

## PART II: BRITISH OVERSEAS TERRITORIES CITIZENSHIP

### CHAPTER 21: GENERAL INFORMATION

NB. In relation to any time before 26 February 2002, references in this Chapter to British overseas territories citizenship and the British overseas territories should be read as references to British Dependent Territories citizenship and the British dependent territories.

#### 21.1 Introduction

21.1.1 **Part II** of the British Nationality Act 1981 makes similar provision for the acquisition of British overseas territories citizenship to that made in **Part I** for British citizenship. A list of the British overseas territories is given in **Schedule 6** to the Act.

21.1.2 **Chapters 22-25** explain how and by whom British overseas territories citizenship was automatically acquired at commencement of the Act on 1 January 1983, and subsequently by birth and descent.

21.1.3 The requirements, procedures and problems of particular applications for registration and naturalisation as a British overseas territories citizen, as well as of declarations of renunciation of British overseas territories citizenship, are explained in **Chapters 26-35**. The guidance in those chapters is mainly for the benefit of the Governors of British overseas territories and their nationality caseworkers. Exceptionally, applications for registration or naturalisation as a British overseas territories citizen, or declarations of renunciation of British overseas citizenship, may be received in the Home Office. The remainder of this chapter gives general guidance of relevance to Home Office nationality caseworkers and British overseas territories nationality caseworkers. Some of the guidance is relevant only to Home Office nationality caseworkers - where this is the case, the context should make it clear.

#### 21.2 Regulations

21.2.1 The way in which the registration and naturalisation provisions of **Part II** of the British Nationality Act 1981 are put into effect are set out in Regulations. These are

Statutory Instruments made by the Home Secretary under **s.41** of the 1981 Act, and approved by Parliament. They lay down such things as:

- how applications and declarations of renunciation should be made
- to whom they should be made
- what information is required
- who should administer an oath or affirmation of allegiance
- what fees are payable

21.2.2 There are two types of Regulations: those dealing with the general handling of applications, and those dealing with fees.

21.2.3 The principal Regulations are:

- The **British Nationality (Dependent Territories) Regulations 1982**, which came into operation on 1 January 1983
- The **British Nationality (Fees) Regulations 1996**, which came into operation on 1 April 1996
- The **British Nationality (British Overseas Territories) (Amendment) Regulations 2003**, which came into operation on 1 April 2003 and amended the **British Nationality (Dependent Territories) Regulations 1982**
- The **British Nationality (British Overseas Territories) (Amendment) (No.2) Regulations 2003**, which came into operation on 1 January 2004 and amended the **British Nationality (Dependent Territories) Regulations 1982**
- The **British Nationality (Fees) Regulations 2003**, which came into operation on 1 January 2004

**NB. The 1996 Regulations are only current for applications made before 1 January 2004.**

21.2.4 Earlier Regulations put into effect the provisions of the previous Nationality Acts, and set the level of fees payable before 1 April 1996. It will be necessary to refer to them when determining an application under **Schedule 8** to the BNA

1981 or any application made before the current Fees Regulations came into force.

### 21.3 Registration/naturalisation authority

21.3.1 Under **s.43** of the British Nationality Act 1981, the Home Secretary has made arrangements for his power to determine applications for British overseas territories citizenship and to register declarations of renunciation of British overseas territories citizenship to be exercised in the British overseas territories by the Governors.

21.3.2 This means that, although the Home Secretary has the power to determine such applications and register such declarations, he would not normally do so, except in the circumstances described in **Chapters 15.9, 31.9 and 35.8**, because this may cause problems if and when the territory with which the applicant is connected achieves independence.

### 21.4 Initial scrutiny of applications

#### Persons with St Christopher and Nevis connections

21.4.1 The **Saint Christopher and Nevis Modification of Enactments Order 1983** removed St Christopher and Nevis from the list of British overseas territories in **Schedule 6** to the British Nationality Act 1981 with effect from 19 September 1983. Although St Christopher and Nevis is no longer a British overseas territory, it is to be regarded as having been one before that date in relation to applications for registration made on or after that date. This benefits some applicants with registration entitlements under **Schedule 2** of the 1981 Act, including entitlements to registration as British overseas territories citizens. However, because of the effect of **Article 2(3)** of the **1983 Order**, this does not benefit any applicant whose entitlement to registration as a British overseas territories citizen depends upon a connection with a person who ceased (or would, but for his or her death, have ceased) to be a British overseas territories citizen on 19 September 1983 because he or she became a citizen of St Christopher and Nevis on that date.

#### Persons with Hong Kong connections

21.4.2 The **Hong Kong (British Nationality) Order 1986** removed Hong Kong from the list of British overseas territories in **Schedule 6** to the British Nationality Act 1981 with effect from 1 July 1997. Although Hong Kong is no longer a British overseas territory, it is to be regarded as having been one before that date in relation to applications made on or after that date. This benefits some applicants with registration entitlements under **Schedule 2** of the 1981 Act. However, the position in relation to registration as British overseas territories citizens under **paragraph 3(1) of Schedule 2** is unclear, and any such application should be referred to Nationality Policy Team (NPT) for advice.

What is an application?

21.4.3 We must treat as an application any request for British overseas territories citizenship which, together with accompanying documents, appears to contain the applicant's:

- full name
- address
- date and place of birth (unless on enquiry this cannot be supplied)
- declaration stating that the contents are true

21.4.4 Applications made after 21 May 2007 must be accompanied by the appropriate fee and all applications must be made to the appropriate 'receiving authority' as prescribed by **Regulation 4** of the **British Nationality (Dependent Territories) Regulations 1982**, namely:

- the Home Secretary if, on the date of receipt, the applicant is in the UK\*
- the Lieutenant-Governor if, on the date of receipt, the applicant is in the Channel Islands or the Isle of Man
- the appropriate Governor if, on the date of receipt, the applicant is in a British overseas territory
- the High Commissioner if, on the date of receipt, the applicant is in a Commonwealth country - if there is no High Commissioner, the appropriate receiving authority is

the Home Secretary

- if the applicant is elsewhere, the "receiving authority" is any consular officer, established officer in the Diplomatic Service or any person authorised to accept nationality applications

**\* Where an application for British overseas territories citizenship is received direct in the Home Office, we must ensure that we forward it to the Governor's Office in the relevant territory to consider.**

21.4.5 It is not a statutory or regulatory requirement that a declaration is signed and dated, although Home Office forms provide space for this to be done. The declaration must, however, contain either the full name or signature of the person making the application. In most cases, this will be the applicant, but it may be a third party (as explained in 21.4.6 and 21.4.7).

#### Minor applicants

21.4.6 If the applicant is a minor, the application will normally be made by a parent or the person having responsibility for the child. There is nothing in law to prevent minors making their own applications but in such cases it may be necessary or desirable to have the consent of the parent(s) or responsible person(s).

#### Adult applicants

21.4.7 An adult will normally make his or her own application, but there are two sets of circumstances in which another person may apply on an adult's behalf. The first is where the applicant is not of full capacity. The second is where the applicant is of full capacity but finds it more convenient to have an agent make the application. NB. Whenever an application is made without the knowledge or agreement of an applicant who is of full capacity, it is deemed not to have been made.

21.4.8 What is the date of application?

21.4.8.1 The date of application is the date of its receipt by the appropriate "receiving authority", as explained in paragraph 21.4.4.

#### General handling of valid applications

21.4.9 If the application has been received more than 6 months after the date on which it was declared, there is a possibility that the applicant's circumstances may have changed. The form should therefore be returned to be re-declared to ensure that the information given is up-to-date.

21.4.10 Where a form has to be returned to the applicant with a request for additional information (i.e. other than in 21.4.3) and no response is received, nationality caseworkers should proceed to determine the application on the basis of the information available.

21.4.11 Where:

- a. a form or request is being treated as an application, and has been recorded as intake, and
- b. the correct fee has been paid, and
- c. the applicant appears to be qualified,

caseworkers should proceed to determine the application in accordance with the guidance and procedures set out in **Chapters 26-35** as appropriate. If the application has been made under the previous Nationality Acts, the related guidance and instructions should be used (see **Chapter 6.3.5.6**).

#### **Special cases**

##### Construing passport etc applications as applications for citizenship

21.4.12 Cases sometimes come to light where, due to official error, people have been consularly registered while ineligible for such registration, or wrongly issued with British passports or certificates of entitlement to the right of abode. As a result, they might have lost age- or time-limited entitlements to citizenship. So that they are not disadvantaged by the official error, nationality caseworkers should be ready, in

such cases, to construe the application as an undetermined application for citizenship and process it accordingly.

21.4.13 This policy will not normally cover the holders of British Visitors Passports issued in error. It is intended, primarily, to benefit people who:

- a. had, but no longer have, an avenue to registration under the minor or other registration provisions of the **British Nationality Act 1948** or the **British Nationality Act 1981**; and
- b. have been led to believe that they are British or have a UK right of abode.

21.4.14 Nationality caseworkers should act reasonably in the circumstances of each individual case. However, the policy should not normally apply where:

- a realistic avenue to citizenship is still open; or
- at the time of the error, the person would clearly not have been eligible for the grant of citizenship (as would be the case, for instance, with an adult who was unable to meet the unwaivable requirements for naturalisation or registration)

but any discretion should normally be exercised in the person's favour.

21.4.15 The policy should not apply either:

- where there is reason to believe that the passport, certificate of entitlement or consular registration was obtained by deception; or
- where the person could reasonably have known that no such claim existed

21.4.16 It is important to note that if an application referred to in paragraph 21.4.12 above is to be construed as a citizenship application, it must have been received by the authority specified in the appropriate nationality regulations. In this

connection it should be noted that:

- the Passport Office did not form part of the Home Office until 1 April 1984
- an application for registration as a CUKC under **s.6(2)** or **s.7(1)** of the **British Nationality Act 1948** had to be made to the Home Secretary if the applicant was in a foreign country
- if a passport etc application is known to have been received, but cannot now be traced and (if necessary) passed to the correct receiving authority, it will not be possible to treat it as a citizenship application

#### Defective applications

21.4.17 There are three types of defective application in respect of which special procedures apply:

- a. An application which has been delivered to the correct authority with the appropriate fee but does not include all of the information in paragraph 21.4.3
- b. An application which includes all of the necessary information (see paragraph 21.4.3), but has not been "made" to the correct receiving authority as required by **s.50(8)** of the 1981 Act
- c. An application which has not only been delivered to the wrong authority, but also does not contain all the information in paragraph 21.4.3

21.4.18 The common factor in all three types of defective application is the clear intention of the applicant to make a valid application. However, the action we should take will depend on the nature of the defect. The procedures to be followed in such cases are explained in **Chapter 6** paragraph 6.3.

#### Unnecessary applications

21.4.19 Applications made by, or on behalf of, persons who have an automatic claim to British overseas territories citizenship at



the date of application (which can include minors whose birth is retrospectively legitimated by the subsequent marriage of their parents before the application is determined) should be treated as a written request for confirmation of status. These should be considered in accordance with the procedures set out in **Chapters 22-25** as appropriate. The total fee paid (if any) should be refunded in cases to be decided in the Home Office. Where it is clear that minors included on a parent's application are already British overseas territories citizens, no computer record should be created for their "applications" and they should not be noted as intake. In all other cases, a computer record should be created and the applications should be noted as intake.

## 21.5 Application forms

- 21.5.1 An application for British overseas territories citizenship is normally made on a form specifically designed by the authorities of the British overseas territories to suit the circumstances of the applicant. An application made in the United Kingdom will probably be made on a form designed for applicants for British citizenship, suitably adapted.
- 21.5.2 These forms have no statutory basis and their use is not compulsory.
- 21.5.3 Applicants may use photocopies of our forms on which to make their application. We do not, however, accept copies of completed forms as the declaration, at least, must be in the original. Applications made by fax or e-mail should not be encouraged but (since the date of an application is sometimes critical) may be accepted provided that the original application form or letter is subsequently received. NB. In order to satisfy the requirement for applications to be accompanied by the appropriate fee, applicants who wish to make their applications by fax or email on or after 21 May 2007 **must** provide their credit/debit card details.
- 21.5.4 All cases should be considered with the aim of using the most convenient avenue to the citizenship or status being sought. But care should be taken to ensure, wherever possible, that the applicant benefits from any entitlement and/or a provision which would give British overseas territories citizenship otherwise than by descent (see **Chapter 36**). If, as a result,

a higher fee is payable a proposal to consider an application under a different provision should be explained to the applicant who should be invited to agree and pay the balance of the fee.

## 21.6 **Fees**

21.6.1 The **Fees Regulations** prescribe the fees payable for the making of any application to the Home Secretary for:

- the registration in the United Kingdom of a person as a British citizen, British overseas territories citizen, British Overseas citizen or a British subject
- the grant of a certificate of naturalisation in the United Kingdom as a British citizen or British overseas territories citizen

21.6.2 The fees currently payable with applications for registration or the grant of a certificate of naturalisation in the United Kingdom are set out in the Table of Fees in the **1996 and 2003 Regulations** (see 21.2.3 above). For ease of reference, details of the fees payable since April 1975 are reproduced in Annex D to **Chapter 6**.

21.6.3 General points to note are:

- The fee payable is that in force at the date of application
- Before 30 October 1981, the non-payment of the fee did not preclude registration or the grant of a certificate of naturalisation
- Before 1 April 1982, the fee was payable only by those whose applications were to be approved
- From 1 April 1982, the full fee has been payable by all applicants when the application is made (but see the last two points below)
- From 1 April 1982 to 31 March 1984, the full fee was refunded to unsuccessful applicants

- From 1 April 1984 to 31 March 1996:
  - a. a separate application and registration or naturalisation fee was payable; and
  - b. only the registration or naturalisation fee would be returned to unsuccessful applicants
- From 1 April 1996, only one fee is payable for the application, and no refund is given for a refused or withdrawn application
- Where a husband and wife or two people who are civil partners of each other apply at the same time for the grant of certificates of naturalisation, and are living together at the time of the applications, the total application fee to be paid is the same as for one application
- Where applications are made under the 1981 Act, at the same time, for the registration of more than one minor child of the same parent, either by inclusion in the parent's application or on separate application forms, only one fee is payable for the children

Applications to be determined in the UK

21.6.4 If it is intended to determine the application here, the full fee is payable at the time the application is made.

21.6.5 If no fee or only a part fee has been paid, the full United Kingdom fee or the balance of the fee, as required, should be requested. The first step is to write to ask for the full fee or the balance of the fee as required. If this is to be done manually, a copy of the FEE REQUEST letter should be sent with the PAYMENT SLIP. The applicant should be asked to reply within one month. Place the file in Fee Almanack for 1 month. If there is no reply, the request should be repeated with the same time scale using the FEE REMINDER letter. If, two months from the date of the original request, there has still been no response the applicant should be told that the Home Secretary cannot register or naturalise (whichever is appropriate) someone when the full fee has not been paid. If:

- a. the application is for registration at entitlement nothing further need be added: we should not say that the application is refused;
- b. the application is under a discretionary provision, the applicant should be told that the application has therefore been refused and a fresh application will be needed.

21.6.5.1 A FEE REFUSAL letter should be used.

#### Applications to be determined by the Governor

21.6.6 If the application is to be transferred to the Governor of the relevant territory to determine, the fee payable is the appropriate one (if any) levied in that territory. Information on the fees levied in each territory, and the sterling equivalent, is kept by Finance Section who should provide advice on:

- the amount the applicant must be asked to pay; and
- how this is to be transmitted to the territory concerned

#### Refunds

21.6.7 Fees payable in the United Kingdom can be refunded if an application is unsuccessful, provided the application was made before 1 April 1996 (after that date fees are not refunded as a matter of course). Normally, the application fee is retained and only the registration or grant fee is refunded. But in limited circumstances, the total fee is refunded. Any excess fee paid in a successful case can also be refunded.

21.6.8 The authorities of the British overseas territory concerned will advise whether any part of their fee is refundable.

21.6.9 The procedures for making a refund and procedure in cases of misappropriation are explained in **Chapter 6.5**.

### 21.7 Determination of applications

21.7.1 If the applicant is not already a British overseas territories

citizen, the application should be examined to check the eligibility for registration or naturalisation (see 21.4.20 above). If the application appears to be in order, the applicant should be sent a letter on the lines of the typing draft at Annex A, requesting documents and/or a fee, as appropriate.

- 21.7.2 If the applicant wishes to proceed with the application for British overseas territories citizenship, the application, fee and photocopies or details of relevant documents should be sent to the appropriate Governor with a covering letter, except in the circumstances described in **Chapters 15.9** and **31.9**. Any original documents should be returned to the applicant.

**NB.** If the applicant has connections with more than one territory, it may be appropriate to refer the case to the Governors of each concerned.

- 21.7.3 The file should then be almanacked to await the Governor's decision, which will be conveyed to the applicant via the Home Office.
- 21.7.4 If the applicant decides to apply for British citizenship, the appropriate action in **Chapter 6** and any other relevant Chapter (e.g. **Chapter 18** if it is an application for naturalisation) should be followed, and the application for British overseas territories citizenship should be treated as having been withdrawn.
- 21.7.5 If the applicant is clearly not eligible for registration or naturalisation as a British overseas territories citizen (e.g. failure to meet an unwaivable requirement), the application should be refused, and the applicant advised about the possibility of applying for British citizenship.
- 21.7.6 Where it appears appropriate to grant an application in the United Kingdom, but an oath of allegiance (and the pledge, if the application was made on or after 1 January 2004) is required, the applicant/agent should be told that the Secretary of State proposes to approve the application and that a certificate of British overseas territories citizenship may be issued, provided that an oath (and pledge, if appropriate) is taken in due form within the statutory period

of 3 months (see 21.8.8 below). In cases where no oath or oath/pledge is required, the certificate constitutes notification of the decision to grant. In cases where an oath or oath/pledge is required, the letter accompanying it constitutes notification of the decision to grant. The procedure for granting or refusing applications is explained in more detail in **Chapter 6.6 - 6.9**.

21.7.7 If we register or naturalise someone as a British overseas territories citizen, we should notify the Governor of the territory concerned using the draft letter at Annex B. The letter should be typed and a copy kept on file.

## 21.8 Oath and pledge

### A. Applications for British overseas territories citizenship made before 1 January 2004

21.8.1 **Section 42(1)(ii)** of the 1981 Act provides that no-one who needs to take an oath of allegiance can be registered or granted a certificate of naturalisation as a British overseas territories citizen, on the basis of an application made on or after 1.1.1983, unless an oath has been taken in the prescribed form and time. As an alternative to the oath, applicants may make an affirmation of allegiance (and references below to "oath" include references to "affirmation").

21.8.2 **Section 42(2)** of the 1981 Act explains who is not required to take an oath of allegiance. These are:

a. those not of full age; or

b. those who are already:

- British citizens; or
- British overseas territories citizens; or
- British Nationals (Overseas); or
- British Overseas citizens; or
- British subjects under the 1981 Act; or
- citizens of any country of which Her Majesty is Queen (see 21.8.3 below)

Everyone else, including British protected persons, must take an oath of allegiance before they can become British overseas territories citizens.

- 21.8.3 Countries whose governments recognise the Queen as Head of State are:

Antigua and Barbuda, Australia, The Bahamas, Barbados, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, St Christopher and Nevis, St Lucia, St Vincent and the Grenadines, Solomon Islands and Tuvalu.

Citizens of these countries do not need to take an oath of allegiance.

- 21.8.4 An oath is conditional as it is taken before a certificate of registration or naturalisation is issued. The form of an oath of allegiance is given in **Schedule 5** to the 1981 Act and is set out below.

"I, AB, swear by Almighty God that, on becoming a British overseas territories citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law".

- 21.8.5 For applicants who wish to affirm rather than swear their allegiance the form of an oath is changed by removal of the words ".... swear by Almighty God ...." and the substitution of ".... do solemnly and sincerely affirm ...."

- 21.8.6 An oath of allegiance must be administered and signed by one of the following persons:

- In England, Wales or Northern Ireland - any justice of the peace, commissioner for oaths or notary public (Barristers, except in Northern Ireland, and practising solicitors have the powers of commissioners for oaths)

**NB.** A solicitor who is acting for the applicant in connection with the application is not empowered to administer an oath unless also a notary public.

- In Scotland - any sheriff principal, sheriff, justice of

the peace or notary public (a practising solicitor may also be a notary public)

- In the Channel Islands, the Isle of Man or any British overseas territory - any judge of any court of civil or criminal jurisdiction, any justice of the peace or magistrate, or any person for the time being authorised by the law of the place where the applicant, declarant or deponent is, to administer an oath for any judicial or other legal purpose
- In any country mentioned in 21.8.3 above or in any territory administered by the government of any such country - any person for the time being authorised by the law of the place where the deponent is, to administer an oath for judicial or other legal purpose, any consular officer or any established officer of the Diplomatic Service of Her Majesty's Government in the United Kingdom
- Elsewhere - any consular officer, any established officer of the Diplomatic Service of Her Majesty's Government in the United Kingdom or any person authorised by the Secretary of State in that behalf
- If the deponent is serving in Her Majesty's naval, military or air forces, an oath may be administered by any officer holding a commission in any of those forces, whether the oath is taken in the United Kingdom or elsewhere

21.8.7 An applicant who is required to take an oath of allegiance must normally do so within the time limit of 3 months prescribed by the **British Nationality (Dependent Territories) Regulations 1982**. Otherwise, registration or naturalisation cannot proceed unless the Home Secretary/Governor decides to extend the period.

21.8.8 A request for the taking of an oath of allegiance should be sent manually using a stock letter OATH REQUEST, amended as necessary. The file should then be almanacked for 2 months and an OATH REMINDER letter, amended as necessary, sent with a new oath form if the original oath form has not then been received. The letter makes it clear that an oath should be taken within 3 months and allows a further two months for it



to be completed and returned. The file should be almanacked for 2 months.

21.8.9 If the applicant asks for an extension of time and gives an acceptable reason (e.g. a serious illness), an extension of up to 3 months may be allowed (or whatever longer period may be justified by the reason given for the request).

21.8.10 If an oath is returned undelivered, or not returned within 3 months of the original request, the applicant should be informed that it will not be possible for him or her to become a British overseas territories citizen because the Home Secretary is not able to register or naturalise a person who has not taken an oath. A stock letter OATH REFUSAL (NON RECEIPT) should be used. The fee should be retained.

21.8.11 If the applicant:

- still wishes to become a British overseas territories citizen; and
- had an entitlement at the date of application,

a certificate may be issued, at any time, on the basis of the original application on receipt (if necessary) of the fee prevailing when the application was made and an oath of allegiance. In all other cases, the applicant will need to re-apply under an appropriate provision of the British Nationality Act 1981.

**B. Applications for British overseas territories citizenship made on or after 1 January 2004**

21.8.12 **Schedule 1** to the **Nationality, Immigration and Asylum Act 2002**, which came into force on 1 January 2004, amended the requirements in **s.42** of the 1981 Act relating to the taking of the oath of allegiance.

21.8.13 With effect from 1 January 2004, all applicants (except those who are not of full age) are required to make an oath and pledge before they are registered or naturalised as a British overseas territories citizen.

21.8.14 The wording of the oath/affirmation is given in paragraphs 21.8.4 and 21.8.5 above however, when the affirmation is spoken the correct wording is "...do solemnly, sincerely and truly declare and affirm...". The wording of the pledge is as follows:

"I will give my loyalty to [name of territory] and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British overseas territories citizen."

21.8.15 An exemption may be made, in the special circumstances of a particular case, in respect of the requirement to make an oath of allegiance and pledge. NB. Exemptions will be granted only in **exceptional** circumstances and any such requests should, in the first instance, be referred to the Nationality Group Casework Manager (only where the applications are to be decided by Home Office nationality caseworkers).

21.8.16 If an applicant does not make the oath and pledge within the 3 month time limit permitted, the applicant should be informed that it will not be possible to become a British overseas territories citizen because the Home Secretary/Governor is not able to register or naturalise a person who has not taken an oath and pledge. If the applicant still wishes to become a British overseas territories citizen and had an entitlement at the date of application, a certificate may be issued at any time on the basis of the original application on making the oath and pledge. In all other cases, the applicant will need to re-apply under an appropriate provision of the legislation.

## 21.9 **Effective date of registration or naturalisation**

### A. **Applications made before 1 January 2004**

21.9.1 **Section 42(4)** of the 1981 Act, as in force prior to 1 January 2004, explains that a person registered as a British overseas territories citizen becomes such a citizen on the date he or she is registered.

21.9.2 **Section 42(5)** of the 1981 Act, as in force prior to 1 January 2004, explains that a person to whom a certificate of naturalisation as a British overseas territories citizen is granted becomes such a citizen from the date the certificate

is granted.

B. Applications made on or after 1 January 2004

21.9.3 **Section 42** was amended by **Schedule 1** to the **Nationality, Immigration and Asylum Act 2002** with effect from 1 January 2004.

21.9.4 **Section 42B(1)** of the 1981 Act, as amended, explains that a person registered as a British citizen becomes such a citizen:

- a. immediately on making the required oath and pledge; or
- b. where the oath/pledge requirement is waived, the date on which he or she is registered

21.9.5 **Section 42B(2)** of the 1981 Act, as amended, explains that a person to whom a certificate of naturalisation as a British citizen is granted becomes such a citizen:

- a. immediately on making the required oath and pledge; or
- b. where the oath/pledge requirement is waived, the date on which the certificate is granted

21.10 Judicial Review

21.10.1 The Law

21.10.1.1 **Section 44(1)** of the British Nationality Act 1981 explains that any discretion given to the Secretary of State, a Governor or Lieutenant-Governor by or under the Act must be exercised without regard to the race, colour or religion of the person who may be affected by its exercise. **Sections 44(2) and (3)** have been repealed (see **Chapter 6.13**).

21.10.1.2 In dealing with cases arising under the 1981 Act we must always bear in mind that our actions and decisions may be challenged in the courts. This is true even where the decision is at discretion.

21.10.1.3 It is always open to a person who is dissatisfied with our decision in his case to ask a court to

review it on the grounds that we acted unlawfully, improperly, or unreasonably. The process by which a court does this is called judicial review.

#### 21.10.2 The main principles

21.10.2.1 The main principles we need to bear in mind, and the caseworking practice we should adopt, are described in **Chapter 6.13**.

#### 21.11 Disclosure of information

21.11.1 Comprehensive guidance on all aspects of the handling, protection and disclosure of official information may be found in **Chapter 24** of the IDIs. This is accessible via the Knowledge Base and, in a less complete version, the Border and Immigration Agency website. A hard copy is retained by NPT.

21.11.2 NPT should be consulted where it is unclear how the IDIs guidance ought to be applied in the nationality context or where situations arise which appear not to be covered at all by the guidance. In these cases, the referring senior caseworker should specify, where appropriate, the particular section or paragraph of the IDIs that is causing difficulty.