

Immigration Law 2024

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Colour Coding Guide

- ❖ Blue Text Reference to statutes, case law and Immigration Rules.
- ❖ Green Text Reference to textbook¹ paragraphs, workshop tasks² and other notes in this guide.
- Orange Text Application Forms.
- * Red Text Points available under the points system.

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¹ Textbook references are to the CLP Legal Practice Guides by CLP Publishing.

² References to Workshop tasks are to University of Law workshop tasks (which may be adopted by other LPC institutions). The content and structure of Workshops is subject to change at short notice and so task references should be treated as a general guide only.

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The Right of Abode

❖ Immigration Law, Chapter 2

	,
What is the "right of	The right of abode is a right to live in the United Kingdom <u>without any</u> <u>immigration restrictions</u> .
abode?"	
	❖ It is set out in <u>\$1 Immigration Act 1971.</u>
<u>Immigration</u>	
<u>Law, 1.2.1</u>	\bullet s1(1): Anyone expressed to have the right of abode in the UK shall be free to:
	Live in, and come and go into, and from;
	➤ The United Kingdom;
	Without let or hindrance;
	Subject to exceptions set out in the Act or otherwise lawfully imposed.
	❖ In overview, anyone with the right of abode is:
	Free to leave or enter the UK at any point in time;
	Will not be subject to immigration controls, providing they can prove their right of abode (normally by presentation of a passport on entry); and
	Cannot be excluded from the UK (i.e., cannot be removed or deported).
Who has the	❖ British Citizens
right of abode?	
	❖ Certain Commonwealth Citizens.
<u>Immigration</u>	s1(2): Anyone who does <i>not</i> have the right of abode may only live, work and settle
<u>Controls</u>	in the UK:
	By permission; and
	Subject to such regulation and control of their entry into, stay in, and
	departure from the UK as imposed by the Act.
	\$\frac{\si1(2)}{2}\$ thus introduces the concept of immigration controls . Broadly, these may require a person to obtain:
	Entry clearance before they travel to the UK.
	Permission ("leave") to enter the UK when first arriving at the port of entry.
	Permission ("leave") to remain in the UK, if an extension of the initial
	time granted for the stay is required.

<u>"Types" of</u> British Citizen

Immigration Law, 2.2.5

- ❖ There are two "types" of British Citizen:
 - British Citizens by Descent; and
 - British Citizens Otherwise than by Descent
- ❖ Very broadly, a **British Citizen by Descent** is someone who acquires British citizenship **through their parent(s)**, where the citizenship is passed on from a British citizen parent.
- ❖ A British Citizen otherwise than by Descent is an individual who acquires British citizenship through their birth within the UK, adoption, naturalisation, or registration in the UK. This category primarily covers those who have a direct claim to citizenship *through their own circumstances* rather than through descent from a parent.
- The "type" of Citizen that a person impacts upon that person's ability to pass their Citizenship on to subsequent generations. Only a British Citizens Otherwise than by descent can automatically pass on their citizenship if their child is born outside the UK (see below).

"Naturalisation"

Immigration Law, 2.2.7

- Naturalisation is explained in greater detail in our note on *Naturalisation*. For the purposes of this note, however, you should understand that:
 - Naturalisation is a process through which an adult, who is a foreign national living in the UK with settled status, can **apply to become a British citizen** (otherwise than by descent).
 - Under s6 of the BNA 1981, the Home Secretary has discretion to grant a certificate of naturalisation to any person aged 18 or over who is not a British citizen where they meet certain requirements.

The requirements differ depending on whether or not an applicant is **married to or in a civil partnership with a British citizen.**

Applications for Registration

Immigration
Law, 2.2.6

- ❖ In certain circumstances, set out in the table below, a person will **not** become a British Citizen automatically when the relevant criteria are fulfilled. Instead, they gain a right to apply to the Home Office to **register to become a British Citizen**.
- ❖ If this is the case, the Home Secretary will have *discretion* as to whether or not to grant that person status as a British Citizen.

When is someone a British Citizen?¹

❖ Immigration Law, 2.2

Overview	❖ Whether someone is a British Citizen depends on three main factors:					
	The date of their birth (changes in the law mean that the requirements for British Citizenship have changed over time; the main date of change is 1 January 1983).					
	➤ The location of their birth (whether it was or was not in the UK).					
	Whether or not they were "legitimate" (i.e., whether their parents were married).					

Date of	Location	Additional Requirements?		Type?
Birth Before 1 January 1983	of Birth In the UK	❖ None	*	British Citizen otherwise than by descent.
	Outside of the UK	 The Person's father must have either been born in the UK; or been registered or "naturalised" as a British Citizen before the Person's birth. AND The Person must be legitimate. This means that the parents must have been married at the time of the Person's birth; or if they were not married at the time of the Person's birth, the parents must have married at a later date in a country where marriage operates to legitimise the Person. 	*	British Citizen by descent.
		 ➤ If the parents do marry at a later date in a country where the marriage operates to legitimise a child, the event of the marriage will cause the Person to become a British Citizen providing the other requirements are met. ❖ This means that a British father cannot transmit his British citizenship acquired in the UK to an illegitimate child born outside the UK before 1 January 1983. However, s4I of the 		

¹ Workshop 1, Task 1

© LPC Buddy	T 1*	Additional Dogginamenta?				
Date of Birth	<u>Location</u> of Birth	Add	itional Requirements?		Type?	
DILUI	UI DII'UI	BNA 1081 now prov	vides such a child with the right to apply			
		to register as a Br				
						
		❖ It is not possible fo	r a <i>mother</i> to pass down her British			
		-	eone born before 1 January 1983. Instead,			
			pply to the Home Office for the Person			
			British (<u>s4C British Nationality Act (BNA)</u>			
	x .1 xxx		1981). Such a Person will be a British Citizen by Descent. ❖ A Person born in the LIK after 1082 is a British Citizen if at ❖ British			
On or after 1	In the UK		❖ A Person born in the UK <u>after 1982</u> is a British Citizen if, at ❖ British			
January			rth, <u>either</u> of their parents (i.e. the mother ritish citizen or had settled status in the		<u>Citizen</u> otherwise	
1983.		UK.	in the		than by	
2903.		014			descent.	
		❖ The Person will be	a <mark>British Citizen otherwise than by</mark>			
		<mark>descent.</mark>				
			vever, until 1 July 2006, the term			
		-	rent" <u>did not include an unmarried</u>			
		<u>fath</u>	<u>ter</u> .			
		* This	s means that a Person born to <i>unmarried</i>			
		pare	ents before 1 July 2006 will <i>not</i> be a			
		Brit	ish Citizen if their only route to claiming			
		this is through their unmarried father.				
		• In such circumstances, the Person must				
		apply to register to become a British Citizen under s4F of the BNA 1981, which				
			require the Secretary of State to accept			
			lence that the father is the Person's			
		pare	ent. Under <u>s50(9A) BNA 1981,</u> an			
			narried father can be considered a parent			
		in tl	nis context if:			
			No type langth, were gried as the			
			He was <i>legally</i> recognised as the father or parent due to fertility			
			treatment under <u>\$28</u> , <u>\$35</u> , <u>\$36</u> , <u>\$42 or</u>			
			s43 Human Fertilisation and			
			Embryology Act 1990; or			
			He can prove he is the <u>natural</u> father			
			with sufficient evidence like a birth			
			certificate, DNA test report, or court order.			
			oruci.			
		❖ Since	ee 1 July 2006, there is no requirement for			
			application for registration. The Person			

© LPC Buddy Date of	Location		Type?			
<u>Birth</u>	of Birth					
			 will be a British Citizen so long as an unmarried father can show that he complies with s50(A) BNA 1981; i.e.: He was legally recognised as the father due to fertility treatment 			
			under s28 Human Fertilisation and Embryology Act 1990 ; or Can prove he is the natural father with sufficient evidence like a birth certificate, DNA test report, or court order.			
		Example	 In both cases the child will be British Citizens by Descent Alfie is born in 2002 in the UK. 			
			 Alfie's parents are Oliver and Jessica. They were not married at the time of Alfie's birth. Alfie's mother, Jessica, is not a British Citizen, and only had limited leave to remain when she gave birth to Alfie. Alfie cannot, therefore, claim British Citizenship "through" his mother. 			
			❖ Alfie's father, Oliver, is a visa national but had indefinite leave to remain when Alfie was born. Alfie <u>can</u> , therefore, claim British Citizenship "through" Oliver, however Oliver and Jessica were not married at the time of Alfie's birth.			
			Alfie will not, therefore, be a British Citizen, however he may be able to apply to be registered as a British Citizen at the discretion of the Secretary of State if the Secretary of State accepts evidence that Oliver is Alfie's father.			
		❖ If <i>neither</i> of the Person's parents were British Citizens or settled in the UK at the time of the Person's birth, a Person who was born in the UK on or after 1 January 1983 can apply				

© LPC Buddy Date of	Location	Additional Requirements?	Type?
<u>Birth</u>	of Birth	Delta de la companya (a) and (a) DNA	
		to register as a British citizen under <u>s1(3)</u> and <u>(4)</u> BNA <u>1981</u> , if after their birth:	
		One of their parents <u>becomes a British citizen or</u> <u>settled in the UK</u> before they reach 18; and	
		The Person is under the age of 18 on the date of tapplication, and, if over the age of 10, is of "good character" ; or	heir
		The Person remained in the UK for the first 10 year of their life and were not absent for more than 9 days in any single year during that period.	
		■ The Home Office has discretion to allow absences for longer than 90 days providing the Person is not absent for more than 180 days in any one year, or for more than 90 days in total, unless these periods of absert were beyond the family's control.	<u>90</u>
	Outside of the UK.	The general rule is that a Person will be a British Citizen descent if their <u>father or mother</u> was a British citizen otherwise than by descent at the time of the Person's bir	Citizen by
		If the parents are unmarried. If the Person was born on or after 1 July 2006, outside of the UK, to unmarried parents, they will be a British citizen by descent if their mother or father was a British citizen (otherwise than by descent) at the time of their birth. In othe words, for children born on or after 1 July 2006, the mother's marital status does not matter.	
		♣ However, if the Person was born after 198 but <u>before 1 July 2006</u> , outside of the UK, <u>unmarried parents</u> , the Person will only la British Citizen by descent if their mother was a <u>British citizen (otherwise than by descent)</u> , at the time of the Person's birth	to be
		❖ If their mother was not a British citizen (otherwise than by descent), the Person may apply to register as a British citizen under s4G of the BNA 1981 which is	

Date of Birth	Location of Birth	Additional Requirements?	Type?
		contingent upon providing satisfactory evidence that: The Person's <u>father</u> was a <u>British</u> citizen otherwise than by descent at the time of the Person's birth, <u>and</u> The Person's father is the Person's	
		biological parent.	

Passing on British Citizenship

❖ Immigration Law, 2.2.5

	When does this apply?	What difference does this make?
British Citizens Otherwise than by Descent	 ❖ If a Person has British citizenship: ➤ By birth in the UK; or ➤ As a child by registration in the UK; or ➤ As an adult by naturalisation in the UK. 	British Citizens Otherwise than by Descent can automatically pass on British citizenship to their children, even if those children are born outside the UK.
British Citizens by Descent	* Where a Person: > Is born outside the UK; or > Acquires British citizenship only because one or both of the Person's parents is a British citizen.	 ❖ If the Person's child is born outside the UK, they cannot automatically pass on British citizenship. ❖ If one of the parents is a British citizen by descent ("the British Parent"); and the British Parent has a parent ("the grandparent") who is or was British otherwise than by descent: ➢ If the British Parent had, at some time before the child's birth lived in the UK for a continuous period of three years; was not absent for more than 270 days in that period, the child will be able to be registered as a British citizen (by descent) (provided, if they are 10 or over, they are of "good character"). ➢ If, however, the British Parent did not, before the child's birth live in the UK for a continuous period of three years, (or they

did but were absent for more than 270 days in that period), it will be possible to **register** the child in the UK as a **British citizen (otherwise than by descent)** but only **if:**

- The child, if aged 10 or over, <u>is of</u>
 <u>"good character"</u>; and
- During the child's childhood both
 parents (unless one of them is dead, or
 the couple have divorced) came to live
 in the UK with them for a
 continuous period of three years;
 and
- They were not absent during that time for more than 270 days; and
- Both parents' consent to the child being registered as a British Citizen, unless one of them has died.

Exclusion from
British
Citizenship by
registration as children under the
Illegal
Migration
Act 2023.

Immigration Law, 2.2.10

- Under the <u>Illegal Migration Act 2023</u>, persons may be unable to claim <u>British</u> <u>Citizenship:</u>
 - **By registration** as children; or
 - ➤ By way of **naturalisation** under <u>s6 of the BNA 1981</u>;
 - > Due to them being <u>inadmissible due to the manner of their entry or arrival</u>.
- ❖ s8AA Immigration Act 1971 provides that an individual will be so excluded where:
 - They entered or arrived in the UK on or after 7 March 2023;
 - They arrive without valid entry clearance, leave to enter, or Electronic Travel Authorisation (ETA);
 - They <u>require leave to enter or remain in the UK</u> but do not have it; and
 - They <u>did not arrive directly from a country where their life and liberty were</u> <u>at risk</u> by reason of their race, religion, nationality, membership of a social group, or political opinion. The Act essentially concerns those who <u>passed</u> <u>through or stopped in a safe country</u> before arriving in the UK.
- The exception to this is if the Secretary of State determines that a person should not be excluded because to do so would **contravene the UK's obligations under the** <u>ECHR</u>.

British Citizenship – Summary

❖ Immigration Law, Appendix 6

Start here	A: Before 1st January	Q2	*	Where was the Person born?	*	In the UK: they are a British citizen otherwise than by descent.
V	1983 :				*	Outside the UK: go to Q3.
Q1	start from Q2 .	Q3	*	Was the Person's father born in the UK [or	*	Yes: go to Q4.
When was				registered / naturalised as a British Citizen before the	*	No : go to Q5 .
<u>the</u>				person was born]?		
Person born?		Q4	*	Was the Person's father married to the person's mother?	*	Yes: they are a British citizen by descent.
					*	<u>No</u> : go to Q5 .
			*	[If the marriage takes place after the Person's birth, did		
				that marriage legitimise the Person?]		4
		Q5	*	Was the Person's mother born in the UK [or		Yes: go to Q6.
				registered/ naturalised as a British Citizen before the	*	No : go to Q7 .
				Person was born]?		
		Q6	*	Did the Person's mother register the person as a British Citizen?	*	Yes: they are a British citizen by descent.
					*	No : go to Q7 .
		Q ₇	*	Has the Person registered as a British citizen?	*	Yes: they are a British citizen by descent.
					*	No : go to Q8 .
		Q8	*	Has the Person been	*	Yes: they are a British citizen
				naturalised in the UK as a British citizen?		otherwise than by descent.
					*	No: they are not a British citizen.
	B: On or after 1	<mark>Q9</mark>	*	Was the Person born in the UK?		Yes: go to Q10.
	<u>January</u>				*	No: go to Q12.
	<u> 1983:</u>	Q10	*	Was either of the Person's	*	Yes: they are a British citizen
	start from			parents a British citizen		otherwise than by descent.
	<mark>Q9</mark> .			or settled in the UK when		Malacatha Dancara and beautiful and the
				the Person was born?		<u>Unless</u> the Person was born before 1 July
						2006, to unmarried parents, and their only route to claiming citizenship is
						through their <i>father</i> (in other words, the
						mother is <i>not</i> a British Citizen). In that
						case, the Person must apply to register
					l	and, and recommittee apply to register

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		to become a British Citizen. To be registered, the Home Office will require satisfactory evidence that the father was either legally recognised as the father due to fertility treatment, or the Person's natural father.
Q11	❖ Did either of the Person's parents <u>subsequently</u> <u>become a British citizen</u> or settled in the UK?	 No: go to Q11. Yes: the Person can apply to register as a British citizen otherwise than by descent. The Person must be able to show that they remained in the UK for the first 10 years of their life and were not absent for more than 90 days in any single year during that period.
Q12	Was one of the person's parents a British citizen otherwise than by descent by birth, registration or naturalisation in the UK before he was born?	 ❖ No: they are not a British citizen. ❖ Yes: they are a British citizen by descent; Unless they were born to unmarried parents before 1 July 2006 and their only route to citizenship is through their father (in other words, the mother is not a British citizen otherwise than by descent). In such a case, the person may apply to register as a British citizen. Registration will be granted if satisfactory evidence can be provided that the person's father was a British citizen otherwise than by descent at the time of the Person's birth, and the father is the Person's biological
		parent. No: they are not a British citizen.