

Passport policy - Immigration and Right of Abode

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Right of Abode in the United Kingdom

A person with the nationality status of British citizen automatically has the Right Of Abode (ROA) in the United Kingdom under the provisions of section 2 of the Immigration Act 1971, as amended by section 39 of the British Nationality Act 1981, a copy of which can be found in Order Book Volume 2.

The observation 'THE HOLDER HAS THE RIGHT OF ABODE IN THE UNITED KINGDOM' is only entered in passports of British Subjects who have a right of abode in the United Kingdom under the provisions of the 1971 Act.

Applicants may produce evidence of immigration status in the following ways:-

ROA under section 2(1)(c) Immigration Act:

- A status letter from the United Kingdom Border Agency (UKBA) confirming the applicant's 2(1)(c) ROA status.
- A passport with an UKBA stamp that shows they were clearly landed in the United Kingdom (UK) before 1st January 1978. Examiners should check the passport to ensure that they have not travelled excessively subsequent to the landed stamp. (If there is evidence that the passport holder has been regularly in and out of the country then they may not qualify as settlement under section 2(1)(c) Immigration Act (IA) and will need to be referred to UKBA to have their claim to ROA established.)

Right to Re-admission to the United Kingdom: (RUK)

- A passport with an UKBA stamp that clearly shows the applicant was free of conditions, this may be an Immigration Officer's stamp showing the holder was granted Indefinite Leave to Enter (ILE), or it may be a simple entry stamp with no accompanying condition attached.
- A passport with an UKBA stamp that shows the holder has Indefinite Leave to Remain (ILR)
- A letter from the Immigration Service confirming the person no longer has conditions attached to their stay in the UK

See below for further information relating to applicants without Right of Abode but entitled to re-admission to the United Kingdom.

The use of P6 submissions to UKBA to establish the above has been stopped and this procedure should not be followed. Examiners must not contact UKBA. They should inform the applicant that the onus is on them to contact UKBA to confirm their Right of Abode (ROA) status.

Settlement Claims (SC) under the Immigration Act:

- A passport where the latest immigration stamp shows conditions attached to the holder's stay, or
- The latest stamp in the passport shows 'The holder is subject to control under the Immigration Act

(When a passport holder has RUK, this endorsement only remains in force as long as the passport holder is not outside the UK for two years or more, after which time the Immigration Officer will determine the current immigration status on re-entry to the UK).

The applicant should be informed that they are entitled to a British Overseas Citizen (BOC) passport if they have British Subject of the United Kingdom and Colonies (BSUKC) status and the Identity and Passport Service (IPS) cannot establish their ROA. Applicants should be told to contact UKBA to confirm their ROA status.

British Citizens who have a connection with the Channel Islands or the Isle of Man

British Citizens from the Channel Islands and the Isle of Man have the right of abode in the United Kingdom but do not necessarily benefit from the right of free movement for employment or establishment in other member states of the European Union.

Where British Citizenship is derived from a connection with the Channel Islands or Isle of Man and an applicant has either:

- a parent or grandparent born, adopted, naturalised or registered as a citizen of the United Kingdom and Colonies in the United Kingdom (apart from the Channel Island and the Isle of Man); or
- been ordinarily resident in the United Kingdom (apart from the Channel Islands and the Isle of Man) for a continuous period of 5 years or more

that person has the right of free movement for employment or establishment.

Where an applicant does not meet either of these requirements the observation:

"THE HOLDER IS NOT ENTITLED TO BENEFIT FROM EC PROVISIONS RELATING TO EMPLOYMENT OR ESTABLISHMENT"

should be entered in the passport.

British Citizens from the Channel Islands or Isle of Man, who have no connection with the United Kingdom, do not have the right of free movement for employment or establishment within all member countries of the European Union. If however, such a person is married to a British Citizen who has the right of residence in another member state, he/she has the same right to reside and work in that state on the same conditions as the spouse.

Passports for Gibraltar 'Belongers'

A British Overseas Territories Citizen who has acquired the status by virtue of a connection with Gibraltar has the right of free movement within the European Union and the observation:

"THE HOLDER IS DEFINED AS A UNITED KINGDOM NATIONAL FOR EC PURPOSES"

should be entered in the passport.

Applicants who have lesser connections with Gibraltar are given right of abode but do not have free movement rights within the European Union. So they can be distinguished from those who enjoy this privilege the observation:

"THE HOLDER HAS THE RIGHT OF ABODE IN GIBRALTAR"

should be entered in the passport.

NOTE: Applications for those with lesser connections should be referred to the passport issuing authority in Gibraltar for confirmation that the applicant does have the right of abode under a Gibraltar ordinance.

Applicants who are 'non-belongers' of Gibraltar are not given either of the above observations. Their passports must be recorded with the observation stating their position under the provisions of the Immigration Act 1971.

Applicants without right of abode but entitled to re-admission to the United Kingdom

Where it is established an applicant who has not previously held a passport is a British subject without the right of abode but who has long been in the United Kingdom the observation:

"THE HOLDER IS ENTITLED TO RE-ADMISSION TO THE UNITED KINGDOM"

should be entered in the passport.

The re-admission observation can also be given to applicants who do not have the right of abode but have passports which indicate they have been previously admitted for settlement in the United Kingdom. This applies equally to applicants who have been admitted subject to conditions, where the conditions have subsequently been cancelled.

NOTE 1: Admitted for settlement means admitted without time limit when there was power to refuse admission or to restrict the period of stay.

NOTE 2: In any case of doubt the Immigration and Nationality Directorate should be consulted.

Applicants subject to restrictions under the Immigration Act 1971

The passport of applicants with the status of British Overseas Citizens (BOC), British Subjects (BS) or British Protected Persons (BPP) who are subject to restrictions under the Immigration Act 1971 should be entered with the observation:

"THE HOLDER IS SUBJECT TO CONTROL UNDER THE IMMIGRATION ACT 1971"

As of 21 May 2002 most people who currently hold a British Dependant Territories Citizen (BDTC) passport will automatically become British citizens as a result of the British Overseas Territories Act 2002 (See British Overseas Territories Act 2002). The Act gives British citizenship **in addition to**, not in replacement of, British Overseas Territories Citizenship (BOTC), formerly known as British Dependent Territories Citizenship (BDTC).

Note: Refer to the British Overseas Territories Act 2002 (See British Overseas Territories Act 2002) before proceeding with any application for renewal of a BDTC passport.

British Overseas Territories citizens (BOTC) who do not have the right of re-admission to the United Kingdom and who apply for new passports are exempt from having the above observation on their passport. However, BOTCs deriving their status from a connection with Anguilla, Pitcairn, or St Helena, should be issued with a passport with the free text observation:

"THE HOLDER HAS THE RIGHT OF ABODE IN (NAME OF TERRITORY)"

Other BOTCs should be advised to apply to the immigration authorities of the appropriate territory for permission to have this Right of Abode observation. Once confirmation has been received the observation can be included on the passport.

Where an applicant who is a BOTC submits a current or expired passport which has the observation 'THE HOLDER IS SUBJECT TO CONTROL UNDER THE IMMIGRATION ACT 1971', this should not be repeated as an observation in the replacement passport. If, however, an applicant is entitled to a dependent territory 'Right of Abode' observation, this should be entered in the passport; this applies equally to BOTC's entitled to the 'RIGHT OF RE-ADMISSION TO THE UNITED KINGDOM' observation.

Establishing settlement claims of parents

Under Section 1(1)(b) British Nationality Act 1981, a child born in the UK after 31.12.82 is a British Citizen if their parent is settled in the UK.

Section 50(2) of the Act explains that a person is settled in the United Kingdom if he (or she) is not subject under the immigration laws to any restriction on the period for which he or she may remain, **and** is ordinarily resident in the UK.

Section 50(3) of the Act also explains that a person who is entitled to an exception under Section 8(3) or 8(4)(b) or 8(4)(c) of the Immigration Act 1971 will **not** be settled for the purposes of the BNA 81.

In most cases, the production of a parent's passport showing that they have indefinite leave to enter, or indefinite leave to remain in the United Kingdom when their child was born in the UK will establish the child's British citizenship

under Section 1(1)(b) of the British Nationality Act 1981 (together with the child's full birth certificate and parent's marriage certificate when the claim is established through the father). However there are exceptions.

On 3 April 2006, the UKBA changed the qualifying period for foreign nationals who came to the UK under their 'Highly Skilled Migrants Programme' when applying for settlement. The change meant that those who were in the programme would now have to wait 5 years before they could apply for ILR, whereas previously the qualifying period was 4 years.

Following a judicial review, the court found that the Secretary of State had acted unlawfully in applying the change to those who had come to the UK under the programme before 3 April 2006. As a result, foreign nationals who may have been refused ILR, or had an extension to their stay under the regulations, will qualify for ILR. This may be retrospective.

In the wake of this ruling UKBA will be writing to those who were affected advising them they will now have been granted ILR and the date on which they became settled. The letter is acceptable evidence of the date on which the individual became settled in the United Kingdom. █

Irish citizens

Irish citizens are not subject to restrictions when they travel to the United Kingdom. In order for their child to gain British nationality, they would have to be considered as resident here in order to fulfil the requirements of the Act.

Irish citizens may be automatically accepted as settled for the purpose of section (1)(1)(b) unless there is clear evidence to the contrary. For example, if staff were advised that the parent was on a short visit to the UK, or that long periods of residence had been spent outside the UK, it would be appropriate to ask the applicant for further clarification.

Following the introduction of the full birth certificate policy, it will now be necessary to be satisfied that the parent is an Irish citizen. In the absence of an Irish passport, the parent's birth certificate confirming birth in the Irish Republic before 1 Jan 2005 will be required, together with the parents' marriage certificate if status is obtained through the father.

Settled status for Vietnamese refugees and Gurkhas

Vietnamese

The Immigration and Nationality Department advised in 1990 that all Vietnamese refugees were to be classed as "settled" immediately upon their arrival in the United Kingdom. Consequently any children born to Vietnamese refugees in the UK would be British citizens under Section 1(1)(b) of the British Nationality Act 1981.

We understand from UKBA that Vietnamese refugees are no longer admitted unconditionally. Indeed, there is some doubt as to whether the practice was ever precisely as described in the 1990 advice. Passport applications should now be treated as follows.

First time passport applications: Examiners should henceforth request evidence of Indefinite Leave to Enter or Indefinite Leave to Remain in support of every application for a first passport where the applicant's nationality status depends on a parent's immigration status at the time of the applicant's birth. Where such evidence is not available it must be assumed that Indefinite Leave to Enter (ILE) / Indefinite Leave to Remain (ILR) has not been given.

Second and subsequent passports: Applicants seeking to renew a passport issued in accordance with the now cancelled 1990 advice should not be asked to submit further evidence of their claim to British Citizenship. Such applicants should be given the benefit of the doubt regarding their parents' immigration status at the relevant time, and their passports renewed accordingly.

Gurkhas

Before 13 Jan 2010

The United Kingdom Border Agency has confirmed that Gurkhas are classed as members of the home forces and, as such, are exempt from UK immigration control by virtue of Section 8(4)(a) of the Immigration Act 1971.

It follows therefore that Gurkhas serving in the UK may be regarded as settled here for the purposes of the British Nationality Act 1981, and that any legitimate children born to them in the UK will be British citizens under section 1(1)(b) of the 1981 Act.

From 13 Jan 2010

From 13 January 2010 the Borders, Citizenship and Immigration Act 2009 amends the British Nationality Act 1981 so that from this date, a child born in the United Kingdom to a parent in the Armed Forces will be a British citizen under the **new** section 1(1A) BNA 81

A child born on or after 13 January 2010 to a foreign national who is a member of the armed forces and subject to service law will be a British citizen.

Other refugees and asylum seekers

Refugees and asylum seekers will not often have a passport in their national identity. A letter from UKBA confirming that the individual has ILR will be acceptable as evidence that they are settled in the UK. Where there is concern over the authenticity of the letter, a check must be made with UKBA to confirm the contents of the letter. They may also have a Home Office

Travel Document or an Immigration Status Document. It will depend on the endorsement contained on the document whether or not the holder has ILR. (The document should clearly show the holder has ILR).

An Application Registration Card (ARC) is given to individuals seeking asylum and will not therefore be evidence that the holder is free from Immigration control.

Other members of HM Forces subject to Service Law

Before 13 January 2010

Many members of the home forces have been recruited from the Commonwealth, and as such will be exempt under Section 8(4) (a) of the Immigration Act 1971. As with Gurkhas, those Commonwealth citizens falling within this section will be ordinarily resident in the UK and can be classed as settled for the purposes of the BNA 81. They may not have ILR in their passport. The stamp shown in their passport may well show that the passport holder is exempt under section 8(4) Immigration Act, but it will not define the relevant subsection for our purposes.

When dealing with these cases, examiners must be very careful to establish which subsection of Section 8 of the IA the passport holder falls. (see below.)

Provided they are entitled to exemption from immigration control under **Section 8(4)(a)** IA 1971, (that is members of the home forces subject to service law) the passport holder may be classed as 'ordinarily' resident here and may be regarded as settled in the UK.

In order to establish that the parents are settled at the time of the child's birth, the appropriate evidence is a letter from the individual's commanding officer or a person of authority who can write a letter on behalf of the commanding officer (e.g. HR manager, welfare officer or equivalent officer who has access to the appropriate records) confirming that they are a member of the home forces and as such, is subject to service law and have been since (date).

If a parent was not in the home forces at the time of the child's birth, and we have no evidence that they had ILR or ILE, the child should be **refused** passport facilities and the parent referred to the Nationality Enquiry Team, UKBA PO Box 306, Liverpool ((0845 010 5200).

On 25 October 2004, the UKBA changed their policy regarding former armed forces personnel living in the UK. The change provides an avenue for former army personnel to acquire settled status. However, this will not affect the claim of a child born in the UK and the parent is a foreign national who left the forces before the child's birth.

When a child is born in the UK and the parent is not a British Citizen, **and has been discharged from the forces before the child's birth**, any claim to citizenship will depend on whether the parent has already been granted ILR.

The parent will be able to apply for ILR, however any request will not be retrospective, and ILR will be dated from the time the endorsement was granted. Children born before their parents' grant of ILR will not have an automatic claim to British Citizenship, but they will have an automatic right to register as a British Citizen.

From 13 Jan 2010

From 13 January 2010 the Borders, Citizenship and Immigration Act 2009 amends the British Nationality Act 1981 so that from this date, a child born in the United Kingdom to a parent in the Armed Forces will be a British citizen under section 1(1A)

A child born on or after 13 January 2010 to a foreign national who is a member of the armed forces and subject to service law will be a British citizen under section 1(1A) BNA 81.

No Time Limit stamps

Examiners may come across a 'No time limit' endorsement in the passport of an EU national. Where an EU national has provided to UKBA evidence of their residence in the UK over a period of time, they will endorse the passport with an ink stamp showing 'No time limit'. A letter will also be sent to the individual confirming their permanent residence in the UK. An EU passport showing this endorsement or a residence permit showing this endorsement or a letter from UKBA confirming there is no time limit on the person's stay in the United Kingdom will be acceptable as evidence that the holder is exercising their treaty rights **and** that they may be regarded as settled in the UK for the Purposes of the British Nationality Act 1981.

NTL stamps may also be found in a passport of a third country national. This occurs where a person with ILR renews their foreign passport but UKBA endorses the new passport with a NTL stamp instead of the previous ILR. This is acceptable as evidence that the holder is settled in the UK for the purposes of nationality as it confirms the holder's existing rights to settlement.

It should be noted that the date shown on the stamp may not necessarily be the date the person became settled. Therefore, if a parent's passport is received where the NTL stamp is dated after the child's birth, the examiner should request evidence (ILR letter or previous passport with ILR endorsement) to show that the holder of the NTL was settled at the time of the child's birth. Where this evidence is unavailable, examiners may want to contact UKBA to confirm the parent's immigration status at the time of the child's birth.

Please also see Annex 4 - Training note.

Permanent Residence label

Since April 1992 this label has been issued to people who have permanent residence in the United Kingdom. It shows "Given leave to remain in the United Kingdom for an Indefinite Period."

Right of Abode certificates

Since July 1992 this label has been issued to people who have the right of abode in the United Kingdom. It shows "Certificate of entitlement to the Right of Abode".

This section advises IPS staff of the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006. The Regulations will have a direct impact on the work of IPS staff in two ways:

Certificates of Entitlement issued before 21 December 2006 in passports should no longer be accepted as conclusive evidence of descent claims, and when issuing a passport to a British citizen or British subject with the right of abode, any Certificate of Entitlement **issued after 21 December 2006** should be revoked.

A 'Certificate of Entitlement' as it is often referred to, is a gummed sticker that is fixed in a valid passport. It constitutes proof of a person's right of abode for United Kingdom immigration control purposes. The Home Office issues certificates of entitlement to eligible applicants in the United Kingdom. If an individual is abroad, they can obtain one from their nearest British Diplomatic Post.

Under Section 2 of the Immigration Act 1971 (which was amended by section 39 of the British Nationality Act 1981), all British citizens and certain Commonwealth citizens have the right of abode in the United Kingdom. Eligible persons may have a Certificate affixed to their passport or travel document

New regulations made under section 10 of the Nationality, Immigration and Asylum Act 2002 came into force on 21 December 2006. The regulations introduce formal provision on applying for a Certificate of Entitlement to the Right of Abode. These include to what Government Departments an application may be made, what documents are to accompany it, and when a certificate of entitlement will cease to be valid. They also introduce certain restrictions on who is eligible for a Certificate of Entitlement and specify a number of circumstances in which they may be revoked. The principal aim is to prevent a person from obtaining a certificate of entitlement if he or she already has an alternative means of proving Right of Abode (such as a British Citizen passport).

A person will not be eligible for a certificate of entitlement if he or she does not have the right of abode in the UK, or is able to prove his or her right of abode in the UK by another means as specified in section 3(9) of the Immigration Act. The other means specified are:

- a. A UK passport describing him as a British citizen, or
- b. A UK passport describing him as a British subject with the right of abode in the UK

A certificate of entitlement issued on or after 21 December 2006 may be revoked by any Home Office official, including an official in the Identity and Passport Service, any immigration officer, consular officer or entry clearance officer where it is discovered that the holder of the certificate is no longer eligible to have it.

A Certificate of Entitlement, whether issued before or after 21 December 2006 will cease to be valid on the expiry of the passport or travel document to which it is affixed.

When a person is issued a UK passport showing he or she is a British Citizen or is a British Subject with the Right of Abode, they are no longer eligible to hold a certificate of entitlement issued on or after 21 December 2006 and that certificate may be revoked.

In practice, this means that examiners will need to check any submitted passport or travel document for a Certificate of Entitlement to the Right of Abode.

Where the passport includes a certificate issued on or after 21 December 2006 and the examiner is issuing a British Citizen passport or a BS with Right of Abode (ROA) passport to the holder, they will need to revoke the Certificate of Entitlement in the Commonwealth passport. This is done by writing the word 'REVOKED' in black ink across the face of the certificate diagonally from bottom left to top right. UKBA does not need to be informed when this is done.

Where the certificate is issued before 21 December 2006 no action need be taken.

Staff are not expected to make enquiries into whether a passport applicant has previously been issued with a certificate of entitlement, or to recover such certificates for the specific purpose of revoking them.

A case note should be made, e.g. Cert of Entitlement granted on (date) in ppt no xxxxxxx/00 revoked on the issue of BC ppt.

[The new regulations also indicate that the Certificate of Entitlement will cease to be valid on the expiry of the passport to which it is affixed and that any further request for a certificate made after 21 December 2006 must be treated as a new application. In view of this IPS will no longer accept a Certificate of Entitlement issued before this date under section 2(1)(a) IA 1971, as amended, as evidence of British Citizenship.]

Staff should also be aware when dealing with such passport applications that a passport or travel document which has a 'revoked' Certificate of Entitlement

may be an indicator that the holder already has a British passport and should make any necessary checks.

European Uniform Format Visa (UFV)

These are issued for three categories: Direct Airside Transit, Visitor in Transit and Visit. These visas are all in a common format and indicate that the passport holder has conditions attached to their stay in the UK. Most of these visas will be completed by machine, but a few very small issuing offices will complete the details by hand. If a visa has been hand written, the machine-readable zone at the bottom will be blank. They will also include the holder's photograph from Sep 2004.

“Red” UK visa

Introduced on 2 October 2000 and used for all categories, other than those above, for example Student or Employment.

Annex A - Training note for settlement

Settlement in the United Kingdom

This training note has been issued to clarify the position for examiners when considering the nationality of children born in the United Kingdom after 31.12.82 whose parents are not British citizens, but may be settled.

Particular care should be taken when the parents' passports do not include an Indefinite Leave to Remain, or Indefinite Leave to Enter stamp, but the parent indicates that he/she is in the home forces, or the passport shows the following stamp details:

“The holder is exempt under Section 8(4) of the Immigration Act 1971. He/she is not subject to any condition or limitation on the period of permitted stay in the United Kingdom”.

The relevant sections of the Acts that need to be considered are set out below together with the evidence required to establish a claim to British nationality in these cases.

British Nationality Act 1971 (IA 71)

Section 1(1)(b)

Acquisition of British citizen status by people:

- Born in the UK after 31.12.82 **if**
- Father **or** Mother is settled in the UK

Section 50

This section of the Act explains various meanings of the BNA 81.

Section 50(2) explains the definition of settled in the UK for the purposes of the Act, as being ordinarily resident in the United Kingdom, without being subject under the Immigration laws to any restriction on the period which he may remain.

Section 50(3) of the Act also explains that a person who is entitled to an exemption under Section 8(3) or 8(4)(b) or 8(4)(c) of the Immigration Act 1971 will **not** be settled for the purposes of the BNA 81.

Section 50(9) defines the relationship of the father and child shall be taken to exist only between a man and any legitimate child born to him.

Immigration Act 1971 (IA 71)

Section 8(3)

Relates to members of diplomatic missions (within the meaning of the Diplomatic Privileges Act 1964), their family or household member, or a person otherwise entitled to immunity as a diplomatic agent.

Section 8(4)

(4)(a) Members of home force subject to service law (including many recruited from the Commonwealth).

(4)(b) Members of a Commonwealth force, or a force raised under the law of an associated state, overseas territory, protectorate or protected state and is undergoing or about to undergo training in the United Kingdom with any body, contingent or detachment of the home forces.

(4)(c) A member of a visiting force, or of any force raised as above, who is serving or posted for service in the United Kingdom as part of an international headquarters or defence organisation designated for the time being by an Order in Council under section 1 of the International Headquarters and Defence Organisations Act 1964, (includes NATO forces).

Evidence required

Advice from the Nationality Group confirms that many who fall under Section 8 of the IA 71 may be ordinarily and unconditionally resident in the UK but not have Indefinite Leave to Remain. The stamp shown in their passport may well show that the passport holder is exempt under section 8(4) Immigration act, but it will not define the relevant sections for our purposes.

When dealing with these cases, examiners should be very careful to establish which subsection of Section 8 of the IA the passport holder falls. (See below.)

Provided they are entitled to exemption from immigration control under **Section 8(4)(a)** IA 71, (that is members of the home forces subject to service law), the passport holder may be classed as “ordinarily” resident here and are regarded as settled in the UK for such purposes. **Remember that examiners must ensure that the parent(s) are settled at the time of the child’s birth in the UK.**

In order to establish this, the most appropriate evidence would be a letter from the individual’s commanding officer confirming that he/she is a member of the home forces and as such, subject to service law and has been since (date).

Where we are unable to establish that the parent falls under Section 8(4)(a) IA 71, the child should be refused passport facilities and the parent referred to the Nationality Group, Liverpool for further advice.

As with other claims to nationality under Section 1(1)(b) BNA 81, these cases should be referred to the line manager for approval.

Case notes

In all cases the application must be appropriately case noted showing documents produced and child’s status. The letter from the CO will need to be scanned.

To summarise

Parents who are exempt under Section 8(4)(a) IA 71 at the time of a child’s birth in the UK may be classed as settled in the UK for the purposes of the BNA 81.

Parents who are exempt under Section 8(3) 8(4)(b) or 8(4)(c) IA 71 at the time of a child’s birth are **not** classed as settled in the UK for the purposes of the BNA 81.