

PART II: BRITISH OVERSEAS TERRITORIES CITIZENSHIP

CHAPTER 24: AUTOMATIC ACQUISITION BY BIRTH OUTSIDE THE BRITISH OVERSEAS TERRITORIES ON OR AFTER 1 JANUARY 1983

SECTION 16 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.

24.1 Introduction

24.1.1 This Chapter deals only with the acquisition of British overseas territories citizenship at birth by people born outside the British overseas territories on or after 1 January 1983.

24.1.2 The automatic acquisition of British overseas territories citizenship by those born either in a British overseas territory or elsewhere before 1 January 1983 is dealt with in **Chapter 22**.

24.1.3 Automatic acquisition by those born (or deemed to have been born) or adopted in a British overseas territory on or after 1 January 1983 is dealt with in **Chapter 23**.

24.1.4 Acquisition by those born (or deemed to have been born) on or after 1 January 1983 either:

- in a British overseas territory, or
- in the United Kingdom, or
- on board a ship or aircraft registered in a British overseas territory, and
- who would otherwise be stateless

is dealt with in **Chapter 25**.

24.2 The Law

- 24.2.1 **Section 16(1)** of the British Nationality Act 1981 explains which people born outside the British overseas territories on or after 1 January 1983 acquired British overseas territories citizenship automatically at birth.
- 24.2.2 Under **s.16(1)(a)**, a person born outside the British overseas territories on or after 1 January 1983 is a British overseas territories citizen at birth if, at the time of the birth, either parent is a British overseas territories citizen "otherwise than by descent".
- 24.2.3 Under **s.16(1)(b)**, a person born outside the British overseas territories on or after 1 January 1983 is a British overseas territories citizen at birth if, at the time of the birth:
- either parent is a British overseas territories citizen;
and
 - that parent is serving outside the British overseas territories:
 - i. in Crown service under the government of a British overseas territory; or
 - ii. in service of any description designated under **s.16(3)** (see Annex A); and
 - iii. was recruited in a British overseas territory for that service.
- 24.2.4 **Section 16(2)** explains the service referred to in **s.16(1)(b)** (see 24.2.3 above).
- 24.2.5 **Section 16(3)** explains that the Home Secretary may make an order by statutory instrument designating any service which he thinks is closely associated with the activities outside the British overseas territories of the government of any British overseas territory.
- 24.2.6 **Section 16(4)** explains that an order made under **s.16(3)** can be annulled by a resolution to that effect passed by either House of Parliament.

24.2.7 An explanation of the terms listed below is given in Annex F to **Chapter 6**:

- "British overseas territory"
- "parent"
- "Crown service"
- "Crown service under the government of a British overseas territory"
- "designated service"
- "recruitment in a British overseas territory"

24.2.8 A person who is a British overseas territories citizen under **s.16(1)** of the 1981 Act is:

- a British overseas territories citizen by descent if a British overseas territories citizen by virtue of **s.16(1)(a)** only (see **Chapter 36**)
- a British overseas territories citizen otherwise than by descent in all other circumstances (see **Chapter 36**)

24.3 **Claims to British overseas territories citizenship**

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

- someone writes about his or her own status and/or that of a child; or
- an enquiry is made about the position of a child born outside the British overseas territories; or
- adult or minor applicants for British overseas territories citizenship appear already to be British overseas territories citizens

24.4 **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**).

It is also important to consider the effects of the British Overseas Territories Act 2002

24.4.1 To recognise a person's claim to British overseas territories citizenship we need to establish that the person:

- a. was born outside the British overseas territories on or after 1 January 1983; and
- b. had a parent who, at the time of the person's birth, was either:
 - a British overseas territories citizen otherwise than by descent; or
 - a British overseas territories citizen (whether by descent or otherwise) who was serving outside the British overseas territories in:
 - i. Crown service under the government of a British overseas territory; or
 - ii. designated service (see Annex A); and
 - iii. was recruited for that service in a British overseas territory.

24.5 Evidence required

24.5.1 A person born outside the British overseas territories 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 Dependent Territories citizen or a British overseas territories citizen; or
- a birth certificate showing parents' details; and

- evidence that at the time of the birth either parent:
 - i. was a British overseas territories citizen otherwise than by descent; or
 - ii. was a British overseas territories citizen who was serving outside the British overseas territories in Crown or designated service and was recruited for that service in a British overseas territory.

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

- a passport describing the holder as 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
- (if born on or after 1 January 1983) a birth certificate showing his or her parents' details and that he or she was born in a British overseas territory and evidence that, at the time of the birth, either parent was a British overseas territories citizen or settled in a British overseas territory; 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 issued in a British overseas territory describing the holder as 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

NB. Chapter 36 should be consulted in every case to confirm whether the parent in question is a British overseas

territories citizen by descent or otherwise than by descent.

24.5.3 Evidence of a parent's service and recruitment is a letter or certificate from:

- a government department in a British overseas territory; or
- a designated organisation,

confirming that the parent was:

- in its service outside the British overseas territories on the date of the child's birth; and
- recruited in a British overseas territory

24.5.4 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.

24.5.5 We should take into account any evidence already on file. If documents have been examined in the past we do not need 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.

24.5.6 In the absence of some or all of the documentary evidence set out in 24.5.2 above related to a parent's British overseas territories citizenship, secondary evidence may be acceptable.

24.5.7 Any doubts about the parent's service or the place of recruitment should be resolved with them and the department or organisation concerned.

24.6 Confirmation of claims

24.6.1 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 B;
- 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**).

24.6.2 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 (see flow-chart at Annex C)

24.6.3 If we notice that an applicant for British overseas territories citizenship is already a British overseas territories citizen under **s.16** 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 D), and
- refund in full any fee submitted with the application (see **Chapter 21**)