



# **Nationality and Borders Act 2022: the Nationality provisions**

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# Nationality and Borders Act 2022: the Nationality provisions



# British overseas territories citizenship

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## The British overseas territories:

Anguilla

Bermuda; British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Gibraltar

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St Helena, Ascension and Tristan da Cunha

South Georgia and the South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia (Cyprus)

Turks and Caicos Islands

British Virgin Islands

[NB: the Crown Dependencies (Channel Islands, Isle of Man) are not overseas territories]



# British overseas territories citizenship

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## Section 1: Historical inability of mothers to transmit citizenship

- This section creates a registration route for the adult children of British overseas territories citizen (BOTC) mothers to acquire British overseas territories citizenship
- New s 17A of the British Nationality Act 1981 ('the 1981 Act') does for British overseas territories citizenship, what s 4C does for British citizenship: reduce the prejudice caused by sex discrimination in pre-1983 British nationality law



# British overseas territories citizenship

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## Section 2: Historical inability of unmarried fathers to transmit citizenship

- This section creates a registration route for the adult children of unmarried BOTC fathers to acquire British overseas territories citizenship
- New ss 17B-G of the 1981 Act do for British overseas territories citizenship, what ss 4E-I do for British citizenship: help end the prejudice caused by discrimination against those born to unmarried fathers in pre-1 July 2006 British nationality law



# British overseas territories citizenship

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## Section 4: Sections 1 to 3: related British citizenship

- This section creates a registration route as a British citizen under the 1981 Act for people who have registered as BOTCs under the new routes introduced by Sections 1, 2 and 3.
- In 2002 all those with BOTC status additionally became British citizens by virtue of section 3 of the British Overseas Territories Act 2002 ('the 2002 Act')
- Those who were unable to become BOTCs, due to the fact that women could not pass on citizenship, or because their parents were not married, were also unable to become British citizens under the 2002 Act



# British overseas territories citizenship

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## Section 5: Period for registration of person born outside the British overseas territories

- This section amends Section 17(2) of the 1981 Act to remove the requirement that an application for the registration of a child as a BOTC must be made *within 12 months* of the birth
- Section 17(2) provides a registration route for a child whose parent is a BOTC *by descent* and had been in a territory for a continuous period of 3 years at some point before the child's birth
- At present, an application under this route must be made *within 12 months* of the child's birth
- The parallel provision for British citizens (s 3(2)) was amended in 2009, replacing the requirement for the application to be made within 12 months of the child's birth with a requirement for the application to be made *while the child is a minor*
- This provision amends the BOTC registration route in the same way



# British overseas territories citizenship

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## Section 3: Provision for Chagos Islanders to acquire British nationality

This section inserts section 17H into of the 1981 Act. A person is entitled to be registered as a BOTC on an application if:

- they are a direct descendant of a person ('P') who was a CUKC by virtue of P's birth in British Indian Ocean Territory or, prior to 8 November 1965, in those islands designated as British Indian Ocean Territory on that date, and
- they have never been a BOTC or a British Dependent Territories citizen





# British overseas territories citizenship

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## Section 3: Provision for Chagos Islanders to acquire British nationality

An application under this section must be made:

- in the case of a person aged 18 years or over on the commencement date, before the end of the period of five years beginning with the commencement date;
- in the case of a person aged under 18 on the commencement date, or a person who is born before the end of the period of five years beginning with the commencement date, before they reach the age of 23 years.



# British citizenship

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## Section 7: Citizenship where mother married to someone other than natural father

- This section amends the the 1981 Act to provide an entitlement to British citizenship for individuals who were previously unable to acquire it because their *mother was married to someone other than their biological British citizen father at the time of their birth*
- This addresses the decision in the case of *K (a child) v Secretary of State for the Home Department* [2018] EWHC 1834 (Admin), which found that, in these circumstances, the definition of father in the 1981 Act was incompatible with Article 8 (read with Article 14) ECHR



# British citizenship

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## Section 7: Citizenship where mother is married to someone other than the natural father

- Section 50(9A) of the 1981 Act defines ‘father’ for the purposes of determining the nationality of the child
- ‘Father’ is either: the *husband (or male civil partner)* of the child’s mother at the time of the child’s birth, or the *person treated as the father in IVF cases*. *If neither* of those situations apply, the father is someone who *can provide proof of paternity*. Where the child’s mother is married to someone other than the child’s natural father, her husband is the child’s father for nationality purposes, even if not biologically related to the child
- The above definition of ‘father’ came into force on 1 July 2006. Before then, ‘father’ was only defined as the *husband of the child’s mother*. In that situation, where the child’s biological parents were unmarried, the *child could not take on the father’s British citizenship*.



# British citizenship

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## Section 7: Citizenship where mother married to someone other than natural father

- Remedial registration routes were subsequently inserted into the 1981 Act to allow the children of unmarried fathers born prior to 1 July 2006 to register as British citizens. These provisions are set out at sections 4E–4J of the 1981 Act
- This section is intended to create an entitlement to British citizenship for children born on or after 1 July 2006 who did not become British *because their mother was married to someone other than their natural father*. By removing *the 1 July 2006 cut-off date* for registration under sections 4F – 4I, they will be able to apply
- Section 4D of the 1981 Act provides a registration route for *children who were born outside of the UK and qualifying British overseas territories to members of the British armed forces*, serving outside the UK and qualifying territories. Currently, a child does not qualify under this provision where their mother was married to someone other than their biological father at the time of the child’s birth. This will also be remedied by this section



# Deprivation of citizenship

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## Statutory context: Secretary of State's powers

- Under section 40(2) of the 1981 Act, the Secretary of State *may* by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is ***conducive to the public good***
- Under section 40(3) of the 1981 Act, the Secretary of State *may* by order deprive a person of a citizenship status which results from his naturalisation or registration if the Secretary of State is satisfied that the naturalisation or registration ***was obtained by means of (i) fraud (ii) false representation, or (iii) concealment of a material fact...***



# Deprivation of citizenship

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## Typical clients

- **Not** just those accused of involvement in terrorism e.g. Shamima Begum
- Where citizenship by naturalisation/registration obtained by fraud (section 40(3))
- OR, in “conducive” cases (section 40(2)), where there has been serious criminal or other activity e.g. “serious organised crime, war crimes or other unacceptable behaviours” (*Deprivation and nullity of British citizenship*, 17 July 2017, at 55.4.4)
- Appeal is to the FTT under section 40A(1) of the 1981 Act or to SIAC under section 2B of the SIAC Act 1997 (where certificate issued under section 40A(2) of 1981 Act)



# Deprivation of citizenship

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## Section 10: No notice deprivation decisions

- Section 10 amends section 40 of the 1981 Act to allow a decision to deprive a person of citizenship to be made in the absence of written notice being given to the person (this is subsection (2) which is not yet in force)
- Subsections (1), (6) and (8) have been in force since 28 April 2022
- Subsection (6) retrospectively validates any pre-commencement deprivation order where written notice was not properly given under section 40(5) of the 1981 Act
- Subsection (8) provides for a right of appeal in these circumstances and deems notice to have been given on the date on which the deprivation order was made or purportedly made



# Deprivation of citizenship

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## Section 10: Context

- Section 10(6) has been introduced following the High Court judgment in *D4 v Secretary of State for the Home Department* [2021] EWHC 2179 in relation to Regulation 10(4) of the British Nationality (General) Regulations 2003; see now [2022] EWCA Civ 33, upholding that judgment
- Regulation 10(4) provides that notice of a deprivation decision is deemed to have been given in certain circumstances when it is placed on a person's Home Office file





# Deprivation of citizenship

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## Section 10: Context

- *D4* found that Regulation 10(4) was *ultra vires* because the requirement to “give written notice” of a deprivation decision under section 40(5) of the 1981 Act cannot be satisfied by placing the notice “on file.” The associated deprivation order was invalid
- Section 10(6) retrospectively validates pre-commencement deprivation orders placed “on file” or where written notice was not otherwise properly given under section 40(5)



# Deprivation of citizenship

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## Section 10: Recent case law on retrospective effect

- In *C12 v Secretary of State for the Home Department* (16 September 2022), SIAC confirmed (per Saini J at 65-66):
  1. The plain language of section 10(6) meant that it had retrospective effect.
  2. Where there has been a failure to give proper notice of a deprivation decision, notice is deemed to have been given on the date of the deprivation order and times start to run from that date for the purposes of the 28-day deadline for appealing to SIAC (under Rule 8 of the SIAC Procedure Rules)

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# Deprivation of citizenship

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## Section 10: Recent case law on retrospective effect

- In *C12 v Secretary of State for the Home Department* (16 September 2022), SIAC confirmed (per Saini J at 65-66):
  3. In a case of true lack of knowledge of the decision (unlike on the facts of *C12*) an extension of time to appeal would be likely granted by SIAC (and unlikely opposed by the SSHD).
  4. Contrary to the Appellant's submissions, Parliament clearly intended that a right of appeal was to be replaced with this weaker ability to ask SIAC to exercise its discretion to extend time.



# Deprivation of citizenship

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## Section 10: conditions for no notice deprivation

The requirement to give notice does not apply if:

- The Secretary of State does not have the information needed to be able to give notice, and
- the Secretary of State *reasonably considers it necessary*, in the interests of:
  - (i) national security,
  - (ii) the investigation or prosecution of organised or serious crime,
  - (iii) preventing or reducing risk to the safety of any person, or
  - (iv) the relationship between the United Kingdom and another country,

that notice under that subsection should not be given.

(New subsection 5A to be inserted into section 40 of the 1981 Act)



# Deprivation of citizenship

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## Section 10: Contact with Secretary of State

Where the Secretary of State has made a conducive order under section 40(2) and has not given the notice required, and

- the person in respect of whom the order was made makes contact with the Secretary of State for the Home Department
- The Secretary of State must, as soon as is reasonably practicable, give the person written notice specifying:
  - (i) that she has made the order,
  - (ii) the reasons for the order, and
  - (iii) the person's right of appeal to the First-tier Tribunal or SIAC.

(New subsection 5D to be inserted into section 40 of the 1981 Act)



# Deprivation of citizenship

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## No notice deprivation: Judicial oversight (Schedule 2 of 2022 Act)

- If the Secretary of State *proposes to make* a conducive grounds deprivation order without notice, the Secretary of State *may* apply to SIAC.
- If the Secretary of State *makes* a conducive grounds deprivation order without notice, the Secretary of State *must* apply to SIAC within the period of seven days beginning with the day on which the order is made, unless an application has already been made.



# Deprivation of citizenship

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- The function of SIAC on an application is to determine whether, in respect of each condition on which the Secretary of State relies under section 10(2), her view is *obviously flawed* (recall the conditions are: the SSHD does not have the information needed to be able to give notice; or she reasonably considers it necessary not to give notice in the interests of: (i) national security, (ii) the investigation or prosecution of organised or serious crime, (iii) preventing or reducing a risk to the safety of any person, or (iv) the relationship between the United Kingdom and another country)
- In determining that question, SIAC must apply the principles that would be applicable on an application for judicial review.



# Deprivation of citizenship

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If SIAC determines that the Secretary of State's view is obviously flawed in respect of each condition on which she relies:

- if the order in question has not been made, notice must be given in relation to the order;
- if the order has been made, the Secretary of State must, within the period of 14 days beginning with the day on which SIAC made the determination
  - (i) give late notice in respect of the order,
  - (ii) revoke the order, or
  - (iii) make an application to SIAC for fresh consideration due to a material change of circumstances or fresh evidence.





# Deprivation of citizenship

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- If the Secretary of State makes a conducive grounds deprivation order without notice, and SIAC has not made a determination about whether it was obviously flawed
- The Secretary of State must, at least once in every review period, review the circumstances of the person in respect of whom the order was made (so far as known) and decide whether to give late notice in respect of the order.
- On such a review, the Secretary of State must decide to give late notice to the person unless it appears to the Secretary of State that any of the conditions disabling the notice requirement are met.



# Deprivation of citizenship

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If the Secretary of State decides at any point to give late notice in respect of the order:

- She must give the notice as soon as reasonably practicable, and
- once the notice is given, further reviews are not required.

If on the expiry of the final review period the Secretary of State has not given, or has not decided to give, late notice in respect of the order, She must make an application to SIAC within the period of seven days beginning with the day after the final day of that review period.



# Deprivation of citizenship

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The Review period is :

- the period of four months beginning with the day after the day on which SIAC first determined an application in relation to an order, and
- each of the next five successive periods of four months



# Deprivation of citizenship

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- Deprivation of British citizenship is a serious step with serious consequences requiring intense scrutiny: *Pham v SSHD* [2015] UKSC 19 (at paras. 98 and 108); *R (Begum) v SSHD* [2021] UKSC 7 (at para. 64); *S1 v SSHD* [2016] EWCA Civ 560 (at para. 17)
- Notice of a decision is a fundamental feature for it to have legal effect, per Lord Steyn in *R (Anufrijeva) v Secretary of State for the Home Department* [2003] UKHL 36 (at para. 26)
- Article 12(4) of the International Covenant of Civil and Political Rights (ICCPR) provides that, “No one shall be arbitrarily deprived of the right to enter his own country”



# Deprivation of citizenship

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The United Nations' Human Rights Committee is the body of independent experts that monitors implementation of the ICCPR. In its General Comment (No 27): Article 12 (Freedom of Movement) it noted:

“21.... The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country”



# Deprivation of citizenship

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- The United Kingdom is also bound by the United Nations' 1961 Convention on the Reduction of Statelessness
- The United Nations High Commissioner for Refugees (“UNHCR”) has a mandate to address statelessness.
- In its *Guidelines on Statelessness No 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*, the UNHCR considers the position of those who stand to be deprived of citizenship and be left stateless *as well as considering the procedural requirements for any deprivation of nationality (even where not left stateless) to avoid the charge that it is arbitrary and thereby unlawful*



# Deprivation of citizenship

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*UNHCR Guidelines on Statelessness No 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness:*

*“99. State decisions involving the acquisition, retention or renunciation of nationality should be issued in writing and open to effective administrative and judicial review. The individual whose nationality is withdrawn should also be provided with written reasons for the withdrawal in a language they understand.”*



# Deprivation of citizenship

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- In addition to the affront that Section 10 poses to the common law, and international legal standards, it may breach the United Kingdom's human rights commitments under the European Convention of Human Rights (“ECHR”), which have been incorporated into domestic law by the Human Rights Act 1998
- The use of the powers conferred by the section may give rise to deprivation decisions that are incompatible with Article 6, 8, and 14 ECHR.





# British citizenship

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## Section 6: Disapplication of historical requirements: Consular registration

- This section amends ss 4C and 4I of the 1981 Act, so that the requirement for a person's *birth to have been registered within 12 months at a British consulate* is to be ignored when assessing whether they would have become a Citizen of the UK and Colonies ('CUKC') under the British Nationality Act 1948 ('the 1948 Act'), had *women and unmarried fathers* been able to pass on citizenship at the time of their birth
- Under the 1948 Act, citizenship could normally only be passed on for *one generation* to children born outside of the UK and Colonies. However, paragraph 5(1)(b) of the 1948 Act permitted it to be passed on to further generations if the child was born *in a foreign country* and *their birth* was registered within a year at a British consulate. The child of a British mother or unmarried British father could not be registered because they were unable to pass on citizenship at that time
- The section amends the 1981 Act, so that applications under section 4C (British mothers) and section 4I (unmarried fathers) will not be refused solely because the requirement to register the birth within a year has not been met. This reflects the decision in the case of the *Advocate General for Scotland v Romein* [2018] UKSC 6



# British citizenship and British overseas territories citizenship

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## Section 8: Citizenship: registration in special cases

This section creates new registration provisions which allow the Secretary of State to grant British citizenship and/or British overseas territories citizenship to adult applicants if, *in the Secretary of State's opinion*, the person would have been or would have become a British citizen and/or BOTC had it not been for:

- *historical unfairness* in the law;
- an act or omission of a public authority;
- or other *exceptional circumstances* relating to the person's case.



# British citizenship and British overseas territories citizenship

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## Section 8: Citizenship: registration in special cases

‘Historical legislative unfairness’ includes circumstances where a person would have become, or would not have ceased to be, a British subject, a citizen of the United Kingdom and Colonies, or a British citizen, if an Act of Parliament or subordinate legislation had, for the purposes of determining a person’s nationality status:

- treated males and females equally,
- treated children of unmarried couples in the same way as children of married couples, or
- treated children of couples where the mother was married to someone other than the natural father in the same way as children of couples where the mother was married to the natural father.



# British citizenship and British overseas territories citizenship

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## Section 8: Citizenship: registration in special cases

- The Secretary of State already has the power to register minors as British citizens by discretion under subsection 3(1) of the 1981 Act
- Currently, no such power exists to grant citizenship by discretion to adults
- Section 7 is not as wide as s 3(1) of the 1981 Act



# British citizenship and British overseas territories citizenship

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## Section 8: Citizenship: registration in special cases

Policy: Registration as a British citizen in special circumstances

Version 2.0



# British citizenship and British overseas territories citizenship

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## Section 8: Citizenship: registration in special cases

- It is not an alternative to meeting other statutory requirements.
- Equally, it is not intended for situations where the law changed over time but applied equally to everyone in the same way, as was the case when the British Nationality Act 1981 itself became law.



# British citizenship and British overseas territories citizenship

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## Fees

Fees are payable in accordance with The Immigration and Nationality (Fees) Regulations 2018.

- People applying on this route who missed out on an entitlement to register, or opportunity to naturalise, as a British citizen because of historical legislative unfairness, an act or omission of a public authority or exceptional circumstances relating to the applicant will be required to pay a British citizenship fee.
- No British citizenship fee will be applied to applicants who missed out on acquiring British citizenship *automatically* but for one of these three reasons.



# British citizenship and British overseas territories citizenship

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## Historical legislative unfairness: There is no exhaustive list.

- Additional examples of legislative unfairness will generally be of a similar nature to those set out in s 8.
- For example, it may additionally extend to scenarios which suggest inequality of treatment between individuals because of *a protected characteristic*.





# British citizenship and British overseas territories citizenship

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## Historical legislative unfairness:

“The law itself is not unfair as it does not distinguish between people in the same circumstances on grounds of protected characteristics - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.”



# British citizenship and British overseas territories citizenship

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## Historical legislative unfairness: Presumptive categories

- Children born in UK to foreign diplomats
- Children with British grandmothers in Crown Service
- People prevented from qualifying for citizenship due to Home Office act or omission
- Children in local authority care
- Young adults adopted by British citizens in UK



# British citizenship and British overseas territories citizenship

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- Remember the Good Character test applies



# British citizenship and British overseas territories citizenship

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## Section 9: Requirements for naturalisation, etc..

- This section enables the Secretary of State to waive a requirement for naturalisation as a British citizen under section 6 of the 1981 Act, naturalisation as a BOTC under section 18, and registration as a British citizen under section 4, namely *to have been present in the UK (or British overseas territory) at the start of the applicable residential qualifying period*
- Section 6 of the 1981 Act gives the Secretary of State the power to grant a certificate of naturalisation to an adult. The requirements for naturalisation are set out at Schedule 1 to the 1981 Act. There is a requirement to complete a period of either 3 or 5 years' residence in the UK (or a British overseas territory) before an application can be made (this is the residential qualifying period) *and the individual must have been present in the UK (or British overseas territory) at the beginning of the residential qualifying period.*



# British citizenship and British overseas territories citizenship

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## Section 9: Requirements for naturalisation, etc...

- Section 4 of the 1981 Act, a provision for registration of British nationals as British citizens, has residence requirements which mirror those for naturalisation. Similar provisions exist for naturalisation as a BOTC, at section 18 of the 1981 Act
- The rationale behind all these requirements is that an individual must be able to demonstrate a *sustained connection with the UK* (or British overseas territory), although absences up to a specified number of days are permitted by the legislation
- The Secretary of State has the power to waive the requirement relating to the maximum number of days of absence and to treat this requirement as fulfilled in the special circumstances of a particular case (see paras 2 and 6 of Schedule 1 to the 1981 Act for British citizenship and BOTC, respectively, and in s 4(4) for registration)



# British citizenship and British overseas territories citizenship

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## Section 9: Requirements for naturalisation, etc...

- Presently, there is no power to waive the requirement to have been present in the UK *at the start of the qualifying period* (except in relation to applications for naturalisation as British citizens from current or former members of the armed forces)
- The section amends the 1981 Act to allow the Secretary of State to waive the requirement that the individual must have been present in the UK or relevant overseas territory at the start of the qualifying period *in the special circumstances of a particular case*



# British citizenship and British overseas territories citizenship

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## Section 9: Requirements for naturalisation, etc...

- Section 9 of and Schedule 1 to the British Nationality Act 1981 allow the Secretary of State to treat a person who has indefinite leave to enter or remain as meeting certain residence requirements in relation to an application for citizenship under those sections.
- The Secretary of State may treat the applicant as fulfilling the requirement *not to be in breach of immigration laws* without enquiring into whether or not the applicant was in the UK in breach of the immigration laws in the period mentioned.
- Among others, it will benefit those with EUSS Settled Status/ILR who were exercising pre-Brexit EU rights of free movement as students or self-sufficient persons but who lacked comprehensive sickness insurance (CSI) and thus were in breach of immigration laws as not lawfully resident.



# British citizenship

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## Changes to policy on Registration of minors under s 3(1) of the British Nationality Act

There are three additional cohorts where the Secretary of State would want to normally grant a section 3(1) application





# British citizenship

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## Registration in line with parents

A number of children apply for registration under section 3(1) at the same time as their parents apply for naturalisation. Such children have usually been living in the UK with their parents and have completed a period of lawful residence. The criteria for granting an application on this basis would be:

- that one parent is a British citizen, or their application for registration or naturalisation is to be approved
- the other parent (if involved in the child's life) is a British citizen or settled in the UK
- the child has been resident in the UK for the last two years (or a shorter residence period if the child is under the age of two, taking into account the age of the child)
- the child has ILR
- the child is of good character if over the age of 10



# British citizenship

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## Registration on the basis of settlement and residence (“child naturalisation”)

Some children will have been living in the UK with their parents, and have completed a period of lawful residence, effectively meeting the same residence requirements that an adult would need to naturalise.

The parents may choose, for valid reasons such as dual nationality restrictions of their home country, not to apply for citizenship. The criteria for this group are:

- the child has completed a period of lawful residence in the UK of more than 5 years
- the child has ILR, and will normally have held that status for at least 12 months
- the child’s parents (or parent if the other parent is not involved in the child’s life) have completed a period of 5 years residence and are settled in the UK
- the child is of good character if over the age of 10.



# British citizenship

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## Registration on the basis of long residence

This category reflects the position of children who have spent a large proportion of their life in the UK. The Secretary of State will normally register if a child has lived in the UK for more than 10 years and:

- the child is in the UK lawfully at the time of consideration
- the parents have regularised their own status
- the child is of good character.

Where a child has completed 10 years residence, but either is not here lawfully or their parent has not regularised their own immigration status, the guidance will advise caseworkers to consider whether there are nevertheless compelling reasons to register despite the normal expectations not being met.



# Statelessness

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## Section 11: Citizenship: stateless minors

- This section amends Schedule 2 to the 1981 Act to introduce a new requirement for the registration of a stateless child (aged 5 to 17) as a British citizen or a BOTC and maintains the existing requirements in relation to those aged 18 to 22
- Provisions for reducing statelessness within the nationality framework are set out at section 36 and Schedule 2 of the 1981 Act
- Paragraph 3 of Schedule 2 to the 1981 Act provide for a stateless child born in the UK or an overseas territory to be registered as a British citizen or BOTC. The conditions which apply to this provision include, amongst others, a residential requirement and a requirement that the individual has always been stateless.



# Statelessness

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## Section 11: Citizenship: stateless minors

- According to the Secretary of State, there have been cases where parents have chosen not to register their child's birth, which would have acquired their own nationality for their child, so that the child can register as a British citizen under the statelessness provisions.
- The section aims to prevent this 'vice'. This is to be achieved by adding a requirement that the Secretary of State be satisfied that the child cannot reasonably acquire another nationality.



# Statelessness

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## Section 11: Citizenship: stateless minors

The change will leave certain children stateless and in doing so runs contrary to the UK's obligations under the 1961 UN Convention on the Reduction of Statelessness

- It adds a provision for those aged 5-17 that the Secretary of State is satisfied that the child applicant is unable to acquire another nationality. It provides that a person is able to acquire a nationality where (i) that nationality is the same as one of the parents; (ii) the person has been entitled to acquire that status since birth; and (iii) *in all the circumstances, it is reasonable to expect them (or someone acting on their behalf) to take steps to acquire that nationality*



# Statelessness

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## Section 11: Citizenship: stateless minors: Criticism

- The problem with the provision is that it allows the Secretary of State to keep a child born in the UK without a nationality stateless from the age of 5 onwards, when in fact, the 1961 Convention—which the 1981 Act purports to implement—simply requires that the applicant is stateless and not that they cannot reasonably acquire another nationality
- The only circumstances where conferral of British citizenship could be withheld under the 1961 Convention is where the nationality of a parent was available to the child *immediately, without any legal or administrative hurdles, and could not be refused by the state concerned*, see for example paragraphs 24 to 26 of the UNHCR ‘*Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*’.



# Thank you

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