

## PART II: BRITISH OVERSEAS TERRITORIES CITIZENSHIP

### CHAPTER 29: REGISTRATION BY ENTITLEMENT OF MINORS BORN OUTSIDE THE BRITISH OVERSEAS TERRITORIES TO BRITISH OVERSEAS TERRITORIES CITIZENS BY DESCENT

#### SECTION 17(2) BRITISH NATIONALITY ACT 1981

NB. In relation to any time before 26 February 2002, references in this Chapter to British overseas territories citizens(hip) and the British overseas territories should be read as references to British Dependent Territories citizens(hip) and the British dependent territories.

#### 29.1 The Law

29.1.1 Minors are entitled to registration as British overseas territories citizens under **s.17(2)** of the British Nationality Act 1981 if:

- born outside the British overseas territories on or after 1 January 1983; and
- either their mother or father ("the parent in question") was a British overseas territories citizen by descent at the time of the minor's birth; and
- the mother or father of the parent in question became or, but for their death, would have become a British overseas territories citizen otherwise than by descent on 1 January 1983; and
- the application was made within 12 months of the minor's birth; and
- the parent in question:
  - i. had, at any time before the minor's birth, lived in a British overseas territory for a continuous period of 3 years; and

ii. was in that territory at the beginning of that 3 year period;  
and

iii. was not absent from that territory for more than 270 days in that 3 year period.

**NB.** 1) For the meaning of “parent”, “father” and “mother”, see **Chapter 6** Annex F.

2) The residence requirements for the parent in question do not apply in the case of a child born stateless.

29.1.2 The permitted absence of 270 days can be taken at any time during the 3 year period before the child's birth, including at the end. This means that the parent in question may leave the relevant territory up to 270 days before the end of the 3 year period, and still meet the requirement, if he or she has no other absences during that period.

**EXAMPLE:** If the parent in question first arrived in a British overseas territory on 31 August 1992, remained until 3 December 1994 (i.e. 2 years 95 days) without any absences from that territory, and then left and did not return, any child born outside the British overseas territories after 30 August 1995 (who was not born stateless) would have an entitlement to registration under **s.17(2)** because the permitted absence in the 3 year period from 31 August 1992 to 30 August 1995 had not exceeded 270 days.

29.1.3 There is no discretion to accept a period of absence longer than 270 days.

29.1.4 There is discretion to allow an application to be made later than the normal time limit of 12 months. This is explained in 29.5 below.

29.1.5 Registration under **s.17(2)** gives British overseas territories citizenship by

descent. (See **Chapter 36**)

## 29.2 **Application forms**

29.2.1 See **Chapter 21**.

## 29.3 **Evidence to be supplied**

29.3.1 Applications should be supported by evidence as follows:

- the minor's birth certificate showing parents' details; and
- the relevant birth, marriage, death, adoption, registration, naturalisation certificates to establish that:
  - i. the parent in question was a British overseas territories citizen by descent (see **Chapter 36**) at the time of the minor's birth; and
  - ii. a parent of the parent in question was a British overseas territories citizen otherwise than by descent (see **Chapter 36**) at the time of the latter's birth, or became, or would but for their death have become, a British Dependent Territories citizen on 1 January 1983; and either
- if the parent in question is the father and the minor is born **before** 1 July 2006, evidence that he is married to the child's mother (i.e. his marriage certificate); or
- if the parent in question is the father and the minor is born **on or after** 1 July 2006, evidence that he comes within the definition of "parent" in Annex F to **Chapter 6**; and
- if the minor was not born stateless, passports and/or other documents

to establish:

- i. the parent in question's 3 years residence in a British overseas territory prior to the minor's birth; and
  - ii. that the parent in question was not absent from that territory for more than 270 days in that 3 year period; or
- if the child was born stateless:
    - i. a letter from the authorities of the country of the child's birth confirming that the minor did not acquire that country's citizenship or nationality at birth; and, if the other parent is neither a British overseas territories citizen nor a national of the country of the child's birth,
    - ii. a letter from the authorities of the country of which the other parent is a citizen confirming that the minor did not acquire that country's citizenship or nationality at birth.

**NB.** It is, of course, for the Home Office or the British overseas territory to determine whether or not the child has any claim to any form of British nationality.

29.3.2 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.

29.3.3 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 territory

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.

## 29.4 **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 connection with the British Indian Ocean Territory, it is necessary to consider the effects of the **British Overseas Territories Act 2002**.

As a result of amendments made to the British Nationality Act 1981 by the **British Overseas Territories Act 2002**, a minor who is born on or after 21 May 2002 may also have a separate claim or entitlement to registration as a British citizen (see 29.4.1.3 and 29.4.4 below).

### 29.4.1 **Checking for automatic claims**

29.4.1.1 The minor will already be a British overseas territories citizen under **s.16(1)** of the British Nationality Act 1981 if, at the time of the minor's birth:

- the father or mother was a British overseas territories citizen otherwise than by descent under **s.25(2)** of the 1981 Act (see **Chapter 36**); or

- the father or mother was a British overseas territories citizen by descent in service to which **s.16(1)(b)** of the 1981 Act applied (see **Chapters 24** and **36**)

29.4.1.2 The minor will already be a British overseas territories citizen under **paragraph 1** of **Schedule 2** of the British Nationality Act 1981 if:

- he or she was born in the United Kingdom; and
- he or she would otherwise have been born stateless; and
- either the father or mother was a British overseas territories citizen at the time of his or her birth (see **Chapter 25**)

29.4.1.3 The minor will already be a British citizen if he or she was born on or after 21 May 2002:

- in the United Kingdom and, at the time of the birth, the father or mother was a British citizen or settled in the United Kingdom (see **Chapter 3**); or
- outside the United Kingdom and the qualifying territories (see Annex F to **Chapter 6**) and, at the time of the birth, the father or mother was a British citizen otherwise than by descent or a British citizen by descent in service to which **s.2(1)(b)** of the 1981 Act applies (see **Chapters 4** and **20**)

29.4.1.4 The references to 'father' in 29.4.1.1 - 29.4.1.3 do not include the father of an illegitimate child born **before** 1 July 2006 (but such a child may be legitimated by the subsequent marriage of the parents). For children born **on or after** 1 July 2006, all

references to father may include the father of an illegitimate child if he satisfies the definition of “father” in Annex F to **Chapter 6**.

29.4.1.5 With regard to 29.4.1.3 above, it should be noted that British overseas territories citizens connected with the qualifying territories became British citizens automatically on 21 May 2002.

29.4.1.6 Unless it is absolutely clear from the papers already available that the minor is already a British overseas territories citizen, this possibility need not be investigated. Equally, it is not necessary to ask for proof that the minor did not acquire British overseas territories citizenship automatically before considering the application.

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

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

## 29.4.2 Checking for entitlement under section 17(5)

29.4.2.1 If the minor does not have an automatic claim, there may now, or in the future, be an entitlement to registration under **s.17(5)** of the British Nationality Act 1981 which gives British overseas territories citizenship otherwise than by descent. (See **Chapter 30**)

- 29.4.2.2 Where the family is resident outside the British overseas territories, the parents should have been told about the provisions of **s.17(5)** when they enquired about the registration of their child. If the parents intend to go to a British overseas territory with the child to live for a period of at least 3 years, they should have been advised that they may prefer not to apply under **s.17(2)** but wait until they can apply under **s.17(5)**.
- 29.4.2.3 If it is not apparent that the family has been advised about **s.17(5)**, it should be consulted about it. No further action should be taken on the application until a reply is received.
- 29.4.2.4 Where the family is in a British overseas territory, the application should be considered depending on the family's circumstances. If it is clear from the papers that the minor and parents (or relevant parent) have been living there for at least three years immediately before the date of application, the application should be considered under **s.17(5)**. If all the requirements are met, the application should be granted under that provision.
- 29.4.2.5 If the minor and parents (or relevant parent) have not lived there for three years, but have completed three years residence at the date of consideration, and the other requirements of **s.17(5)** are met, the parents should be advised of the advantages of **s.17(5)**, and offered the opportunity to re-declare the application if the criteria described in **Chapter 18** Annex B, paragraph 3.3 are met. If these criteria are not met, the application should be refused and advice given about a future **s.17(5)** application.
- 29.4.2.6 If, at the date of consideration, the family has not completed three years residence, the parents should be advised of the

advantages of **s.17(5)** and asked to confirm whether they wish either to proceed under **s.17(2)** or withdraw the application in favour of a future application under **s.17(5)**.

29.4.2.7 It should be made clear that if any application is formally withdrawn in favour of a possible future application, all of the fee submitted with the **s.17(2)** application will be retained (except where the application is being considered in a British overseas territory and different fee arrangements apply).

#### 29.4.3 Checking for entitlement under paragraph 4 Schedule 2

29.4.3.1 If the minor, but not the parent(s), has lived in a British overseas territory for the 3 years immediately before the application, the minor may be entitled to registration under **paragraph 4 of Schedule 2** of the British Nationality Act 1981, which gives British overseas territories citizenship otherwise than by descent. (See **Chapter 31**)

#### 29.4.4 Checking for entitlement to registration as a British citizen

29.4.4.1 If the minor was born outside the qualifying territories (see Annex F to **Chapter 6**) on or after 21 May 2002, there may be a separate entitlement, now or in the future, to registration as a British citizen under **ss.3(2)** or **3(5)** of the 1981 Act (see **Chapters 10** and **11**) and a letter should be sent explaining this.

#### 29.4.5 No immediate entitlement

29.4.5.1 If the minor does not have an immediate entitlement under **s.17(2)** (taking into account 29.5 below if necessary), **17(5)** or **paragraph 4 of Schedule 2**, or does not wish to wait for a possible future entitlement under **s.17(5)** or **paragraph 4** of

**Schedule 2**, the application should be considered under the discretionary provision of **s.17(1)**. (See **Chapter 28**)

29.5 **Exercise of discretion to allow a 'late' application to be made**

29.5.1 **Section 17(4)** gives discretion to allow an application to be made within 6 years of the minor's birth instead of the normal 12 months, in the special circumstances of any particular case. Each case must be considered on its merits and the parents should, if necessary, be asked to explain what the special circumstances are.

29.5.2 Discretion should not normally be exercised:

- automatically to extend the normal time limit; or
- if the only reason for the delay is parental ignorance of a time limit

29.5.3 Provided the other requirements are met, applications made after 12 months, but within 6 years of the minor's birth, may normally be granted if:

- the parents have received incorrect advice (e.g. to the effect that the child is already a British overseas territories citizen, or that there is no time limit), either from an official source, or from a solicitor or other recognised advisory agency; or
- there were domestic difficulties which distracted the parents; or
- the family had intended to go to a British overseas territory and apply in due course for the child's registration under **s.17(5)**, but were prevented from doing so because of:
  - i. the death of one of the parents; or
  - ii. other unforeseen circumstances, (e.g. an employer's

demands, or a significant change in domestic circumstances such as a divorce); or

- enquiries were made within the normal 12 month period about the possibility or need for registration, and this is followed up by an application no later than 3 months after the end of that period; or
- in any other case, the application is made up to a month late; or
- the minor has a brother or sister for whom a successful "in time" application has been made either under **s.17(2)** or **21** of the 1981 Act, or was a citizen of the United Kingdom and Colonies under **s.5(1)(b)** of the **1948 Act** which gave British overseas territories citizenship on 1 January 1983; or
- the minor would suffer significant and special hardship by not being a British overseas territories citizen

29.5.4 Hardship should imply some serious disadvantage, to the family or to the child, which goes beyond the normal convenience and benefits of British overseas territories citizenship, such as travelling on a British passport. This might, for example, include cases where:

- the family's ability to remain where it is depends on the child acquiring British overseas territories citizenship
- the child is stateless, and is thereby at a disadvantage under local law

29.5.5 If hardship is claimed, nationality caseworkers should expect to be told:

- what the child's position would be if he or she is not registered; and
- what hardship would ensue

29.5.6 Nationality caseworkers must also consider, in each case that does not come within the terms of 29.5.3-29.5.5 above, whether there are special circumstances which are nevertheless sufficiently compelling to justify the use of the Home Secretary's or Governor's discretion to allow a late application.

29.6 **Consent to the application**

29.6.1 As the minor has an entitlement to be registered as a British overseas territories citizen if the requirements in 29.1.1 above are met (if necessary, with the use of the discretion in **s.17(4)**), the absence of parental consent is not a reason for refusal. Therefore, it is not necessary for the parent(s), or the person(s) having responsibility for the person, to consent to the application.