

PART II: BRITISH OVERSEAS TERRITORIES CITIZENSHIP

CHAPTER 30:REGISTRATION BY ENTITLEMENT OF MINORS BORN OUTSIDE THE BRITISH OVERSEAS TERRITORIES TO BRITISH OVERSEAS TERRITORIES CITIZENS BY DESCENT

SECTION 17(5) BRITISH NATIONALITY ACT 1981

NB. As regards 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.

30.1 **The Law**

30.1.1 Minors are entitled to registration as British overseas territories citizens under **s.17(5)** of the British Nationality Act 1981 if, subject to 30.1.2-30.1.4 below:

- they were born outside the British overseas territories on or after 1 January 1983; and
- at the time of their birth, they had a parent who was a British overseas territories citizen by descent; and
- the application is made while they are minors; and
- (in the case of a person 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 on his behalf) is satisfied that they are of good character (see Chapter 9, Annex B); and
- they and both parents were in the same British overseas territory at the beginning of the 3 year period ending with the date of the application; and
- neither they nor either parent was absent from that territory for more than 270 days in that 3 year period; and

- the consent of both parents is given to the application
- 30.1.2 If the minor was born before 1 July 2006 and was illegitimate, all references to a parent or parents in 30.1.1 above are references to the mother only. If the person was born illegitimate **on or after** 1 July 2006, all references to a parent or parents are references to the mother or the father (but only include the father if he satisfies the definition of "father" in Annex F to **Chapter 6**).
- 30.1.3 If:
- the minor's father or mother died on or before the date of application; or
 - the parents' marriage or civil partnership had ended in divorce or annulment on or before the date of application; or
 - the parents were legally separated on the date of application,
- then the residence requirements in 30.1.1 above need be met only by the minor and either one of his/her parents.
- 30.1.4 If either of the minor's parents died on or before the date of application, the consent of the surviving parent only is required.
- 30.1.5 There is no discretion to accept a longer period of absence than 270 days in the 3 years before the date of application.
- 30.1.6 Registration under **s.17(5)** gives British overseas territories citizenship otherwise than by descent. It is therefore important to ensure that a person with a **s.17(5)** entitlement is registered under this section. Registration under **ss.17(1)** or **(2)** would, instead, give British overseas territories citizenship by descent (see **Chapter 36**).
- 30.1.7 It should also be noted that, as a result of amendments made to the BNA 1981

by the **British Overseas Territories Act 2002**, a minor who satisfies the requirements for registration as a British overseas territories citizen under **s.17(5)**, and was born on or after 21 May 2002, may also be eligible for registration as a British citizen under **s.3(5)** of the 1981 Act (see **Chapter 11**).

30.2 **Application forms**

30.2.1 See **Chapter 21**.

30.3 **Evidence to be supplied**

30.3.1 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, such a 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. the 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**.

30.3.2 In the circumstances described in 30.1.3 above:

- i. the father's or mother's death certificate; or
 - ii. the parents' divorce certificate, decree of nullity, evidence of dissolution of a civil partnership or decree of judicial separation; and
- passports and/or other documents to establish:
 - i. that the minor had been resident in the relevant territory for 3 years immediately before the date of application; and
 - ii. as appropriate, that either or both of the parents were so resident; and
 - iii. that the minor and, as appropriate, either or both of the parents was not absent from the relevant territory for more than 270 days in that 3 year period.

30.3.3 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.

30.3.4 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.

30.4 **Consent to the application**

30.4.1 **Section 17(5)** is the only provision of the British Nationality Act 1981 relating to British overseas territories citizenship in which parental consent is a statutory requirement.

30.4.2 There is no discretion to waive this requirement. This means that, an applicant cannot be registered under **s.17(5)** if the consent of both parents (or one parent in the circumstances described in 30.1.2, 30.1.3 and 30.1.4 above) cannot be obtained, even if all the other requirements are met. There is no exception to this.

30.4.3 The consent of the parent(s) has to be given in writing and be signed by him/her/them.

30.4.4 If only one parent has given consent and the consent of both is required, or the wrong parent has consented (e.g. the father, where the child was born illegitimate before 1 July 2006), the consent of the other parent must be requested.

30.4.5 If the appropriate consent cannot be obtained, any alternative route to citizenship must be considered (see 30.5.2 to 30.5.4 below).

30.5 **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 30.5.1.3 and 30.5.4 below).

30.5.1 Checking for automatic claims

30.5.1.1 A 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 (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 applies (see **Chapters 24** and **36**)

30.5.1.2 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
- the father or mother was a British overseas territories citizen at the time of the birth; and either

a. the minor was born before 21 May 2002; or

b.the relevant parent was a British overseas territories citizen by connection only with the Sovereign Base Areas of Akrotiri and Dhekelia (see **Chapter 25**)

30.5.1.3 The minor will already be a British citizen if he or she was born in the United Kingdom on or after 21 May 2002 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
- the father or mother was a British citizen by descent in service to which **s.2(1)(b)** of the 1981 Act applies (see **Chapters 4 and 20**)

30.5.1.4 The references to 'father' in 30.5.1.1 - 30.5.1.3 are subject to the definition of 'parent' in Annex F to Chapter 6.

30.5.1.5 Unless it is absolutely clear from the papers we have that the child is already a British overseas territories citizen or British citizen, it is not necessary to investigate this possibility. Equally, it is not necessary to ask for proof that the child did not acquire British overseas territories citizenship before considering the application.

30.5.1.6 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**)

30.5.1.7 If the minor has an automatic claim to British citizenship, the nationality caseworker should:

- write to say so; and
- ask the person who made the application whether separate registration as a British overseas territories citizen is still desired

30.5.2 Checking for entitlement under section 17(2)

30.5.2.1 If the minor:

- does not have an automatic claim to British overseas territories citizenship; and
- has no immediate entitlement to registration under **s.17(5)**; and
- was under 6 on the date of application,

there may be an entitlement to registration under **s.17(2)** of the British Nationality Act 1981 which gives British overseas territories citizenship by descent (see **Chapter 29**).

30.5.3 Checking for entitlement under paragraph 4 Schedule 2

30.5.3.1 If the minor, but not his or her parent(s), has lived in a British overseas territory for the 3 years immediately before the application, there may be an entitlement to registration under **paragraph 4** of **Schedule 2** of the British Nationality Act 1981,

which gives British citizenship otherwise than by descent (see **Chapter 31**).

30.5.4 Checking for entitlement to registration as a British citizen

30.5.4.1 If the minor was born outside the qualifying territories (see Annex F to **Chapter 6**) on or after 21 May 2002, there may also be a separate entitlement to registration, now or in the future, 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.

30.5.5 No immediate entitlement

30.5.5.1 If the minor does not have an immediate entitlement under **s.17(2)** or **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**).

30.6 Re-declaration

30.6.1 If the applicant or his parents (or relevant parent) miss the requirement to have been in a British overseas territory on the date 3 years prior to the application date, consideration may be given to offering re-declaration in the circumstances described in **Chapter 18**, Annex B.

30.7 Oath and pledge

30.7.1 Where the application is made before 1 January 2004, the applicant may have to take an oath of allegiance if 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 case 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).