

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Question

Please provide information on whether a person maintains UK citizenship despite being away from the country for more than 50 years and acquiring permanent residency elsewhere.

RESPONSE

British citizenship is governed by the *British Nationality Act 1981*, which replaced all previous laws (for a brief outline see UK Home Office – Border & Immigration Agency (undated), ‘BN1 – British Citizenship’ <http://www.bia.homeoffice.gov.uk/sitecontent/documents/britishcitizenship/informationleaflets/bnchapters/bn1.pdf?view=Binary> – Accessed 29 February 2008 – Attachment 1; for the current amended version of the Act itself see Great Britain 1981, *British Nationality Act 1981*, October 30 <http://www.uniset.ca/naty/BNA1981revd.htm> – Accessed 29 February 2008 – Attachment 2).

Sources indicate that there is no restriction, within British law, on an individual being a citizen of both Great Britain and another country. A British citizen may become a citizen of another country, and they will retain their British citizenship.

However, an individual may have their citizenship withdrawn or ‘deprived’ under several circumstances, as explained below. Nonetheless, none of these circumstances relate solely to an individual ‘being away from the country for more than 50 years’ or ‘acquiring permanent residency in another country’.

An individual may also voluntarily renounce their British citizenship by making a declaration to the Home Secretary. This renunciation is effective from the date the declaration is registered by the Home Secretary.

To address these different situations, the response to this question is divided into the following sections:

Permanent Residency and British Citizenship

Dual Citizenship

Forced Deprivation of citizenship

Voluntary Renunciation of Citizenship

Permanent Residency and British Citizenship

Sources indicate that people would retain their British citizenship if they became 'long-term residents', and even if they gain citizenship, in Australia. Information from the British High Commission in Australia states:

The Australian Government is encouraging long-term residents of the country to apply for citizenship in the lead-up to the Australian Citizenship Day on 17 September, and has made a specific appeal to British long-term residents.

British High Commissioner Sir Alastair Goodlad said that many British nationals had sought clarification of the impact upon their UK citizenship of acquiring Australian citizenship.

“The UK Government has no objection to British citizens holding another nationality. A person’s British citizenship would not be affected should he or she acquire Australian citizenship,” Sir Alastair said.

Notes to Editors:

The following information is provided as guidance only.

- 1. The Australian Government’s citizenship website states: “Australia does not require you to renounce your citizenship when you become an Australian citizen. Whether you lose your former citizenship when you become an Australian citizen (depends) ... upon the citizenship laws of the other country.”** (www.citizenship.gov.au)
- 2. The Home Office in the UK states: “In general there is no restriction, in UK law, on a British national being a citizen of another country as well. So, if you get another nationality, you will not lose your British nationality.”** However, there are special rules for British protected persons, and certain British subjects, and they should check with the Home Office. (www.ind.homeoffice.gov.uk)
- 3. In consular matters British citizens who are long-term residents of Australia are already, under long-standing convention, treated de facto as citizens of Australia. UK missions in Australia do not, therefore, normally provide consular assistance to long-term British residents. Dual nationals travelling outside their countries of nationality would be expected to turn to the mission of the country of the passport on which they traveled should they need consular assistance.**
- 4. Acquisition of Australian citizenship by a long-term resident should not affect that person’s entitlement to UK pension or other government payments.**

(British High Commission – Australia 2003, ‘Australian citizenship: information for UK citizens’, 28 August <http://bhc.britaus.net/News/newsdefault.asp?id=191> – Accessed 29 February 2008 – Attachment 3).

Dual Citizenship

Sources also indicate that British citizens may hold dual citizenship with other nations without losing their British citizenship.

Advice from the British High Commission states:

Dual Citizenship

Under present legislation the United Kingdom recognises dual nationality, and, if you acquire Australian citizenship, this does not affect your right to hold a British passport and live in the United Kingdom. As regards your position in Australian law, you are advised to consult the Australian authorities (British High Commission – Australia (undated), ‘British Nationality and Registrations’ <http://bhc.britaus.net/Passports/passportsdefault.asp?id=81> – Accessed 29 February 2008 – Attachment 4).

The UK Home Office Border & Immigration Agency also indicates that British citizens may hold dual citizenship:

When becoming a British citizen

You do not need to give up your present citizenship or nationality to become a British citizen.

Many countries will not let you have two nationalities (dual nationality). If you become a British citizen and are a national of a country which does not allow dual nationality, the authorities of that country may either regard you as having lost that nationality or may refuse to recognise your new nationality. Before you apply for British citizenship you may wish to check what your position would be with the authorities of the country of which you are a citizen.

If you become a national of another country

You will not normally lose your British nationality if you become a citizen or national of another country. If you are a British subject otherwise than by connection with the Republic of Ireland you will lose that status on acquiring any other nationality or citizenship. If you are a British protected person you will lose that status on acquiring any other nationality or citizenship.

If you are becoming a citizen or national of a country that does not allow dual nationality, you may be required by that country to give up your British nationality (‘Can I be a citizen of two countries?’ (undated), UK Home Office – Border & Immigration Agency <http://www.bia.homeoffice.gov.uk/britishcitizenship/dualnationality/> – Accessed 29 February 2008 – Attachment 5).

Forced Deprivation of citizenship

An individual may have their citizenship deprived under a number of circumstances. The relevant portion of the *British Nationality Act 1981* is section 40:

s 40 Deprivation of citizenship

40 Deprivation of citizenship

(1) In this section a reference to a person's "citizenship status" is a reference to his status as--

- (a) a British citizen,
- (b) a British overseas territories citizen,
- (c) a British Overseas citizen,
- (d) a British National (Overseas),
- (e) a British protected person, or
- (f) a British subject.

(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that the person has done anything seriously prejudicial to the vital interests of--

- (a) the United Kingdom, or**
- (b) a British overseas territory.**

(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of--

- (a) fraud,**
- (b) false representation, or**
- (c) concealment of a material fact.**

(4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.

(5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying--

- (a) that the Secretary of State has decided to make an order,
- (b) the reasons for the order, and
- (c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).

(6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of--

- (a) fraud,
- (b) false representation, or
- (c) concealment of a material fact.

...s 40A Deprivation of citizenship: appeal

40A Deprivation of citizenship: appeal

(1) A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against the decision to an adjudicator appointed under section 81 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal).

(2) Subsection (1) shall not apply to a decision if the Secretary of State certifies that it was taken wholly or partly in reliance on information which in his opinion should not be made public--

- (a) in the interests of national security,
- (b) in the interests of the relationship between the United Kingdom and another country, or
- (c) otherwise in the public interest.

(3) A party to an appeal to an adjudicator under subsection (1) may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator's determination on a point of law.

(4) A party to an appeal to the Immigration Appeal Tribunal under subsection (3) may bring a further appeal on a point of law--

- (a) where the decision of the adjudicator was made in Scotland, to the Court of Session, or
- (b) in any other case, to the Court of Appeal.

(5) An appeal under subsection (4) may be brought only with the permission of--

- (a) the Tribunal, or
- (b) if the Tribunal refuses permission, the court referred to in subsection (4)(a) or (b).

(6) An order under section 40 may not be made in respect of a person while an appeal under this section or section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68)--

- (a) has been instituted and has not yet been finally determined, withdrawn or abandoned, or

(b) could be brought (ignoring any possibility of an appeal out of time with permission).

(7) Rules under section 106 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal: rules) may make provision about an appeal under this section.

(8) Directions under section 107 of that Act (practice directions) may make provision about an appeal under this section.

(Great Britain 1981, *British Nationality Act 1981*, October 30
<http://www.uniset.ca/naty/BNA1981revd.htm> – Accessed 29 February 2008 – Attachment 2).

The website of the UK Home Office Border and Immigration Agency advises that citizenship may be removed if it is deemed ‘in the public interest’:

Withdrawal of you citizenship

We may withdraw your British citizenship if it is found to have been obtained by fraud, false statements or concealing facts that would have affected our decision.

We may also withdraw your of British citizenship if, in our opinion, it would be in the public interest for us to do so and you would not be made stateless as a result of us withdrawing British citizenship.

Further information on withdrawal of British citizenship can be found in chapter 55 of the nationality instructions (‘Withdrawal of you citizenship’ (undated), UK Home Office – Border & Immigration Agency
<http://www.bia.homeoffice.gov.uk/britishcitizenship/withdrawingcitizenship/> – Accessed 29 February 2008 – Attachment 6).

This is expanded in further detail in the ‘Caseworking Instructions’ for *The British Nationality Act 1981*:

55.2 The Law

55.2.1 Under s.40, as amended by the Nationality, Immigration and Asylum Act

2002 from 1 April 2003 and by the **Immigration, Asylum and Nationality Act 2006** from 16 June 2006, **any** British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas), British protected person or British subject may, by order, be deprived of his or her citizenship or status if the Home Secretary is satisfied that:

- a. it would be conducive to the public good to deprive the person of his or her British nationality, and that s/he would not become stateless as a result of the deprivation (**ss.40(2) and (4)**); or
- b. where the person acquired the citizenship or status as a result of his registration or naturalisation on or after 1 January 1983, the registration or naturalisation was obtained by means of:

- fraud; or

- false representation; or
 - the concealment of any material fact (s.40(3)); or
- c. where the person acquired the citizenship or status on account of his registration or naturalisation before 1983, the registration or naturalisation was obtained by means of:
- fraud; or
 - false representation; or
 - the concealment of any material fact (s.40(6))
- 55.2.2 Ministers suggested during the passage of the **2006 Act** that deprivation under s.40(2) of the 1981 Act may be appropriate where the person-
- has encouraged or assisted others to commit acts of terrorism;
 - has committed war crimes, public order offences or other serious crime; or
 - has carried out acts seriously prejudicial to vital national interests, including espionage and acts of terrorism directed at the United Kingdom or an allied power.
- 55.2.3 “False representation” is understood to imply dishonesty on the applicant’s part (i.e. an innocent mistake or omission would not give rise to a power to order deprivation under this provision).
- 55.2.4 “Concealment of any material fact” means *operative* concealment (i.e. the concealment practised by the applicant must have led directly to the decision to register or, as the case may be, to issue a certificate of naturalisation).

(UK Home Office 2007, *Nationality Instructions – Volume 1: The British Nationality Act 1981 – Caseworking Instructions*, Chapter 55: Deprivation (section 40) and nullity, 17 December <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/nationalityinstructions/nichapter55/chapter55?view=Binary> – Accessed 29 February 2008 – Attachment 7; see also UK Home Office 2007, *Nationality Instructions – Volume 1: The British Nationality Act 1981 – Caseworking Instructions*, Chapter 49: Renunciation – automatic loss, 17 December <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/nationalityinstructions/nichapter49/chapter49?view=Binary> – Accessed 29 February 2008 – Attachment 8).

None of these circumstances suggest that an individual will be deprived of their citizenship on the *sole basis* of their ‘being away from the country for more than 50 years and acquiring permanent residency’.

Voluntary Renunciation of Citizenship

There are several additional circumstances under which an individual may *voluntarily* renounce their citizenship. In summary, if a person is of ‘full age’ and of ‘full capacity’, they

may make a declaration of renunciation. The relevant portion of the *British Nationality Act 1981* is section 12:

s 12 Renunciation.

(1) If any British citizen of full age and capacity makes in the prescribed manner a declaration of renunciation of British citizenship, then, subject to subsections (3) and (4), the Secretary of State shall cause the declaration to be registered.

(2) On the registration of a declaration made in pursuance of this section the person who made it shall cease to be a British citizen.

(3) A declaration made by a person in pursuance of this section shall not be registered unless the Secretary of State is satisfied that the person who made it will after the registration have or acquire some citizenship or nationality other than British citizenship; and if that person does not have any such citizenship or nationality on the date of registration and does not acquire some such citizenship or nationality within six months from that date, he shall be, and be deemed to have remained, a British citizen notwithstanding the registration.

(4) The Secretary of State may withhold registration of any declaration made in pursuance of this section if it is made during any war in which Her Majesty may be engaged in right of Her Majesty's government in the United Kingdom.

(5) For the purposes of this section any person who has been married shall be deemed to be of full age (Great Britain 1981, *British Nationality Act 1981*, October 30 <http://www.uniset.ca/naty/BNA1981revd.htm> – Accessed 29 February 2008 – Attachment 2).

List of Sources Consulted

Internet Sources:

Google <http://www.google.com.au/>

All the web <http://www.alltheweb.com/>

Altavista <http://www.altavista.com/>

Ask <http://www.ask.com/?ax=5>

Exalead <http://www.exalead.com/search>

Yahoo! <http://search.yahoo.com/>

Government Information & Reports

Immigration & Refugee Board of Canada <http://www.irb.gc.ca/>

UK Home Office <http://www.homeoffice.gov.uk>

US Department of State <http://www.state.gov/>

Non-Government Organisations

Amnesty International website <http://www.amnesty.org/>

Human Rights Watch <http://www.hrw.org/>

International News & Politics

BBC News <http://www.bbc.co.uk/worldservice/index.shtml>

Databases:

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. UK Home Office – Border & Immigration Agency (undated), ‘BN1 – British Citizenship’
<http://www.bia.homeoffice.gov.uk/sitecontent/documents/britishcitizenship/informationleaflets/bnchapters/bn1.pdf?view=Binary> – Accessed 29 February 2008.
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3. British High Commission – Australia 2003, ‘Australian citizenship: information for UK citizens’, 28 August <http://bhc.britaus.net/News/newsdefault.asp?id=191> – Accessed 29 February 2008.
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5. ‘Can I be a citizen of two countries?’ (undated), UK Home Office – Border & Immigration Agency
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6. ‘Withdrawal of you citizenship’ (undated), UK Home Office – Border & Immigration Agency <http://www.bia.homeoffice.gov.uk/britishcitizenship/withdrawingcitizenship/> – Accessed 29 February 2008.
7. UK Home Office 2007, *Nationality Instructions – Volume 1: The British Nationality Act 1981 – Caseworking Instructions*, Chapter 55: Deprivation (section 40) and nullity, 17 December
<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/nationalityinstructions/nichapter55/chapter55?view=Binary> – Accessed 29 February 2008.
8. UK Home Office 2007, *Nationality Instructions – Volume 1: The British Nationality Act 1981 – Caseworking Instructions*, Chapter 49: Renunciation – automatic loss, 17 December.