

PART II: BRITISH OVERSEAS TERRITORIES CITIZENSHIP

CHAPTER 22: AUTOMATIC ACQUISITION - PERSONS BORN BEFORE 1 JANUARY 1983

SECTION 23 BRITISH NATIONALITY ACT 1981

SECTION 6 BRITISH OVERSEAS TERRITORIES ACT 2002

NB. British Dependent Territories citizenship and the British dependent territories were renamed British overseas territories citizenship and the British overseas territories respectively on 26 February 2002.

British overseas territories citizens who, immediately before 21 May 2002, had that citizenship wholly or partly by connection with a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia became British citizens automatically on that date under **s.3** of the **British Overseas Territories Act 2002**.

22.1 Introduction

22.1.1 This Chapter deals only with the status of people born before on 1 January 1983.

22.1.2 The status of those born on or after 1 January 1983 is dealt with in **Chapters 23, 24** and **25**.

22.2 The Law

22.2.1 **Section 23** of the British Nationality Act 1981 explains which people born before 1 January 1983 acquired British Dependent Territories citizenship automatically on that date.

22.2.2 Under **s.23(1)**, a person automatically became a British Dependent Territories citizen on 1 January 1983 if, immediately before that date, he or she was a citizen of the United Kingdom and Colonies who:

- had acquired that status by birth, naturalisation or registration in a British overseas territory; or
- was born to a parent who, at the time of the birth, was:
 - i. a citizen of the United Kingdom and Colonies; and either

- ii. acquired that status by birth, naturalisation or registration in a British overseas territory; or
 - iii. was born to a parent who, at the time of the birth, was a citizen of the United Kingdom and Colonies by birth, naturalisation or registration in a British overseas territory; or
 - being a woman was, immediately before 1 January 1983, a citizen of the United Kingdom and Colonies who either then was, or had at any time been, the wife of a man who became a British Dependent Territories citizen under either of the categories above or would have done so but for his death
- 22.2.2.1 **Section 23(6)** explains that references in **s.23(1)** to citizenship of the United Kingdom and Colonies, shall, in relation to a time before 1949, be construed as references to British nationality.
- 22.2.3 Under **s.23(2)**, a person automatically became a British Dependent Territories citizen on 1 January 1983 if, immediately before that date, he or she was a citizen of the United Kingdom and Colonies who:
- had that status by registration either:
 - i. under **s.7** of the **British Nationality Act 1948**; or
 - ii. under **s.1** of the **British Nationality (No 2) Act 1964**; and
 - was registered outside the British overseas territories; and
 - his or her father or mother (if registered under **s.7** of the **1948 Act**), or mother (if registered under **s.1** of the **1964 Act**), was:
 - i. a citizen of the United Kingdom and Colonies at the time of the registration (or would have been but for his or her death); and

- ii. became a British Dependent Territories citizen on 1 January 1983 (or would have done so but for his or her death).

22.2.4 Under **s.23(3)**, a person automatically became a British Dependent Territories citizen on 1 January 1983 if, immediately before that date, he or she was a citizen of the United Kingdom and Colonies who:

- had that status by registration under **s.12(6)** of the **British Nationality Act 1948**; and
- was registered outside the British overseas territories; and
- was descended in the male line from a person who was either:
 - i. born or naturalised in a British overseas territory; or
 - ii. became a British subject by reason of annexation of any territory included in a British overseas territory.

22.2.5 Under **s.23(4)**, a person automatically became a British Dependent Territories citizen on 1 January 1983 if, immediately before that date, he or she was a citizen of the United Kingdom and Colonies who:

- had that status by registration under **s.1** of the **British Nationality Act 1964**; and
- was registered outside the British overseas territories; and
- had a qualifying connection with a British overseas territory; or
- if a woman, was married to a man who, at the time of the registration, had or would but for his death have had a

qualifying connection with a British overseas territory

22.2.6 **Section 23(5)** explains that, for the purpose of **s.23(4)**, people have a qualifying connection with a British overseas territory if they, their father, or their father's father:

- was born in a British overseas territory; or
- is or was naturalised in a British overseas territory; or
- was registered as a citizen of the United Kingdom and Colonies in a British overseas territory; or
- became a British subject by reason of the annexation of any territory included in a British overseas territory

22.2.7 The British Overseas Territories Act 2002

22.2.7.1 The **British Overseas Territories Act 2002** added 1 further category of persons who automatically became British overseas territories citizens after 1 January 1983.

22.2.7.2 A person became a British overseas territories citizen automatically on 21 May 2002 under **s.6** of the **2002 Act** if he or she:

- was born on or after 26 April 1969 and before 1 January 1983; and
- was born to a woman who, at the time of the birth, was a citizen of the United Kingdom and Colonies by virtue of her birth in the British Indian Ocean Territory; and
- immediately before 21 May 2002, was not a British overseas territories citizen

22.3 Claims to British overseas territories citizenship

22.3.1 We will need to investigate claims to British overseas territories citizenship when:

- a person has written to enquire about his or her own status
- a person's own status affects someone else - for example a spouse, child or grandchild - who may as a result either:
 - i. derive citizenship automatically from that person;
or
 - ii. be able to apply for British overseas territories citizenship because that person is a British overseas territories citizen
- adult or minor applicants for British overseas territories citizenship appear already to be British overseas territories citizens

22.3.2 It is important to remember that the person concerned may have become a British citizen as well as a British Dependent Territories citizen on 1 January 1983 because he or she had the right of abode in the United Kingdom under **s.2** of the **Immigration Act 1971** or is connected with the Falkland Islands (see **Chapter 2**).

22.3.3 It is also important to remember that the person concerned may have become a British citizen automatically on 21 May 2002 under **s.3** of the **British Overseas Territories Act 2002** because he or she was a British overseas territories citizen by connection with a qualifying territory (i.e. a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia).

22.4 Procedure for establishing claims

IMPORTANT NOTE: Where an apparent claim or entitlement derives from a personal or ancestral connection with St Christopher and Nevis, it is necessary to consider the effects of the **Saint Christopher and Nevis Modification of Enactments Order 1983**. Where an apparent claim or entitlement derives from such a connection with Hong Kong, it is necessary to consider the effects of the **Hong Kong (British Nationality) Order 1986** and the **Hong Kong (British Nationality) (Amendment) Order 1993** (see **Chapter 21.4**).

22.4.1 To recognise a person's claim to British Dependent Territories citizenship under **s.23** of the British Nationality Act 1981, we need to establish that he or she:

- was a citizen of the United Kingdom and Colonies on 31 December 1982; and
- meets the other requirements in 22.2.2-22.2.5 above

22.4.2 Annex A, B & C of this Chapter should be consulted to establish whether the person was a citizen of the United Kingdom and Colonies. The term 'father' in those charts means the natural father of a legitimate child. An illegitimate child may be legitimated by the subsequent marriage of the parents.

22.4.3 When citizenship of the United Kingdom and Colonies was derived from a connection with a former British overseas territory, particular care should be taken to establish that the person concerned retained that status when the territory in question gained independence.

22.4.4 If the person concerned was a citizen of the United Kingdom and Colonies, Annex D and the accompanying Notes should be consulted to establish if the person became a British Dependent Territories citizen on 1 January 1983 under **s.23** of the British Nationality Act 1981. If not, the person would have become either a British citizen or a British Overseas citizen and should be advised accordingly. (See **Chapters 2** and **37** respectively)

22.5 Evidence required

22.5.1 A person born in a British overseas territory (see Note A to Annex D) before 1 January 1983 may be regarded as a British overseas territories citizen on production of:

- a passport issued on or after 1 January 1983 describing the holder as a British Dependent Territories citizen or a British overseas territories citizen; or

- a British overseas territories birth certificate showing parents' details
- 22.5.2 Because of the terms of the **British Nationality and Status of Aliens Act 1914** and the **British Nationality Act 1948**, if the father was either a diplomat or an enemy alien at the time of the person's birth, the person may not have been a citizen of the United Kingdom and Colonies by reason of birth in a British overseas territory.
- 22.5.3 If the father's occupation is given on the birth certificate as "diplomat", or the description otherwise suggests it is of a "diplomatic" nature, we should determine whether the person had a claim to citizenship of the United Kingdom and Colonies.
- 22.5.4 A person born outside the British overseas territories (see Note A to Annex D) before 1 January 1983 may be regarded as a British overseas territories citizen on production of:
- a passport issued on or after 1 January 1983 describing the holder as a British Dependent Territories citizen or a British overseas territories citizen; or
 - the relevant documents related to the person's, his or her parents', grandparents', spouse's birth, adoption, marriage, death, registration or naturalisation
- 22.5.5 To guard against the possibility of fraud, we should expect to see evidence of identity over and above that required to establish a claim to citizenship before formally acknowledging a claim. It should be remembered, in particular, that a birth certificate is evidence not of identity, but of an event.
- 22.5.6 We should take into account any evidence already on file. If documents have been examined in the past it is not always necessary to ask to see them again. If a particular marriage or parent and child relationship has been accepted as valid by an Entry Clearance Officer, Immigration Officer, Home Office or British overseas territories official, or any tribunal or court in the United Kingdom or a British overseas territory, we do not need to ask for any further evidence except where later information provides reasonable grounds 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.

22.5.7 In the absence of some or all of the documentary evidence set out in 22.5.1 and 22.5.4 above, secondary evidence may be acceptable.

22.6 Confirmation of claims

22.6.1 Where we can accept that a person became a British Dependent Territories citizen on 1 January 1983, then:

- a. if a claim to citizenship has been established by production of all the appropriate documents, we should send a letter along the lines of the draft at Annex E;
- b. if it is a complicated claim to citizenship (e.g. involving difficult legitimacy or marriage law, several independence acts etc); or
- c. if it has not been possible to supply detailed evidence; and
- d. we are nonetheless satisfied that the claim is valid, we should send a status letter (see Annex H to **Chapter 2**).

22.6.2 Where we cannot accept that the person became a British Dependent Territories citizen on 1 January 1983, or conclude that he or she is no longer a British overseas territories citizen, we should:

- briefly explain why; and
- explain how that person may become a British overseas territories citizen

22.6.3 If we notice that an applicant for British overseas territories citizenship is already a British overseas territories citizen, we should:

- write and explain that the application is not necessary (along the lines of the draft at Annex F); and
- refund in full any fee submitted with the application (see **Chapter 21**)