

ADOPTION

1. Adoption in the UK before 1 January 1950

- 1.1 Under the **Adoption Act 1926**, a court had no power to make an adoption order in respect of a child who was not a British subject. At least a Senior Caseworker should be consulted before action is taken on any case which turns on the status of persons legally adopted in the UK before 1 January 1950.

2. Adoption in the UK on or after 1 January 1950

- 2.1 From 1 January 1950 (the date on which the **Adoption of Children Act 1949** came into force) until 31 December 1982, a child of any nationality who was adopted in the UK became a CUKC from the day of the adoption if the adopter, or in the case of a joint adoption, the male adopter, was a CUKC. This provision, reiterated in **s.19** of the **Adoption Act 1958**, was repealed by the BNA 1981.

(NB: The implication of this was that, prior to 1.1.83, a female CUKC could only pass on her citizenship to an adopted child if she was unmarried.)

- 2.2 The references to 'an adoption order' in **s.19** of the **1958 Act** were stated (by **s.19(2)**) to 'include references to an order authorising an adoption under the **Adoption of Children Act (Northern Ireland) Act 1950**, or any enactment of the Parliament of Northern Ireland for the time being in force'.

- 2.3 Since 1 January 1983, **s.1(5)** of the British Nationality Act 1981 is the only statutory provision which confers British citizenship through adoption in the UK (see **Chapter 9** of Volume 1). **Section 15(5)** of the 1981 Act makes equivalent provision in respect to British overseas territories citizenship (see **Chapter 23** of Volume 1).

3. Adoption in the Channel Islands and Isle of Man

- 3.1 **Section 19** of the **Adoption Act 1958** was extended to the Channel Islands and Isle of Man by the **Adoption Act 1964 (s.1(3))**.
- 3.2 **Section 1(3)** of the **Adoption Act 1964** applied to adoption orders made on or after 1 April 1959 (the date on which the **Adoption Act 1958** came into force) as well as to those made under the **Adoption Act 1964** which came into force on 16 July 1964. A child who was adopted in the Channel Islands or Isle of Man between 1 April 1959 and 16 July 1964 acquired CUKC on 16 July 1964. A child who was adopted after 16 July 1964 acquired CUKC from the date of the adoption order.
- 3.3 Since 1 January 1983, **s.1(5)** of the British Nationality Act 1981 confers British citizenship through adoption in the Islands.

4. Adoption in the Falkland Islands on or after 1 January 1983

- 4.1 As from 1.1.1983, a child adopted by Court order in the Falkland Islands will be a British citizen from the date of the order if one of the adopters is a British citizen (**British Nationality (Falkland Islands) Act 1983, s.1(4)**).

5. Adoption in Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Gibraltar, Montserrat, the Pitcairn Islands, St Helena, Ascension and Tristan da Cunha, South Georgia & The South Sandwich Islands, the Turks & Caicos Islands or the British Virgin Islands on or after 21 May 2002

5.1 Where, on or after 21 May 2002, a foreign child is adopted by order of a court in any of the above-mentioned British Overseas territories, and the adopter (or, in the case of a joint adoption, at least one of the adopters) is a British citizen, the child will be a British citizen as from the date of the adoption (**s.1(5)** British Nationality Act 1981, as amended by **Schedule 1** to the **British Overseas Territories Act 2002**).

6. **Adoption under the terms of the 1993 Hague Convention on Intercountry Adoption ("the Hague Convention")**

6.1 Where a foreign child has been adopted *in any country or territory outside the United Kingdom* under the terms of the Hague Convention, and

- the adopter (or, in the case of a joint adoption, one of the adopters) is a British citizen, and
- the adopters is (or, in the case of a joint adoption, both of the adopters are) habitually resident in the United Kingdom or in a territory which has been designated for this purpose under **s.50(14)** of the British Nationality Act 1981 (no territories have yet been designated)

the child will be a British citizen from the date on which the Hague Convention adoption is effected (**s.1(5)** British Nationality Act 1981 as amended, from 1 June 2003, by **s.7** of the **Adoption (Intercountry Aspects) Act 1999** and, from 30 December 2005, by **s.137** of the **Adoption and Children Act 2002**).

6.2 From 30 December 2005, a child who is not a British overseas territories citizen but is adopted under a Hague Convention adoption becomes a British overseas territories citizen from the date of adoption if:

- the adopter (or, in the case of a joint adoption, one of the adopters) is a British overseas territories citizen, and
- the adopter (or, in the case of a joint adoption, both of the adopters are) habitually resident in a territory which has been designated for this purpose under **s.50(14)** (no territories have yet been designated) of the British Nationality Act 1981, and
- the Convention adoption is effected under the law of a country or territory outside the designated territory

(See **s.15(5A)** of the British Nationality Act 1981, as inserted by **s.137** of the **Adoption and Children Act 2002**.)

6.3 If an adoption has been made in accordance with the Convention, the adoptive parents should be able to provide a certificate issued by the competent authorities of the state in which the adoption took place. The certificate will, in all cases, indicate that the adoption has been effected under the Hague Convention.

6.4 The certificate will *normally* include information about where the adoptive parents were habitually resident at the time of the adoption. If it does not, this should be established. For guidance on the term "habitually resident" see paragraph 11 below.

7. **Other Adoptions**

7.1 A child who was adopted outside the United Kingdom and Islands by a CUKC did not automatically acquire CUKC status. The **Adoption Act 1968** included a provision to extend the **Adoption Act 1958** so that certain overseas adoptions would be recognised for nationality purposes. However, that particular provision of the Act was not brought into force and was repealed by the **Children Act 1975**.

7.2 Except as mentioned above, the avenue to British citizenship will usually be by registration under **s.3(1)** of the British Nationality Act 1981 (see **Chapter 9** of Volume 1).

8. **Enquiries from the parents of children adopted and living abroad**

8.1 From time to time enquiries are received from British citizens living abroad asking if the child they have adopted has acquired British citizenship. They may well be just as concerned about whether the child can gain entry to the UK and Managed Migration Policy team in Croydon should be invited to contribute to any reply.

9. **Territories designated under the Adoption (Designation of Overseas Adoptions) Order 1973** (see **Chapter 9** of Volume 1)

Commonwealth countries and British overseas territories

Anguilla	Malta
Australia	Mauritius
Bahamas	Montserrat
Barbados	Namibia
Belize	New Zealand
Bermuda	Nigeria
Botswana	Pitcairn
British Virgin Islands	St Christopher and Nevis
Canada	St Vincent
Cayman Islands	Seychelles
The Republic of Cyprus	Singapore
Dominica	South Africa
Ghana	Sri Lanka
Gibraltar	Swaziland
Guyana	Tanzania
Jamaica	Tonga
Kenya	Trinidad and Tobago
Lesotho	Uganda
Malawi	Zambia
Malaysia	Zimbabwe (see paragraph 10)

Other countries and territories

Austria	The Netherlands
Belgium	(including the
China (see Note 1 below)	Antilles)
Denmark (including	Norway
Greenland and the Faroes)	Portugal (including the
Fiji	Azores and Madeira)
Finland	Spain (including the
France (including Reunion,	Balearics and the
Martinique, Guadeloupe	Canary Islands)
and French Guiana)	Surinam
Germany (see Note 2 below)	Sweden
Greece (see Note 3 below)	Switzerland
Hong Kong	Turkey
Iceland	The United States of
Ireland, Republic of	America
Israel	Yugoslavia (see Note 4
Italy	below)
Luxembourg	

Note 1 An adoption in China will not be recognised as valid in United Kingdom law if it took place before 5.4.93 (and the adoptive parents were then domiciled in England and Wales), or 10.7.95 (in Scotland), or 19.2.96 (in Northern Ireland).

Note 2 Prior to the re-unification of Germany on 3 October 1990, United Kingdom law recognised only adoptions in the Federal Republic of

Germany and Land Berlin (i.e. West Berlin).

Note 3 It is common practice for adoptive parents in Greece to take a pseudonym during the adoption procedure. This is permitted under **Article 12 Paragraph II** of the **Adoption Law No.610** of 17/21.8.70 in order to secure and protect the rights of the adoptive parents and the child. Enquiries may need to be made in such cases to confirm the identity of the adoptive parents.

Note 4 An adoption which takes place in any of the new countries which made up the former Yugoslavia will not be recognised as valid in United Kingdom law.

10. Adoption in Southern Rhodesia

10.1 The **Southern Rhodesia (Marriages, Matrimonial Causes and Adoptions) Order 1972**, which came into operation on 12 December 1972 and was retroactive to the illegal declaration of independence (i.d.i.) (11 November 1965), provided that marriages, divorces and annulments performed or granted in Southern Rhodesia since i.d.i. should not be regarded as invalid merely because the officials or authorities concerned were regarded as having been appointed by, or acting for, the illegal regime. The **Order** applied also to authorisations of adoption and to determinations of the status of a child or the validity or subsistence of a marriage. The **Order** was repealed by **Schedule 3** to the **Zimbabwe Act 1979**.

11. Habitual Residence

11.1 Habitual residence is a legal concept which is subject to interpretation by the courts. There is no statutory definition of the term. Whether someone is habitually resident in a particular place will depend upon all the circumstances and facts of an individual case.

11.2 Habitual residence is concerned with the *quality* of residence in a particular place rather than its *duration*. Account should be taken of the person's intention and reasonable expectations in adopting the particular place of residence, and the location of his or her property and family members and other "durable ties" such as employment or study commitments. Habitual residence may be established after a long or short period of actual physical presence, and irrespective of any immigration restrictions on the maximum length of stay. A person may become habitually resident in one country whilst still remaining so (because of continuing ties) in another.

11.3 The concept is closely related to, but may not be identical with, **ORDINARY RESIDENCE** (q.v.)