

PART I: BRITISH CITIZENSHIP

CHAPTER 10: REGISTRATION BY ENTITLEMENT OF MINORS BORN OUTSIDE THE UNITED KINGDOM/THE QUALIFYING TERRITORIES TO BRITISH CITIZENS BY DESCENT:

- REGISTRATION AS A BRITISH CITIZEN *OTHERWISE THAN BY DESCENT* SECTION 3(5)
- REGISTRATION AS A BRITISH CITIZEN *BY DESCENT* SECTION 3(2)

SECTION 3(5)

10.1 **The Law**

10.1.1 Minors are entitled to registration as British citizens under **s.3(5)** of the British Nationality Act 1981 if,:

EITHER

- they were born outside the United Kingdom on or after 1 January 1983 or outside the UK and the qualifying territories on or after 21 May 2002; and
- at the time of the birth they had a parent who was a British citizen by descent; and
- the application is made while they are minors; and
- the child and both parents were in the United Kingdom at the beginning of the 3 year period ending with the date of the application; and
- the child and both parents had not been absent from the United Kingdom for more than 270 days in that 3 year period; and

- the consent of both parents is given to the application (see paragraph 10.8 below); and
- if the child is aged 10 or over, the Secretary of State is satisfied that he or she is of good character (applications made on or after 4 December 2006) (see Annex B to **Chapter 9**)

10.1.2 There is no discretion to accept a longer period of absence than 270 days in the 3 years before the date of application.

10.1.3 If the child was born illegitimate **before** 1 July 2006, all references to a parent or parents in 10.1.1 above are references to the mother only unless the person's birth was legitimated by the parents' subsequent marriage (see "**LEGITIMACY**" in Volume 2).

If the child was born illegitimate **on or after** 1 July 2006, all references to a parent or parents in 10.1.1 above are references to the mother, and also the father if he satisfies the definition of "father" in Annex F to **Chapter 6**).

10.1.4 If, on or before the date of application:

- the child's father or mother died; or
- the parents' marriage/civil partnership had ended in divorce, annulment, or dissolution; or
- on the date of application the parents were legally separated,

then the residence requirements in 10.1.1 above need be met only by the child and either one of his/her parents.

10.1.5 If either of the child's parents died on or before the date of application, the

consent of the surviving parent only is required.

10.2 **Status acquired**

10.2.1 Registration under **s.3(5)** gives British citizenship otherwise than by descent (see **Chapter 20**).

10.3 **Evidence required**

10.3.1 An application must be supported by two referees who have known the child personally - one should know the child in a professional capacity (e.g. a teacher), and the other should be a British citizen who is either a professional person or aged over 25. 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.

10.3.2 Applications under **s.3(5)** should also be supported by evidence as follows:

- a. the child's birth certificate showing parents' details; and
- b. the relevant birth, marriage, death, adoption, registration, naturalisation certificates to establish that a parent was a British citizen by descent (see **Chapter 20**) at the time of the person's birth; and
- c. if the parent in question is the father we need to see evidence that he meets the definition of "father" for nationality purposes (see Chapter 6).:

- d. passports and/or other documents to establish that the child and, as appropriate, either or both of the parents:
 - i. had been resident in the United Kingdom (or the qualifying territories if applicable) for 3 years immediately before the date of application; and
 - ii. had not been absent from the United Kingdom (or the qualifying territories) for more than 270 days in that 3 year period; and
- e. if one of the parents has died we need to see the the father's or mother's death certificate;
- f. If the parents' marriage/civil partnership has ended in divorce, annulment, or dissolution; or were legally separated on the date of application, we need to see the parents' divorce certificate, decree of nullity, evidence of dissolution of civil partnership or decree of judicial separation.

10.4 **Parental consent**

- 10.4.1 Parental consent is a statutory requirement for registration under **s.3(5)**. There is no discretion to waive this requirement.
- 10.4.2 This means that we cannot register a child under **s.3(5)** unless both parents (or one parent in the circumstances described in 10.1.3 - 10.1.5 above) have given their consent to the child's registration, even if all the other requirements are met. There is no exception to this.
- 10.4.3 The consent of the parent(s) has to be given in writing and be signed. This requirement is met if Section 6 of the Form MN1 is completed by the parent(s).

10.4.4 If only one parent has given consent and we require the consent of both parents, or the wrong parent has consented (e.g. the father, where the child was born illegitimate before 1 July 2006), the consent of the other parent must be requested.

10.4.5 If, for any reason, the appropriate consent cannot be obtained, we must consider any alternative route to citizenship.

SECTION 3(2)

10.5 The Law

10.5.1 Minors are entitled to registration as British citizens under **s.3(2)** of the British Nationality Act 1981 if:

- a. born either outside the United Kingdom on or after 1 January 1983 and or born outside the United Kingdom and the qualifying territories on or after 21 May 2002; and
- b. either parent ("the parent in question") was a British citizen by descent at the time of the child's birth; and
- c. the mother or father of the parent in question (i.e. the child's grandparent) became or, but for their death, would have become, a British citizen otherwise than by descent on 1 January 1983; and
- d. (in the case of an application made before 13 January 2010) the application was made within 12 months of the minor's birth (but see Note 1 below); and
- e. Either the parent in question:
 - i. had, at any time before the child's birth lived in the United

Kingdom for a continuous period of 3 years; and

- ii. was in the United Kingdom at the beginning of that 3 year period; and
 - iii. was not absent from the United Kingdom for more than 270 days in that 3 year period (but see Note 2 below);
- f. Or - if the child was born on or after 21 May 2002, the parent in question:
- i. had, at any time before the minor's birth lived a qualifying territory for a continuous period of 3 years; and
 - ii. was in that qualifying territory at the beginning of that 3 year period; and
 - iii. was not absent from the qualifying territories for more than 270 days in that 3 year period (but see Note 2 below); and
- g. (where an application is made on or after 13 January 2010 for a child aged 10 or over) the Secretary of State is satisfied that the child is of good character (see Annex B to **Chapter 9**)

Notes

1. There is discretion to allow an application to be made later than the normal time limit of 12 months. This is explained in 10.8 below.

If the application is made on or after 13 January 2010, the reference in d. to "within 12 months of the minor's birth" should be read as "while still a minor".

2. The residence requirements in e. and f. above do not apply if the

child was born stateless.

10.5.2 The permitted absence of 270 days can be taken at any time during the 3 year period before the child's birth, including at the end. There is no discretion to accept a period of absence longer than 270 days. This means that the parent in question may leave the United Kingdom (or the qualifying territories, if applicable) up to 270 days before the end of the 3 year period, and still meet the requirement, if he or she has no other absences during that period.

10.6 **Status acquired**

10.6.1 Registration under **s.3(2)** gives British citizenship by descent (see Chapter 20).

10.6.2 Where the child does not have an entitlement to registration under **s.3(5)** at the time the application received or considered, it is important to follow the procedures outlined in paragraph 10.12.2 below to ensure that, wherever possible, a person with a **s.3(5)** entitlement is considered under that section.

10.7 **Evidence to be supplied**

10.7.1 An application must be supported by two referees who have known the child personally for at least 3 years. 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.

10.7.2 Applications under **s.3(2)** should be supported by evidence as follows:

- a. the child's birth certificate showing parents' details; and
- b. the relevant birth, marriage, death, adoption, registration, naturalisation certificates to establish that a parent (the "parent in question") was a British citizen by descent (see **Chapter 20**) at the time of the person's birth; and
- c. the relevant birth, marriage, death, adoption, registration, naturalisation certificates to establish that a parent of the parent in question was:
 - i. a British citizen otherwise than by descent (see **Chapter 20**) at the time of the latter's birth; or
 - ii. became, or would but for their death have become, such a citizen on 1 January 1983; and
- d. if the parent in question is the father, evidence that he meets the definition of "Father" at Chapter 6
- e. if the child was not born stateless, passports and/or other documents to establish that the parent in question:
 - i. lived in the United Kingdom (or the qualifying territories, if appropriate) for 3 years prior to the minor's birth; and
 - ii. was not absent from the United Kingdom (or the qualifying territories, if appropriate) for more than 270 days in that 3 year period; or
- f. if the child was born stateless:
 - i. a letter from the authorities of the country of the child's birth

confirming that the child did not acquire that country's citizenship or nationality at birth; and,

- ii. if the other parent is neither a British citizen nor a national of the country of the child's birth, a letter from the authorities of the country of which the other parent is a citizen confirming that the minor did not acquire that country's citizenship or nationality at birth.

NB. to the caseworker should also determine whether or not the child has any claim to any form of British nationality.

10.7.3 The majority of applications for registration under **s.3(2)** will be sent from abroad. These will normally be submitted to us through a British Diplomatic Post and should be accompanied by a report giving:

- confirmation that the statutory requirements are met
- particulars of the relevant documentary evidence produced (with photocopies where possible) together with confirmation that the originals have been seen; and
- confirmation that the application fee has been collected and is being credited to the Home Office in the Post's accounts

10.8 **Exercise of discretion to allow a 'late' application to be made**

10.8.1 **Section 3(4)**, which was repealed on 13 January 2010 by the **Borders, Citizenship and Immigration Act 2009**, gave discretion to allow an application to be made within 6 years of the minor's birth instead of the normal 12 months, in the special circumstances of any particular case.

10.8.2 In view of the amendments made to **s.3(2)** by the **Borders, Citizenship**

and Immigration Act 2009, we may normally grant applications made after 12 months of the minor's birth if:

- an application was made before 13 January 2010 but not determined by that date, and
- the minor was aged under 6 on the date of application, and
- the other requirements for registration under **s.3(2)** are met

10.8.3 Where an application is made before 13 January 2010 for a minor aged 6 or over, and the child does not have any other entitlement to registration, we should invite the parents to re-declare the application.

10.9 **Consent to the application**

10.9.1 As the minor has an entitlement to be registered as a British citizen if the requirements in 10.2 above are met (if necessary, with the use of the discretion in **s.3(4)**), the absence of parental consent is not a reason for refusal.

10.9.2 Therefore, it is not necessary for the parent(s) or the person(s) having responsibility for the person to consent to the application.

10.10 **Explanation of terms**

10.10.1 An explanation of the terms "United Kingdom", "British overseas territory", "qualifying territories" and "parent" is in Annex F to **Chapter 6**.

10.11 **Application forms**

10.11.1 The application should normally be made:

- on Form MN1; or
- by inclusion in a parent's application for citizenship

10.12 **Checking the application**

10.12.1 **Checking for automatic claims**

10.12.1.1 A child may already be a British citizen if:

- his or her parent (i.e. other than the "parent in question") was a British citizen otherwise than by descent at the time of the child's birth (see **Chapter 20**); or
- his or her parent was, at the time of the child's birth, a British citizen by descent in service to which **s.2(1)(b)** or **(c)** of the 1981 Act applies (see **Chapters 4** and **20**); or
- (if born in a British overseas territory) his or her parent was a British citizen or settled in that territory (see **Chapter 3**); or
- (if otherwise born stateless) his or her parent is a British citizen (see **Chapter 5**); or
- he or she was a British overseas territories citizen by virtue of a connection with a qualifying territory (see **Chapter 2**)

10.12.1.2 Unless it is absolutely clear from the papers we have that the minor is already a British citizen, we need not investigate this possibility. Equally, we do not have to prove that the minor did not acquire British citizenship automatically before we

consider the application.

10.12.1.3 If the minor has an automatic claim, we should:

- write to say so; and
- explain that registration is not necessary (using the procedure in **Chapters 4.6** or **5.7** as appropriate); and
- refund in full any fee submitted with the application (see **Chapter 6**).

10.12.2 Checking for entitlement under section 3(5)

10.12.2.1 A minor who does not have an automatic claim may now, or in the future, be entitled to registration under **s.3(5)** of the British Nationality Act 1981, which gives British citizenship otherwise than by descent.

10.12.2.2 Where the family is resident abroad, the Post should have told the parents about the provisions of **s.3(5)** when they enquired about the registration of their child. If the parents intend to come to the United Kingdom (or a qualifying territory, if the child was born on or after 21 May 2002) with the child to live for a period of at least 3 years, the Post should have advised them that they may prefer not to apply under **s.3(2)** but wait until they can apply under **s.3(5)**.

10.12.2.3 The Post should mention in their report that the family has been advised about **s.3(5)** but has decided to proceed under **s.3(2)**. If this is not mentioned, we should ask the Post to confirm that the parents are aware of **s.3(5)** and, if not, to consult them about it. No further action should be taken on

the application until a reply is received.

10.12.2.4 If, on the date of application, the child and parents (or relevant parent) have not lived in the United Kingdom or, if applicable, the qualifying territories for three years, but have completed three years residence by the time the application is being considered, and the other requirements of **s.3(5)** are met, we should write and explain the advantages of **s.3(5)**, and offer the parents the opportunity to re-declare the application if the criteria described in **Chapter 18**, Annex B, paragraph 3 are met.

10.12.2.5 If those criteria are not met or, at the date of consideration, the family has not completed three years residence, we should write and explain the advantages of **s.3(5)**, and ask the parents to confirm whether they wish either to proceed under **s.3(2)** or withdraw the application in favour of a future application under **s.3(5)**.

10.12.2.6 Caseworkers should make it clear that if any application is formally withdrawn in favour of a possible future application under **s.3(5)** the Home Office will retain the fee submitted with the **s.3(2)** application.

10.12.3 Checking for entitlement under paragraph 4 of Schedule 2

10.12.3.1 If the minor but not the parent(s) has lived in the United Kingdom for the 3 years immediately before the application, there may be an entitlement to registration under **paragraph 4 of Schedule 2** of the British Nationality Act 1981, which gives British citizenship otherwise than by descent. (See **Chapter 15**)

10.12.4 No immediate entitlement

- 10.12.4.1 If the minor does not have an immediate entitlement under **s.3(2)** (taking into account 10.7 below if appropriate), **s.3(5)** or **paragraph 4** of **Schedule 2**, or does not wish to wait for a possible future entitlement under **s.3(5)** or **paragraph 4** of **Schedule 2**, the application should be considered under the discretionary provision of **s.3(1)**. (See **Chapter 9**)