

VOLUME 1

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VOLUME 1

CHAPTER 57: RIGHT OF ABODE

1. The Law

- 1.1 Section 1(1) of the Immigration Act 1971 confers complete exemption from UK immigration control on persons with the right of abode, subject to proof of that right.
- 1.2 With very few exceptions, CUKCs who had right of abode on 31 December 1982 became British citizens under the British Nationality Act 1981 (see Chapter 2).
- 1.3 Section 2 of the 1971 Act, as amended by s.39(2) of the BNA 1981, defines the categories of people who currently have the right of abode in the UK.
- 1.4 The right of abode is a statutory right which a person either has or does not have, depending on whether the conditions in s.2 of the 1971 Act are satisfied and subject to possible exercise of the power to remove the right of abode in s.2A of the 1971 Act (see paragraph 6 below). No action by or on behalf of a Minister (including the issue of a passport or certificate of entitlement) can operate so as to *confer* the right of abode on any person who does not have it already by virtue of the 1971 Act (Christodoulido -v- SSHD [1985] Imm AR 179). However, where a certificate of entitlement has been granted in error and the applicant has now lost age- or time-limited entitlements to citizenship we should be ready to construe the application as an undetermined citizenship application (see Chapter 6).

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2. Qualification for right of abode

2.1 Persons with right of abode before 1983

Basis of claim	Provision of IA 71 (as in force before 1 January 1983) conferring right of abode	Corresponding provision of IA 71 as in force from 1 January 1983
1) A CUKC who was born, adopted, naturalised or registered in the United Kingdom	2(1)(a)	2(1)(a)
2) A CUKC born to or	2(1)(b)(i)	2(1)(a)

adopted by a parent who at the time of the persons birth or adoption had right of abode under 2(1)(a) of the 1971 Act		
3) A CUKC born to or adopted by a parent who, at the time of the persons birth had right of abode under 2(1)(b)(i)	2(1)(b)(ii)	2(1)(a)
4) A CUKC who was ordinarily resident in the UK for any continuous period of 5 years <u>before</u> 31 December 1982 (time spent subject to immigration conditions can be included but the conditions must have been removed before completion of the 5 years)	2(1)(c)	2(1)(a)
5) A Commonwealth citizen with a parent or adoptive parent who, at the time of the person's birth or adoption, was a CUKC by birth in the United Kingdom	2(1)(d)	2(1)(b)
6) a) A female Commonwealth citizen who is, or has been, married to a man with right of abode at any time before 31 December 1982	2(2)	2(1)(b)
b) A CUKC woman who is, or has been, married to a man with right of abode at any time before 31 December 1982	2(2)	2(1)(a)

2.1.1 Definitions

- "CUKC", in relation to a time before 1 January 1949, means a British subject (so, if the claimant was then a British subject, residence in the UK before 1.1.49 will count for the purposes of s.2(1)(c))
- "Registration" does not include registration under s.6(2) of the

BNA 1948 by virtue of a marriage which took place on or after 28 October 1971 (though a woman who was so registered may have had the right of abode under s.2(2))

- "Registration in the United Kingdom" includes registration in an independent Commonwealth country (including South Africa before 1 January 1966 and Pakistan before 1 September 1973) by the British High Commissioner, except in the case of children registered under s.7 of the BNA 1948 on or after 28 October 1971 (though such children may have had the right of abode under s.2(1)(b)(i) or (ii))
- "United Kingdom" means England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man. It also includes what is now the Republic of Ireland at a time when it formed part of the United Kingdom (i.e. before 31 March 1922)
- "Parent" before 1 January 1983 included:
 - the mother, but not the father, of an illegitimate child. However, such a child may have been legitimated by the subsequent marriage of his or her parents.
 - The adoptive parents of a legally adopted child (see below)
- "Adopted" means legally adopted (i.e. adopted by order of a United Kingdom court or in any country listed in the Schedule to the Adoption (Designation of Overseas Adoptions) Order 1973 or in the Adoption (Recognition of Overseas Adoptions) Order 2013 or the 2013 Scottish Regulations (see Chapter 9 of Volume 1 and ADOPTION in Volume 2)
- "Commonwealth citizen" means a CUKC or a citizen of a country which, at the relevant date, was listed in s.1(3) of the British Nationality Act 1948.
- The list of Commonwealth countries as at 31 December 1982 can be found at Annex A to Chapter 16.

2.1.2 A flow chart to determine whether a CUKC had right of abode on 31 December 1982 is in Annex D to Chapter 2.

General points

- 2.1.3 British subjects born prior to 1.1.1949 are Commonwealth citizens. Citizens of Eire who claim to have remained a British subject, via completion of a Form E, are deemed to have retained British subject status throughout. These people are also Commonwealth citizens.
- 2.1.4 A person who had the right of abode through being a CUKC ceased to have that right if they lost their CUKC status e.g. on the independence of a colony.
- 2.1.5 CUKCs who renounced that status in order to retain or acquire citizenship of another Commonwealth country may have had right of abode on 31 December 1982 under s.2(1)(d) or s.2(2) of the 1971 Act as then in force. Provided they have since remained a Commonwealth citizen, that right will have been preserved by the new s.2(1)(b) (see 2.2.1 below).

2.2 Persons with right of abode on and after 1 January 1983

- 2.2.1 The Immigration Act 1971 as amended by s.39(2) of the BNA 1981 now provides that the right of abode is held only by the following:
- British citizens (s.2(1)(a)); and
 - Other Commonwealth citizens who had right of abode under the original s.2(1)(d) or s.2(2) of the 1971 Act on 31 January 1982, and have not ceased to be Commonwealth citizens at any time since then (s.2(1)(b)).
- 2.2.2 One result of the wording of the amended right of abode provisions is that the re-admission of Pakistan and South Africa to the Commonwealth in 1989 and 1994 respectively did not have the effect of reviving any claims by their nationals to right of abode in the UK. However, a person who held an additional Commonwealth nationality may still have the right of abode, provided they have remained a Commonwealth citizen since 31 December 1982.
- 2.2.3 The only way to acquire right of abode since 1 January 1983 has been by becoming a British citizen.
- 2.2.4 British citizens who renounce that status immediately forfeit their right of abode unless they continue to qualify, by virtue of having some other variety of Commonwealth citizenship, under s.2(1)(b) of the 1971 Act (as amended).

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3. Proving the right of abode

3.1 Under s.3(9) of the 1971 Act, as amended by the Immigration, Asylum and Nationality Act 2006, a person claiming right of abode in the United Kingdom must prove it by presenting either:

- a United Kingdom passport describing the person as a British citizen; or
- a United Kingdom passport describing the person as a British subject with the right of abode in the United Kingdom; or
- a certificate of entitlement

3.2 This superseded earlier legislation, which allowed the production of alternative documentation in some cases.

3.3 Entry into the United Kingdom

A passenger seeking to enter the UK and claiming to have the right of abode, but who is unable to produce any of the above documentary evidence should be treated as subject to control. Such a person should be examined in order to decide whether or not he qualifies for entry. For example if he is claiming entry for settlement and the rules state that an entry clearance is required, then he should be refused. (It should be remembered that a passenger who does not hold the required evidence to prove he holds or is entitled to the right of abode is not, in itself, a ground for refusal of entry.)

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4. Procedure for obtaining a certificate of entitlement

4.1 An application for a certificate of entitlement should normally be made on Form ROA. Applications for certificates of entitlement received on and after 21 December 2006 should be determined in accordance with the Immigration (Certificate of Entitlement to the Right of Abode in the United Kingdom) Regulations 2006 (as now amended by the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) (Amendment) Regulations 2011.

4.2 The Regulations provide that:

- (a) The application must be made:

- (i) to the Home Office , if the applicant is in the UK;
 - (ii) to the Home Office or to the Lieutenant-Governor, if the applicant is in any of the Channel Islands or the Isle of Man Islands;
 - (iii) to the Governor, if the applicant is in a British Overseas Territory; and
 - (iv) to an entry clearance officer, if the applicant is elsewhere.
- (b) Applications must be accompanied by the applicant's own valid passport or travel document, 2 photographs of the applicant taken no more than 6 months prior to the date of the application, and relevant supporting documentation as specified in Annex A.

However, in exceptional cases we have the power in law to proceed without all of the specified documentation. This discretion should be used very rarely and only in cases where

- (a) the person clearly has a right of abode despite the lack of a particular document specified in the Regulations and
- (b) we are satisfied that the lack of documents is not part of an attempt to acquire a certificate of entitlement by fraudulent means.

Any case where it is proposed to exercise discretion to grant without receipt of a particular document should be referred to a SCW. SCWs should refer to Nationality Policy Team for advice as required.

- (c) A certificate of entitlement is to be issued by means of being affixed to the passport or travel document of the applicant. A passport will be suitable for this purpose only if:
- (i) it relates to the applicant,
 - (ii) it has not been altered otherwise than by or with the permission of the authority who issued it, and
 - (iii) it was not obtained by deception.
- (d) A person will be ineligible for a certificate of entitlement if he or she either:
- (i) does not have the right of abode in the UK (see paragraph 2

above) or

(ii) holds one of the following documents:

- a current United Kingdom passport describing the person as a British citizen; or
- a current United Kingdom passport describing the person as a British subject with the right of abode in the United Kingdom; or
- a certificate of entitlement in another foreign passport

(iii) is a person whose right of abode is restricted under s.2 of the Immigration Act 1988 (see paragraph 5 below) or is deprived of his or her right of abode by order under s.2A of the Immigration Act 1971 (see paragraph 6 below).

(e) 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 Passports Service), any immigration officer, any consular officer or any entry clearance officer where it is discovered that the holder is no longer eligible for it (see (d) above).

(f) A certificate of entitlement (whether issued before or after 21 December 2006) will otherwise cease to have effect on the expiry of the passport or travel document to which it is affixed.

4.3 Fees

4.3.1 The fees for a right of abode application are set out in Fees Regulations (see Chapter 6). Different fees apply to applications made in and outside of the United Kingdom.

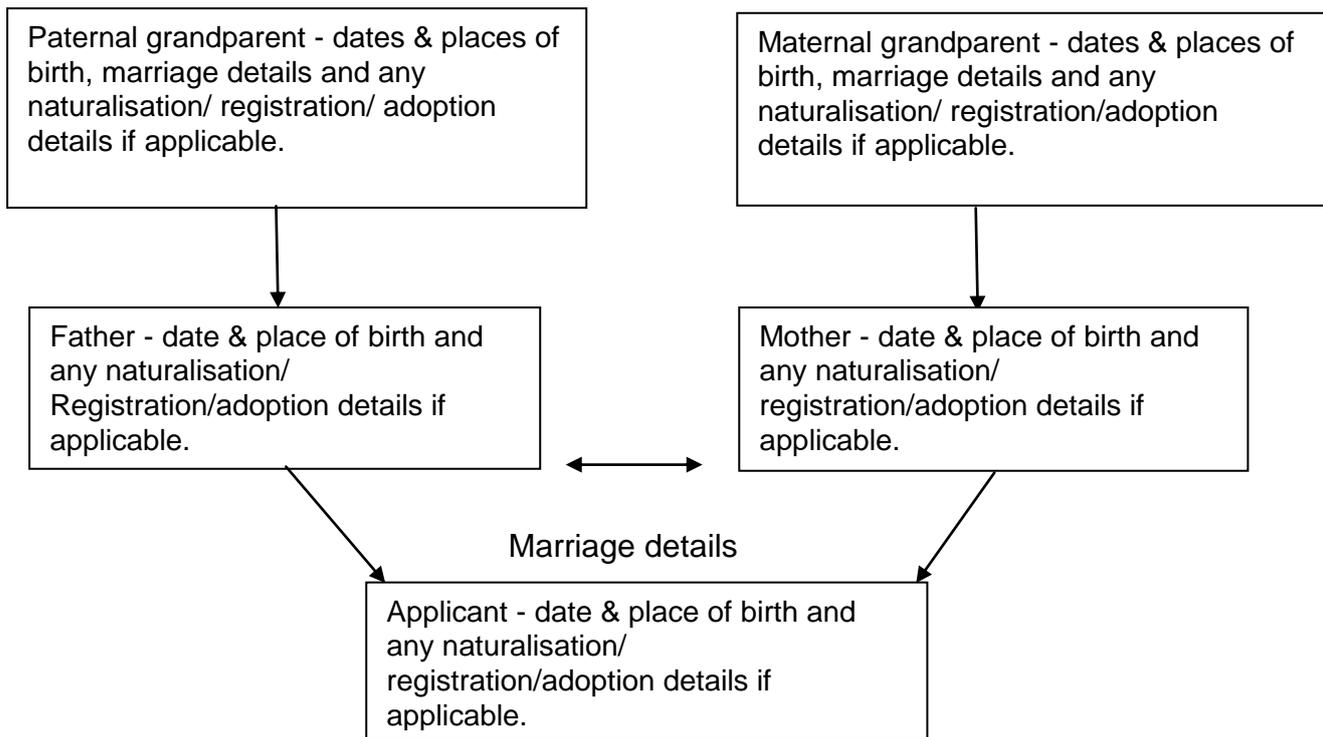
4.3.2 Each request for a certificate of entitlement –even if it is a request for replacement of a previous certificate that has ceased to have effect- should be treated as a new application requiring payment of a fee.

4.4 Checking the application

Drawing up a family tree

4.4.1 Before starting to consider an application for a certificate of entitlement it may help to draw up a family tree as below. All relevant dates of independence and any exceptions to loss should also be taken in to account. These can be found in the Diplomatic

Service Procedures (DSPs):



NB. For female applicants married before 1.1.1983, we may also need to consider her husband's family tree as she may have a claim to ROA through him

4.4.2 Forgery Checks

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Official sensitive – not for disclosure – end of section

4.5 Granting a certificate of right of abode

Official sensitive – not for disclosure – start of section

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Official sensitive – not for disclosure – end of section

4.6 Refusals

4.6.1 When an application is refused, if the application was received before 6 April 2015 the following letters/documentation should be prepared:

- 2 x Reason for refusal letters -RFRL (do not print a 'file copy'). One letter should be sent to the applicant and one should be kept on file.
- 2 x Refusal notices. One notice should be sent to the applicant and one should be kept on file.
- 1 x PF1. This should remain on the file.
- 1 x Appeal booklet. This is to be sent to the applicant.

If the application was received on or after 6 April 2015 the applicant does not have a right of appeal and so only a refusal letter should be prepared.

NB. All letters should be addressed to the applicant. If the applicant has an agent a covering letter should be completed. All letters should be despatched by SMS even if there are no enclosed documents.

4.6.2 Copies of supporting documentation submitted with the application or obtained in the course of consideration should be kept on file.

4.7 Appeals

Any person whose application was received before 6 April 2015 and who is refused a certificate of entitlement has a right to appeal against the refusal, regardless of why the application is refused.

4.7.2 The appeal will normally be to the Asylum and Immigration Tribunal under s.82 of the Nationality, Immigration and Asylum Act 2002. If, however, there are national security or other public interest issues, and the appropriate certification has been made under s.97 of the 2002 Act, the appeal will instead be to the Special Immigration Appeals Commission under s.2 of the Special Immigration Appeals Commission Act 1997.

4.7.3 A person whose application was received on or after 6 April 2015 does not have a right of appeal. Any representations against

refusal should be considered administratively. Applicants can apply on form RROA setting out why they believe the decision was not in line with the law and our policy at that time. There is a fee payable for a reconsideration application. If, following reconsideration, the applicant is still not satisfied with our decision, their only option to challenge it is by judicial review.

- 4.7.4 There is no right to appeal against the revocation of a certificate of entitlement.

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5. Restriction on exercise of right of abode in some cases

5.1 Section 2 of the Immigration Act 1988 provides that a woman who acquired the right of abode through marriage before 1983 (i.e. by virtue of s.2(2) of the Immigration Act 1971, as then in force) may not enter the UK in exercise of that right, or be granted a certificate of entitlement, if either:

- another living wife or widow of the same man is or has at any time since *her* marriage been in the UK otherwise than as a visitor, an illegal entrant or on temporary admission, or
- another living wife or widow of the same man has been granted a certificate of entitlement or entry clearance on account of her marriage

NB 'Another living wife' does not include a divorcée

5.2 The restrictions do not prevent a wife who entered the UK in that capacity before 1 August 1988 from returning to this country, or from being issued with a certificate of entitlement or entry clearance enabling her to do so, irrespective of the presence here of other wives. Nor do they apply to a wife who has been in the UK at any time since her marriage if she was then the only wife to have entered, or been cleared for entry to, the UK.

5.3 So long as a woman is prevented under s.2 from entering the UK or obtaining a certificate of entitlement, she is subject to the provisions of the 1971 Act in the same way as a person who does not have the right of abode in the United Kingdom (s.2(3)).

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6. Deprivation of right of abode

6.1 Under s.2A of the Immigration Act 1971, as inserted by s.57 of the Immigration, Asylum and Nationality Act 2006, a person who has right of

abode on the basis of Commonwealth (but not British) citizenship –i.e. under s.2(1)(b) of the 1971 Act as amended- may be deprived of that right “if the Secretary of State thinks it would be conducive to the public good for the person to be excluded or removed from the United Kingdom”.

6.2 Ministers suggested during the passage of the 2006 Act that such action may be appropriate where the person-

- has encouraged or assisted others to commit acts of terrorism;
- has committed war crimes, public order offences or other serious crime; or
- has carried out acts seriously prejudicial to vital national interests, including espionage and acts of terrorism directed at the United Kingdom or an allied power

6.3 A person against whom a deprivation order is made will have a right of appeal to the Asylum and Immigration Appeal Tribunal or, where sensitive information might otherwise be disclosed in the course of the appeal, to the Special Immigration Appeals Commission. Subject to the outcome of any such appeal, an order made under s.2A of the 1971 Act remains in force until revoked by the Secretary of State.

6.4 Cases in which there may be a possibility of deprivation of right of abode will be scarce. However, on the rare occasion that such a case arises, the file should be referred to the Nationality Special Cases Team.

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Additional documents which must accompany an application for a certificate of entitlement

Basis of application	Documents
Applicant was registered or naturalised as a British citizen on or after 1st January 1983	Applicant's registration or naturalisation certificate
Applicant was born in the United Kingdom before 1st January 1983	Applicant's full birth certificate, showing parents' details
Applicant was registered or naturalised as a citizen of the United Kingdom and Colonies in the United Kingdom before 1st January 1983	Applicant's registration or naturalisation certificate
Applicant was a British overseas territories citizen and became a British citizen on 21 May 2002	<ul style="list-style-type: none"> (i) Applicant's British overseas territories citizen passport; (ii) Applicant's full birth certificate showing parents' details; (iii) If born outside an overseas territory, parent's marriage certificate (if claiming through the father) and parent's full birth certificate, registration or naturalisation certificate (iv) If registered or naturalised as a British overseas territories citizen before 21 May 2002, certificate of registration or naturalisation (v) If registered or naturalised as a British overseas territories citizen on or after 21 May 2002, certificate of registration or naturalisation and certificate of registration as a British citizen
Applicant is a Commonwealth (not British) citizen born before 1st January 1983 to a parent who was born in the United Kingdom	<ul style="list-style-type: none"> (i) Applicant's full birth certificate showing parents' details; and (ii) Parent's full UK birth certificate (iii) If claiming through the father, the marriage certificate
Applicant is a female Commonwealth citizen who was married before 1st January 1983 to a man with right of abode in the United Kingdom (NB – the marriage must have taken place	<ul style="list-style-type: none"> (i) Applicant's marriage certificate; and (ii) Evidence of applicant's husband's right of abode prior to 1 January 1983, e.g. passport or UK birth

Basis of application	Documents
before 1 January 1983, and the husband should have had a right of abode before that date)	certificate, certificate of registration or naturalisation
Applicant was born in the United Kingdom or the Falkland Islands on or after 1st January 1983, or in another qualifying British overseas territory on or after 21st May 2002	(i) Applicant's full birth certificate showing parents' details; (ii) Evidence of either parent's British citizenship or settled status at time of applicant's birth, e.g. a passport describing the relevant parent as a British citizen or indicating that he or she then had indefinite leave to remain; and (iii) Parents' marriage certificate (if claiming through father)
Applicant was born outside the United Kingdom and the Falkland Islands on or after 1st January 1983, or outside the United Kingdom and any qualifying British overseas territory on or after 21st May 2002, to a parent born in the United Kingdom or the Falkland Islands (or, on/after 21 May 2002, any qualifying British overseas territory) or to a parent registered or naturalised in the United Kingdom prior to the applicant's birth	(i) Applicant's full birth certificate showing parents' details; (ii) Parents' marriage certificate (if claiming through father); and (iii) Parents' full birth certificate, registration or naturalisation certificate
Applicant was born outside the United Kingdom and the Falkland Islands on or after 1st January 1983, or outside the United Kingdom and any qualifying British overseas territory on or after 21 May 2002, to a parent who, at the time of the birth, was a British citizen in service to which section 2(1)(b) of the British Nationality Act 1981 applies	(i) Applicant's full birth certificate; (ii) Parents' marriage certificate (if claiming through father); and (iii) Evidence of parent's relevant employment at the time of the birth, e.g. a letter from the employer
Applicant was adopted in the United Kingdom, a qualifying British overseas territory, or otherwise under the terms of the Hague Convention on Intercountry Adoption ⁽¹⁾	(i) Applicant's adoption certificate; and (ii) Evidence of adoptive parents' citizenship and, if a Convention adoption, of their place of habitual residence at the time of the adoption, e.g. in respect of citizenship, a

⁽¹⁾ Concluded at the Hague on 29th May 1993.

Basis of application	Documents
	passport, and in respect of habitual residence at the time of the Convention adoption, the adoption certificate
Applicant was a citizen of the United Kingdom and Colonies and was ordinarily resident in the United Kingdom for a continuous period of 5 years before 1st January 1983 and was settled in the United Kingdom at the end of that period	(i) Evidence of citizenship of the United Kingdom and Colonies, e.g. a passport or certificate of naturalisation or registration; and (ii) Evidence of settlement and 5 years' ordinary residence in the UK before 1983, e.g., passport, P60s, details of National Insurance contributions, DSS claims, employers' letters
Applicant was a citizen of the United Kingdom and Colonies and had a parent who was born, adopted, registered or naturalised in the United Kingdom prior to the applicant's birth/adoption	(i) Applicant's full birth certificate or adoption certificate; (ii) Parents' marriage certificate (if claiming through father); and (iii) Parent's full birth certificate, adoption, registration or naturalisation certificate
Applicant was a citizen of the United Kingdom and Colonies and had a grandparent born, adopted, registered or naturalised in the United Kingdom before the applicant's parent's birth/adoption	(i) Parents' marriage certificate (if claiming through father); (ii) Parents' full birth certificate or adoption certificate; (iii) Applicant's full birth certificate or adoption certificate; (iv) Grandparents' marriage certificate (if claiming through grandfather); and (v) Grandparent's full birth certificate, adoption, registration or naturalisation certificate

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