

Chapter 2: British Citizenship and the Right of Abode

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Aims of this Chapter

This chapter will enable you to achieve the following learning outcome from the CILEx syllabus:

- 5 Understand modern British nationality law

2.1 Introduction

One of the key elements of British immigration law is the distinction between those who have the right of abode in the UK and those who do not. Those who do not have the right of abode can enter and remain in the UK only if they are given permission to do so, that is, if they are given **leave** to enter or remain. This means that they must qualify under the immigration rules. By contrast, those who have the right of abode have a statutory right to be admitted to and remain in the UK, subject only to being able to prove that they have the right of abode.

The general rule is that **all British citizens have a right of abode**. There are certain **Commonwealth citizens** who also have a **right of abode** but who are **not** British citizens. The latter are a group of people whose numbers are dwindling, because they must have acquired the right of abode before 1983. Since then, Commonwealth citizenship has not created a right of abode.

As all British citizens have the right of abode, this chapter will look largely at how to decide if someone is a British citizen. The situation is still far from straightforward; the main reason for this is that there are different categories of British nationality and not everyone in these categories is necessarily a **British citizen with the right of abode**. There are also a number of different ways in which a person can acquire British citizenship; by **birth, descent, registration** or **naturalisation**.

The position is further complicated by the terminology used. The term **British citizen** has existed only since 1 January 1983, when it was introduced by the **British Nationality Act 1981 (BNA 1981)**. Previously, the right of abode depended on whether one had patrial status under the **Immigration Act 1971 (IA 1971)**, which in turn depended on **citizen of the UK and colonies**

(**CUKC**) status under the **British Nationality Act 1948 (BNA 1948)**. Thus, an understanding of this area of the law requires some knowledge of the historical development of nationality law.

Given the complexity of British nationality law, it would be impossible to provide an exhaustive analysis of the topic in this manual. It is sufficient to be able to identify the circumstances in which a person is likely to have a claim to British citizenship and, therefore, have the right of abode.

2.2 The position before the British Nationality Act 1981

The two defining pieces of legislation relating to nationality law prior to **BNA 1981** were **BNA 1948** and **IA 1971**. The changes brought in by the legislation have shifted the ability to acquire British citizenship from acquisition by birth in the UK to an ability to acquire citizenship largely through one's parents (see **2.5.1** and **2.5.3**). The transition is by no means complete and the legislation now in force enables people to acquire British citizenship by a variety of means.

Before **BNA 1948** citizenship was dictated by place of birth. Anyone born in the UK or a colony was a British subject, owing allegiance to the Crown. **BNA 1948** introduced a new category, **CUKC**, which applied to those born or naturalised in the UK or colonies or to those whose father had been born or naturalised in the UK or colonies. This was the start of the concept of **patriality** – where citizenship is acquired because of one's father's citizenship – although the term was not then used.

IA 1971 properly introduced patriality as the defining factor for the acquisition of citizenship. All patrials had the right of abode and a patrial was defined in **s2 IA 1971**.

2.2.1 Becoming a CUKC on commencement of the British Nationality Act 1948

On the coming into force of **BNA 1948** on **1 January 1949**, British subjects who were born or naturalised (see **2.2.2**) in the UK or colonies, or whose father had been, automatically became **CUKCs**. In addition, people living in independent Commonwealth countries were also British subjects, but these countries enacted their own citizenship laws, so their citizens were not **CUKCs**. A woman married to a man who became a **CUKC**, or who would have become so but for his death, automatically acquired **CUKC** status.

2.2.2 Acquiring CUKC status after commencement of the British Nationality Act 1948

After 1 January 1949, **CUKC** status was acquired in the following ways.

(1) By birth or adoption

Birth (or adoption) in the UK or its colonies continued to be the main way in which people became citizens of the UK and colonies. Unlike current nationality law, the status of children's parents was irrelevant. The parents could be foreigners,

or even living here illegally. The children were British by birth (the one exception being the children of foreign diplomats). This system of acquiring citizenship by birth in the country still prevails in the United States of America, and did until a few years ago in the Republic of Ireland.

Most of the British colonies, however, became independent during the 1950s and 1960s. The majority of people living in the newly independent countries lost their CUKC status, and became citizens of those countries instead.

(2) **By descent**

A child born outside the UK or colonies to a CUKC father acquired CUKC status. This is known as **citizenship by descent**. Only fathers could pass on their CUKC status. British nationality could also be passed on in this way by fathers to children born before 1 January 1949, but for children born after this date the right to become a CUKC by descent was limited where the child's father had himself acquired his citizenship by descent.

An illegitimate child could not acquire CUKC status despite the father being a CUKC; however, the subsequent marriage of the child's parents would legitimate the birth and the child could then acquire his father's CUKC status.

(3) **By registration**

BNA 1948 also made provision for those who were not born CUKCs to acquire this citizenship through registration. In particular, citizens of independent Commonwealth countries who were living and working in the UK were entitled to register as CUKCs after a certain period of lawful residence. This right was subsequently abolished, as Britain's ties to the Commonwealth were weakened.

(4) **By naturalisation**

Provision was also made for people who were not from Commonwealth countries to become British. **BNA 1948** made aliens eligible for naturalisation as CUKCs on the basis of residence in the UK. But unlike the **right** to registration enjoyed by Commonwealth citizens, naturalisation was at the **discretion** of the Home Office and would not be granted unless the applicant was of good character, had sufficient knowledge of the English language, and had been resident in the UK for a minimum period.

2.2.3 **Immigration Act 1971 – patrials and the right of abode**

Despite the grant of independence to most of Britain's colonies, some groups of people living in the newly independent countries did not acquire citizenship of those countries, and continued to be CUKCs. When large numbers of people of Asian ethnicity began using their British passports to emigrate from East Africa to the UK, legislation was introduced in 1968 to restrict this migration. Eventually, **IA 1971** introduced the notion of **patriality**, meaning a close connection with the United Kingdom. Only those CUKCs who were **patrial** continued to have a right of abode in the UK. The main categories of people who were patrial were CUKCs who were born (or adopted, naturalised or registered) in the UK, or who had a father or grandfather who was born in the UK.

This regime was short lived. **IA 1971** came into force on 1 January 1973, and was replaced only ten years later.



Self-assessment Question

(6) What is meant by being British by descent?

2.3 Becoming a British citizen on commencement of the British Nationality Act 1981

BNA 1981 finally introduced the term **British citizen**. Under **BNA 1981**, only British citizens (and certain **Commonwealth citizens**) have a right of abode in the UK. It is important, therefore, to understand who is considered to be a British citizen under **BNA 1981**. **s11(1) BNA 1981** provides that (subject to two exceptions) any person:

- who was a CUKC; and
- who had a right of abode – as defined in **s2 IA 1971** – immediately before **BNA 1981** came into force;

became a British citizen.

s2 IA 1971 was replaced by **s39(2) BNA 1981**, which provides that from the date of commencement – 1 January 1983 – a person has a right of abode if he is:

- a British citizen (formerly a CUKC with a right of abode); or
- a Commonwealth citizen who immediately before commencement was a Commonwealth citizen with a right of abode.

Those CUKCs who did not have the right of abode could not, therefore, become British citizens under **BNA 1981**. Instead, they became either **British dependent territories citizens** (BDTCs) or **British overseas citizens** (BOCs).

2.4 CUKCs who did not have the right of abode

Only CUKCs who qualified for the right of abode in one of the above categories became British citizens. CUKCs who did not have the right of abode became either BDTCs or BOCs.

2.4.1 BDTCs and the British Overseas Territories Act 2002

BDTCs were those persons who were CUKCs by reason of their connection (e.g. by birth) with what was known as a British Dependent Territory (the new name for colony). They were CUKCs who did not have a right of abode under **s2 IA**

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