

PART I: BRITISH CITIZENSHIP

CHAPTER 12: REGISTRATION OF BRITISH NATIONALS

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NB. Except where otherwise indicated references to "British overseas territories" and "British overseas territories citizenship" should, in respect of any time before 26 February 2002, be read as references to "dependent territories" and "British Dependent Territories citizenship".

12.1 The Law

12.1.1 **Section 4(1)** explains that **s.4** applies to any person who is a:

- British overseas territories citizen
- British National (Overseas)
- British Overseas citizen
- British subject under the 1981 Act
- British protected person

12.1.2 The status of British National (Overseas) was created by the **Hong Kong Act 1985** and inserted into **s.4(1)** with effect from 1 July 1987 by **Article 7(2)** of the **Hong Kong (British Nationality) Order 1986**.

NB. **Section 4(1)** does not apply to registration under **s.4A**, which is available

only to certain British overseas territories citizens (see paragraph 12.1.14 below) or to registration under **s.4B**, which is available only to certain British Overseas citizens, British subjects, British protected persons and British Nationals (Overseas) (see paragraph 12.1.6 below).

A. Registration by entitlement under section 4(2)

12.1.3 Adults or minors, who are British overseas territories citizens, British Nationals (Overseas), British Overseas citizens, British subjects under the 1981 Act or British protected persons are entitled to registration as British citizens under **s.4(2)** of the British Nationality Act 1981 if they were:

- a. in the United Kingdom at the beginning of the period of 5 years ending with the date of application; or
- b. settled in the United Kingdom immediately before 1 January 1983 (see 12.1.8 below); and
- c. not absent from the United Kingdom for more than 450 days in the 5 year period ending with the date of application; and
- d. not absent from the United Kingdom for more than 90 days in the period of 12 months ending with the date of application; and
- e. not on the date of application subject under the immigration laws to any restriction on their stay in the United Kingdom; and
- f. not subject under the immigration laws to any restriction on their stay in the United Kingdom in the 12 months immediately before the date of application; and

- g. not at any time in the 5 years ending with the date of application in the United Kingdom in breach of the immigration laws.
 - h. (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 **Chapter 18**, Annexes D and H and, where the applicant is still a minor, **Chapter 9**, Annex B)
- 12.1.4 Only whole days' absences should be counted (see **s.50(10)(b)** of the British Nationality Act 1981). The dates of departure and arrival are not to be counted as absences.
- 12.1.5 For the purpose of **s.4(2)**, residence means physical presence. Unless **s.4(3)** applies (see 12.1.8 below), the applicant does not have to have been ordinarily resident here. An applicant is to be regarded as present in the United Kingdom unless physically absent (unlike naturalisation under **s.6**, (see **Chapter 18**) there is no requirement that certain periods of physical presence be treated as absences).
- 12.1.6 An explanation of the terms "United Kingdom", "settled", "ordinarily resident" and "immigration laws", is given in Annex F to **Chapter 6**.
- 12.1.7 Under **s.4(4)**, there is discretion:
- to allow absences in excess of the number of days mentioned in 12.1.3.c. and d. above
 - to disregard any such restriction as is mentioned in 12.1.3.f above
 - to waive the requirement at 12.1.3.g above

12.1.7.1 The use of this discretion is described in Annex A.

12.1.8 Applicants settled in the United Kingdom immediately before 1 January 1983

12.1.8.1 **Section 4(3)** explains that an applicant under **s.4(2)** who was settled in the United Kingdom immediately before 1 January 1983 is not required to have been in the United Kingdom at the beginning of the 5 year period ending with the date of application.

12.1.8.2 This benefits applicants settled in the United Kingdom on 31 December 1982 who:

- were ordinarily resident in the United Kingdom 5 years before the date of their application, but who happened to be absent on the first day of the 5 year period; or
- on the date of application, had been in the United Kingdom for less than 5 years, but who can make up the qualifying period of 5 years by the use of the 450 days allowable absences (12.1.3 above) to cover as much as is necessary of the period before they arrived

EXAMPLE: A British Overseas citizen, who was granted indefinite leave to remain on first arrival in December 1982, would satisfy the requirement not to have been absent for more than 450 days in the 5 year period 3 years 280 days after first arrival (i.e. 5 years less 450 days) provided there were no absences between arrival and the date of

application. If the number of days absence in the 5 year period ending with the date of application exceeds 450 days, the residence requirement may still be met if the reason for the excess absences qualifies for the exercise of discretion as explained in Annex A.

12.1.9 Registration under **s.4(2)** gives British citizenship otherwise than by descent. (See **Chapter 20**)

B. Registration at discretion (on grounds of service) under section 4(5)

12.1.10 A person, whether an adult or a minor, who is a British overseas territories citizen, British National (Overseas), British Overseas citizen, British subject under the 1981 Act or a British protected person may be registered as a British citizen at the Home Secretary's discretion under **s.4(5)** of the British Nationality Act 1981. The Home Secretary needs to:

- be satisfied that the applicant has at any time served in service to which **s.4(5)** applies (see 12.1.11 below); and
- think it fitting in the special circumstances of the applicant's case
- be satisfied that they are of good character (this applies to applications made after 4 December 2006 on behalf of a person over the age of 10) (see **Chapter 18**, Annexes D and H and, where the applicant is still a minor, **Chapter 9**, Annex B)

12.1.10.1 The criteria for the use of the discretion to register a person under **s.4(5)** are described in Annex B.

12.1.11 **Section 4(6)** explains that **s.4(5)** applies to:

- Crown service under the government of a British overseas territory
- other paid or unpaid service as a member of a body established by law in a British overseas territory, members of which are appointed by or on behalf of the Crown

12.1.12 An explanation of the terms "Crown service", "Crown service under the government of a British overseas territory" and "British overseas territory" is given in Annex F to **Chapter 6**.

12.1.13 Registration under **s.4(5)** gives British citizenship otherwise than by descent. (See **Chapter 20**)

C. Registration at discretion (British overseas territories citizens only) under section 4A

12.1.14 A person, whether an adult or a minor, may be registered as a British citizen at the Home Secretary's discretion under **s.4A** of the British Nationality Act 1981, as inserted by the **British Overseas Territories Act 2002**, if he or she:

- is a British overseas territories citizen; and
- does not have that citizenship only by virtue of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia; and
- has not previously ceased to be a British citizen as a result of a declaration of renunciation

- satisfies the Secretary of State that they are of good character (this applies to applications made after 4 December 2006 on behalf of a person over the age of 10) (see **Chapter 18**, Annexes D and H and, where the applicant is still a minor, **Chapter 9**, Annex B)

12.1.15 Registration under **s.4A** gives British citizenship otherwise than by descent. (See **Chapter 20**)

D. Registration by entitlement (British Overseas citizens, British subjects, British Nationals (Overseas) and British protected persons only) under section 4B

12.1.16 A person, whether an adult or a minor, is entitled to be registered as a British citizen under **s.4B** of the British Nationality Act 1981, as inserted by the **Nationality, Immigration and Asylum Act 2002**, if:

- he or she is a British Overseas citizen, a British subject (under the British Nationality Act 1981), a British National (Overseas) or a British protected person; and
- the Secretary of State is satisfied that he or has no other citizenship or nationality; and
- the Secretary of State is satisfied that he or she has not renounced, voluntarily relinquished or lost through action or inaction any citizenship or nationality:
 - i. for British Overseas citizens, British subjects and British protected persons - on or after 4 July 2002
 - ii. for British Nationals (Overseas) - on or after 19 March 2009

12.1.17 Registration under **s.4B** gives British citizenship by descent. (See **Chapter 20**)

12.2 **Application forms**

12.2.1 Applications under **s.4(2)**, **s.4(5)** and **s.4A** should normally be made:

- on Form B (if made before 21 May 2002); or
- on Form B(OTA) (if made on or after 21 May 2002); or
- (if a minor) by inclusion in a parent's application for citizenship

12.2.2 Applications under **s.4B** should normally be made on Form B(OS)

12.2.3 Under **Regulation 4(2)** of the **British Nationality (General) Regulations 2003**, an application under **s.4(5)** must be made to the Governor of the British overseas territory where the service has taken or is taking place, wherever the applicant is living ("Governor" includes the Administrator of the Sovereign Base Areas, Cyprus). Applications under **s.4(5)** can no longer be made on the basis of service in St Christopher and Nevis or Hong Kong. (Because those places are no longer British overseas territories, they no longer have Governors.

12.3 **Evidence to be supplied**

Sections 4(2) and 4(5)

12.3.1 Applications under **s.4(2)** and **s.4(5)** should be supported by evidence of the applicant's citizenship or status as follows:

British overseas territories citizenship

- a passport describing the holder as either a British Dependent Territories citizen or a British overseas territories citizen; or
- a birth certificate showing his or her parents' details and that he or she was born in a British overseas territory before 1 January 1983; or
- a certificate of registration or naturalisation describing the holder as either a British Dependent Territories citizen or a British overseas territories citizen; or
- a certificate of registration or naturalisation granted in a British overseas territory describing the holder as a citizen of the United Kingdom and Colonies; or
- the relevant documents related to parent's, grandparents', spouse's etc. birth, adoption, marriage, death, registration, or naturalisation which establish a claim to British overseas territories citizenship

NB. If an applicant's citizenship depended on a connection with St Christopher and Nevis or Hong Kong, he or she may have lost that citizenship on 19.9.83 or 1.7.97 respectively. However, the person may still possess another form of British nationality.

British National (Overseas) status

- a passport describing the holder as a British National (Overseas)

British Overseas citizenship

- a passport describing the holder as a British Overseas citizen; or
- a certificate of registration describing the holder as a British Overseas citizen; or
- a certificate of registration granted outside the United Kingdom and the British overseas territories describing the holder as a citizen of the United Kingdom and Colonies and which did not give the holder the right of abode in the United Kingdom under **s.2(1)(a)**, read with **s.2(4)**, of the **Immigration Act 1971** as originally enacted; or
- relevant documents related to parents' grandparents, spouse etc., similar to those required to establish British overseas territories citizenship, but which establish that the applicant was a citizen of the United Kingdom and Colonies who did not, on 1 January 1983, become either a British citizen or a British Dependent Territories citizen; or
- relevant documents showing that the applicant was a British Dependent Territories citizen by connection only with Hong Kong and did not, on 1.7.97, have any other nationality or citizenship

British subject status under the 1981 Act

- a passport issued on or after 1 January 1983 describing the holder as a British subject; or
- a certificate of registration describing the holder as a British subject; or

- an acknowledgement of a claim to remain a British subject under **s.2** of the **British Nationality Act 1948** or **s.31(3)** of the British Nationality Act 1981; or
- similar relevant documents related to his or her parents', grandparents', spouse etc, as those required to establish British overseas territories citizenship, but which establish that the applicant became, on 1 January 1949, a British subject without citizenship under **s.13** or **16** of the **British Nationality Act 1948** and had that status on 31 December 1982

British protected person's status

- a passport issued on or after 1 January 1983 describing the holder as a British protected person; or
- a certificate of registration describing the holder as a British protected person issued under **Article 7(2)** of the **British Protectorates, Protected States and Protected Persons Order 1982**; or
- other documents and information which show that the person can be regarded as a British protected person under:
 - a. any provision of the **1982 Order**; or
 - b. the **Solomon Islands Act 1978**

12.3.2 **IT IS IMPORTANT** to remember that those who claim to be:

- British subjects under **ss.30, 32 or 33** or **paragraphs 1, 2 or 4** of **Schedule 2** of the 1981 Act (see **Chapters 43, 44, 45 and 47**); or
- British protected persons under the **British Protectorates, Protected States and Protected Persons Order 1982** (see **Chapter 54**)

may have lost that status automatically if they have acquired another nationality or citizenship, and will be ineligible for registration under **ss.4** or **4B**. If there is any information to suggest this may be the case, the matter should be investigated before determining the application.

12.3.3 Applications under **s.4(2)** should also be supported by evidence as follows:

Residence in the United Kingdom at the beginning of the 5 year qualifying period

- a passport or parent's passport (if included in one);
- letters from employers;
- letters from schools or other educational establishments;
- a letter from the Inland Revenue showing the payment of National Insurance contributions;
- P60s or a letter from the Inland Revenue confirming payment of tax;
- any other documents which establish residence in the United Kingdom at the relevant time

OR

Settlement in the United Kingdom on 31 December 1982

- an immigration officer's stamp in a passport showing the holder had been given leave to enter the United Kingdom for an indefinite period or without any restriction on the period of stay; or
- a Home Office stamp in a passport or on a personal file confirming indefinite leave to remain in the United Kingdom or that there was no limit on a person's stay here; or
- a Home Office letter to the effect that the addressee had been granted indefinite leave to remain in the United Kingdom

NB. A certificate of entitlement or patriality in a passport showing the holder has the right of abode in the United Kingdom or a stamp in a passport showing that the holder is exempt from immigration control is not evidence of settled status in the United Kingdom. But some persons who have certificates of entitlement or patriality or who are exempt from immigration control can nevertheless be regarded as settled here. (See Annex F to **Chapter 6**)

AND

Residence throughout the 5 year qualifying period

- as for evidence of presence in the United Kingdom at the beginning of the 5 year qualifying period

AND

Absences of not more than 450 days in the 5 year qualifying period or 90 days in the 12 months before the date of application

- a passport or parent's passport (if included in one). If none, we can assume there were no absences unless there is any evidence on the papers to the contrary

AND

Freedom from restrictions of stay throughout the period of 12 months ending with the date of application

- as for settlement in the United Kingdom on 31 December 1982

AND

Lawful residence throughout the 5 year qualifying period

- as for settlement in the United Kingdom on 31 December 1982 but with stamps, file or correspondence which should also show, where appropriate, imposition, and 'in time' extensions, of restrictions of stay

12.3.3.1 Where the applicant appears to be exempt from immigration control, or where there is otherwise any doubt about immigration status (i.e. whether the applicant is, or has been, settled free from restrictions or lawfully in the United Kingdom), the application should be referred to the relevant immigration case management unit. This will

usually be the immigration CMU which deals with:

- (in the case of a BOTC) the territory of which the applicant is a citizen; or
- (if the applicant is a BN(O), BOC, BS or BPP) the country in which the applicant is currently living; or
- (if the applicant is a BN(O), BOC, BS or BPP who is in the UK) the country in which the applicant last lived, or appears to have lived

AND (if applicable)

Good character

We should normally accept that an applicant is of good character if:

- enquiries are clear
- there are no unspent convictions
- there is no information on file to cast serious doubts on the applicants character
- (where the applicant is a businessman or is self-employed or a person of independent means or a sole representative) there is written confirmation from the Inland Revenue that business affairs are in order

12.3.3.2 If any of the factors mentioned above are not met, or it is

obvious from the papers that the applicant is unsuitable for registration (e.g. because of a criminal record), we should consider refusing the application without further ado. If the application does not clearly fall on these grounds, or on grounds not related to character, but there are doubts about the applicant's character, we may request an interview.

12.3.4 Applications under **s.4(5)** should also be supported by evidence as follows:

- Past or present service as described in 12.1.11 above. A statement or certificate from:
 - i. a British overseas territory government department confirming Crown service under the government of a British overseas territory; or
 - ii. a body established by law in a British overseas territory confirming service as a member and that the person was appointed by, or on behalf of, the Crown.

Section 4A

12.3.5 Where the application is made in a British overseas territory, the Governor will forward the application with confirmation that the applicant:

- is a British overseas territories citizen (i.e. a copy of the applicant's passport or certificate of registration or naturalisation describing the holder as a British overseas territories citizen); and

- was properly registered or naturalised as a British overseas territories citizen (including a copy of the application form for registration or naturalisation as a BOTC); and
- is of good character (if the applicant is not considered to be of good character, details will be provided)

Where the applicant is in the United Kingdom, the application should be supported by evidence that the applicant is a British overseas territories citizen (i.e. a passport or certificate of registration or naturalisation describing the holder as a British overseas territories citizen).

- 12.3.6 Where the applicant is applying outside a British overseas territory and outside the UK, the post to which the application has been made will forward evidence as above that the applicant is a British overseas territories citizen and state whether anything adverse is known about the applicant's character.

Section 4B

- 12.3.7 Applications under **s.4B** should be supported by evidence that the applicant is a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person (see paragraph 12.3.1 above).
- 12.3.8 Applications should also be supported by evidence that applicants hold no other citizenship or nationality and have not renounced such a citizenship or nationality or given up such a citizenship or nationality in circumstances effectively amounting to renunciation:
- on or after 4 July 2002 (British Overseas citizens, British subjects

and British protected persons)

- on or after 19 March 2009 (British Nationals (Overseas)).

12.3.9 To guard against the possibility of fraud, we should expect to see evidence of identity over and above that required to establish eligibility for registration. It should be remembered, in particular, that a birth certificate is evidence not of identity, but of an event.

12.3.10 We should take into account any evidence already on the file. If documents have been seen and noted in the past there is no need to ask to see them again. If the parents' marriage or a parent and child relationship has been accepted as valid by an Entry Clearance Officer, Immigration Officer, Home Office official or official in a qualifying territory, or any tribunal or court in the United Kingdom or a qualifying territory, there is no need to ask for further evidence unless there is cause to doubt the previously accepted position. It should be noted, however, that on occasions a subsisting relationship is accepted for immigration purposes whereas, for nationality purposes, a valid marriage is needed.

12.4 **Checking the application**

12.4.1 **Checking for automatic claims**

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

- **s.1(1)** of the 1981 Act - born either in the UK on or after 1 January 1983 or in the UK or a qualifying territory on or after 21 May 2002 (see **Chapter 3**)
- **s.1(2)** of the 1981 Act - found abandoned either in the UK on or after 1 January 1983 or in the UK or a qualifying territory on or after 21 May 2002 (see **Chapter 3**)
- **s.1(5)** of the 1981 Act - adopted either in the UK on or after 1 January 1983 or in the UK or a qualifying territory on or after 21 May 2002 (see **Chapter 3**)
- **s.2(1)** of the 1981 Act - born outside the UK (or, since 21 May 2002, outside the UK and qualifying territories) to a parent who is a British citizen otherwise than by descent, or in relevant service (see **Chapter 4**)
- **s.11** of the 1981 Act - became a British citizen on 1 January 1983 (see **Chapter 2**)
- **Schedule 2, para 2** of the 1981 Act - born stateless in the Sovereign Base Areas of Akrotiri and Dhekelia of a British citizen parent (see **Chapter 5**)
- **s.1(1)** of the **1983 Act** - became a British citizen on 1 January 1983 (see **Chapter 2**)
- **s.3(1)** of the **2002 Act** - was a British overseas territories citizen (except by virtue only of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia)

immediately before 21 May 2002 (see **Chapter 3**)

- **s.6(1)** of the **2002 Act** - born between 26 April 1969 and 1 January 1983 to a mother who, at the time of the birth, was a CUKC by birth in the British Indian Ocean Territory (see **Chapter 3**)

12.4.1.2 If it is not clear from the papers we have that the applicant is already a British citizen, we need not investigate this possibility. But it is important to remember that an applicant may have an automatic claim to British citizenship as a child:

- of a void marriage; or
- legitimated by the parents' subsequent marriage

12.4.1.3 If the applicant has an automatic claim we should write and say so and explain that registration is not necessary (using the procedure in **Chapters 2, 3, 4** or **5** as appropriate) and refund in full any fee submitted with the application (see **Chapter 6**).

12.4.2 Checking for an alternative entitlement

12.4.2.1 If there is no automatic claim to British citizenship and no entitlement to registration under **s.4(2)** or **s.4B**, there may be an entitlement under:

- **s.1(3)** - UK born and a minor on the date of application - a parent being a British citizen, or settled here (see

Chapter 8)

- **s.1(4)** - UK born and aged 10 or over on date of application - residence in UK (see **Chapter 8**)
- **s.3(2)** - born either outside UK on or after 1.1.83 or outside the UK and qualifying territories on or after 21 May 2002 to a parent who is a BC by descent (see **Chapter 10**)
- **s.3(5)** - born either outside UK on or after 1.1.83 or outside the UK and qualifying territories on or after 21 May 2002 to a parent who is a BC by descent - a minor on date of application (see **Chapter 10**)
- **s.5** - UK national for EC purposes (see **Chapter 13**)
- **Schedule 2, paragraphs 3, 4 and 5** - stateless persons (see **Chapter 15**)

12.4.3 No entitlement

12.4.3.1 If we are satisfied that the applicant has no entitlement to registration under any provision, we should consider the possibility of:

- registration under **s.4(5)** or **s.4A**: or
- if an adult, naturalisation under **s.6** (see **Chapter 18**); or
- if a minor, registration under **s.3(1)** (see **Chapter 9**)

12.4.4 Checking section 4(5) applications

12.4.4.1 As explained in 12.2.3 above, applications under **s.4(5)** must be made to the Governor of the British overseas territory where the applicant is, or has been, serving. The purpose of this is to enable the Governor to confirm the service on which the application is based and to give his views on whether the application should be granted.

12.4.4.2 Applications under **s.4(5)** will, therefore, normally be received from British overseas territories and be accompanied by a report giving:

- particulars of the relevant documentary evidence produced with photocopies where possible and confirmation that the originals have been seen; and
- confirmation of the applicant's service; and
- the views of the Governor on the application; and
- confirmation that the registration fee has been collected and is being credited to the Home Office
- if applicable, confirmation that the applicant is of good character (if the applicant is not considered to be of good character, details will be provided)

12.4.4.3 If an application under **s.4(5)** is received direct in the Home Office and the applicant appears to be eligible for registration under this provision, we should write to the

Governor of the relevant territory, sending a copy of the application, and requesting a report containing his views on the application, confirmation of the applicant's service and any other necessary information.

12.4.4.4 When the application is in order it should be considered in accordance with the criteria set out in Annex B.

12.4.5 Checking section 4A applications

12.4.5.1 If the application is in order, it should be considered in accordance with the criteria set out in Annex C.

12.4.6 Checking section 4B applications

12.4.6.1 If the application is in order, it should be considered in accordance with the criteria set out in Annex D.

12.5 **Consent to minors' applications**

12.5.1 It is not necessary for minors applying under **s.4(2)** or **s.4B** to obtain the consent of their parents or the person having responsibility for them.

12.5.2 If they meet the requirements, they are entitled to registration, and the application cannot be refused even if the parents or the responsible person do not consent to it.

12.5.3 Because of the employment requirements of **s.4(5)**, it is not expected that an application under that provision will be made by a minor.

12.5.4 Where applications are made for the registration of minors under **s.4A**,

their parents or the person(s) having responsibility for them should normally be requested to provide their consent to the registration separately in writing.

12.6 **Oath and pledge**

- 12.6.1 If the application is made before 1 January 2004, the applicant will be required to take an oath of allegiance only if he or she is a British protected person who is an adult when the case is decided. Since 1 January 2004, all adult applicants, and those who become adults by the time the case is determined, are required to attend a citizenship ceremony and make an oath of allegiance and pledge. (See **Chapter 6** for the procedures to follow).