

## PART II: BRITISH OVERSEAS TERRITORIES CITIZENSHIP

### CHAPTER 28: REGISTRATION OF MINORS AT DISCRETION

#### SECTION 17(1) 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.

#### 28.1 **The Law**

28.1.1 Persons may be registered under **s.17(1)** if:

- applications are made while they are minors; and
- (if aged 10 or over on the date of application, this being a date on or after 4 December 2006) the Secretary of State (or the Governor acting on his behalf) is satisfied that they are of good character (see Chapter 9, Annex B); and
- the Secretary of State (or the Governor) thinks fit to register them.

28.1.2 These are the only statutory requirements.

28.1.3 But in practice a number of other factors are normally taken into account in deciding whether or not to register a minor under this provision. This Chapter gives guidance about how discretion should normally be used under the law.

28.1.4 **IT IS IMPORTANT TO REMEMBER** that the guidance in this Chapter does not amount to hard and fast rules. It will enable the majority of cases to be dealt with but, because the law gives complete discretion, each case must be considered on its merits. It is possible to register a minor under **s.17(1)** in circumstances that would normally lead to the refusal of an application, or to

refuse when normally a child might be registered, if this is justified in the particular circumstances of any case. All the relevant factors must be taken into account, together with any representations made to us. Failure to take these factors/representations into account could provoke criticism that discretion has not been exercised reasonably.

28.1.5 Registration under **s.17(1)** gives British overseas territories citizenship by descent if:

- the father or the mother was a British overseas territories citizen at the time of the child's birth; or
- the father or mother was a citizen of the United Kingdom and Colonies at the time of the child's birth and became or would, but for his or her death, have become a British Dependent Territories citizen on 1 January 1983

28.1.6 In all other cases, registration gives British overseas territories citizenship otherwise than by descent. (See **Chapter 36**)

28.1.7 In this context:

- "father or mother" does not include an adoptive father or mother
- "father" includes the father of an illegitimate child if, and only if:
  - a. the child was born on or after 1 July 2006, and
  - b. the father satisfies the prescribed requirements as to proof of paternity in such cases (see Annex F to **Chapter 6**).

28.1.8 Children registered under s.17(1) will therefore be British overseas territories citizens otherwise than by descent if they were:

- adopted by British overseas territories citizens, or

- born before 1 July 2006 and are the illegitimate children of British overseas territories citizen men, or
  - born on or after 1 July 2006 and are illegitimate children of British overseas territories citizen men who cannot provide satisfactory evidence of paternity
- (See **Chapter 36**)

## 28.2 **How to use this Chapter**

- 28.2.1 Part 2 of this Chapter follows the way in which applications would normally and logically be considered.
- 28.2.2 It should not be assumed that because an application has been made the minor is in need of registration. The minor may already be a British overseas territories citizen without the parents realising it, in which case there is no need to register. So, before considering registration, nationality caseworkers should check whether the child is already a British overseas territories citizen (see 28.4 below).
- 28.2.3 It is not always possible to tell just by looking at an application form what section of the Act is applicable. Many different applications for minors are made on the same type of form, and the parents will not usually know under what section they are applying. So before considering whether to exercise discretion to register under **s.17(1)**, consideration should be given to whether the minor has an entitlement to registration under another section of the Act (see 28.5 below).
- 28.2.4 When it has been decided that the application is properly one under **s.17(1)**, the minor's circumstances should be considered. With allowance for any circumstances unique to a particular British overseas territory, the normal expectation is that the criteria which should be met are similar to those for registration as a British citizen under **s.3(1)**. These are set out in full in

**Chapter 9** but must be read with obvious adjustments (e.g. where the context requires, references to the United Kingdom should be read as references to a British overseas territory; British citizenship should be read as British overseas territories citizenship etc). Appropriate enquiries should be made in accordance with Annex B to **Chapter 9**.

28.2.5 To sum up, when an application is first examined, consider whether:

- a. the minor has an automatic claim to British overseas territories citizenship (28.4); if not
- b. the minor has an entitlement to registration (28.5); if not
- c. the minor falls into any of the categories in **Chapter 9.6 to 9.13**; if not
- d. the criteria in **Chapter 9.15** are met; if not
- e. there are any grounds for making an exception to the normal criteria (consulting the Governor of the relevant British overseas territory if an application is being considered by a Home Office caseworker).

### 28.3 **Application forms and who may apply**

28.3.1 Applications will normally be made on the forms described in **Chapter 21**.

28.3.2 Anyone who has assumed responsibility for a minor may apply for him or her to be registered under **s.17(1)**, but in practice it is expected that an application will be made by:

- one or both parents; or
- a guardian; or
- a local authority which, because of the existence of a care order, shares

parental responsibility for a child with the parents

28.3.3 In some cases it may be appropriate for an application to be made by:

- someone else who has the responsibility for the minor (e.g. another relation)
- the minor
- someone who shares parental responsibility for the minor with the parents (e.g. another relation or someone appointed to act as custodian before the commencement of the **Children Act 1989** or equivalent legislation outside England and Wales)

## **PART 2: HOW TO CONSIDER APPLICATIONS**

**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**.

### 28.4 **Checking for automatic claims**

28.4.1 There is always the possibility that an applicant minor is already a British overseas territories citizen under one of the following sections of the British Nationality Act 1981:

- **Section 15(1)** - born in a British overseas territory (see **Chapter 23**)

- **Section 15(2)** - found abandoned in a British overseas territory (see **Chapter 23**)
- **Section 15(5) and (5A)**- adopted in a British overseas territory or under the terms of the Hague Convention on Intercountry Adoption (see **Chapter 23**)
- **Section 16(1)** - born abroad to a parent who is a British overseas territories citizen otherwise than by descent, or in relevant service (see **Chapter 24**)
- **Section 23** - became a British overseas territories citizen on 1 January 1983 (see **Chapter 22**)
- **Schedule 2, paragraph 1** - born stateless in the United Kingdom of a British overseas territories citizen parent (see **Chapter 25**)

28.4.2 As the person making the application may not know if the minor is a British overseas territories citizen, this possibility should be checked first. If someone is already a British overseas territories citizen, it follows that this person should not be registered.

28.4.3 The checks do not need to be very detailed but are centred on the information already to hand. If it is not clear from the papers that the minor is a British overseas territories citizen, it should be assumed that he/she is not.

28.4.4 If the minor has an automatic claim to British overseas territories citizenship, the nationality caseworker should:

- write to explain that the application is not necessary (using the procedure in **Chapter 22, 23, 24 or 25** as appropriate); and
- refund in full any fee submitted with the application (see **Chapter 21**)

## 28.5 Checking for possible entitlement to registration

28.5.1 The 1981 Act contains a number of provisions which give minors in certain circumstances an entitlement to registration as British overseas territories citizens. These are:

- **Section 15(3)** - British overseas territory born minors - a parent being a British overseas territories citizen or settled in a British overseas territory (**Chapter 26**)
- **Section 15(4)** - British overseas territory born minors - residence in a British overseas territory (**Chapter 27**)
- **Section 17(2)** - born outside a British overseas territory to BOTCs (**Chapter 29**)
- **Section 17(5)** - born outside a British overseas territory to BOTCs (**Chapter 30**)
- **Schedule 2 paragraphs 3 and 4** - stateless minors (**Chapter 31**)

28.5.2 Once it has been established that a minor applicant is not already a British overseas territories citizen, consideration should be given to whether an entitlement to registration exists under any of the above provisions.

28.5.3 **IT IS IMPORTANT** to ensure that a minor is registered under the appropriate provision. As a matter of principle, a minor with an entitlement should be registered at entitlement, and not by use of the discretion under **s.17(1)**. It could also affect future generations, because in some cases registration under **s.17(1)** would give British overseas territories citizenship by descent, whereas registration under an entitlement provision would give British overseas territories citizenship otherwise than by descent (see **Chapter 36**).

28.5.4 **PARTICULAR CARE** should be taken to note cases where a minor born

outside a British overseas territory does not have an entitlement under **s.17(5)**, but would have such an entitlement if the family were to live in a British overseas territory for 3 years. If such a minor were registered under **s.17(1)**, this would give British overseas territories citizenship by descent. Registration under **s.17(5)** gives British overseas territories citizenship otherwise than by descent and it might, therefore, be more advantageous for the family to wait until the minor met the requirements of **s.17(5)**. If the family is in a British overseas territory, or is proposing to return there to live, it should be advised that it might be preferable not to proceed with an application under **s.17(1)**, but to wait until the requirements of **s.17(5)** are met.

- 28.5.5 If the minor does not have an entitlement to registration, and it would not be appropriate to suggest the possibility of a later application under **s.17(5)**, the application should be considered under **s.17(1)**.

## 28.6 **Evidence to be supplied**

- 28.6.1 Applications should be supported by evidence appropriate to the criteria which the minor is expected to meet.
- 28.6.2 To guard against the possibility of fraud, nationality caseworkers should expect to see evidence of identity over and above that required to determine the application. It should be remembered, in particular, that a birth certificate is evidence not of identity, but of an event.

## 28.7 **Oath and pledge**

- 28.7.1 Where the application is made before 1 January 2004, the applicant may have to take an oath of allegiance if he or she becomes an adult by the time the case is decided. If the application is made on or after 1 January 2004, and the applicant has become an adult by the time the application is decided, he or she will have to make a citizenship oath and pledge. (See **Chapter 21** for guidance on the procedures to follow in either case).



## PART 3: OTHER MATTERS

### 28.8 Parental consent

- 28.8.1 The consent of both parents to a minor's registration is normally expected, irrespective of where the child or the parents are living, or whether the child is natural or adopted. While it is not a legal requirement for applications under **s.17(1)**, it is reasonable that the views of both parents should be considered as it is consistent with the assumptions which now underlie much of United Kingdom family law. Where there is a conflict between the parents, the courts will put the welfare of the child first. This may be relevant in cases where a parent objects to registration.
- 28.8.2 It is usually a straightforward matter to secure the consent of both parents where the child is legitimate or legally adopted, and is living with its parents. It is where the marriage has temporarily or permanently broken down, or where the child is illegitimate, that difficulty is most likely to arise.
- 28.8.3 Where the parents are **legally separated or divorced**, it will have been decided with whom the child should live. If the parents could not agree on this, a court will usually have granted a residence order (under **s.8** of the **Children Act 1989**, if in England and Wales). This will usually be to one parent, but it could be to both, in which case the order will specify the periods the child will spend with each parent. Both parents retain parental responsibility for the child, and so both should be consulted regarding any major changes in the child's life. Therefore, reasonable steps should be taken to obtain and consider the views of both parents.
- 28.8.4 Where a court has awarded a residence order solely to one parent (or other individual), the consent of the other parent (or parents) retaining or having continuing parental responsibility will need to be sought.
- 28.8.5 Where separation has not been formalised by a court, the consent of both

parents or any other person having parental responsibility should be sought.

28.8.6 In the case of an **illegitimate** child (in England and Wales), the mother (but not the father) will automatically acquire parental responsibility. The father may acquire it:

- by applying to the court for a parental responsibility order under **s.4(1)(a)** of the **Children Act 1989**; or
- by making an agreement with the mother, in a prescribed form, under **s.4(1)(b)** of the **Children Act 1989**; or
- by having a residence order made in his favour, following which the court must make a parental responsibility order as well; or
- by being appointed guardian

28.8.7 Where it becomes known that the father has parental responsibility in one of these ways, or under equivalent provisions of foreign law, the father's consent should be sought. There is no need to ask the mother to confirm that a parental responsibility order does not exist. If necessary (i.e. if the application is being considered in the Home Office), advice on the legal position, in a particular British overseas territory, of the father of an illegitimate child should be sought from the authorities of that territory or, where the place is no longer a British overseas territory, from the British Consulate or High Commission.

28.8.8 Guidance on the steps which should normally be taken to obtain the other parent's views, and the circumstances in which we can dispense with the other parent's views, are set out in **Chapter 9.16**.

## 28.9 **Wards of court**

28.9.1 If an application is received on behalf of a child who is a ward of court, or

who is subject to a prohibited steps order relating to a question of nationality, the consent of the court must be obtained.

28.9.2 It is for the person making the application to seek the consent of a court in these circumstances. But an approach to the court should only be encouraged if it is reasonably clear that the application would succeed if the court were to agree to it.

#### 28.10 **Adoption in a British overseas territory**

28.10.1 By virtue of **s.15(5)** and **(5A)** of the British Nationality Act 1981, a child who is not a British overseas territories citizen, but is adopted by order of a court in a British overseas territory or (from 30 December 2005) under a Convention adoption, becomes a British overseas territories citizen as from the date of adoption provided the adopter or, in the case of a joint adoption, one of the adopters is a British overseas territories citizen. (In the case of a Convention adoption, the following conditions must also be satisfied:

1. the adopter or, in the case of a joint adoption, both of the adopters are habitually resident in a designated territory (no territories have yet been designated) and
2. the Convention adoption is effected under the law of a country or territory outside the designated territory.)

28.10.2 In addition, as a result of amendments made to **s.1(5)** of the 1981 Act by the **British Overseas Territories Act 2002**, a child who is not a British citizen, but is adopted, on or after 21 May 2002, by order of a court either in the United Kingdom or a qualifying territory (i.e. a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia), becomes a British citizen as from the date of adoption provided the adopter or, in the case of a joint adoption, one of the adopters is a British citizen. In this regard, it is important to note that those who were British overseas territories citizens by connection with a qualifying territory became British citizens automatically on 21 May 2002.

28.10.3 While it is not the function of nationality caseworkers to advise on adoption, the effect of an adoption in the United Kingdom or a British overseas territory may be mentioned if a correspondent enquires about it, or asks how a child may become a British citizen or British overseas territories citizen. Care should be taken to avoid giving any impression that the courts would look favourably on an application for an adoption order if it were made. The courts may be inclined to refuse an adoption order if it is satisfied that the aim of the application is to circumvent the immigration or nationality laws, or that the adoption would not be in the child's best interests.

28.10.4 Similarly, in giving advice to would-be adopters about the possibility of registration under **s.17(1)**, the impression should not be given that an application for registration would be successful if an application for an adoption order failed.

28.10.5 If an application for registration is made under **s.17(1)**, and it is known that an adoption order has been refused, the reasons for the refusal should be examined to see if they are relevant to the application. If a court takes a view of the minor's eligibility for citizenship, that view should be considered against the relevant criteria for registration under **s.17(1)**.

## 28.11 **Guardianship orders**

### 28.11.1 **Meaning of Guardianship and what it involves**

28.11.1.1 In the UK, a guardian is a person who is appointed to take over the responsibility for a child's upbringing where nobody has parental responsibility for the child.

28.11.1.2 A guardian may be appointed by:

- any parent with parental responsibility
- any guardian

- a court

28.11.1.3 A guardian may act:

- jointly with a surviving parent
- jointly with another guardian or guardians
- alone

28.11.1.4 If it is for the welfare of the minor, the High Court may remove a guardian or guardians, whether appointed by a parent or by a court, and may appoint a replacement.

28.11.1.5 Where two or more persons act as joint guardians, and cannot agree on any question affecting the welfare of the minor (e.g. registration as a British overseas territories citizen), any of them may apply to a court for an order resolving the matter.

28.11.1.6 Information on what constitutes guardianship in a British overseas territory should be available in/from the territory concerned or, where the place is no longer a British overseas territory, from the British Consulate or High Commission.

## 28.11.2 Applications by guardians for the registration of minors

28.11.2.1 An application may be made by a guardian for the registration of a minor as a British overseas territories citizen.

28.11.2.2 A guardian should be expected to supply evidence of his or her right to act as such by, for example, producing a deed, will or Court order. There is no longer any need for the appointment to be in the form of a will or deed. It suffices if it is in writing,

dated and signed by the person making the appointment.

- 28.11.2.3 Unless the guardian is acting alone, the consent of the other guardian(s) and/or the surviving parent to the application would normally also be required.
- 28.11.2.4 If a guardianship order has been made abroad, consideration should be given to what checks should be made (if necessary with the assistance of the FCO) on its acceptability.
- 28.11.2.5 Nationality caseworkers should carefully examine applications made by a guardian to ensure that the guardianship is not simply a device to avoid refusal because, for example, the parents are not British overseas territories citizens, or are resident outside the British overseas territories, or as a device to get round the immigration control of a particular British overseas territory. If there is evidence that this is the case, the application should normally be refused.
- 28.11.2.6 It is important to remember that in guardianship cases the usual criteria are normally expected to be met, including the criterion that at least one parent should be a British overseas territories citizen. However, if:
- a. the child's parents have died; and
  - b. at least one of them was a British overseas territories citizen; and
  - c. the guardian or one of them is a British overseas territories citizen; and
  - d. the child meets the residence and other normal expectations,

discretion should normally be exercised in the child's favour and he or she should be registered. This is to fulfil an undertaking by Ministers to Parliament that we would do all we could to relieve hardship in such cases.

## 28.12 **Custodianship and parental responsibility orders**

28.12.1 A Custodianship Order gave custody of a child to the adults caring for the child. A custodian had most of the rights and duties of a parent and was able to take nearly all the major decisions about the child's upbringing and day-to-day care.

28.12.2 Parental responsibility orders replaced Custodianship Orders and were introduced in England and Wales by the **Children Act 1989**. Since the commencement of that Act, it is no longer possible for Custodianship Orders to be made. Those in force before the commencement of the **Children Act 1989** are now deemed to be parental responsibility orders, parental responsibility being shared with the parents. Someone holding a parental responsibility order may make an application, but the consent of all those with parental responsibility should be sought.

28.12.3 Unlike an adoption order, a parental responsibility order:

- does not cut a child's legal ties with his natural parents
- does not involve a change of name
- does not confer British overseas territories citizenship

28.12.4 The courts may bring a parental responsibility order to an end on an application by a person having parental responsibility, or by the child (with the leave of the court). Otherwise an order has effect until the child is 18.

28.12.5 Applications for the registration of minors by those sharing parental responsibility with the parents

28.12.5.1 An application may be made for the registration of a child as a British overseas territories citizen by anyone sharing parental responsibility for a child with the parents. Consent of all those with parental responsibility should be sought.

28.12.5.2 The following people may have parental responsibility for a child in England and Wales:

- the mother
- the father, if the child was born legitimate
- the father, if the child was illegitimate, and
  - i. he has a residence order, or
  - ii. he has a parental responsibility order, or
  - iii. he has a formal "parental responsibility agreement" with the mother, or
  - iv. he has since married the mother
- a guardian of the child
- someone who holds a custody or residence order
- a local authority which has a care order
- someone who holds an emergency protection order



- someone who has adopted the child

28.12.5.3 Those sharing parental responsibility with the natural parents do not take the parents' place for the purposes of registration of the minor as a British overseas territories citizen under **s.17(1)**.

28.12.5.4 Therefore, all the usual criteria are normally expected to be met including, where appropriate, those relating to the citizenship and immigration status of the parents and their consent to the registration.

## 28.13 **Children in care**

28.13.1 An application under **s.17(1)** may be made on behalf of a child who is being looked after by a local authority. If the local authority is providing the child with accommodation, but the child is not in the authority's care, the local authority's consent is not required. If the child is in the local authority's care, the local authority shares parental responsibility for the child with the parents, and its consent is therefore required. The following paragraphs apply to cases where the local authority shares parental responsibility with the child's parents.

### 28.13.2 **Application made by the parents**

28.13.2.1 If the normal criteria for registration appear to be met, the local authority concerned should be asked for a report on the background to the case and for its views on the application.

28.13.2.2 If the authority supports the application, then the child may normally be registered.

28.13.2.3 If the authority does not recommend registration, then the child should not be registered while the care order remains in force.

28.13.3 Applications made by the local authority

- 28.13.3.1 The local authority should be asked for a report on the background to the case, including details of the parents.
- 28.13.3.2 If the normal criteria for registration appear to be met, and both parents consent, the child may normally be registered.
- 28.13.3.3 If the normal criteria are not met, but the parents nevertheless consent, consideration should be given, in the light of the local authority's report, to whether there are grounds for making an exception to normal practice.
- 28.13.3.4 If one or both parents object, the child should be registered only if the local authority is satisfied that it is necessary to safeguard or promote the child's welfare.

28.14 Applications made by persons other than parents

28.14.1 The normal expectation is that applications will be made by one or both parents, or by someone with parental responsibility for the child, and this is implied in the Regulations governing applications under **s.17(1)**. Applications made by others on behalf of the minor should normally be refused unless there are special circumstances, which could include:

- the child's parents are dead, and the minor is living permanently with the person making the application
- the child's parents have gone abroad long-term, and the minor has been left in the permanent care of the person making the application

28.14.2 Nationality caseworkers should normally expect to see evidence of the applicant's right to exercise parental responsibility (e.g. evidence of appointment as guardian by the parents or by a court, or a copy of the

residence order in the applicant's favour).

28.14.3 If there is evidence that the application was made by that person in order to avoid refusal because, for example, the parents or, where appropriate, the person or persons who we would normally expect to make the application, were not British overseas territories citizens, then the application should normally be refused.

28.14.4 Application made by minors themselves

28.14.4.1 There is nothing, in law, to prevent minors making their own applications. But, in practice, such applications should normally be refused if the consent of the parents or the person with legal responsibility for the child is not forthcoming. However, if a minor is 17 or over, and has good reason for making the application himself or herself, it can be considered in the normal way. This may be appropriate, for example, where minors have no contact with their natural parents and have been in the care of the local authority, but the care orders have now been discharged.

28.14.5 The minor's own views

28.14.5.1 If it becomes apparent during the course of consideration that the minor does not wish to become a British overseas territories citizen, consideration should be given to whether it would be right to refuse the application. It is a matter of judgement whether a minor is of sufficient intelligence and understanding to make an informed decision on this. The older the minor is, the more appropriate a refusal is likely to be.