

## **PART I: BRITISH CITIZENSHIP**

### **CHAPTER 3: AUTOMATIC ACQUISITION BY BIRTH, ADOPTION OR PARENTAL ORDER:**

**(A) IN THE UNITED KINGDOM OR FALKLAND ISLANDS ON OR AFTER 1 JANUARY 1983 AND BEFORE 21 MAY 2002; OR**

**(B) IN THE UNITED KINGDOM AND THE QUALIFYING TERRITORIES ON OR AFTER 21 MAY 2002  
OR BY VIRTUE OF A CONVENTION ADOPTION**

SECTION 1 BRITISH NATIONALITY ACT 1981

SECTIONS 1(2)-1(5) BRITISH NATIONALITY (FALKLAND ISLANDS)  
ACT 1983

#### **3.1 Introduction**

3.1.1 This Chapter deals only with the acquisition of British citizenship by people:

- born or adopted in the United Kingdom or the Falkland Islands between 1 January 1983 and 20 May 2002 (inclusive); and
- born or adopted in the United Kingdom or the qualifying territories (see Annex F to **Chapter 6**) on or after 21 May 2002; and
- adopted under a Convention adoption (see Annex F to **Chapter 6**); and
- who are the subject of a parental order made in a UK court after 6 April 2010, following a surrogacy arrangement.

3.1.2 The status of those born before 1 January 1983 is dealt with in **Chapter 2**.

3.1.3 The status of those born either outside the United Kingdom and the Falkland Islands between 1 January 1983 and 20 May 2002 or born outside the United Kingdom and the qualifying territories on or after 21 May 2002 is dealt with in **Chapter 4**.

3.1.4 The status of those born either in the United Kingdom or in a British overseas territory on or after 1 January 1983 or who were born on board a British ship or aircraft, and who would otherwise be stateless, is dealt with in **Chapter 5**.

## 3.2 **The Law**

### **Acquisition of British citizenship by birth**

3.2.1 **Sections 1(1) and 1(2)** of the British Nationality Act 1981 explain which people born, or deemed to have been born, in the United Kingdom on or after 1 January 1983, or in the United Kingdom or a qualifying territory on or after 21 May 2002, acquired British citizenship automatically at birth.

3.2.2 **Sections 1(2) and 1(3)** of the **British Nationality (Falkland Islands) Act 1983** explain which people born, or deemed to have been born, in the Falkland Islands on or after 1 January 1983 and before 21 May 2002 acquired British citizenship automatically at birth.

### **1 January 1983 - 20 May 2002**

#### **Section 1(1) British Nationality Act 1981**

3.2.3 Under **s.1(1)**, a person born in the United Kingdom on or after 1 January 1983 is a British citizen at birth if, at the time of the birth:

- either parent is a British citizen; or
- either parent is settled in the United Kingdom

Section 1(2) British Nationality Act 1981

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

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

unless either can be disproved.

Section 1(2) British Nationality (Falkland Islands) Act 1983

3.2.5 Under **s.1(2)**, a person born in the Falkland Islands on or after 1 January 1983 and before 21 May 2002 is a British citizen if, at the time of the birth:

- either parent was a British citizen; or
- either parent was settled in the Falkland Islands

Section 1(3) British Nationality (Falkland Islands) Act 1983

3.2.6 Under **s.1(3)**, a new-born infant found abandoned in the Falkland Islands on or after 1 January 1983 and before 21 May 2002 can be regarded, for the purposes of **s.1(2)**, as having been:

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

unless either can be disproved.

NB. **Sections 1(2) and 1(3) of the 1983 Act** were repealed by the **British Overseas Territories Act 2002** on 21 May 2002.

#### **21 May 2002 – 12 January 2010**

3.2.7 Under **s.1(1)** of the 1981 Act, as amended by the **British Overseas Territories Act 2002**, a person born in a qualifying territory (see Annex F to **Chapter 6**) on or after 21 May 2002 is a British citizen at birth if, at the time of the birth:

- either parent is a British citizen; or
- either parent is settled in the United Kingdom; or
- either parent is settled in that qualifying territory

3.2.8 Under **s.1(2)** of the 1981 Act, as amended by the **British Overseas Territories Act 2002**, a new-born infant found abandoned in a qualifying territory (see Annex F to **Chapter 6**) on or after 21 May 2002 can be regarded, for the purposes of **s.1(1)**, as having been:

- born in that territory on or after 21 May 2002; and
- born to a parent who, at the time of the birth, was either a British citizen or settled in the United Kingdom or settled in that territory

unless either can be disproved.

### **13 January 2010 - present**

3.2.9 Under **s.1(1)** of the 1981 Act, as further amended by the **Borders, Citizenship and Immigration Act 2009**, a person born in the United Kingdom or a qualifying territory (see Annex F to **Chapter 6**) on or after 13 January 2010 is a British citizen at birth if, at the time of the birth:

- either parent is a British citizen; or
- either parent is settled in the United Kingdom; or
- either parent is settled in that qualifying territory; or
- either parent is serving in the Armed Forces

3.2.10 The **2009 Act** did not amend **s.1(2)** of the 1981 Act.

3.2.11 An explanation of the terms 'United Kingdom', 'qualifying territory', 'parent', 'settled', 'Armed Forces' and 'Convention adoption' is in Annex F to **Chapter 6**.

### **Acquisition of British citizenship by adoption or parental order**

3.2.12 **Section 1(5)** of the British Nationality Act 1981, as amended by the **Adoption (Intercountry Aspects) Act 1999**, the **British Overseas Territories Act 2002** and the **Adoption and Children Act 2002**, explains which children adopted on or after 1 January 1983 acquired British citizenship automatically because of their adoption.

3.2.13 Under **s.1(5)**, a child who is not already a British citizen becomes a British citizen from the date of an adoption order if EITHER:

- the adoption is authorised by order of a court in the United Kingdom on or after 1 January 1983 or
- the adoption is authorised by order of a court in a qualifying territory on or after 21 May 2002; and
- the adopter or, in the case of a joint adoption, one of the adopters is a British citizen on the date of the adoption order

OR

- it is a Convention adoption under the **1993 Hague Convention on Intercountry Adoptions** (see Annex F to **Chapter 6**); and
- the adoption is effected on or after 1 June 2003; and
- the adopter or, in the case of a joint adoption, one of the adopters is a British citizen on the date of the Convention adoption; and
- the adopter or, in the case of a joint adoption, both of the adopters is habitually resident in the United Kingdom or in a territory designated for this purpose under **s.50(14)** of the 1981 Act (no territories have been designated at this time) on the date of the

## Convention adoption

- 3.2.14 From 6 April 2010 a child who is the subject of a parental order made in a UK court, following a surrogacy arrangement, becomes a British citizen under **s. 1(5)** from the date of the order, if either of the persons making the order is a British citizen (see **SURROGACY** in Volume 2).
- 3.2.15. Under **s.1(6)**, British citizenship acquired by virtue of **s.1(5)** is not lost if the adoption or parental order 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.1(6)** has no effect and the child will thereupon cease to be a British citizen.

## Adoption in the Falkland Islands

- 3.2.16 **Section 1(4)** of the **British Nationality (Falkland Islands) Act 1983** explains which children adopted in the Falkland Islands acquired British citizenship automatically because of their adoption.
- 3.2.17 Under **s.1(4)**, a child who is not already a British citizen becomes a British citizen from the date of an adoption order if:
- the adoption is authorised, on or after 1 January 1983 and before 21 May 2002, by order of a court in the Falkland Islands; and
  - the adopter or, in the case of a joint adoption, one of the adopters was a British citizen on the date of the adoption order
- 3.2.18 Under **s.1(5)**, British citizenship acquired by virtue of **s.1(4)** is not lost if the adoption order 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.1(5)** has no effect and the child will thereupon cease to be a British citizen.

3.2.19 **Sections 1(4) and 1(5)** were repealed by the **British Overseas Territories Act 2002** on 21 May 2002. However, as the Falkland Islands is one of the "qualifying territories", a child adopted in the Falkland Islands on or after 21 May 2002 will still be a British citizen if he or she meets the requirements explained in paragraph 3.2.13 above.

3.2.20 Any person who is a British citizen under **s.1(1)** or **1(5)** of the 1981 Act or **s.1(2)** or **1(4)** of the **1983 Act** is a British citizen otherwise than by descent (see **Chapter 20**).

### 3.3 **Claims to British citizenship**

3.3.1 Claims to British citizenship will need to be investigated when:

- someone writes about his or her own status and that of a child; or
- a question is raised about a child found abandoned in the United Kingdom, or in the Falkland Islands or, on or after 21 May 2002, in a qualifying territory; or
- an enquiry is made about the position of a child adopted in the United Kingdom, or in the Falkland Islands or, on or after 21 May 2002, in a qualifying territory, or who is the subject of a parental order made after 6 April 2010; or
- an enquiry is made about the nationality consequences of a Convention adoption; or



- adult or minor applicants for British citizenship appear to be British citizens

### 3.4 **Procedure for establishing claims**

3.4.1 To recognise a claim to British citizenship we must establish that the person either:

- was born in the United Kingdom on or after 1 January 1983; or
- was born in the Falkland Islands on or after 1 January 1983 and before 21 May 2002; or
- was born in a qualifying territory on or after 21 May 2002; and
- had a parent who, at the time of the person's birth, was a British citizen or was settled in the United Kingdom or the Falkland Islands or, if applicable, was settled in that qualifying territory

OR

- was born in the United Kingdom on or after 13 January 2010; and
- had a parent who, at the time of the person's birth, was serving in HM Armed Forces

OR

- was found abandoned in the United Kingdom or the Falkland Islands or, on or after 21 May 2002, in the qualifying territories as a new-born infant; and

- there is no evidence that the birth took place outside the United Kingdom/Falkland Islands/qualifying territories; and
- there is no evidence that neither parent was a British citizen or settled in the United Kingdom or in the Falkland Islands or, if applicable, in the relevant qualifying territory

OR

- was adopted by order of a court either:
  - i. in the United Kingdom on or after 1 January 1983; or
  - ii. in the Falkland Islands on or after 1 January 1983 and before 21 May 2002; or
  - iii. in a qualifying territory on or after 21 May 2002; and
- the adopter or, in the case of a joint adoption, one of the adopters was a British citizen on the date of the adoption order; or

OR

- was adopted under a Convention adoption on or after 1 June 2003; and
- the adopter or, in the case of a joint adoption, at least one of the adopters was a British citizen on the date of the adoption order; and
- the adopter or, in the case of a joint adoption, both of the adopters were habitually resident in the United Kingdom or in a territory

designated for this purpose under **s.50(14)** of the 1981 Act (no territories have been designated at this time) on the date of the adoption order

OR

- was the subject of a parental order made in a UK court after 6 April 2010.

### 3.5 **Evidence required**

#### 3.5.1 Persons **born** in the United Kingdom/the Falkland Islands/or the qualifying territories

3.5.1.1 A person born in the United Kingdom or the Falkland Islands (on or after 1 January 1983) or in a qualifying territory (on or after 21 May 2002) may be regarded as a British citizen on production of:

- a passport describing the holder as a British citizen;  
or
- (if born in the Falkland Islands or a qualifying territory)  
a passport describing the holder as a British Dependent Territories citizen; or
- a birth certificate showing parents' details; and
- evidence that, at the time of the birth, either parent was:
  - i. a British citizen, or

- ii. settled in the United Kingdom, or
- iii. settled in the Falkland Islands, or
- iv. (if born on or after 21 May 2002) settled in a qualifying territory, or
- v. (if born on or after 13 January 2010 ) a member of the armed forces

3.5.1.2 A United Kingdom birth certificate showing parents' details will establish the relationship to the parent(s) and indicate whether the child was born legitimate. A guide to the interpretation of the entries on a United Kingdom birth certificate is at Annex B. Information about the registration of births in the Falkland Islands and the qualifying territories should, if necessary, be obtained from the authorities of the territory concerned.

3.5.1.3 Evidence of a parent's British citizenship is:

- a passport describing the holder as a British citizen; or
- a passport issued before 1 January 1983 describing the holder as a citizen of the United Kingdom and Colonies and carrying an endorsement stating the holder has the right of abode in the United Kingdom; or
- a passport describing the holder as a British Dependent Territories citizen and information showing

that the holder has that citizenship by connection with a qualifying territory; or

- a birth certificate showing his or her parents' details and that he or she was born in the United Kingdom or Falkland Islands or a qualifying territory before 1 January 1983; or
- (if born on or after 1 January 1983) a United Kingdom or Falkland Islands birth certificate showing his or her parents' details and evidence that, at the time of the birth, either parent was a British citizen or settled in the United Kingdom or Falkland Islands (as the case may be); 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 qualifying territory and evidence that, at the time of the birth, either parent was:
  - i. a British citizen; or
  - ii. a British Dependent Territories citizen by connection with a qualifying territory; or
  - iii. settled in a British overseas territory; or
- a certificate of registration or naturalisation issued in the United Kingdom describing the holder as either a British citizen or a citizen of the United Kingdom and Colonies. (An explanation of "registration in the United Kingdom" is given in Annex F to **Chapter 6**); or

- a certificate of registration or naturalisation issued in a qualifying territory describing the holder as either a British citizen, 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

3.5.1.4 Evidence of a parent's settled status in the United Kingdom is:

- an immigration officer's stamp in a passport showing the holder has been given leave to enter the United Kingdom for an indefinite period or without any restriction on the period of stay; or
- a Home Office stamp in a passport or Police Registration Certificate or on a personal file showing the holder has indefinite leave to remain in the United Kingdom or that there is no limit on the stay here; or
- a Home Office letter to the effect that the addressee has been granted indefinite leave to remain in the United Kingdom; or
- (if the child was born in the United Kingdom before 2 October 2000) evidence that one of the parents was an EEA national who, at the time of the birth, was exercising EC Treaty rights in the United Kingdom

3.5.1.5 Evidence that a parent is a member of the armed forces is:

- a Home Office stamp in a passport showing the holder is entitled to exemption under **s.8(4)(a)** of the **Immigration Act 1971**; or
- a letter from the Ministry of Defence confirming details of Armed Forces service (including details of postings at the time of the birth and dates of service)

3.5.1.6 A certificate of entitlement or patriality in a passport showing the holder has the right of abode in the United Kingdom is not evidence that he or she is settled in the United Kingdom, if that person is resident abroad. If a person has a stamp in a passport showing that the holder is exempt from immigration control this is also not evidence that he or she is settled in the United Kingdom. But some people are exempt from immigration control can nevertheless be regarded as settled here (see **Chapter 6** Annex F).

3.5.1.7 In **all** cases where the claim to British citizenship is based on the father having become a British citizen or settled in the United Kingdom or the Falkland Islands or the qualifying territories, we need to be satisfied that the father comes within the definition of "parent" in Annex F to **Chapter 6**. If the person was born before 1 July 2006, we need to be satisfied that either:

- a. the parents were married at the time of the child's birth,  
or

- b. if the parents married after the child's birth, the marriage served to legitimate the birth (see Volume 2 - "**LEGITIMACY**")

3.5.1.8 Unless the claim is based on a parent being a member of the armed forces, where the relevant parent appears to be exempt from immigration control or where there is otherwise any doubt about whether he or she is settled in the United Kingdom, the application should be referred to the Immigration department for confirmation of the parents' immigration status.

3.5.1.9 Confirmation of the parents' immigration status in the Falkland Islands or, if applicable, the qualifying territories should, if necessary, be obtained from the authorities of the territory concerned.

3.5.2 Persons **found abandoned** in the United Kingdom/the Falkland Islands/the qualifying territories

3.5.2.1 Persons may be regarded as British citizens in circumstances when the organisation or authority which took responsibility for them confirms that:

- they were found abandoned either:
  - i. in the United Kingdom on or after 1 January 1983; or
  - ii. in the Falkland Islands on or after 1 January 1983 and before 21 May 2002; or



iii. in a qualifying territory on or after 21 May 2002;  
and

- they were new-born infants when found; and
- their parents cannot be identified

3.5.2.2 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.1(2)** of the British Nationality Act 1981 or **s.1(3)** of the **British Nationality (Falkland Islands) Act 1983**.

3.5.2.3 If evidence turns up later to show that:

- neither parent was a British citizen or, if appropriate, a British Dependent Territories citizen or settled in the United Kingdom or in the Falkland Islands or the qualifying territory at the time of the birth; or
- the child was not born in the United Kingdom or the Falkland Islands or the qualifying territory, and could not claim British citizenship by descent (see **Chapter 4**),

then the child will no longer be regarded as a British

citizen.

3.5.2.4 If evidence turns up later to show that the person was born in the United Kingdom or the Falkland Islands before 1 January 1983, the person may probably continue to be regarded as a British citizen but under **s.11** of the British Nationality Act 1981 or **s.1(1)** of the **British Nationality (Falkland Islands) Act 1983** (see **Chapter 2**).

3.5.3 Persons **adopted** in the United Kingdom/the Falkland Islands/the qualifying territories

3.5.3.1 A person who is not a British citizen and who is adopted by order of a court either in the United Kingdom (on or after 1 January 1983), or the Falkland Islands (on or after 1 January 1983 and before 21 May 2002), or a qualifying territory (on or after 21 May 2002) may be regarded as a British citizen on production of:

- a passport describing the holder as a British citizen; or
- (if the adoption took place in the Falkland Islands before 21 May 2002) a passport describing the holder as 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 citizen - see 3.5.1.3 above; and
- the adoption order or a full extract from the Adopted

## Children Register

### 3.5.4 Persons **adopted** under a Convention adoption

3.5.4.1 A person who is not a British citizen and who is adopted under a Convention adoption may be regarded as a British citizen on production of:

- a passport describing the holder as a British citizen;

OR

- the Convention adoption certificate issued on or after 1 June 2003; and
- 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 citizen - see 3.5.1.3 above; and
- evidence that, on the date of the adoption, the adopter or, in the case of a joint adoption, both of the adopters were habitually resident in the United Kingdom or in a territory designated for this purpose under **s.50(14)** of the 1981 Act.

Notes:

(1) The Convention adoption certificate will usually confirm the adopters' place of habitual residence at the relevant time. Provided it does so, there will be no need to seek additional evidence on this point.

(2) No territories have so far been designated under **s.50(14)**.

3.5.5. Persons who are the subject of a parental order made in the UK after 6 April 2010.

A person who is not a British citizen and who is the subject of a parental order made in a court in the United Kingdom on or after 6 April 2010.

- a passport describing the holder as a British citizen;  
or
- evidence that, on the date of the order, one of the persons making the order was a British citizen; and
- the parental order

3.5.6 General principles

3.5.6.1 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, official at the Home Office or in the Falkland Islands or another qualifying territory, or any tribunal or court in the United Kingdom or the Falkland Islands or another qualifying 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.

3.5.6.2 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 not of identity, but of an event.

3.5.6.3 In the absence of some or all of the documentary evidence set out in 3.5.1.3 above, secondary evidence may be acceptable.

3.5.6.4 If none of the documentary evidence set out in 3.5.1.4 or 3.5.1.7 above is available but a parent nevertheless claims either to be settled or to have lived longer than 10 years in the United Kingdom or the Falkland Islands or the qualifying territories, the papers should be sent to the appropriate immigration CMU (see 3.5.1.7 above) or the Falkland Islands authorities or authorities in the relevant qualifying territory with a request for advice on the parent's immigration status.

3.5.6.5 If they are satisfied that the parent was settled here or in the relevant territory before the date of the child's birth, then we may accept that the child is a British citizen.

3.5.6.6 If the child was born in the United Kingdom and the evidence shows that after the birth:

- a parent became a British citizen or settled here, or

- (if born on or after 13 January 2010) a parent became a member of the armed forces, and
- the child is still a minor

there will be an entitlement to registration as a British citizen under **s.1(3)** (see **Chapter 7**). Otherwise there may be an entitlement to registration as a British citizen under **s.1(4)** (see **Chapter 8**).

NB. There are no equivalent provisions for children born in the Falkland Islands or the qualifying territories to register as a British citizen although the child may be able to register as a British overseas territories citizen (see **Chapter 26** or **Chapter 27**, as appropriate).

3.5.6.7 If the child was born outside the United Kingdom or the Falkland Islands (on or after 1 January 1983 and before 21 May 2002), or outside the United Kingdom and the qualifying territories (on or after 21 May 2002) and has no automatic claim to British citizenship by descent but the evidence shows a parent was a British 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 citizen under **s.3(2)** (see **Chapter 10**) or **s.3(5)** (see **Chapter 11**).

3.5.6.8 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**).

3.5.6.9 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**).

3.5.6.10 If the child has no entitlement to registration and the child is still a minor, we should consider whether it would be right to offer registration at discretion under **s.3(1)** (see **Chapter 9**) or, if the child is a British overseas territories citizen, under **s.4A** (see **Chapter 12**).

### 3.6 **Confirmation of claims**

3.6.1 In response to an enquiry about British citizenship:

- 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

OR

- if it is a complicated claim to citizenship (e.g. involving difficult legitimacy or marriage law, several independence Acts etc); or
- if it has not been possible to supply detailed evidence; and
- we are nonetheless satisfied that the claim is valid, we should send a status letter as explained in Annex H to **Chapter 2**

3.6.2 Where we cannot accept that the person became a British citizen we should:

- briefly explain why; and
- explain how that person may become a British citizen (see 3.5.5.5 - 3.5.5.9 above)

3.6.3 If we notice that an applicant for British citizenship is already a British citizen under **s.1(1)** or **1(5)** of the British Nationality Act 1981, as amended, or **s.1(2)** or **1(4)** of the **British Nationality (Falkland Islands) Act 1983** we should write to explain that the application is not necessary (along the lines of the draft at Annex B) and refund in full any fee submitted with the application (see **Chapter 6**).