

Part I: British citizenship

Chapter 20: British citizenship "by descent" and "otherwise than by descent"

section 14 British Nationality Act 1981

section 3 British Nationality (Falkland Islands) Act 1983

section 2(1) British Nationality (Hong Kong) Act 1990

section 2(1) Hong Kong (war wives and widows) Act 1996

section 2 British Nationality (Hong Kong) Act 1997

sections 3(3) and 6(2) British Overseas Territories Act 2002

20.1 Introduction

20.1.1 Every person who is a British citizen is so either "by descent" or "otherwise than by descent".

20.1.2 The distinction between the two affects a British citizen's ability to transmit that citizenship to children born abroad. It does not affect any of the other rights or duties that go with British citizenship.

20.1.3 British citizens by descent cannot transmit their citizenship to children born abroad except in the circumstances described in **Chapter 4**. British citizens otherwise than by descent automatically transmit their citizenship to children born abroad.

20.1.4 As a general principle, people are British citizens otherwise than by descent if they are British citizens:

- by birth, adoption, registration or naturalisation in **the United Kingdom** or **the Falkland Islands** before 21 May 2002; or
- by birth, adoption, registration or naturalisation in **the United Kingdom** or **a qualifying territory** (see Annex F to **Chapter 6**) on or after 21 May 2002; or

- because, immediately before 21 May 2002, they were British overseas territories citizens by birth, adoption, registration or naturalisation in a **qualifying territory**; or
- because they were adopted, on or after 1 June 2003, **in any country** under the terms of the **Hague Convention on Intercountry Adoption 1993**

20.1.5 People who are British citizens by birth or other means **elsewhere** are British citizens by descent.

20.1.6 There are a number of exceptions in the categories mentioned in 20.1.4 and 20.1.5, so this Chapter needs to be consulted in all cases where it is necessary to know whether a person is a British citizen by descent or otherwise than by descent.

20.1.7 It is important to remember that no one can acquire British citizenship under **s.14** of the 1981 Act, or **s.3** of the **1983 Act**, or **s.2(1)** of the **1990** or **1996 Acts**, or **s.2** of the **1997 Act**. British citizenship is acquired either automatically or by registration or naturalisation under other provisions of those Acts.

20.1.8 It is necessary to define only one category of British citizens (because all other British citizens must without exception fall into the other category). Because the category of those who are British citizens by descent is the smaller of the two, **s.14(1)** of the 1981 Act and **s.3** of the **1983 Act** define this category. Supplementary provision is made by:

- **s.2(1)** of the **1990** and **1996 Acts**, and **s.2** of the **1997 Act** with regard to the status of persons registered as British citizens under those Acts; and
- **s.3(3)** and **s.6(2)** of the **2002 Act** with regard to people who became British citizens under that Act

20.1.9 We do not normally have to concern ourselves with this when we grant British citizenship. But some people (mostly minors) may be eligible for registration under more than one provision. By the operation of **s.14(1)** of the 1981 Act, registration under one provision may give British citizenship by descent and, under another, British citizenship otherwise than by descent. In such cases, we should, whenever possible, choose the one which gives British citizenship "otherwise than by descent". This is made clear in the relevant Chapters of these Instructions.

20.2 **The Law**

A. British citizens born on or after 1 January 1983 (BNA 1981)

20.2.1 Under **s.14(1)** of the 1981 Act, a British citizen born on or after 1 January 1983 is a British citizen by descent if he or she is a British citizen:

- automatically under **s.2(1)(a)** only (**s.14(1)(a)**)
- by registration under **s.3(1)** and, at the time of the birth, the father or mother was a British citizen (**s.14(1)(c)**)
- by registration under **s.3(2)** (**s.14(1)(a)**)
- by registration under **s.4B** (**s.14(1)(d)**)
- by registration under **s.5** (**s.14(1)(d)**)
- by registration under **s.9** (**s.14(1)(a)**)
- by registration under **s.13** and, immediately before renunciation of British citizenship was a British citizen by descent (**s.14(1)(g)**)
- automatically under **paragraph 2 of Schedule 2** (**s.14(1)(h)**)

20.2.2 The reference in 20.2.1 to father or mother does not include an adoptive father or mother. This means that adopted children registered under **s.3(1)** are British citizens otherwise than by descent unless one of their natural parents was a British citizen at the time of the birth. For the definition of 'father' and 'mother', see Annex F to **Chapter 6**).

B. British citizens born before 1 January 1983 (BNA 1981)

20.2.3 **Sections 14(1) and 14(2)** of the 1981 Act must be read together. **Section 14(1)** lists those British citizens who are so by descent. **Section 14(2)** sets out exceptions for certain people born before 1 January 1983.

20.2.4 Under **s.14(1)**, a British citizen born before 1 January 1983 is a British citizen by descent if he or she is a British citizen:

- a. who was a citizen of the United Kingdom and Colonies under **s.5** of the **British Nationality Act 1948 (s.14(1)(b)(i))**; or
- b. who was deemed, or would have been so deemed if male, (see, for example, **paragraph 3** of **Schedule 3** to the **1948 Act** and **s.1(4)** of the **British Nationality (No.2) Act 1964**) to be a citizen of the United Kingdom and Colonies by descent only for the purposes of the proviso to **s.5(1)** of the **1948 Act (s.14(1)(b)(ii))**; or
- c. who was a citizen of the United Kingdom and Colonies who:
 - had the right of abode under **s.2(1)(b)** only of the **Immigration Act 1971 (s.14(1)(b)(iii))**; or
 - had the right of abode under **s.2(1)(b)** only and **s.2(1)(c)** of the **1971 Act (s.14(1)(b)(iii))**; or
 - who being a woman, had the right of abode only because she was, or had been, the wife of a man who had the right of abode:

- i. under **s.2(1)(b)** only; or
 - ii. under **s.2(1)(b)** only and **s.2(1)(c)** of the **1971 Act (s.14(1)(b)(iii))**; or
- d. who being a woman, was a citizen of the United Kingdom and Colonies by registration under **s.6(2)** of the **1948 Act** by reason of marriage to a man who, on 1 January 1983:
- became a British citizen by descent (**s.14(1)(b)(iv)**); or
 - would, but for his death, have become a British citizen by descent (**s.14(1)(b)(iv)**); or
 - would, but for having ceased to be a citizen of the United Kingdom and Colonies as a result of a declaration of renunciation, have become a British citizen by descent (**s.14(1)(b)(iv)**); or
- e. by registration under **s.3(1)** and, at the time of the birth, his or her father or mother (see 20.2.2 above) was a citizen of the United Kingdom and Colonies who became or, but for death, would have become a British citizen on 1 January 1983 (**s.14(1)(c)**); or
- f. by registration under **s.4B (s.14(1)(d))**; or
- g. by registration under **s.4C (s.14(1)(d))**; or
- h. by registration under **s.5 (s.14(1)(d))**; or
- i. by registration under **s.8** by reason of marriage to a man who, on 1 January 1983:
- became a British citizen by descent (**s.14(1)(e)**); or

- would, but for his death, have become a British citizen by descent (**s.14(1)(e)**); or
 - would, but for having ceased to be a citizen of the United Kingdom and Colonies as a result of a declaration of renunciation, have become a British citizen by descent (**s.14(1)(e)**); or
- j. by registration under **s.10** and, but for having ceased to be a citizen of the United Kingdom and Colonies as a result of a declaration of renunciation, would have become a British citizen by descent on 1 January 1983 for any of the reasons set out in a, b, c or d above (**s.14(1)(f)**); or
- k. by registration under **s.13** and, immediately before renunciation of British citizenship, was a British citizen by descent (**s.14(1)(g)**).

NB. **Section 14** contains no provision corresponding to e. above in respect of minors registered under **s.7** of the **1948 Act**. In order to decide whether such a minor became a British citizen by descent or otherwise than by descent, it is necessary to establish how, or if, he or she acquired the right of abode in the United Kingdom.

20.2.5 Under **s.14(2)**, a British citizen born outside the United Kingdom before 1 January 1983 is not a British citizen by descent under **s.14(1)** for any of the reasons in 20.2.4.a, b, c, d or i above if, at the time of the birth, his or her father:

- was serving outside the United Kingdom; and
- was in Crown service under the government of the United Kingdom; or
- was in service of any description at any time designated under **s.2(3)**; or

- was in service under a Community institution; and
- was recruited for the service in question:
 - a. in the United Kingdom, if in Crown service or service at any time designated under **s.2(3)**; or
 - b. in a country which was at the time a member of the Communities, if in service under a Community institution

20.2.6 For the purposes of **s.14(2)** it is important to remember that:

- the person's father did not have to be a citizen of the United Kingdom and Colonies, or have any form of British nationality
- the person's father did not have to become a British citizen on 1 January 1983
- if the person's father was, at the time of the birth, in service which was designated after 1 January 1983, the person became a British citizen otherwise than by descent only on the date the service was designated not on 1 January 1983

Examples

20.2.6.1 A person was born in Hong Kong in 1950. He was, therefore, a citizen of the United Kingdom and Colonies under **s.4** of the **British Nationality Act 1948**. His father was Australian. His mother was a citizen of the United Kingdom and Colonies by birth in the United Kingdom. His father was recruited in the United Kingdom in 1948 into the British Army and was posted to Hong Kong. That person would normally have become, on 1 January 1983, a British citizen by descent under **s.14(1)(b)**. But, in fact, he became a British citizen otherwise than by

descent under **s.14(2)** because of his father's Crown service, even though his father was not a British citizen.

20.2.6.2 The same as 20.2.6.1 except that the person's father was recruited in the United Kingdom into the Overseas Civil Service (not to be confused with the Diplomatic Service) to work in Hong Kong. The Overseas Civil Service was designated on 1 January 1983. Thus, the person would have become a British citizen otherwise than by descent on that date.

20.2.6.3 The same as 20.2.6.1 or 20.2.6.2 except the person's father was recruited in the United Kingdom by the Medical Research Council and sent to work in Hong Kong. The Medical Research Council was designated on 21 December 1984. Thus, the person would have become a British citizen by descent on 1 January 1983 under **s.14(1)(b)** but, on 21 December 1984, would have been "converted" to a British citizen otherwise than by descent under **s.14(2)**.

20.2.7 It is important to remember that any children born outside the United Kingdom on or after 1 January 1983, and before the date a particular service was designated (see the example at 20.2.6.3), would not have been British citizens unless they had a parent who was, at the time of the birth:

- a British citizen otherwise than by descent; or
- a British citizen serving outside the United Kingdom:
 - a. in Crown, designated or Community institution service; and
 - b. was recruited for that service in the United Kingdom, (in the case of Crown or designated service), or in a country which was at the time a member of the Communities (in the case of Community institution service)

C. Other British citizens under the BNA 1981

20.2.8 British citizens by registration under **s.4B** or **4C** of the 1981 Act are British citizens by descent.

D. British citizens under the British Nationality (Falkland Islands) Act 1983

20.2.9 Under **s.3(1)** of the **1983 Act**, a British citizen born before 1 January 1983 is a British citizen by descent if a British citizen automatically under **s.1(1)(a)** and **(b)(ii)** or **(iii)** of that Act only.

20.2.10 Under **s.3(2)** of the **1983 Act**, a British citizen born before 1 January 1983 is a British citizen by descent if, and only if:

- a British citizen automatically under **s.1(1)(a)** and **(b)(ii)** or **(iii)** of that Act only; and
- a British citizen by descent under **s.14(1)** of the 1981 Act

20.2.11 A person registered as a British citizen under **s.2** of the **1983 Act** is a British citizen otherwise than by descent.

E. British citizens under the British Nationality (Hong Kong) Act 1990

20.2.12 The status of persons registered as British citizens under the **British Nationality (Hong Kong) Act 1990** is set out in **s.2(1)** of that Act.

20.2.13 A person registered as a British citizen under **s.1(1)** of the **1990 Act** is to be treated for the purposes of the British Nationality Act 1981 as a British citizen otherwise than by descent. A person registered under **s.1(4)** of the **1990 Act** (i.e. spouses and minor children of persons registered under **s.1(1)**) is to be treated as a British citizen by descent.

F. British citizens under the Hong Kong (War Wives and Widows) Act 1996

20.2.14 The status of women registered as British citizens under the **Hong Kong (War Wives and Widows) Act 1996** is set out in **s.2(1)** of that Act.

20.2.15 A woman registered as a British citizen under **s.1(1)** of the **1996 Act** is to be treated for the purposes of the British Nationality Act 1981 as a British citizen otherwise than by descent.

G. British citizens under the British Nationality (Hong Kong) Act 1997

20.2.16 Persons who, on or after 1 July 1997, are former British Dependent Territories citizens (i.e. British Nationals (Overseas) or British Overseas citizens under **Article 6(1)** of the **Hong Kong (British Nationality) Order 1986**) when they are registered become British citizens by descent if they held British Dependent Territories citizenship by descent. Such persons who held British Dependent Territories citizenship otherwise than by descent become British citizens otherwise than by descent.

20.2.17 Persons become British citizens by descent on registration if they were:

- British Overseas citizens under the British Nationality Act 1981; or
- British Overseas citizens under the **1986 Order**, who were not previously British Dependent Territories citizens; or
- British subjects; or
- British protected persons

H. British citizens under the British Overseas Territories Act 2002

20.2.18 The status of persons who became British citizens automatically under the **British Overseas Territories Act 2002** is set out in **s.3(3)** and **s.6(2)** of that

Act.

20.2.19 A person who became a British citizen under **s.3(1)** of the **2002 Act**, is a British citizen by descent if, and only if, he or she was, immediately before 21 May 2002:

- a British overseas territories citizen by descent; or
- a British citizen by descent as well as a British overseas territories citizen by descent

20.2.20 A person who became a British citizen under **s.6(1)** of the **2002 Act** is a British citizen by descent.