

PART II: BRITISH OVERSEAS TERRITORIES CITIZENSHIP

CHAPTER 23: AUTOMATIC ACQUISITION BY BIRTH OR ADOPTION ON OR AFTER 1 JANUARY 1983

SECTION 15 BRITISH NATIONALITY ACT 1981

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.

23.1 Introduction

23.1.1 This Chapter deals only with the acquisition of British overseas territories citizenship at birth by people born or adopted in a British overseas territory on or after 1 January 1983.

23.1.2 Acquisition of British overseas territories citizenship by those born before 1 January 1983 is dealt with in **Chapter 22**.

23.1.3 Acquisition by those born outside the British overseas territories on or after 1 January 1983 is dealt with in **Chapter 24**.

23.1.4 Acquisition by those born either in a British overseas territory or in the United Kingdom on or after 1 January 1983, or who were born on a ship or aircraft registered in a British overseas territory, and who would otherwise be stateless, is dealt with in **Chapter 25**.

23.2 The Law

23.2.1 **Sections 15(1) and 15(2)** of the British Nationality Act 1981 explain which people born, or deemed to have been born, in a British overseas territory on or after 1 January 1983 acquired British overseas territories citizenship automatically at birth.

23.2.2 Under **s.15(1)**, a person born in a British overseas territory on or after 1 January 1983 became a British overseas territories citizen at birth if, at the time of the birth:

- either parent was a British overseas territories citizen;
or
- either parent was settled in a British overseas territory

23.2.3 Under **s.15(2)**, a new-born infant found abandoned in a British overseas territory on or after 1 January 1983 can be regarded for the purposes of **s.15(1)** as having been:

- born in a British overseas territory on or after 1 January 1983; and
- born to a parent who, at the time of the birth, was a British overseas territories citizen or settled in a British overseas territory,

unless either can be disproved.

23.2.4 It is important to remember that a person born, or deemed to have been born, in the Falkland Islands or a qualifying territory (see Annex F to **Chapter 6**) may have acquired British citizenship at birth as well as, or instead of, British overseas territories citizenship under the **British Nationality (Falkland Islands) Act 1983** or the **British Overseas Territories Act 2002** (see **Chapter 3**).

23.2.5 **Section 15(5) and (5A)** of the British Nationality Act 1981 explain which children adopted in a British overseas territory or elsewhere on or after 1 January 1983 acquired British overseas territories citizenship automatically because of their adoption.

23.2.6 Under **s.15(5)**, a child whose adoption is authorised by order of a court in a British overseas territory becomes a British overseas territories citizen from the date of the order if:

- not already a British overseas territories citizen; and
- the adopter or, in the case of a joint adoption, one of the adopters is a British overseas territories citizen on the date of the adoption order

23.2.7 Under **s.15(5A)**, as inserted by **s.137** of the **Adoption and**

Children Act 2002, a child who is not a British overseas territories citizen but is adopted under a Hague Convention adoption on or after 30 December 2005, becomes a British overseas territories citizen as from the date of adoption if:

- the adopter, or in the case of a joint adoption, one of the adopters is a British overseas territories citizen, and
- the adopter, or in the case of a joint adoption, both of the adopters are habitually resident in a territory which has been designated for this purpose under s.50(14) of the 1981 Act (no territories have yet been designated), and
- the Convention adoption is effected under the law of a country or territory outside the designated territory.

23.2.8 Under **s.15(6)**, British overseas territories citizenship acquired by virtue of **s.15(5)** or **(5A)** is not lost if the adoption order or the Convention adoption ceases to have effect at a later date, for example on annulment. Where, however, the order is merely set aside by a higher court on appeal by the Home Secretary, **s.15(6)** has no effect and the child will thereupon cease to be a British overseas territories citizen.

23.2.9 It is important to remember that a person adopted in the Falkland Islands or a qualifying territory (see Annex F to **Chapter 6**) on or after 1 January 1983 may have become a British citizen as well as, or instead of, a British overseas territories citizen either on the date of adoption or on 21 May 2002 (if the adoption took place before that date) under the **British Nationality (Falkland Islands) Act 1983** or the **British Overseas Territories Act 2002** (see **Chapter 3**).

23.2.10 Any person who is a British overseas territories citizen under **s.15(1)** or **15(5)** or **15(5A)** of the British Nationality Act 1981 is a British overseas territories citizen otherwise than by descent (see **Chapter 36**).

23.2.11 An explanation of the terms "British overseas territory", "designated territory", "qualifying territory", "parent" and "settled" is in Annex F to **Chapter 6**.

23.3 Claims to British overseas territories citizenship

23.3.1 Claims to British overseas territories citizenship will need to be investigated when:

- someone writes about his or her own status and/or that of a child; or
- a question is raised about a child found abandoned in a British overseas territory; or
- an enquiry is made about the position of a child adopted in a British overseas territory; or
- adult or minor applicants for British overseas territories citizenship appear already to hold that status

23.4 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**).

23.4.1 To recognise a person's claim to British overseas territories citizenship, we must establish that the person either:

- was born in a British overseas territory on or after 1 January 1983; and
- had a parent who, at the time of the person's birth, was a British overseas territories citizen or was settled in a British overseas territory

OR

- was found abandoned in a British overseas territory as a new-born infant; and

- there is no evidence that the birth took place outside a British overseas territory; and
- there is no evidence that neither parent was a British overseas territories citizen or settled in a British overseas territory

OR

- was adopted by order of a court in a British overseas territory or by means of a Convention adoption on or after 1 January 1983; and
- on the date of the adoption, the adopter was a British overseas territories citizen; or
- (in the case of a joint adoption) on the date of the adoption order, one of the adopters was a British overseas territories citizen; and
- (in the case of a Convention adoption), the requirement as to habitual residence in a designated territory was satisfied.

23.5 Evidence required

23.5.1 Persons born in a British overseas territory

23.5.1.1 A person born in a British overseas territory on or after 1 January 1983 may be regarded as a British overseas territories citizen on production of:

- a passport describing the holder as a British overseas territories citizen; or
- a British overseas territories birth certificate showing parents' details; and
- evidence that at the time of the birth either parent was a British overseas territories citizen or settled in a British overseas territory

23.5.1.2 A British overseas territories birth certificate showing parents' details should establish the relationship to the parent(s) and indicate whether the child was born legitimate. Information about the registration of births in a British overseas territory should, if necessary, be obtained from the authorities of the territory concerned.

23.5.1.3 Evidence of a parent's British overseas territories citizenship is:

- a passport describing the holder as a British overseas territories citizen; or
- a British overseas territories birth certificate showing his or her parents' details and that he or she was born before 1 January 1983; or
- (if born on or after 1 January 1983) a British overseas territories birth certificate showing his or her parents' details and evidence that, at the time of the birth, either parent was a British overseas territories citizen or settled in the British overseas territory; or
- a certificate of registration or naturalisation, issued in a British overseas territory, describing the holder as either a British overseas territories citizen, or a British Dependent Territories citizen or a citizen of the United Kingdom and Colonies; or
- the relevant documents related to his or her parents', grandparents', spouse's birth, adoption, marriage, death, registration or naturalisation

23.5.1.4 Information about what constitutes evidence of a parent's settled status in a British overseas territory should, if necessary, be obtained from the authorities of the territory concerned or, where the place is no longer a British overseas

territory, from the British Consulate or High Commission.

23.5.1.5 If the person is born before 1 July 2006 and the claim to British overseas territories citizenship is based on the father having become a British overseas territories citizen or settled in a British overseas territory, we need to be satisfied that the person is legitimate. This is shown by the parents' marriage certificate. If a person is born on or after 1 July 2006, we need to be satisfied that the father comes within the definition of "parent" in Annex F to **Chapter 6**.

23.5.2 Persons found abandoned in a British overseas territory

23.5.2.1 Persons may be regarded as British overseas territories citizens if the organisation or authority, which took responsibility for them, confirms that they were:

- found abandoned in a British overseas territory; and
- found after 1 January 1983; and
- new-born infants when found; and
- their parents cannot be identified

23.5.2.2 There is no definition as to what "new-born" means in terms of age, and we should interpret the phrase generously. As a broad rule of thumb, we would expect it normally to apply to a child no more than a few months old when found. But we should consider the circumstances of each child, and there may be cases where it would be right to regard a child as much as 1 year old as "new-born" for the purposes of **s.15(2)** of the British Nationality Act 1981.

23.5.2.3 If evidence turns up later to show that:

- neither parent was a British overseas territories citizen or settled in a British overseas territory at the time of the birth; or
- the child was not born in a British overseas territory, and could not claim British overseas territories citizenship by descent (see **Chapter 24**),

then the child will no longer be regarded as a British overseas territories citizen.

23.5.2.4 If evidence turns up later to show that the person was born in a British overseas territory before 1 January 1983, he or she may probably continue to be regarded as a British overseas territories citizen but under **s.23** of the British Nationality Act 1981 (see **Chapter 22**).

23.5.3 Persons adopted in a British overseas territory

23.5.3.1 A person who is not a British overseas territories citizen, and who is adopted on or after the 1 January 1983 by order of a court in a British overseas territory, may be regarded as a British overseas territories citizen on production of:

- a passport describing the holder as a British overseas territories citizen or a British Dependent Territories citizen; or
- evidence that, on the date of the adoption the adopter or, in the case of a joint adoption, one of the adopters was a British overseas territories citizen (see 23.5.1.3 above); and
- the adoption order or a full extract from the Adopted Children Register

23.5.3.2 A person who is not a British overseas territories citizen, and who is adopted on or after 30 December 2005 under a Convention adoption, may be regarded as a British overseas territories citizen on

production of:

- a passport describing the holder as a British overseas territories citizen; or
- evidence that, on the date of the adoption the adopter or, in the case of a joint adoption, one of the adopters was a British overseas territories citizen (see 23.5.1.3 above); and
- the Convention adoption order, confirming the adopter(s)' habitual residence in a designated territory (no territories have yet been designated), adoption under the law of a country or territory *outside* the designated territory and certification under Article 23(1) of the Convention.

23.5.4 General principles

23.5.4.1 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 of an event, not of identity.

23.5.4.2 Any evidence already on the file should be taken into account. 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 or British overseas territories official, or any tribunal or court in the United Kingdom or a British overseas 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.

23.5.4.3 In the absence of some or all of the documentary evidence set out in 23.5.1.3 above, secondary evidence may be acceptable.

23.5.4.4 If the authorities of the relevant territory are satisfied that the parent was settled there before the date of the child's birth, then we may accept that the child is a British overseas territories citizen.

23.5.4.5 If:

- the child was born in a British overseas territory; and
- the evidence shows that the parent became a British overseas territories citizen or settled there after the birth; and
- the child is still a minor,

there will be an entitlement to registration as a British overseas territories citizen under **s.15(3)** (see **Chapter 26**). Otherwise, there may be an entitlement to registration as a British overseas territories citizen under **s.15(4)** (see **Chapter 27**).

23.5.4.6 If:

- the child was born outside a British overseas territory; and
- has no automatic claim to British overseas territories citizenship by descent but the evidence shows a parent was a British overseas territories citizen by descent at the time of the birth; and
- the child is still a minor,

there may be an entitlement to registration as a

British overseas territories citizen under **s.17(2)** (see **Chapter 29**) or **s.17(5)** (see **Chapter 30**).

- 23.5.4.7 NB. A child born outside the qualifying territories on or after 21 May 2002 to a parent who was a British citizen by descent may be entitled to registration as a British citizen under **s.3(2)** (see **Chapter 10**) or **s.3(5)** (see **Chapter 11**).
- 23.5.4.8 If the child is a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject, or a British protected person, there may be an entitlement to registration as a British citizen under **s.4** (see **Chapter 12**).
- 23.5.4.9 If the child is a British overseas territories citizen by connection with Gibraltar, there may also be an entitlement to registration as a British citizen under **s.5** (see **Chapter 13**).
- 23.5.4.10 If the child is not entitled to registration as a British overseas territories citizen or a British citizen and is still a minor, we should consider whether it would be right to offer registration at discretion as a British overseas territories citizen under **s.17(1)** (see **Chapter 28**) or as British citizen under **s.3(1)** (see **Chapter 9**).

23.6 Confirmation of claims

- 23.6.1 In response to an enquiry about British overseas territories citizenship:
- 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 A; or
 - 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**).

23.6.2 Where we cannot accept that the person became a British overseas territories citizen, or conclude that he or she no longer holds that citizenship, we should:

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

23.6.3 If we notice that an applicant for British overseas territories citizenship is already a British overseas territories citizen under **s.15(1)** or **15(5)** or **15(5A)** of the British Nationality Act 1981, we should:

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

23.6.4 If we notice that an applicant for British overseas territories citizenship is also entitled to registration as a British citizen in the circumstances described in paragraphs 23.5.4.7 - 23.5.4.9 above, we should write to explain how that person may become a British citizen.