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EEA and Swiss national Children and their rights to British citizenship

April 2019



PRCBC
Project for the Registration
of Children as British Citizens



Please note: The information set out here does not cover all the circumstances in which a child born to a European Economic Area (EEA) or Swiss national may become a British citizen.

Some cases may be complex and need detailed evidence. This may include expert evidence. It is therefore very important to get advice from a citizenship law specialist.

An explanation of some of the legal words used in this leaflet is given in the glossary at the end.

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Foreword

The UK is set to leave the European Union (EU). The right of free movement for people under EU law will not continue to operate in the same way if and when the UK leaves the EU.

This means that EEA and Swiss nationals in the UK and their children should consider if they need to take steps to protect their rights and continue living here. There are various ways of doing this. The focus of this leaflet is British citizenship rights. Many children of EEA and Swiss nationals may already be British citizens or may have a right to register as a British citizen even though they and their parents/carers may not realise it.

The purpose of this leaflet is to give a broad outline of British citizenship law and how it applies to the children of EEA and Swiss nationals in the UK.

Claude Moraes

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Is your child born in the UK a British citizen?



Yes

If your child was born in the UK and at the time of the birth either of her/his parents were:

- British citizens themselves; or
- settled in the UK,

then your child was automatically born a British citizen, and you can apply to the British Passport Office for a British passport for the child. You will need the child's full birth certificate and the proof of the parent(s) British citizenship or settled status at the time of the birth.

If, at the birth of a child born before 1 July 2006, the father is a British citizen or settled in the UK but the mother is not, and the parents were not married, the child was not born a British citizen but has an entitlement to register as a British citizen. Please see 'General points' section on fathers.

The current fee for a passport for a child under 16 is £49 if applied for online or £58.50 if applied for by paper form. Children of 16 or over are charged the same as adults (£75.50 or £85 respectively).



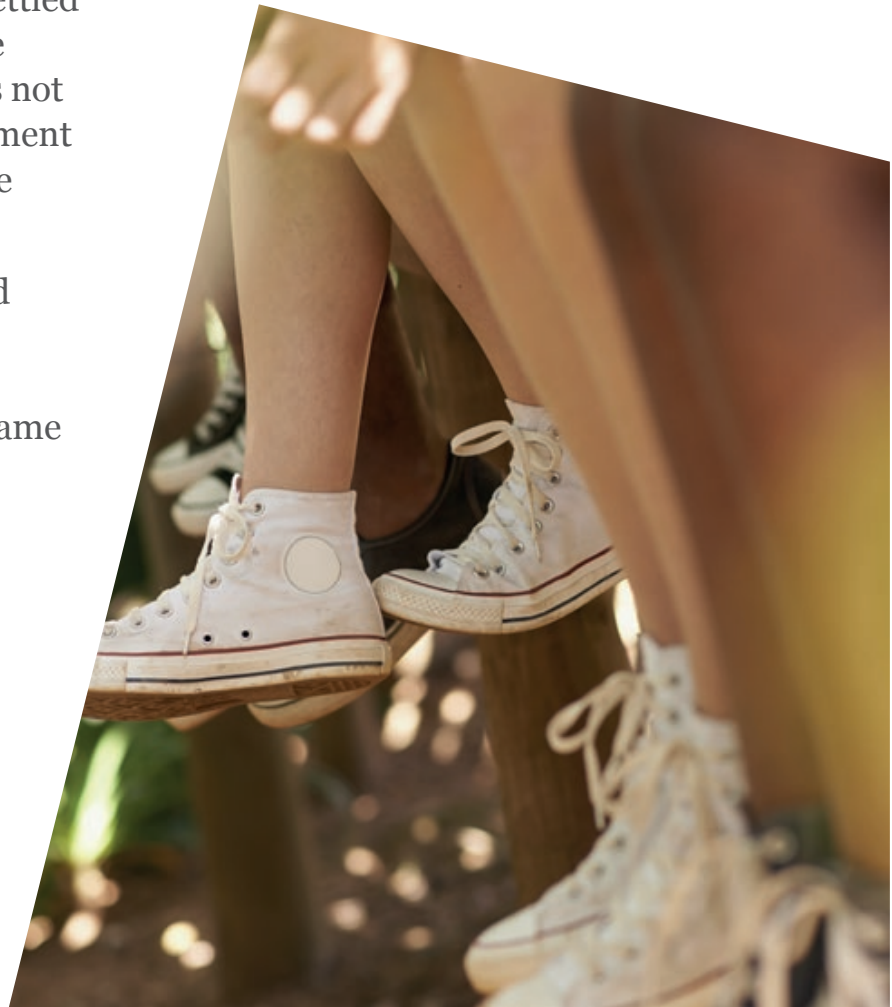
No

If your child was born in the UK but at the time of the birth neither of her/his parents were British citizens or settled then s/he was not born a British citizen.



But

There are ways in which your child can register to become a British citizen.



Can your child born in the UK become a British citizen?

Scenario One

- S/he would have the *right* to become a British citizen if s/he was born in the UK and either of her/his parents become settled or become British citizens, while s/he is under 18; and
- If the child is aged 10 or over, the Home Office is satisfied that the child is of good character.

The registration application can be made to the **Home Office on Form MN1**. The child's full birth certificate and proof the parent has been granted settled status or British citizenship after the child was born will also need to be submitted. The current Home Office registration fee is £1,012.

Scenario Two

- S/he would have the *right* to become a British citizen if s/he was born in the UK and lives here for the first 10 years of her/his life, with no gaps of more than 90 days in any year. (If there are longer gaps, there may still be a right to become a British citizen depending on the circumstances.) This application can be made at any time after the child is 10, even after s/he has become an adult; and
- If the person is 10 or over the Home Office is satisfied that s/he is of good character.

The registration application can be made to the **Home Office on Form T**. The person's full birth certificate and proof of her/his being in the UK through the first 10 years of her/his life. The current Home Office registration fee is £1,012 for children and £1,206 for adults.



Scenario Three

S/he would have the *right* to become a British citizen if s/he was born in the UK, has always been stateless, has lived in the UK for the last five years (not being out of the country for more than 450 days in that five-year period) and is under 22 years old at the date of the application. (If there are longer gaps, there may still be a right to become a British citizen depending on the circumstances.)

The registration application can be made to the **Home Office on Form S3**.

The person's full birth certificate and proof that s/he is and always has been stateless and has lived in the UK for the last five years also need to be submitted. The current Home Office registration fee is £1,012 for children and £1,206 for adults.

'Statelessness' does not mean not having a passport. It means that no country accepts the stateless person as a citizen. The stateless person would need proof from the country/countries of her/his parents' citizenships that s/he did not have that citizenship.



Is your child not born in the UK a British citizen?



Yes

If your child was not born in the UK but either parent was a British citizen either through birth in the UK, or through being registered (unless registered as a British citizen by descent), or naturalised as a British citizen before the child was born, your child was automatically born a British citizen by descent.

The child can apply to the British Passport Office for a passport. The child's full birth certificate and the proof of the parent(s) status at the time of the birth, such as the parent's original full birth certificate or original naturalisation or registration certificate should be submitted. The current fee for a passport for a child under 16 is £49 if applied for online or £58.50 if applied for by paper form. Children of 16 or over are charged the same as adults (£75.50 or £85 respectively).

If, at the birth of a child born before 1 July 2006, the father is a British citizen but the mother is not, and the parents were not married, the child was not born a British citizen but has an entitlement to register as a British citizen. Please see 'General points' section on fathers.



No

If your child was not born in the UK and neither parent was a British citizen at the time of birth, the Home Office has the **discretion** to register him/her as a British citizen.

The Home Office will usually register a child if:

- the child is settled in the UK; **and**
- at least one parent is a British citizen or settled in the UK and applying for British citizenship; **and**
- the other parent is unlikely to be required to leave the UK (unless the child no longer has contact with this parent); **and**
- they are satisfied that the child's future lies in the UK; **and**
- the Home Office is satisfied that the child (if 10 years old or over) is of good character.

The registration application can be made on **Home Office Form MN1** and the current fee is £1,012.

? But

Because the Home Office has wide discretion to register any child to become a British citizen, it is possible to apply when you don't meet all the Home Office published guidance.

For example:

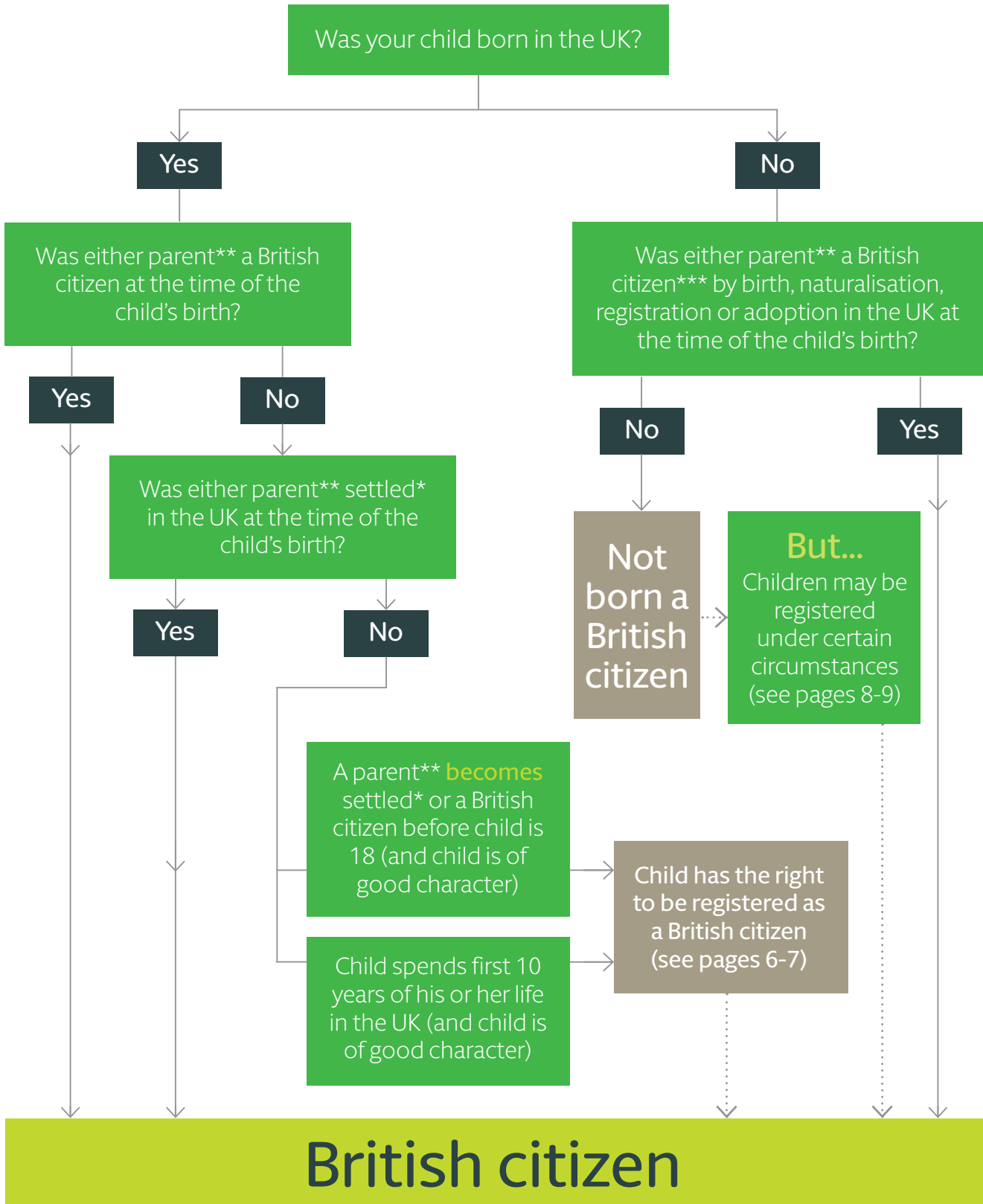
- children with lengthy residence in the UK and who arrived at a young age, even if they don't yet have indefinite leave; **and**
- where it can be demonstrated that the child's future clearly lies in the UK; **and**
- that it would be in the child's best interests to be registered as a British citizen; **and**
- the child is of good character.

Supporting evidence will be required to show the strength of the child's connection to the UK and that her/his future clearly lies here.

Depending on the circumstances, if a child is in local authority care, that may show her/his future clearly lies in the UK and s/he should be registered as a British citizen.



Is your child a British citizen?



*Indefinite leave or permanent residence.

But if parents are not married, see **Father on page 11.

***However, if the parent is a British citizen by descent, the child will not be born a British citizen.

General points

Father

Where a person's rights to British citizenship depend on the citizenship or settled status of the child's father, the following information is relevant.

If the child's parents are not married, evidence will be required to prove the father is the child's father.

A person born outside marriage in the UK **before 1 July 2006** to a British citizen or settled father can register by entitlement if they are not otherwise a British citizen.

A person born outside marriage outside the UK **before 1 July 2006** to a father who is a British citizen (but not by descent) can register by entitlement if they are not otherwise a British citizen. S/he will be registered as a British citizen by descent.

The registration application for a child born **before 1 July 2006** to a father who was not married to the child's mother can be made on **Home Office Form UKF**.

There is no fee for this application.

If at the time of a person's birth the mother is married, UK law treats the mother's husband as the child's father even if the biological father is another person.

If, however, the person's rights to British citizenship arise from her/his biological father then advice should be sought from a citizenship law specialist.

Dual nationality

The UK permits **dual nationality**.

This means that a British citizen does not lose her/his British citizenship if taking the nationality of another country.

However, some countries do not permit dual nationality so becoming a British citizen could mean that the person loses her/his original nationality. It is necessary to check this with the embassy or consulate of the country of the person's original nationality to find out.

Application fees

Most Home Office nationality (including passport) fees are non-refundable: they will not be returned if the application is refused.

Home Office fees may increase at short notice.

Best interests

The Home Office must by law consider the **best interests** of the child when deciding on any child's registration or passport application.

Review on refusal of registration

It is possible to ask the Home Office to review its decision to refuse registration of British citizenship. There is a fee of £372, which will be refunded if the review is successful. If registration, however, is still refused, it may sometimes be possible to apply to the courts for a **judicial review** of the refusal.

Legal Aid and advice

There is **no Legal Aid** for advice and assistance in applying for citizenship or a passport, or in asking for a Home Office review of a refusal. However, in some cases it may be possible to apply for exceptional case funding to the Legal Aid Agency. Legal Aid may be available for a judicial review, depending on the child's financial means and the strength of the case.

It is very important to get advice from a citizenship law specialist. The Project for the Registration of Children as British citizens (PRCBC) provides further information on its website (www.prcbc.org) and provides advice and assistance to a very small number of children and young adults with complex citizenship cases; and may be able to identify an alternative local specialist. Some Citizens Advice Bureaux, law centres, other advice agencies or law firms may have a citizenship law specialist.



Glossary

Acquisition

Getting citizenship automatically (usually at a child's birth).

Child

For the purposes of nationality law, this means a person under the age of 18.

Descent

A person is a British citizen by descent when born outside the UK to a parent who is a British citizen otherwise than by descent. This means the parent must be a British citizen through birth in the UK, registration (except where the parent was registered as a British citizen by descent) or naturalisation.

European Economic Area (EEA)

The EEA includes all EU countries and also Iceland, Liechtenstein and Norway.

European Union (EU)

The EU countries are: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and (for the moment) the UK.

Good character

This is not defined in the British Nationality Act 1981. The Home Office may take account of any criminal convictions, fines, cautions and other adverse matters. Advice should be sought from a citizenship law specialist where any of these may apply. This requirement of good character applies to a person aged 10 or over.

Her Majesty's Passport Office (HMPO)

This is part of the Home Office that deals with passport applications.

Home Office

This is a UK government department. Its responsibilities include dealing with applications and making decisions relating to British citizenship and passports.

Indefinite leave

A status given by the Home Office which means a person is settled (see below). A person may have indefinite leave to enter or remain. In either case, they are settled.

Judicial review

The procedure by which the High Court can check the Home Office is acting within the law.

Nationality law

This defines who is a citizen of a country and how someone might gain that citizenship. (In the UK this may be by acquisition, registration or naturalisation.)

Naturalisation

The process for most adult migrants applying to become British citizens.

Permanent residence

This applies to someone from an EEA country or Switzerland, or their family member, who has lived in the UK for a certain number of years, usually five, and who fulfils certain conditions, such as working or being economically active for that period.

Registration

The process for children and certain categories of adults to become British citizens. Registration is always by entitlement except in the case of the children whose registration rights are by discretion (see the section on page 8 titled ‘Is your child not born in the UK a British citizen?’).

Settled

A person with indefinite leave or with permanent residence is settled. Some EEA nationals may be treated as being settled even without indefinite leave or permanent residence, particularly if they were in the UK prior to October 2000. Advice should be sought from a citizenship law specialist.

Settled status scheme

This scheme is for EEA and Swiss nationals and their family members currently living in the UK to apply for indefinite leave to remain (referred to as ‘settled status’). Under the scheme, some EEA and Swiss nationals and their family members may first have to get limited leave to remain (referred to as ‘pre-settled status’). Both settled status and pre-settled status will allow a person to continue living and working in the UK. Further information may be sought from an immigration law specialist.

Switzerland

Switzerland is not an EEA member but under EU law Swiss nationals have the same rights to live and work in the EU as EEA nationals.

UK Visas and Immigration (UKVI)

This is the part of the Home Office that deals with registration and naturalisation as a British citizen. It also deals with immigration and asylum claims.

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The law contained in this booklet is correct as at 3 April 2019.

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