

## PART I: BRITISH CITIZENSHIP

### CHAPTER 9: REGISTRATION OF MINORS AT DISCRETION

#### SECTION 3(1) BRITISH NATIONALITY ACT 1981

## PART 1: INTRODUCTION

### 9.1 The Law

9.1.1 Persons may be registered under **s.3(1)** if:

- applications are made while they are minors; and
- (if aged 10 or over on the date of application, this being a date on or after 4 December 2006) the Secretary of State is satisfied that they are of good character (see Annex B); and
- the Secretary of State thinks fit to register them.

9.1.2 These are the only statutory requirements.

9.1.3 All applications must be supported by two referees who know the child personally. These references will not automatically be taken up. The application should also include a recent passport sized photograph of the child stapled or clipped into the space provided on the form. For further guidance on referees and identity, see **Chapter 6** paragraph 6.3.

9.1.4 A number of other factors are normally taken into account in deciding whether or not to register a minor under this provision. This Chapter

gives guidance about how discretion should normally be used under the law.

9.1.5 **IT IS IMPORTANT TO REMEMBER** that the guidance in this Chapter does not amount to hard and fast rules. It will enable the majority of cases to be dealt with, but because the law gives complete discretion each case must be considered on its merits. All the relevant factors must be taken into account, together with any representations made to us. If we do not, we are open to criticism for not exercising our discretion reasonably.

9.1.6 It is therefore possible to register a minor under circumstances that would normally lead to the refusal of an application or to refuse when normally a child might be registered if this is justified in the particular circumstances of any case.

9.1.7 Registration under **s.3(1)** gives British citizenship by descent if:

- the father or the mother was a British citizen at the time of the child's birth; or
- the father or mother was a citizen of the United Kingdom and Colonies at the time of the child's birth and became, or would but for his or her death, have become a British citizen on 1 January 1983

9.1.8 In all other cases registration gives British citizenship otherwise than by descent. (See **Chapter 20**)

9.1.9 In this context:

- "father or mother" does not include an adoptive father or mother
- "father" includes the father of an illegitimate child if, and only if:
  - a. the child was born on or after 1 July 2006, and
  - b. the father satisfies the prescribed requirements as to proof of paternity in such cases (see Annex F to **Chapter 6**)

9.1.10 Children registered under **s.3(1)** will therefore be British citizens otherwise than by descent if they were:

- adopted by British citizens, or
- born before 1 July 2006 and are the illegitimate children of British citizen men, or
- born on or after 1 July 2006 and are the illegitimate children of British citizen men who cannot provide satisfactory evidence of paternity. (See **Chapter 20**)

## 9.2 **How to use this Chapter**

9.2.1 Part 2 of this Chapter is designed to follow the way in which applications would normally and logically be considered.

9.2.2 It should not be assumed that because an application has been made the minor is in need of registration. The minor may already be a British citizen without the parents realising it, in which case there is no

need to register. So before considering registration we should check whether the child is already a British citizen (see 9.4 below).

- 9.2.3 It is not always possible to tell just by looking at an application form what section of the Act is applicable. Many different applications for minors are made on the same type of form, and the parents will not necessarily know under what section they are applying. So before considering whether to exercise discretion to register under **s.3(1)**, we must consider whether the minor has an entitlement to registration under another section of the Act (see 9.5 below).
- 9.2.4 When it has been decided that the application is properly one under **s.3(1)**, the minor's circumstances should be considered. The full list of criteria which we normally expect minors to meet is set out in 9.17, but there are a number of applications where other criteria are set out (see 9.6 to 9.16). Minors in these categories do not need to meet all the criteria in 9.17. So it can save time to check first whether a minor falls into any one of the categories in 9.6 to 9.16. If so, a decision may be made at that point without going any further.
- 9.2.5 In order to avoid unnecessary cross-checking, paragraphs 9.6 to 9.17 are self-contained, and include not only the criteria to be met, but also the particular evidence required.
- 9.2.6 To sum up, when an application is first examined, consider whether:
- a. the minor has an automatic claim to British citizenship (see 9.4); if not
  - b. the minor has an entitlement to registration (see 9.5); if not

- c. the minor falls into any of the categories 9.6 to 9.16; if not
- d. the criteria in 9.17 are met; if not
- e. there are any grounds for making an exception to the normal criteria.

### 9.3 **Application forms and who may apply**

9.3.1 Applications will normally be made on Form MN1.

9.3.2 Anyone who has assumed responsibility for a minor may apply for the minor's registration under **s.3(1)**, but in practice it is expected that an application will be made by:

- one or both parents; or
- a guardian; or
- a local authority which, because of the existence of a care order, shares parental responsibility for a child with the parents

9.3.3 In some cases it may be appropriate for an application to be made by:

- the minor
- someone else who has the responsibility for the minor (e.g. another relation)

- someone who shares parental responsibility for the minor with the parents (e.g. another relation or someone appointed to act as custodian before the commencement of the **Children Act 1989** or equivalent legislation outside England and Wales)

## PART 2: HOW TO CONSIDER APPLICATIONS

### 9.4 Checking for automatic claims

9.4.1 There is always the possibility that an applicant minor is already a British citizen under one of the following sections of the British Nationality Act 1981 or the **British Nationality (Falkland Islands) Act 1983** or the **British Overseas Territories Act 2002**:

- **s.1(1) 1981 Act** - born in the UK or a qualifying territory (see **Chapter 3**)
- **s.1(2) 1983 Act** - born in the Falkland Islands before 21 May 2002 (see **Chapter 3**)
- **s.1(2) 1981 Act** - found abandoned in the UK or a qualifying territory (see **Chapter 3**)
- **s.1(3) 1983 Act** - found abandoned in the Falkland Islands before 21 May 2002 (see **Chapter 3**)
- **s.1(5) 1981 Act** - UK or qualifying territory or Convention adoption (see **Chapter 3**)
- **s.1(4) 1983 Act** - adopted in the Falkland Islands before 21 May

2002 (see **Chapter 3**)

- **s.2(1)** 1981 Act - born outside the UK before 21 May 2002 or outside the UK and qualifying territories on or after 21 May 2002 to a parent who is a British citizen otherwise than by descent, or in relevant service (see **Chapter 4**)
- **Schedule 2, paragraph 2** 1981 Act - born stateless in a British overseas territory before 21 May 2002 (see **Chapter 5**)
- **s.3(1) 2002 Act** - British overseas territories citizen by connection with a qualifying territory (see **Chapter 2**)

9.4.2 As the person making the application may not know if the minor is a British citizen, this possibility should be checked first. If someone is already a British citizen, it follows that this person cannot be registered.

9.4.3 The checks need not be very detailed but are centred on the information already to hand. **IT IS IMPORTANT** to remember that the minor may have an automatic claim to British citizenship as the child of a void marriage or legitimated by the subsequent marriage of the parents (see **LEGITIMACY**).

9.4.4 If it is not clear from the papers that the minor is a British citizen, it should be assumed that the minor is not.

9.4.5 If the minor has an automatic claim to British citizenship, we should write to explain that the application is not necessary (using the procedure in **Chapter 2, 3, 4** or **5** as appropriate) and refund in full

any fee submitted with the application (see **Chapter 6**).

## 9.5 **Checking for possible entitlement to registration**

9.5.1 The 1981 Act contains a number of provisions which give minors in certain circumstances an entitlement to registration as British citizens. These are:

- **s.1(3)** - UK born minors - a parent being a British citizen, settled here or in the armed forces (see **Chapter 8**)
- **s.1(4)** - UK born minors - residence in UK (see **Chapter 8**)
- **s.3(2)** - born to BCs outside UK before 21 May 2002 or outside the UK and qualifying territories on or after 21 May 2002 (see **Chapter 10**)
- **s.3(5)** - born to BCs outside UK before 21 May 2002 or outside the UK and qualifying territories on or after 21 May 2002 (see **Chapter 11**)
- **s.4(2)** - BOTCs, BOCs, BN(O)s, BSs or BPPs (see **Chapter 12**)
- **s.4B** - BOCs, BSs, BPPs or BN(O)s (see **Chapter 12**)
- **s.4D** – born outside the UK to a parent serving in the armed forces
- **s.5** - UK nationals for EC purposes (see **Chapter 13**)
- **Schedule 2 paragraphs 3, 4 and 5** - stateless minors (see



## Chapter 15)

- 9.5.2 Once it has been established that a minor applicant is not already a British citizen, we should consider whether an entitlement to registration exists under any of the above provisions.
- 9.5.3 **IT IS IMPORTANT** to ensure that a minor is registered under the appropriate provision. As a matter of principle, a minor with an entitlement should be registered at entitlement, and not by use of the discretion under **s.3(1)**. It could **also** affect future generations, because in some cases registration under **s.3(1)** would give British citizenship by descent, whereas registration under an entitlement provision would give British citizenship otherwise than by descent. (See **Chapter 20**)
- 9.5.4 It will not normally be possible to tell whether a minor has an entitlement just by seeing what form is used. This is because the same form is used for a number of different provisions, or the person making the application may not know whether a minor has an entitlement, or use the correct form; or because the minor's application is included in a parent's application form. (See **Chapter 6**)
- 9.5.5 Each application should be checked to see whether the minor meets the requirements for registration at entitlement. In most cases this will be a fairly simple job. As a rough and ready guide:
- a minor born outside the UK cannot have an entitlement under **s.1(3)** or **s.1(4)**
  - only a Gibraltarian BOTC can have an entitlement under **s.5**, and

the application will normally be forwarded by Gibraltar

- 9.5.6 **IT IS IMPORTANT** to remember that the minor may have an entitlement to registration as a British citizen as the child of a void marriage or legitimated by the subsequent marriage of the parents (see **LEGITIMACY**).
- 9.5.7 **IT IS OF PARTICULAR IMPORTANCE** to be alert to possible entitlements under **s.1(3)**. Where an application includes a minor born in the United Kingdom on or after 1 January 1983 but before the date on which the parent was granted settlement (i.e. indefinite leave to enter or remain), then the minor has an entitlement to registration under **s.1(3)**, provided the father or mother has either become settled here, a British citizen, or a member of the armed forces before the date of application.
- 9.5.8 **PARTICULAR CARE** has to be taken to note cases where a minor does not have an entitlement under **s.3(5)**, but would have such an entitlement if the family were to live in the UK or a qualifying territory (if appropriate) for 3 years. If we were to register such a minor under **s.3(1)**, this would give British citizenship by descent. Registration under **s.3(5)** gives British citizenship otherwise than by descent and it might therefore be more advantageous for the family to wait until the minor met the requirements of **s.3(5)**. If the family is in the United Kingdom or a qualifying territory, or is proposing to return to the UK or a qualifying territory to live, we should advise that it might be preferable not to proceed with an application under **s.3(1)**, but to wait until the requirements of **s.3(5)** are met.
- 9.5.9 If a minor does not have an entitlement to registration, and it would not

be appropriate to suggest the possibility of a later application under **s.3(5)**, the application should be considered under **s.3(1)**.

9.6 **Children born before 1 January 1983 to women born, adopted, registered, naturalised in the United Kingdom**

This category was only applicable to minors born before 1983 and therefore to applications made no later than 30 December 2000. If required, caseworkers should consult Nationality Policy Team to view archive copies of guidance.

9.7 **Children born abroad to other British citizens**

9.7.1 NB - It was our policy to register certain minors born before 1 January 1983 whose parents became British citizens otherwise than by descent on 1 January 1983. If required, caseworkers should consult Nationality Policy Team to view archived copies of this guidance.

Minors born abroad to a parent whose father was in Crown, designated, or Community Institution service

9.7.2 This section only applies to those born before 1 January 1983. If required, caseworkers should consult Nationality Policy Team to view archived copies of this guidance.

Minors born abroad to a parent in designated or Community Institution service

9.7.3 We may normally register if:

- a. the child was born before the date of designation or admission

as a Community Institution (see **Chapter 4**); and

- b. the mother or father is, or was at their death, a British citizen by descent; and
- c. that parent is, or would but for their death have been, in designated or Community Institution service on the date of application; and
- d. at the time of the child's birth the parent was in that service before it was designated or admitted; and
- e. where necessary, both parents consent to the registration, or any objections by the non-applicant parent are ill-founded (see 9.18 below); and
- f. there is no reason to refuse on character grounds (see 9.17.30-9.17.33 below and Annex B).

NB. The registration of a child born abroad before a parent joined the service in question should be considered by reference to the criteria in 9.6 or 9.8-9.17 as appropriate.

Minors born to a parent who has renounced and subsequently resumed our citizenship

9.7.4 We may normally register if:

- a. the mother or father has renounced and subsequently resumed our citizenship; and

- b. the child was born before the date of resumption; and
- c. either
  - that parent became a British citizen otherwise than by descent on resumption;
  - or
  - the parent was a British citizen by descent and the child would have had an entitlement to registration under section 3(2) or 3(5) of the 1981 Act had the parent not renouncedand
- d. where necessary, both parents consent to the registration or any objections by the non-applicant parent are ill-founded (see 9.19 below); and
- e. there is no reason to refuse on character grounds (see 9.17.30-9.17.33 below and Annex B).

Minors born to a parent who has been registered under section 4C BNA 1981

9.7.5 Section 4C of the 1981 Act allows those born before 1 January 1983 to British mothers to be registered as a British citizen. Once registered, their children born outside of the United Kingdom will have an entitlement to be registered as a British citizen under section 3(2) of the Act, if certain requirements are met. In view of this, Ministers have agreed to exercise discretion to register children who were born *before* the parent registered as a British citizen under section 4C.

9.7.6 We may normally register if:

- a. the child was born *before* the parent registered under section 4C;
- b. if the child had been born *after* the parent's registration, he or she would have had an entitlement under section 3(2) (see **Chapter 10** );
- c. where necessary, both parents consent to the registration or any objections by the non-applicant parent are ill-founded (see 9.19 below); and
- d. there is no reason to refuse on character grounds (see 9.17.30-9.17.33 below and Annex B).

#### Evidence to be supplied

9.7.7 The evidence will vary according to the circumstances of the parent(s). In every case we should expect to see:

- the child's birth certificate showing parents' details; and
- the relevant parent's birth certificate showing his or her parents' details; and
- if appropriate, the parent's marriage certificate
- if appropriate, the grandparent's birth and marriage certificates.

9.7.8 In cases involving designated service we should also expect to see:

- evidence that the parent was in the relevant service at the time of the birth; and, where appropriate
- evidence of the place of recruitment; and
- the parent's marriage certificate if appropriate

9.7.9 Applications received from abroad are usually accompanied by a letter from a British Diplomatic Post giving enough information to establish the applicant's eligibility for registration and listing the documents produced.

## 9.8 **Children adopted abroad by British citizens**

9.8.1 Special consideration needs to be given to children adopted abroad by British citizens. Particular care should be taken where a child is:

- adopted in a qualifying territory (see 9.20 below); or
- adopted under a Convention adoption (see **Chapter 3**)

and may have an automatic claim to British citizenship (see **Chapter 3**).

9.8.2 The guidance below provides advice on when we should and should not register and applies to all cases received on or after 1 June 2005. For applications received before 1 June 2005 we should apply our previous policy which can be found in section 9.8.9 of this chapter.

**N.B.** In certain cases involving British citizen adopters, overseas

adoptions under the terms of the 1993 Hague Convention on Intercountry Adoption give an automatic claim to British citizenship under **s.1(5)** of the British Nationality Act 1981 (see **Chapter 3**). Only where a Hague Convention adoption does not produce this result will it be appropriate to consider the case for registration under s.3(1) as directed below.

**9.8.3 Adoption in designated countries (see list in Volume 2, Part 2, Adoption) and Hague Convention adoptions**

- Full adoptions (i.e. where the legal relationship with the birth family is completely terminated and the child is treated in law as being only the child of the adoptive parent rather than simple, informal or interim adoptions) which have taken place in designated countries, or under the terms of the 1993 Hague Convention on Intercountry Adoption, are recognised in UK law. We should consider registering the subject of such an adoption where the following criteria are met;
  - a. at least one of the adoptive parents is a British citizen otherwise than by descent (see **Chapter 20**); and
  - b. if necessary, both adoptive parents have signified their consent to the registration (see 9.18 below); and
  - c. there is no reason to refuse on character grounds (see 9.17.30-9.17.33 below and Annex B); and
  - d. we are satisfied that all relevant adoption laws have been adhered to. This includes the laws of the country in which the



adoption has taken place, the country of origin of the child and the country in which the adoptive parents are habitually resident; and

- e. we are satisfied the adoption is not one of convenience arranged to facilitate the child's admission to the United Kingdom.

If some or all of the criteria set out in the preceding paragraph are not met, the application should be considered on its merits and the child registered if registration is demonstrably in the child's best interest. Even where the criteria in paragraph 9.8.4 are met, there may be reasons why the child should not be registered, such as the existence of serious doubts about an adoptive parent's character or suitability to adopt a child, or irregularities in the adoption procedure.

**9.8.4 Adoption in non-designated countries (countries not on list in Volume 2, Part 2, Adoption)**

- Adoptions in non-designated countries, and which are not Hague Convention adoptions, are not recognised in UK law.
- Applications for registration in these circumstances should normally be refused.
- Despite the bias towards refusal in such cases all applications should be considered on their merits and the child registered as a British citizen if it is demonstrably in the child's best interest. If we were going to register in such cases we would expect to see the evidence detailed in 9.8.7.

#### 9.8.5 **Children brought to the United Kingdom with a view to adoption in the UK**

From time to time, British citizens bring children to the UK, either having gone through a form of adoption which is not recognised as such in the UK or sometimes without any formality in the country of origin at all. If permitted to enter the UK, the children will usually be given limited leave to enter pending the completion of adoption proceedings in the UK. If these proceedings are successful the child will automatically become a British citizen at that point (see **Chapter 3**). Any application for registration whilst the UK adoption proceedings are still underway, or before they have even begun, should normally be refused.

#### 9.8.6 **Evidence required**

In all adoption cases we should expect to see the following:

- The child's birth certificate, or where the child has been abandoned, a certificate of abandonment from the authorities previously responsible for the child ; and
- evidence of the relevant adoptive parent's claim to British citizenship otherwise than by descent; and
- the consent of the adoptive parent(s) to the registration; and
- the Adoption Order; and
- A contemporary report from the overseas equivalent of the Social

Services Department which details:

- i. the child's parentage and history; and
  - ii. the degree of contact with the original parent(s); and
  - iii. the reasons for adoption; and
  - iv. the date, reasons and arrangements for the child's entry into an institution or foster placement; and
  - v. when, how and why the child came to be offered to the adoptive parent(s)
- evidence of the parents' country of habitual residence (see notes in Volume 2, General Information, **ADOPTION**); and
  - i. Where the parents are habitually resident in the UK, confirmation from the DfES (for those in England and Wales), from the Scottish Executive (for those parents in Scotland) or from the Department of Health Social Security and Public Safety - Northern Ireland (for those resident in Northern Ireland) that they have been assessed and approved as eligible to become an adoptive parent. If there are any doubts about the validity of the documentation provided, the DfES can be contacted for confirmation that the parents have had the relevant approval (DfES hold details on all approvals not just those in England and Wales); or
  - ii. Where the parents are not habitually resident in the UK,

confirmation from the equivalent of the Social Services Department in their country of residence that all relevant adoption laws have been complied with.

9.8.7 If the application is made overseas we should expect Post to report and confirm that they have seen all the documentary evidence required as detailed in 9.8.6 and provide photocopies of the originals wherever possible. Additionally we require;

- Confirmation that nothing adverse is known about the child or the parents; and
- Confirmation that the fee has been collected and has been credited to the Home Office in the Post's accounts

**NB.** If it is clear from Home Office papers that the UK Immigration authorities have already seen the adoption order and have accepted the adoption for immigration purposes, we need not ask to see it again.

9.8.8 **Applications received prior to 1 June 2005**

Where applications have been received prior to 1 June 2005 we may normally register a child adopted overseas if:

- a. at least one of the adoptive parents is a British citizen otherwise than by descent (see **Chapter 20**); and
- b. if necessary, both adoptive parents have signified their consent to the registration (see 9.18 below); and

- c. there is no reason to refuse on character grounds (see 9.17.30-9.17.33 below and Annex B); and
- d. we are satisfied the adoption is not one of convenience arranged to facilitate the child's admission to the United Kingdom; and either
- e. the adoption was made under the law of a country which is specified in the **Adoption (Designation of Overseas Adoptions) Order 1973**; or
- f. we are satisfied that there has been a genuine transfer of parental responsibility on the grounds of the original parents' inability (or unwillingness) to care for the child.

If some or all of the criteria set out above are not met, the application should be considered on its merits and the child registered if registration is demonstrably in the child's best interest. Even where the criteria in paragraph 9.8.4 are met, there may be reasons why the child should not be registered, such as the existence of serious doubts about an adoptive parent's character or suitability to adopt a child, or irregularities in the adoption procedure. Particular care should be exercised where the adoption has taken place in a non-designated country and the adoptive parents have been looking after the child for less than a year and/or the child is still in contact with its natural parents.

#### Evidence required for applications made prior to 1 June 2005

9.8.9 Applications for the registration of children living abroad will normally

be made through a British Diplomatic Post. The Post will report and confirm:

- particulars of the child's place and date of birth; and
- particulars of the relevant adoptive parent's claim to British citizenship otherwise than by descent; and
- that the adoption was made under the law of a country specified in the **Adoption (Designation of Overseas Adoption) Order 1973**; or
- that there has been a genuine transfer of parental responsibility on the grounds of the original parents' inability (or unwillingness) to care for the child, and that the adoption is not one of convenience arranged to facilitate the child's admission to the United Kingdom; and
- if necessary, that both adoptive parents have signified consent to the registration; and
- that nothing adverse is known about the child or the parents; and
- particulars of the relevant documents seen by the Post (with photocopies where possible) together with confirmation that the originals have been seen; and
- that the fee has been collected and has been credited to the Home Office in the Post's accounts

- 9.8.10 If the application is made in the United Kingdom we should expect to see documentary evidence as required in 9.8.9.

**NB.** If it is clear from Home Office papers that the UK Immigration authorities have already seen the adoption order and have accepted the adoption for immigration purposes, we need not ask to see it again.

## 9.9 **Illegitimate children of British citizen and ‘settled’ fathers**

### Children born before 1 July 2006

- 9.9.1 Unlike mothers, fathers could not transmit British citizenship or the benefits of their settled status to any illegitimate children born **before** 1 July 2006 (**s.50(9)** of the British Nationality Act 1981). However, a child’s birth could be legitimated if the parents later married and the marriage served to legitimate the child in the law of the place where the father was domiciled at the time of the marriage. For further information see “**LEGITIMACY**” in Volume 2.
- 9.9.2 **Section 1** of the **Family Law Reform Act 1987**, which came into force on 4 April 1988, did away with most distinctions between legitimate and illegitimate children. It did not, however, alter the citizenship position.
- 9.9.3 **Section 9** of the **Nationality, Immigration and Asylum Act 2002** amended the 1981 Act to allow fathers to transmit citizenship to their illegitimate children born on or after 1 July 2006 provided there is satisfactory evidence of paternity. *But the changes do not apply in respect of anyone born before that date.*

9.9.4 However, in accordance with the spirit of the **1987 Act** (and the changes introduced by the **2002 Act**), we may normally register the illegitimate minor child, born before 1 July 2006, of a British citizen or “settled” father if the criteria at a-c. (and, if appropriate, d.) below are all satisfied:

- a. We are satisfied about the paternity of the child; and
- b. We have the consent of all those with parental responsibility (see 9.22.6 below); and
- c. We are satisfied that, had the child been born to the father legitimately:
  - i. the child would have had an automatic claim to British citizenship under **s.1(1)** or **s.2(1)** of the British Nationality Act 1981; or
  - ii. the child would have had an entitlement to registration under either **s.1(3)**, **s.3(2)** or **s.3(5)** (see **Chapters 8, 10 or 11**); or
  - iii. we would normally have registered under **s.3(1)**; and, if appropriate
- d. There is no reason to refuse on character grounds (see 9.17.30-9.17.33 below and Annex B).

Children born on or after 1 July 2006



9.9.5 One of the effects of the changes introduced by **s.9** of the **2002 Act** is that where a child's mother is married at the time of the birth, her husband (and no other man) is regarded as the father of any child born to her on or after 1 July 2006. However, cases may arise where there is compelling evidence that someone other than the husband is the child's natural father. In such cases, where we are satisfied that the child would have had a claim to citizenship or entitlement to registration if the mother had been married to the natural father, it will normally be appropriate to register the child under **s.3(1)** if the criteria in 9.9.4 are met.

#### How to decide the paternity of the child

9.9.6 The **British Nationality (Proof of Paternity) Regulations 2006**, which came into effect on 1 July 2006, prescribed certain forms of evidence which will be sufficient to prove paternity in cases where the mother was not married at the time of the child's birth and no provision is made by **s.28** of the **Human Fertilisation and Embryology Act 1990** (see Volume 2, "**SURROGACY**") as to the identity of the father. In such cases, the "father" will be any person who is shown to be such by either:

- a. a birth certificate, issued within 1 year of the birth, naming the child's father, or
- b. any other evidence, such as DNA test reports and court orders, considered by the Secretary of State considers to be relevant to the issue of paternity and to constitute sufficient proof.

9.9.7 Although the **2006 Regulations** only apply in relation to children born on or after 1 July 2006, we should expect to see the same evidence in support of an application for registration under **s.3(1)** where consideration is being given to such registration on the bases set out in paragraphs 9.9.1-9.9.4 or 9.9.5 above.

9.9.8 The **2006 Regulations** do not specify what forms of evidence apart from those specifically mentioned in paragraph 9.9.6 might be acceptable. However, we may normally accept that a man is the father of an illegitimate child if:

- paternity has been acknowledged in some other official context, for example, if the child was born abroad and the relationship has been accepted for United Kingdom immigration purposes, where there is no documentary evidence available
- he has stated that he is the father and we have confirmation of that from the mother (provided there is no evidence to suggest that their evidence is false – e.g. made in the hope of gaining an immigration advantage)

#### Evidence to be supplied

9.9.9 Applications should be supported by the following evidence:

- Father's birth certificate; and
- Mother's birth certificate; and
- Child's birth certificate showing parents' details; and

- Evidence of paternity (see 9.9.6 - 9.9.8); and
- If necessary, the consent of the non-applicant parent; and
- If the child was born abroad, and the father is a British citizen by descent:
  - i. that the conditions for registration under **s.3(2)** or **3(5)** would be met if the child was legitimate; or
  - ii. that we would normally have registered the child under **s.3(1)** in accordance with the criteria in 9.17 below.

#### 9.10 **Children born to "surrogate" mothers**

9.10.1 General guidance on surrogacy, and how to identify the legal parents in such cases, may be found in Volume 2. Generally speaking, the "commissioning couple" will have no legal relationship to the child and, therefore, will be unable to pass on the benefits of their British citizenship or "settled" status automatically. When asked to register the child as a British citizen under **s.3(1)**, our normal approach should be as follows.

9.10.2 Where a man is the biological father of the child but falls outside the relevant definition of "father" in the BNA 1981 (see **Chapter 6** Annex F)

9.10.2.1 The guidance in paragraph 9.9 above ("Illegitimate children of British citizen and 'settled' fathers") should be

followed.

9.10.3 Where a man is neither the biological father of the child nor within the relevant definition of "father" in the BNA 1981 (see **Chapter 6** Annex F)

9.10.3.1 We should normally register if:

- a. we have the consent of all those with parental responsibility (see 9.22.6 below); and
- b. we are satisfied that, had the child been born to the man legitimately:
  - i. the child would have had an automatic claim to British citizenship under **s.1(1)** or **s.2(1)** of the British Nationality Act 1981; or
  - ii. the child would have had an entitlement to registration under either **s.1(3)**, **s.3(2)** or **s.3(5)** (see **Chapters 8, 10** or **11**); or
  - iii. we would normally have registered under **s.3(1)**; and, if appropriate
- c. there is no reason to refuse on character grounds (see 9.17.30 - 9.17.33 below and Annex B); and
- d. the man has been granted either:

- an order under **s.30** of the **Human Fertilisation and Embryology Act 1990**, or
- an order by a foreign court, within whose jurisdiction the child was born, directing that he be treated, in law, as the child's father

9.10.4 Where a woman (whether the child's biological mother or not) falls outside the definition of "mother" in the BNA 1981 (see **Chapter 6** Annex F)

9.10.4.1 We should normally register if:

- a. we have the consent of all those with parental responsibility (see 9.22.6 below); and
- b. we are satisfied that, had the woman been the child's mother for BNA 1981 purposes:
  - i. the child would have had an automatic claim to British citizenship under **s.1(1)** or **s.2(1)** of the British Nationality Act 1981; or
  - ii. the child would have had an entitlement to registration under either **s.1(3)**, **s.3(2)** or **s.3(5)** (see **Chapters 8, 10** or **11**); or
  - iii. we would normally have registered under **s.3(1)**; and, if appropriate

- c. there is no reason to refuse on character grounds (see 9.17.30 - 9.17.33 below and Annex B); and
- d. the woman has been granted either:
  - an order under **s.30** of the **Human Fertilisation and Embryology Act 1990**, or
  - an order by a foreign court, within whose jurisdiction the child was born, directing that she be treated, in law, as the child's mother

#### **9.11 Children born to British citizen women in civil partnerships**

9.11.1 The mother of a child for British nationality purposes is the woman that gives birth to that child. From 6 April 2009, the Human Fertilisation and Embryology Act 2008 provides for the mother's female partner to be treated as the parent of the child. If a child was conceived before the HFE Act changes came into force, and the mother's civil partner is a British citizen (irrespective of whether or not she is biologically related to the child), we should consider registering if:

- a. we have the consent of all those with parental responsibility (see 9.22.6 below); and
- b. we are satisfied that, had the woman been the child's mother for BNA 1981 purposes:
  - i. the child would have had an automatic claim to British

citizenship under **s.1(1)** or **s.2(1)** of the British Nationality Act 1981; or

ii. the child would have had an entitlement to registration under either **s.1(3)**, **s.3(2)** or **s.3(5)** (see **Chapters 8, 10 or 11**); or

iii. we would normally have registered under **s.3(1)**; and, if appropriate

c. there is no reason to refuse on character grounds (see 9.17.30 - 9.17.33 below and Annex B);

9.12 **Second or subsequent generations born abroad into a British citizen family on long-term business or service overseas**

9.12.1 During the passage of the British Nationality Bill through Parliament, Ministers said that the special problems of British business families on long-term service overseas would be taken into account in considering applications under **s.3(1)**.

9.12.2 Ministers said also that British citizens working overseas for international organisations should have little difficulty in acquiring British citizenship for their children born abroad, provided they were maintaining a connection with this country (but see also 9.5.8 above).

9.12.3 In such cases the discretion to register may be used sympathetically, but we should expect there to be clear and strong links with the United Kingdom (both personally and through the parent's employment) or compassionate circumstances. These might include the avoidance of

statelessness although, if the child is the third or subsequent generation born abroad, we should not assume that it is for the United Kingdom to put this right.

9.12.4 We should therefore normally register a second or subsequent generation child born and living abroad if:

- a. the child is part of a British citizen family on long-term business abroad; or
- b. at least one parent is a British citizen working overseas for an international organisation of which the United Kingdom is a member; and
- c. if necessary, both parents consent to the registration or any objections by the non-applicant parent are ill-founded (see 9.18 below); and
- d. there is no reason to refuse on character grounds (see 9.17.30 - 9.17.33 below and Annex B); and
- e. both the child and the family have strong links with the United Kingdom such as:
  - ancestors born in the UK
  - frequent visits to the UK
  - cultural or professional associations with the UK



- relatives living in the UK
  - investments or property in the UK
  - education of the child either in the UK or in an English speaking school abroad, or
- f. there are compassionate circumstances such as:
- the avoidance of statelessness if the child is the second generation born abroad
  - hardship for the child because the child is not a British citizen
  - problems for the family in carrying on business or service if the child is not a British citizen

NB. These links and compassionate circumstances are not comprehensive and are for guidance only. Each case must be considered on its merits and we must be ready to consider any other reasons links or circumstances put forward by an applicant.

#### Evidence to be supplied

9.12.5 Applications should be supported by the following evidence:

- child's birth certificate showing parents' details; and
- parent's birth certificate showing his or her parents' details; and

- if appropriate, the parent's marriage certificate; and
- that the family has been and still is on long-term British business abroad; or
- that at least one parent is a British citizen working abroad for an international organisation; and
- continuing close connections with the UK; or
- compassionate circumstances; and
- if necessary the consent of the non-applicant parent (see 9.17 below)

9.12.6 Applications received from abroad are usually accompanied by a letter from a British Diplomatic Post giving the information necessary to establish the applicant's eligibility for registration and listing the documents that have been produced.

### 9.13 **Minors with a learning disability**

#### Applications made before 1 January 2004

The information below relates to applications made after 1 January 2004. If required, caseworkers should consult Nationality Policy Team to view archived copies of this guidance.

#### Applications made on or after 1 January 2004

9.13.1 People who apply as adults, or apply as minors and have reached the age of majority before their applications are approved, are required to attend a citizenship ceremony to take an oath of allegiance and pledge before registration or naturalisation (unless that requirement is waived) (see **Chapter 6**). It is preferable to try to determine applications while applicants are minors in order to avoid them becoming liable to these requirements, so an appropriate degree of priority should be given to applicants who are approaching the age of majority.

9.13.2 However, there is discretion to set aside the requirements to attend a citizenship ceremony and to take the oath and pledge. Where:

- an application for registration has been made on or after 1 January 2004; and
- the applicant has reached the age of majority; and
- it is known that the minor's mental capacity is affected in such a way as might make it impossible for an oath of allegiance to be taken,

discretion should normally be exercised to waive the need for the minor to attend a citizenship ceremony and to take the oath of allegiance and pledge.

#### Criteria to be applied

9.13.3 We should expect mentally disabled minors as far as possible to meet the criteria set out in 9.16 below, except that we should normally

register if the child would:

- be granted citizenship if applying as an adult; or
- otherwise be the only member of the family who was not a British citizen; or
- be unable to meet the normal two year residence expectation before reaching majority but the child's future clearly lies here; or
- suffer hardship by not being registered (e.g. because of difficulties over remaining in local authority care)

Evidence to be supplied

9.13.4 All applications should be supported by a report from the minor's doctor or a person professionally responsible for the minor's care or welfare about the extent of the child's mental disability to enable us to judge if priority is needed.

NB. The person making the application should be asked to obtain this.

9.13.5 Applications which additionally involve giving consideration outside the normal criteria in 9.16 below should be supported by evidence that:

- the other members of the family are British citizens; or
- the child's future lies here; or
- the child would suffer hardship if not registered

9.13.6 Applications received from abroad are usually accompanied by a letter from a British Diplomatic Post giving the information necessary to establish the applicant's eligibility for registration and listing the documents that have been produced.

9.14 **Married minors/minors in a civil partnership**

9.14.1 On marriage/civil partnership, minors are assumed to have family status on their own account and to have become less a part of their parents' family. Less weight should therefore be given to the parents' circumstances or their views of the minor's registration.

9.14.2 We should normally consider applications from married minors/minors in a civil partnership by reference to the criteria set out in 9.17 below except that we need not normally take into account:

- a. the parents' citizenship or immigration status; and
- b. if the minor is aged 17 or over on the date of consideration, the consent of the parents to the registration; and
- c. if married/in a civil partnership to a British citizen, where the minor's future lies. (This is because there is no future intentions requirement for naturalisation under the possible alternative of **s.6(2)** (see **Chapter 18**).

**Evidence to be supplied**

9.14.3 Applications from married minors/minors in a civil partnership should

normally be supported by the following evidence:

- minor's birth certificate; and
- spouse's/civil partners birth certificate; and
- minor's marriage/civil partnership certificate; and
- that the minor is settled here (see **Chapter 3.5**) and has been living here for at least 2 years. (This may be obvious from Home Office papers); and
- if not married/in a civil partnership to a British citizen, that the minor's future lies here

9.14.4 Alternatively, if the evidence required under 9.16 below has already been supplied, or is available from Home Office papers, we need not ask for:

- the spouse's/civil partners birth certificate
- the minor's marriage/civil partnership certificate

9.14.5 The reason for this is that if the minor meets all the normal criteria set out in 9.17 below, the marriage/civil partnership is of no particular relevance.

9.14.6 Applications received from abroad are usually accompanied by a letter from a British Diplomatic Post giving the information necessary to establish the applicant's eligibility for registration and listing the

documents produced.

9.15 **Minors wishing to follow a particular career**

9.15.1 The welfare of the minor is an important consideration, which can sometimes lead to the overriding of other policy considerations, most usually where the minor's career is involved.

9.15.2 It sometimes happens that in order to follow a chosen career a minor must meet a legal requirement to be a British citizen. It is usual to be as helpful as possible in considering these cases.

9.15.3 We should be particularly helpful in dealing with applications where a minor wishes to join Her Majesty's Forces, the Civil Service or the Police.

9.15.4 We should therefore be prepared in such cases to disregard the normal criteria. In particular, the fact that the minor does not have a parent who is a British citizen should not normally be a sufficient reason for refusal.

9.15.5 We must, however, be satisfied that the minor's intentions are firm, and that the only bar to acceptance is the lack of British citizenship.

9.15.6 It is, therefore, not enough for the minor simply to have expressed a wish to join the service or follow the career in question. We should expect to see evidence of:

- an application for the career or service in question; and

- provisional acceptance, subject to becoming a British citizen; or
- of acceptance on becoming a British citizen

#### 9.16 **Hong Kong "split families" cases**

This category was only applicable to minors born before 1983 and therefore to applications made no later than 30 December 2000. If required, caseworkers should consult Nationality Policy Team to view archived versions of this guidance.

#### 9.17 **Criteria for all other minors**

9.17.1 **Chapters 9.6 to 9.16** deal with applications from minors in a variety of different circumstances. This section deals with all other applications. It sets out, broadly in order of importance, criteria which other minors are normally expected to meet.

##### Future intentions

9.17.2 The most important criterion is that the child's future should clearly be seen to lie in the UK. A reliable indicator should be the applicant's and/or the family's past behaviour. If that suggests an established way of life in the UK, and we have no reason to think that this will not continue, we should accept at face value that the child intends to live here.

9.17.3 If there is any information to make us doubt that the child's future lies here, for example:

- the child, or one or both parents, has recently left the country for a



period of more than six months

- the child is about to leave the United Kingdom
- one or both parents is resident abroad,

we should write to clear up the point. If our doubts are serious, and we are still not satisfied this criterion is met, the application should be refused.

#### Children in the United Kingdom

9.17.4 In most cases the child's future is straightforward and self-evident. We should normally accept that the child meets this criterion if:

- future intentions are confirmed on the application form; and
- the residence criteria in 9.17.17-9.17.29 are met; and
- the child has an established home here.

#### Children abroad

9.17.5 Few applications for the registration of a minor resident abroad are likely to succeed unless the minor falls into one of the categories in 9.6-9.12 or 9.16 above. But if the child was abroad on the date of application, or is abroad on the date of consideration, we may accept this criterion is met if either:

- (i) the child is abroad with a parent in Crown service (e.g. the Forces);

or

(ii) the child had an established home here before going abroad to which the child has returned or will be returning; and

- the residence criteria in 9.17.17-9.17.29 were/are met; and
- the absence was, or will not be, more than 6 months; and
- if the child is still abroad, we are satisfied of an intended return to live here by the end of 6 months from the date of departure

9.17.6 If:

- the minor is abroad on the date of application; and
- the minor has been included in a parent's or someone else's application for registration or naturalisation; and
- the application form has been sent direct to the Home Office,

the minor's application cannot be regarded as valid under the terms of the **British Nationality (General) Regulations 1982** (or the **British Nationality (General) Regulations 2003**, as appropriate).

9.17.7 If the minor falls into one of the categories in 9.6-9.12, or 9.17.5 above, the procedure in **Chapter 6.3** should be followed in order to validate the minor's application.

9.17.8 If the minor does not fall into one of the categories in 9.6-9.12, or

9.17.5 above, the principal applicant should be advised that no valid application has been made for the minor. Any fee paid in respect of the minor should be refunded in full.

#### Citizenship and immigration status of the parents

9.17.9 We should normally expect that:

- at least one parent is a British citizen or
- one of the parents has applied to be registered or naturalised as a British citizen and the application is going to be granted (if the parent's application is to be refused, we should normally refuse the minor's application as well);

and

- the other parent is either settled in the United Kingdom (see Annex F to Chapter 6); or
- whilst not settled, is unlikely in the short or medium term to be returnable to his or her country of origin (eg s/he has been granted Discretionary Leave), and there is otherwise no reason to think that the child's future does not lie in the United Kingdom.

9.17.10 If the parents have divorced or separated and the child does not have ongoing contact with the other parent (even if he or she shares parental responsibility for the child) we would normally expect that:

- the parent having the day-to-day responsibility for the child is, or is

about to become, a British citizen; or

- is settled here but not a British citizen and there are good reasons why registration would be appropriate, taking into account the examples given in 9.17.11 below

9.17.11 It will rarely be right to register a child neither of whose parents is or is about to become a British citizen. However, each case should be considered on its merits, and there may be exceptional circumstances to justify registration in a particular case, such as for example:

- older teenagers who have spent most of their life here, or
- minors who require British citizenship in order to follow a particular career (e.g. sport, Armed Forces, etc),

and

- the minor's future can clearly be seen to lie in the United Kingdom, and, in relevant cases only,
- the person making the application has day to day care and responsibility for the child's upbringing, and either is, or is about to become a British citizen but see section 9.21 on applications made by guardians.

9.17.12 An application which falls outside these criteria should not normally be approved, even if there are British citizen siblings or siblings with *entitlements* to registration as a British citizen, unless we are satisfied that registration would be in the child's best interests.

### Consent of the parent

9.17.13 We should normally expect both parents to give consent to the registration. The main reasons for this, the exceptions which can be made, and what to do in cases of difficulty, are set out in 9.18 below.

9.17.14 The way in which consent is given may vary according to the circumstances in which the application is made:

- If the application is made on Form MN1, then either;
  - i. both parents should have signed part 16(a); or
  - ii. there should be an accompanying letter of consent from the non-applicant parent
- If both parents have made a joint application for citizenship, and any minors are included in only one parent's form, we may assume that the consent of the other parent has been given
- If only one parent is applying for citizenship and any minors are included in the application, then we should expect a letter of consent from the other parent
- We may also judge that consent has been given if the other parent has good reason for not putting it in writing (e.g. if, by formally giving consent, the child would lose his existing nationality, which happens, for example, under Swedish law) but we are nevertheless satisfied from the circumstantial evidence that the

other parent is willing for the child to be registered

### Residence in the UK

9.17.15 We should normally expect a child seeking registration as a British citizen under **s.3(1)** to have completed a period of residence in the UK because:

- it is consistent with nearly all the other provisions under which children can be registered as British citizens; and
- it enables a child to establish personal connections with this country; and
- it helps to confirm that a child's future clearly lies here (see 9.17.2 above)

9.17.16 Paragraphs 9.17.20-9.17.23 below set out the normal expectations for residence but we should be prepared to consider in all cases whether there are particular circumstances which would justify registration of a minor who does not meet these.

9.17.17 Residence means continuous presence except for holidays and short visits abroad for other reasons. Continuous absences of 6 months or more may be considered to have broken the qualifying period of residence.

### Children under 13

9.17.18 The length of residence in the United Kingdom is less important for

children under 13. If we are satisfied that their future lies here, and that registration would otherwise be appropriate, we need not normally take into account the length of residence here. There will be plenty of time for the children to establish their own personal connections with the United Kingdom before they become adults.

#### Children aged 13 or over

9.17.19 We should normally expect a minor child aged 13 or more to have completed 2 years residence in the United Kingdom before agreeing to registration.

9.17.20 Applications for the registration of minors aged 16 or more on first arrival in the United Kingdom should normally be refused since they will have had too short a period to establish personal connections with this country at a time in their lives when their future plans are unclear. Each case must, however be considered on its merits, and a minor in these circumstances may be registered if there are grounds for doing so. Some examples of the sorts of cases in which it might be right to register a minor with less than 2 years residence are given below.

#### Minors with less than 2 years residence

9.17.21 There will be occasions when a child (of whatever age) has less than 2 years residence here but it would nevertheless be reasonable to register. Examples are:

- if the firm offer of a job in the UK (particularly with HM. Forces, the police or the Civil Service) depends upon British citizenship

- if the minor is 2 months or less short of meeting the 2 years residence expectation at the date of consideration of the application and either:
  - i. would still be a minor at the end of the 2 months period; or
  - ii. would reach the age of majority before the end of the 2 months, (and thus could not reapply under **s.3(1)** at that time) but was prevented from coming here earlier through circumstances beyond the family's control; or
  - iii. there are compelling compassionate reasons for accepting a shorter period of residence, or a refusal would cause the child considerable hardship (e.g. a mentally disabled minor who might be unable to take the oath of allegiance as an adult - see 9.13); or
  - iv. the minor would be the only member of the family who would not become a citizen (i.e. the minor is included in a 'family' application); or
  - v. applications have been made on behalf of more than one minor and at least one is under 13. There may be a case for registering the older ones despite the lack of 2 years residence in the United Kingdom; or
  - vi. the minor's residence is broken (ignoring short holidays etc) but periods of residence may be aggregated.

9.17.22 These are only guidelines, and it does not necessarily follow that



every minor who fits one of them should be registered, even if they meet the other normal criteria.

9.17.23 Equally, there may be other cases outside these guidelines where registration of a minor with less than 2 years residence appears to be justified. We must be ready to consider the circumstances of each case, and to take into account any representations made or any relevant factor.

#### Conditions of stay

9.17.24 We should normally expect a minor to be free of conditions of stay because the future of a child whose stay is restricted does not clearly lie here (see 9.17.2). Registering a minor who is on conditions has the effect of cancelling their conditions because, on becoming a British citizen, the minor would cease to be subject to immigration control.

9.17.25 We should therefore normally refuse an application for the registration of a minor whose stay in the United Kingdom is restricted to a specific period.

9.17.26 But if one or both parents are British citizens who have come to the United Kingdom to live permanently, then this may be less important, if:

- a. the minor meets the other normal criteria for registration set out in 9.17; and
- b. the parents meet the criteria set out in 9.17.9-9.17.14 above, then we should consider whether registration would be

appropriate.

- 9.17.27 If the minor is on restrictions but otherwise meets the normal criteria for registration, we should consult the relevant immigration CMU to see if they wish to remove restrictions. If they do not, we should consider their reasons before deciding whether to approve or refuse registration.

#### Character

- 9.17.28 The character of a child becomes a more important consideration the nearer the child is to the age of majority.
- 9.17.29 In considering applications for the registration of children aged 16 or over we should, therefore, have regard to the standards of character required for the grant of citizenship to an adult at the Secretary of State's discretion. (See Annex D to **Chapter 18**)
- 9.17.30 We should normally refuse an application for a minor aged 16 or over if we consider these standards are not met.
- 9.17.31 We should also consider refusing an application for a minor aged less than 16 if available information suggests serious doubts about character.

#### Evidence to be supplied

- 9.17.32 The evidence to be supplied will depend to some extent on the circumstances of the case. Applications should therefore be supported by as much of the following documentary evidence as may be

necessary in each case:

- Minor's birth certificate
- Birth certificates of parents, guardians, or those with parental responsibility
- Marriage certificate of parents, guardians, or those having parental responsibility
- Minor's passport(s)/travel document(s)
- Travel documents of parents, guardians, or those having parental responsibility
- School letters, school reports, employers' letters (to provide evidence of residence and future intentions, where necessary)
- Divorce documents
- Court Orders concerning wardship, guardianship, adoption, custodianship, parental responsibility
- Citizenship of parents
- Parents' immigration status
- Minor's immigration status
- Minor's spouse's/civil partners citizenship, residence, immigration

status

9.17.33 Applications received from abroad are usually accompanied by a letter from a British Diplomatic Post giving the information necessary to establish the applicant's eligibility for registration and listing the documents that have been produced.

9.17.34 Sometimes a minor for whom registration is sought may not in fact be the child of the parents as claimed. We should, therefore, take particular care to be satisfied as to the evidence of the relationship between the child and the parents.

9.17.35 Where the relationship is not clearly established we should take careful account of the information on Home Office records or those of parents and other close relatives, and should follow up any discrepancy. If in doubt, we should consult the relevant immigration CMU.

### **PART 3: OTHER MATTERS**

#### **9.18 Parental consent**

9.18.1 We normally expect the consent of both parents to a minor's registration irrespective of where the child or the parents are living, or whether the child is natural or adopted. While it is not a legal requirement for applications under **s.3(1)**, it is reasonable that the view of both parents should be considered, as it is consistent with the assumptions which now underlie much of United Kingdom family law. Where there is a conflict between the parents, the courts will put the welfare of the child first. This may be relevant in cases where a parent

objects to registration.

- 9.18.2 It is usually a straightforward matter to secure the consent of both parents where the child is legitimate or legally adopted and living with the parents. Difficulty may arise when the marriage has temporarily or permanently broken down, or the child is illegitimate.
- 9.18.3 Where the parents are **legally separated or divorced**, it will have been decided with whom the child should live. If the parents could not agree on this, a court will normally have granted a residence order (under **s.8** of the **Children Act 1989**, if in England or Wales). This will usually be to one parent, but it could be to both, in which case the order will specify the periods the child will spend with each parent. Both parents retain parental responsibility for the child, and so both should be consulted regarding any major changes in the child's life. We therefore need to take reasonable steps to obtain and consider the views of both parents.
- 9.18.4 Where a court has awarded a residence order solely to one parent (or other individual), the consent of the other parent (or parents) retaining or having continuing parental responsibility will need to be sought.
- 9.18.5 Where separation has not been formalised by a court, the consent of both parents, or any other person having parental responsibility, should be sought.
- 9.18.6 In the case of an **illegitimate** child (in England and Wales), the mother (but not the father) will automatically acquire parental responsibility. The father may acquire it:

- by applying to the court for a parent responsibility order under **s.4(1)(a)** of the **Children Act 1989**; or
- by making an agreement with the mother, in a prescribed form, under **s.4(1)(b)** of the **Children Act 1989**; or
- by having a residence order made in his favour, following which the court must make a parental responsibility order as well; or
- by being appointed guardian

9.18.7 Where we are informed that the father has parental responsibility in one of these ways, or under the equivalent provisions of foreign law, we should seek the father's consent. There is no need to ask the mother to confirm that a parental responsibility order does not exist.

9.18.8 The following paragraphs give guidance on:

- the steps we should normally take to obtain the other parent's views
- the circumstances in which we can dispense with the other parent's views

#### Steps to be taken to obtain the other parent's views

9.18.9 We should invite the applicant parent to obtain the consent of the other parent to the child's registration unless it is clear that the circumstances as set out in 9.18.13 below apply.

9.18.10 If the applicant parent refuses, we should seek agreement to our approaching the other parent, as set out in 9.18.11 below, asking for that parent's address if we do not have it.

9.18.11 The sort of steps we might reasonably offer to take, with the applicant parent's permission, are:

- (where the other parent is believed to be abroad) contact the appropriate British Diplomatic Post in the country concerned to see if the other parent's whereabouts are known and, if so, whether they are able to seek his or her views on the application
- (if the other parent is believed to be in this country and we have an address, or the address of that parent's solicitors, on file) write ourselves direct or through the solicitors seeking the parent's views

9.18.12 In offering to help seek the other parent's views, we should be guided by the following:

- We should be able to show, to a Court if necessary, that we have taken reasonable steps to obtain the other parent's views. But we cannot be expected to act as a detective or tracing agency
- We must abide by the requirements of the **Data Protection Act 1998**. We cannot give third parties (other than those for whom we have authority under the Act) any information held on our paper files or computer systems without the permission of the applicant. This means that in cases covered by this section we cannot write to the other parent or to his or her solicitors without the express permission of the applicant parent

- We need not draw adverse conclusions from an applicant parent's reluctance to contact the other parent. This could arise from many personal factors unknown to us, including fear

#### Dispensing with the other parent's views

9.18.13 The need to obtain the other parent's consent or views may normally be dispensed with where:

- the applicant parent has been given sole custody by a court; or
- the child is illegitimate, and the applicant parent is the mother, and we have no reason to believe that the father has parental responsibility (or overseas equivalent) (see 9.18.6 above); or, in other cases,
- the applicant parent or solicitor states that the other parent has abandoned the child (e.g. there has been no contact for many years); or
- the applicant parent or solicitor states that the other parent's whereabouts are not known and he or she cannot reasonably be traced; or
- despite our efforts, the other parent does not respond to our or the applicant parent's letter seeking his or her views

9.18.14 There are two points to note about this:



- The fact that in any particular case we decide we need not seek the other parent's views does not mean that we can ignore them if they are nevertheless given. We must always be ready to listen to any views offered by the other parent, whatever the circumstances, and to take full account of them before we decide an application
- If the parent with sole custody of the child is making the application and has re-married, we do not need to obtain the step-parent's consent

#### What to do if the other parent objects to registration

9.18.15 Any objections raised by the other parent should be considered on their merits. We should not normally expect to set them aside if:

- the child's home is in the country of existing nationality which would be lost by registration as a British citizen; and/or
- there was evidence that the child had been or was likely to be brought here in contravention of a Court Order; or
- there were outstanding Court proceedings (whether here or abroad) over custody of the child; or
- there was reason to believe that registration would not be in the child's best interests

9.18.16 It may, however, be reasonable to override the other parent's views if:

- the minor is living in this country with the applicant parent; and
- registration would appear to be in the child's best interests (e.g. by giving security or bringing the child in line with brothers or sisters)

9.18.17 Other reasons for overriding a parent's objections would be:

- they were not well-founded
- they appeared to be motivated by bad feeling between the parents
- the objecting parent appeared not to be acting in the child's best interests

#### Children aged 17 or over

9.18.18 A child who is 17 or over when the application is considered, and who signifies in writing a wish to be registered, may be registered despite any parental objections. This fact may be pointed out to any parent whose application on behalf of a younger child is being refused due to objections by the other parent.

### 9.19 **Wards of court**

9.19.1 If an application is received on behalf of a child who is a ward of court, or who is subject to a prohibited steps order relating to a question of nationality, the consent of the court must be obtained.

9.19.2 It is for the person making the application to seek the consent of a court in these circumstances. But we should only encourage an

approach to the court if it is reasonably clear that the application would succeed if the court were to agree to it.

9.20 **Adoption in the United Kingdom and the qualifying territories**

- 9.20.1 By virtue of **s.1(5)** of the British Nationality Act 1981, a child who is not a British citizen but is adopted by order of a court in the United Kingdom or, on or after 21 May 2002, in a qualifying territory (see Annex F to **Chapter 6**) becomes a British citizen as from the date of adoption provided the adopter or, in the case of a joint adoption, one of the adopters is a British citizen.
- 9.20.2 While it is not the function of the Nationality Group to advise on adoption, we may mention the effect of an adoption in the United Kingdom or a qualifying territory if a correspondent enquires about it or asks how a child may become a British citizen. We should take care to avoid giving any impression that the courts would look favourably on an application for an adoption order if it were made. The courts may be inclined to refuse an adoption order if it is satisfied that the aim of the application is to circumvent the immigration or nationality laws, or that the adoption would not be in the child's best interests.
- 9.20.3 Similarly, in giving advice to would be adopters about the possibility of registration under **s.3(1)**, we should not give the impression that an application for registration would be successful if an application for an adoption order failed.
- 9.20.4 If an application for registration is made under **s.3(1)**, and it is known that an adoption order has been refused, we should examine the reasons for the refusal to see if they are relevant to the application. If

a court takes a view of the minor's eligibility for citizenship, we should consider that view against the relevant criteria for registration under **s.3(1)**.

## 9.21 **Guardianship orders**

### Meaning of Guardianship and what it involves

9.21.1 In the UK a guardian is a person appointed to take over the responsibility for a child's upbringing where nobody has parental responsibility for the child.

9.21.2 A guardian may be appointed by either:

- any parent with parental responsibility; or
- any guardian; or
- a court

9.21.3 A guardian may act:

- jointly with a surviving parent
- jointly with another guardian or guardians
- alone

9.21.4 If it is for the welfare of the minor the High Court may remove a guardian or guardians, whether appointed by a parent or by a court

and may appoint a replacement.

- 9.21.5 Where two or more persons act as joint guardians, and cannot agree on any question affecting the welfare of the minor (e.g. registration as a British citizen), any of them may apply to a court for an order resolving the matter.

#### Applications by guardians for the registration of minors

- 9.21.6 A guardian may make an application for the registration of a minor as a British citizen.
- 9.21.7 We should expect the guardian to supply evidence of his or her right to act as such by, for example, producing a deed, will or Court order. There is no longer any need for the appointment to be in the form of a will or deed. It suffices if it is in writing, dated and signed by the person making the appointment.
- 9.21.8 Unless the guardian is acting alone, we would normally also need the consent of the other guardian(s) and/or the surviving parent to the application.
- 9.21.9 If a guardianship order has been made abroad, we should consider what checks should be made (if necessary, with the assistance of the FCO) on its acceptability.
- 9.21.10 We should carefully examine applications made by a guardian to ensure that the guardianship is not simply a device to avoid refusal because, for example, the parents are not British citizens, or are resident abroad, or as a device to get round the immigration control. If

there is evidence that this is the case, we should normally refuse the application.

9.21.11 **IT IS IMPORTANT TO REMEMBER** that, in guardianship cases, we should normally expect the usual criteria to be met, including, where appropriate, those relating to the citizenship and immigration status of the parents and their consent to the registration. The paramount concerns, however, should be whether registration would be in the child's best interests and whether the child's future lies in the UK.

9.21.12 If:

- a. the child's parents have died; and
- b. at least one of them was a British citizen; and
- c. the guardian or one of them is a British citizen; and
- d. the child meets the residence and other normal expectations,

then we should normally exercise discretion in the child's favour and register. This is to fulfil an undertaking by Ministers to Parliament that we would do all we could to relieve hardship in such cases.

## 9.22 **Custodianship and parental responsibility orders**

9.22.1 A Custodianship Order gave custody of a child to the adults caring for the child. A custodian had most of the rights and duties of a parent and was able to take nearly all the major decisions about the child's upbringing and day-to-day care.

9.22.2 Parental responsibility orders replaced Custodianship Orders and were introduced in England and Wales by the **Children Act 1989**. Since the commencement of the **1989 Act**, it is no longer possible for Custodianship Orders to be made. Those in force before the commencement of the **1989 Act** are now deemed to be parental responsibility orders, parental responsibility being shared with the parents. Someone holding a parental responsibility order may make an application, but the consent of all those with parental responsibility should be sought.

9.22.3 Unlike an adoption order in the United Kingdom, a parental responsibility order:

- does not cut a child's legal ties with the natural parents
- does not involve a change of name
- does not confer British citizenship

9.22.4 The courts may bring a parental responsibility order to an end on an application by a person having parental responsibility, or by the child with the leave of the court. Otherwise an order has effect until the child is 18.

Applications for the registration of minors by those sharing parental responsibility with the parents

9.22.5 An application may be made by anyone sharing parental responsibility for a child with the parents for the registration of a child as a British

citizen. Consent of all those with parental responsibility should be sought.

9.22.6 The following people have parental responsibility for a child in England and Wales:

- the mother
- the father, if the child was born legitimate
- the father, if the child was illegitimate, and
  - i. he has a residence order, or
  - ii. he has a parental responsibility order, or
  - iii. he has a formal "parental responsibility agreement" with the mother, or
  - iv. he has since married the mother
- a guardian of the child
- someone who holds a custody or residence order
- a local authority which has a care order
- someone who holds an emergency protection order
- someone who has adopted the child



9.22.7 Those sharing parental responsibility with the natural parents do not take the parents place for the purposes of registration of the minor as a British citizen under **s.3(1)**.

9.22.8 We should therefore normally expect the usual criteria to be met including, where appropriate, those relating to the citizenship and immigration status of the parents and the parents' consent to the registration. The paramount concerns, however, should be whether registration would be in the child's best interests and whether the child's future lies in the UK.

## 9.23 **Children in care**

9.23.1 An application under **s.3(1)** may be made on behalf of a child who is being looked after by a local authority. If the local authority is providing the child with accommodation, but the child is not in the authority's care, the local authority's consent is not required. If the child is in the local authority's care, the local authority shares parental responsibility for the child with the parents, and consent is therefore required. The following paragraphs apply whenever the local authority shares parental responsibility with the child's parents.

### Application made by the parents

9.23.2 If the normal criteria for registration appear to be met, we should ask the local authority concerned for a report on the background to the case and for its views on the application.

9.23.3 If the authority supports the application, we may normally register the

child.

- 9.23.4 If the authority does not recommend registration, we should not register the child while the care order remains in force.

Applications made by the local authority

- 9.23.5 We should ask the local authority for a background report, including details of the parents.
- 9.23.6 If the normal criteria for registration appear to be met, and both parents consent, we may normally register.
- 9.23.7 If the normal criteria are not met, but the parents nevertheless consent, we should consider, in the light of the local authority's report, whether there are grounds for making an exception to our normal practice. Normally, we should at least expect to be satisfied that the child's future lies here.
- 9.23.8 If one or both parents object, the child should be registered only if the local authority is satisfied that it is necessary to safeguard or promote the child's welfare.

9.24 **Applications made by persons other than parents**

- 9.24.1 We normally expect applications to be made by one or both parents, or by someone with parental responsibility for the child, and this is implied in the Regulations governing applications under **s.3(1)**. Applications made by others on behalf of the minor should normally be refused, unless there are special circumstances, which could include:

- the child's parents are dead and the minor is living permanently with the person making the application
- the child's parents have gone abroad long-term and the minor has been left in the permanent care of the person making the application

9.24.2 We would normally expect the applicant to provide:

- a. evidence of their appointment as guardian by the parents or by a court – e.g. a will or a residence order; and
- b. a statutory declaration confirming:
  - why they assumed parental responsibility for the minor
  - when they assumed that parental responsibility
  - whether there are any others who have parental responsibility for the minor – if so, the declaration should indicate where they are and whether they are aware of, and consent to, the application (and if not, why not)

9.24.3 If we have evidence that the application was made in order to avoid refusal because, for example, the parents or, where appropriate, the person or persons making the application were not British citizens, then we should normally refuse it.

#### Applications made by minors themselves

9.24.4 There is nothing, in law, to prevent minors making their own applications. But, in practice, we should normally refuse such an application if we do not have the consent of the parents or the person with legal responsibility for the child. However, if minors are 17 or over and have good reason for making the application themselves, it can be considered in the normal way. This may be appropriate, for example, where minors have no contact with their natural parents and have been in the care of the local authority but the care order has now been discharged.

9.24.5 If the minor is married/in a civil partnership it may be appropriate to register if the criteria in 9.14.2 are met.

#### The minor's own views

9.24.6 If the application is made on Form MN1, the minor may well have signed consent to the application but this is not normally essential.

9.24.7 If it becomes apparent during the course of consideration that the minor does not wish to become a British citizen, we should consider whether it would be right to refuse the application. It is a matter of judgement whether a minor is of sufficient intelligence and understanding to make an informed decision on this. The older the minor is, the more appropriate a refusal is likely to be.