

*This is the full version of an article which was eventually edited for inclusion in TNT Magazine in the UK on 22 April 2003. For the shorter print version, see the UK Citizenship and Immigration Law and Policy folder of the Southern Cross Group Archives at <http://www.southern-cross-group.org/archives/archives.html>*

## **Important Changes to British Citizenship Law on 30 April 2003**

**By Anne MacGregor**  
Solicitor (England & Wales)  
Co-founder  
Southern Cross Group

As of 30 April 2003, many readers who presently have only the right of abode in the UK will be able to benefit from changes to British law governing who may obtain British citizenship by descent.

### **What's British citizenship by descent?**

Basically, British law distinguishes between those who obtain their British citizenship by descent, and those who obtain it *otherwise* than by descent. "British citizenship by descent" essentially means you were born outside the UK and obtained your citizenship through a British parent. You are usually British "by birth" if you were born in the UK. You can also become a British citizen by naturalisation or by registration or by adoption.

### **Current Rules on British Citizenship by Descent**

Those born *on or after 1 January 1983* outside the UK, to a parent who was a British citizen otherwise than by descent at the time of their birth, are already British citizens by descent.

For those born *before 1 January 1983* outside the UK, the problem has been until now that they could only become British citizens by descent if their father was a UK citizen otherwise than by descent - not their mother. There was limited provision for several years for UK-citizen mothers to exceptionally register their overseas-born children as British citizens by descent with British consular authorities until the child's 18<sup>th</sup> birthday, but if your mother didn't realise this was an option, you may have missed out on British citizenship while you were a minor. You will instead just have the right of abode in the UK.

### **British Citizenship vs. Right of Abode**

British citizenship makes you a citizen of the EU, which brings with it the right to live and work in any other EU country without needing to apply for visas or working permits. The right of abode, on the other hand, just means that you are free of immigration control and able to enter, work in and leave the UK freely at any time. A UK right of abode gives you no options for other EU countries.

### **The Changes**

From 30 April 2003, people born outside the UK after 7 February 1961 and before 1 January 1983 to a British-citizen mother, who herself was British otherwise than by descent, will qualify to register as British citizens by descent. So the historical sexual discrimination in the law will be partially corrected.

If you fall into this category, then you need to think about whether you want to apply for registration as a British citizen by descent. Although this is a very positive change, whether you should apply for British citizenship by descent will very much depend on your particular circumstances. See our hypothetical example below.

### **Practicalities**

The change took effect on Wednesday 30 April 2003. The Home Office website will carries full details:

#### ***Guide to the changes***

<http://194.203.40.90/default.asp?PageId=3855>

#### ***Application Form***

<http://194.203.40.90/filestore/UKMForm.pdf>

#### ***Leaflet BN13***

<http://194.203.40.90/default.asp?PageId=3854>

To apply you'll need to complete an application form and provide evidence of when you were born (to prove you were born after 7 February 1961 and before 1 January 1983). You'll also need to provide evidence of your mother's British citizenship at the time of your birth. This could be in the form of your mother's birth certificate, for example.

If you are in the UK, you'll have to apply to the Home Office. If you are outside the UK, you'll have to apply to the nearest British consular authorities. Their respective websites should also be posting information on the changes on 30 April. E.g. check out the website of the British High Commission in Canberra at <http://www.uk.emb.gov.au>.

It is anticipated that the new registration by descent process available from 30 April 2003 will take at least 4 months.

If you are already in Britain and fulfil the residency requirements to become a naturalised British citizen, rather than a British citizen by descent, the naturalisation process takes about a year once your application is lodged with the Home Office.

Here's an example of how the change will work in practice.

**Basic Facts:** Tom was born in Sydney in 1977. His father was an Australian citizen. His mother was born in Britain in 1950 and therefore she was and still is a British citizen. Strictly speaking, under British law, Tom could not obtain British citizenship by descent because his father was not British and he was born before 1 January 1983. Although there was special provision for Tom's mother to register him with the British consular authorities in Australia as British by descent before he turned 18, Tom was never registered. Tom therefore is an Australian citizen with a right of abode in the UK. Tom's right of abode means he can come and go from the UK as he likes, but he cannot live or work in other EU countries without the relevant work permits and visas.

### **Scenario 1**

Tom has been living in the UK since 1995. He is not married to a British citizen. He now wonders whether he should apply for British citizenship by descent through his mother following the changes on 30 April 2003.

**Advice:** Tom should apply for British citizenship *by naturalisation*, rather than by descent. He already has five years' residence in the UK. Once a naturalised British citizen, he can move back to Australia and any children born to him in Australia (or elsewhere outside Britain) will be British by descent, regardless of the citizenship status of that child's mother. Tom will not lose his Australian citizenship when he is granted British citizenship by naturalisation - he will be a dual citizen. (Australia's citizenship law changed to allow this on 4 April 2002 thanks to the lobbying efforts of the Southern Cross Group, and British citizenship law has tolerated dual citizenship for many years.)

If Tom applies for registration as a British citizenship by descent, he can't later have his status changed to that of British citizen by naturalisation. Any children born to him outside the UK won't be British through him. This is because British law restricts the passing on of British citizenship to those born outside Britain to one generation only.

### **Scenario 2**

Same as above, except Tom married a British citizen two months ago.

**Advice:** Tom should still apply for British citizenship by naturalisation for all the reasons outlined above. As the spouse of a British citizen though, he qualifies to apply for British citizenship by naturalisation after only three years of residence in Britain, as long as he is married to a British citizen at the date he applies.

### **Scenario 3**

Tom arrived in the UK two years ago, making use of the right of abode he's entitled to through his mother. Now he's itching to move to Italy to live and work. But he needs a job offer from an Italian employer who's prepared to

apply for a work permit for him with the Italian authorities. This is proving very difficult.

**Advice:** Tom needs to decide how desperately he wants British citizenship and how long he's prepared to stay in the UK. If he applies for British citizenship by descent using the new procedure available as from 30 April 2003, he should be a British citizen by Christmas. Then he'll be able to work and live without restrictions in any EU country. But he will be a British citizen by descent. So if he later parents a child born outside the UK, that child won't be entitled to British citizenship through him. If he can bear to stay in the UK until he has five years' residency (or three if he's married to a British citizen), the best option is to apply for British citizenship by naturalisation later down the track.

#### **Scenario 4**

Tom is not living in the UK, but still lives in Australia. He doesn't ever plan to live in the UK. But he really wants to live and work in France and maybe Germany. He also thinks he'll probably never have kids.

**Advice:** Tom should apply to the British High Commission in Canberra to be registered as a British citizen by descent. He is unlikely to ever qualify for British citizenship by naturalisation. But he should be aware that any child he later has outside Britain won't be able to be British. British citizenship by descent will entitle him to live and work freely in any EU Member State, of which France is one.

**General Disclaimer:** *We have outlined the basic changes to the law here, but we stress that this is only the most general of information. There are a number of exceptions to the general principles - so you should carefully consult the Home Office website and/or an immigration lawyer to get the full picture.*