

PART II: BRITISH OVERSEAS TERRITORIES CITIZENSHIP

CHAPTER 27: REGISTRATION BY ENTITLEMENT OF PERSONS BORN IN A BRITISH OVERSEAS TERRITORY ON GROUNDS OF RESIDENCE

SECTION 15(4) BRITISH NATIONALITY ACT 1981

NB. In respect of 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.

27.1 The Law

27.1.1 Adults or minors are entitled to registration under **s.15(4)** of the BNA 1981 if they:

- were born in a British overseas territory on or after 1 January 1983; and
- were not British overseas territories citizens at birth because, at the time, neither parent was a British overseas territories citizen or settled in a British overseas territory; and
- are aged 10 years or more on the date of application; and
- have lived in the territory of their birth for the first 10 years of their life; and
- during that 10 year period, have not been out of that territory for more than 90 days in any one of those years; and
- (in the case of an application made on or after 4 December 2006) the Secretary of State (or the Governor acting on his behalf) is satisfied that the applicant is of good character (see Chapter 18 Annexes D and H and, in relation to applicants who are still minors, Chapter 9, Annex B).

27.1.2 There is discretion under **s.15(7)** to allow absences from the British overseas territory amounting to more than 90 days in any of the first 10 years of the person's life.

27.1.3 An explanation of the terms 'British overseas territory', 'parent' and 'settled' is in Annex F to **Chapter 6**.

27.1.4 Registration under **s.15(4)** gives British overseas territories citizenship otherwise than by descent. (See **Chapter 36**)

27.2 **Application forms**

27.2.1 See **Chapter 21**.

27.3 **Evidence to be supplied**

27.3.1 Applications should be supported by evidence as follows:

- the person's British overseas territories birth certificate showing parents' details;

AND

- residence in the relevant territory from birth to age 10:
 - i. from birth to age 5: medical cards, letters from doctors/clinics, letters from friends, relations, etc, passport/travel document if the person has travelled;
 - ii. from age 5 to 10: school letters will be acceptable;

AND

- absences of no more than 90 days in any of the first 10 years of the person's life:

- i. passport/travel document (own or included in parents). If none, we can assume there were no absences.

27.3.2 Applications supported by incomplete evidence of residence in the relevant territory up to the age of 10 may be granted without further enquiry if the gaps in the evidence do not relate to periods exceeding 90 days in any one of those years.

27.3.3 To guard against the possibility of fraud, nationality caseworkers should expect to see evidence of identity over and above that required to establish an entitlement to registration. It should be remembered, in particular, that a birth certificate is evidence not of identity, but of an event.

27.3.4 Nationality caseworkers should take into account any evidence already available. 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.

27.4 **Checking the application**

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**). Where an apparent claim or entitlement derives from a personal or ancestral connection with the British Indian Ocean Territory, it is necessary to consider the effects of the **British Overseas Territories Act 2002**.

27.4.1 Checking for automatic claims

27.4.1.1 The person will already be a British overseas territories citizen at birth under **s.15(1)** if:

- a parent was a British overseas territories citizen when the person was born; or
- a parent was settled in a British overseas territory when the person was born; and
- the person has not renounced or been deprived of British overseas territories citizenship

27.4.1.2 If it is absolutely clear from the papers available that the applicant is already a British overseas territories citizen, it is not necessary to investigate further.

27.4.1.3 If the person has an automatic claim, the caseworker should:

- write to say so; and
- explain that registration is not necessary (using the procedure in **Chapter 23**); and
- refund in full any fee submitted with the application (see **Chapter 21**)

27.4.2 Checking for an entitlement under section 15(3)

27.4.2.1 If:

- there is no automatic claim under **s.15(1)**; and
- it is clear from the papers that a parent became either a British overseas territories citizen or settled in a British overseas territory after the person's birth; and
- the person was a minor on the date of application,

he or she may have an entitlement to registration under **s.15(3)** (see **Chapter 26**).

27.4.2.2 The application should be considered under this provision if:

- there is insufficient evidence of residence for **s.15(4)** purposes; and/or
- it would be necessary to use the discretion in **s.15(7)**

27.4.3 Checking for an entitlement under paragraph 3 of Schedule 2

27.4.3.1 If there is no automatic claim under **s.15(1)** or an entitlement under **s.15(3)** or **15(4)**, there may be an entitlement under **paragraph 3** of **Schedule 2** on grounds of residence if:

- a. the person is and always has been stateless; and
- b. meets the age requirement on the date of application.
(See **Chapter 31**)

27.4.4 No entitlement

27.4.4.1 If it is decided that there is no entitlement under either **s.15(3)**, **15(4)** or **paragraph 3** of **Schedule 2** and the person was a minor on the date of application, the application should be considered under **s.17(1)**. (See **Chapter 28**)

27.4.5 Parent applying for citizenship

27.4.5.1 If a parent is applying for citizenship, and has included a minor child in his or her application, the child may have an entitlement under **s.15(3)**, **s.15(4)** or **paragraph 3** of **Schedule 2** even if the parent's application is refused.

27.4.5.2 In such cases, it should be explained to the parent why the child can be registered even though the parent's application is refused. A draft paragraph for inclusion in the parent's refusal letter is at Annex A.

27.4.5.3 When applying for citizenship, some parents may omit to seek the registration of children born in a British overseas territory on or after 1 January 1983 in the mistaken belief that the children are already British overseas territories citizens. If it is known that such children exist, the parents should be advised of the correct position and told how they can apply for their children's registration.

27.5 **Exercise of discretion to allow excess absences**

27.5.1 **Section 15(7)** gives discretion to allow absences of more than 90 days in any of the first 10 years of the person's life. Excess absences should normally be waived:

- if the number of days absent from the British overseas territory in any one of those years does not exceed 180 days, and the total number of days absent over the 10 year period does not exceed 990 days; or

- (if the number of days absent exceeds 180/990 respectively) the excess absence is the result of circumstances beyond the person's control (e.g. a serious illness)

27.5.2 Excess absences should not normally be waived simply because:

- the applicant's parents were unaware of the requirements; or
- the parents' absences, with the person, were entirely voluntary

27.6 **Consent to the application**

27.6.1 As the person has an entitlement to be registered as a British overseas territories citizen if the requirements in 27.1.1 above are met, the absence of parental consent, in cases where the person is a minor, is not a reason for refusal. Therefore, it is not necessary in such cases for the parent(s) or the person(s) having parental responsibility for the applicant to consent to the application.

27.7 **Oath and pledge**

27.7.1 An oath of allegiance may have to be taken if:

- the applicant applies as an adult; or
- the applicant applies as a minor but becomes an adult by the time the case is decided

27.7.2 If the application is made on or after 1 January 2004, such an applicant will also need to make a pledge in addition to the oath of allegiance.

27.7.3 See **Chapter 21** for the action necessary, with any appropriate adjustments being made for procedural and administrative differences where an

application is being considered in a British overseas territory.