

## Part II: British overseas territories citizenship

### Chapter 31: Registration by entitlement of stateless persons

schedule 2, paragraphs 3, 4 & 5 British Nationality Act 1981

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|--|-----------------------|
| a. born in the united kingdom or a British overseas territory on or after 1 January 1983 | sch.2,<br>paragraph 3 |
| b. born outside the united kingdom and the British overseas territories                  | sch.2,<br>paragraph 4 |
| c. born before 1 January 1983  | Sch.2,<br>paragraph 5 |

#### 31.1 Introduction

- 31.1.1 To meet our obligations under the **United Nations Convention on the Reduction of Statelessness**, **Schedule 2** to the British Nationality Act 1981 makes provision for the acquisition of the citizenships and statuses, created by the Act, by certain persons who are or would otherwise be stateless.
- 31.1.2 The provisions of **Schedule 2** are applied by **s.36** of the Act.
- 31.1.3 This Chapter deals with the provisions for acquisition by registration. The provisions for automatic acquisition are explained in **Chapter 25**.
- 31.1.4 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.
- 31.1.5 For the meaning of “parent”, “father” and “mother” see **Chapter 6** Annex F.

## 31.2 **The Law**

### A. Schedule 2, paragraph 3

31.2.1 Persons are entitled to registration under this provision if:

- born on or after 1 January 1983; and
- born in the United Kingdom or a British overseas territory; and
- born stateless; and
- they have remained stateless; and
- on the date of application they are under 22 years of age; and
- they were in the United Kingdom or a British overseas territory at the beginning of the period of 5 years ending with the date of application; and
- in that 5 year period they were not absent from both the United Kingdom and the British overseas territories for more than 450 days

31.2.2 A person who meets these requirements is entitled to be registered as:

- a British citizen if the number of days spent in the United Kingdom in the 5 year qualifying period exceeds the number of days spent in the British overseas territories
- a British overseas territories citizen in any other case

31.2.3 There is discretion under **paragraph 6 of Schedule 2** to allow absences in excess of 450 days in the 5 year qualifying period. The way in which this discretion should normally be exercised is explained in 31.6 below.

31.2.4 An application could not be made under this provision before 1993. This was because, originally, there was a further requirement that the applicant had attained the age of 10 by the date of application. That requirement was abolished in respect of any application made or determined on or after 1 April 2003 by **section 8** of the **Nationality, Immigration and Asylum Act 2002**.

31.2.5 Registration under this provision gives British citizenship or British overseas territories citizenship otherwise than by descent (see **Chapter 20** or **Chapter 36**).

B. Schedule 2, paragraph 4

31.2.6 Persons are entitled to registration under this provision if:

- born on or after 1 January 1983; and
- born outside the United Kingdom and the British overseas territories; and
- born stateless; and
- they have remained stateless; and
- at the time of the birth their father or mother was:
  - i. a British citizen; or
  - ii. a British overseas territories citizen; or
  - iii. a British Overseas citizen; or
  - iv. a British subject under the 1981 Act; and

- they were in the United Kingdom or a British overseas territory at the beginning of the period of 3 years ending with the date of application; and
- in that 3 year period they were not absent from both the United Kingdom and the British overseas territories for more than 270 days

31.2.7 Persons who meet these requirements are entitled to be registered as:

- British citizens; or
- British overseas territories citizens; or
- British Overseas citizens; or
- any combination of these, depending on which one or more of them their father or mother possessed at the time of the birth. For example:
  - i. a person whose mother or father, or both, was a British overseas territories citizen only will be entitled to registration as a British overseas territories citizen only
  - ii. a person with a British overseas territories citizen father, and a mother who is both a British overseas territories citizen and a British citizen, will be entitled to registration as a British overseas territories citizen and as a British citizen
  - iii. a person with a British Overseas citizen, father and a mother who is both a British overseas territories citizen and a British citizen, will be entitled to registration as a British citizen and as a British overseas territories citizen and as British Overseas citizen

or

- a British subject

31.2.8 A person may not be registered as a British subject as well as a British citizen, British overseas territories citizen or British Overseas citizen. Persons are entitled to be registered as British subjects only if:

- a. one or both of their parents is a British subject; and
- b. neither parent is:
  - a British citizen; or
  - a British overseas territories citizen; or
  - a British Overseas citizen

For example:

- A person whose father is a British subject and whose mother has no form of British nationality will be entitled to be registered as a British subject
- A person whose father is a British subject and whose mother is a British citizen will be entitled to be registered as a British citizen only

31.2.9 A person is required to state in the application which citizenship or status is being applied for.

31.2.10 There is discretion under **paragraph 6** of **Schedule 2** to allow absences in excess of 270 days in the 3 year qualifying period (see 31.6 below).

31.2.11 Registration under this provision gives British citizenship and/or British overseas territories citizenship otherwise than by descent. (See **Chapter 20** or **Chapter 36**)

31.2.12 British Overseas citizenship or British subject status is not transmissible, and the question of descent or otherwise does not therefore arise.

C. Schedule 2, paragraph 5

31.2.13 Persons are entitled to registration under this provision if:

- born before 1 January 1983; and
- born stateless; and
- they have remained stateless; and either
  - i. their mother was a citizen of the United Kingdom and Colonies at the time of their birth; or
  - ii. they were born in a place which is, at the date of application, within the United Kingdom or a British overseas territory; or
  - iii. they otherwise meet the requirements of parentage or residence and parentage set out in the **Schedule** to the **British Nationality (No 2) Act 1964**, as amended by **s.4** of the **British Nationality Act 1965**. For a detailed explanation of the requirements for registration under the **1964 Act**, see **Chapter 15**.

31.2.14 The citizenship to which persons will be entitled depends on what they would have become on 1 January 1983 if they had been registered as a citizen of the United Kingdom and Colonies, before that date, under **s.1** of the **British Nationality (No 2) Act 1964**.

31.2.14.1 Persons are entitled to registration as:

- British citizens, if they would have become such a citizen on 1 January 1983 under **s.11** of the British Nationality Act 1981 (see **Chapter 2**); and/or
- British overseas territories citizens, if they would have become British Dependent Territories citizens on 1 January 1983 under **s.23** of the British Nationality Act 1981 (see **Chapter 22**); or
- British Overseas citizens, if they would not have become on 1 January 1983 either British citizens or British Dependent Territories citizens

31.2.14.2 A person may be entitled to be registered as:

- a British citizen; or
- a British overseas territories citizen; or
- both; or
- a British Overseas citizen only

31.2.15 Registration under this provision gives British citizenship and British overseas territories citizenship otherwise than by descent (see **Chapter 20** or **Chapter 36**).

31.2.16 British Overseas citizenship is not transmissible, and the question of by descent or otherwise does not therefore arise.

### 31.3 **Application forms**

31.3.1 An application should normally be made:

- on Form S3 under **Schedule 2, paragraph 3**
- on Form S2 under **Schedule 2, paragraph 4**
- on Form S1 under **Schedule 2, paragraph 5**
- by being included in a parent's application for citizenship

31.4 **Evidence to be supplied**

31.4.1 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.

31.4.2 Nationality caseworkers should take into account any evidence already available. If documents have been examined in the past there is no need to ask to see them again. If a particular marriage or parent and child relationship has been accepted as valid by an Entry Clearance Office, Immigration Office, Home Office or British overseas territories official, or any Tribunal or Court in the United Kingdom or a British overseas territory it is unnecessary to ask for any further evidence except where later information provides reasonable grounds 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.

31.4.3 Applications under **paragraphs 3, 4 or 5 of Schedule 2** should be supported by evidence as follows:

- the person's full birth certificate; and

- a letter from the authorities of the person's country of birth (other than the United Kingdom and the British overseas territories) stating that the person is not, and never has been, a citizen of that country; and
- if either or both of the person's parents is not a national of that country, a letter from the authorities of the country of which either or both parent(s) is a national stating that the person is not, and never has been, a citizen of that country

31.4.4 Applications under **paragraph 3** and **4** of **Schedule 2** should also be supported by passports and/or other documents to:

- establish the person's 5/3 years residence in the United Kingdom or a British overseas territory prior to the application; and
- establish that the person was not absent from the United Kingdom or British overseas territories for more than 450/270 days in that 5/3 year period

31.4.5 Applications under **paragraph 4** of **Schedule 2** should also be supported by evidence as follows:

- if the parent in question is the father, evidence that he may be regarded as such for this purpose (see the definition of 'parent' etc in Annex F to Chapter 6); and
- a parent's citizenship or status at the time of the person's birth

31.4.5.1 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 United Kingdom or Falkland Islands birth certificate showing his or her parents' details and birth before 1 January 1983; or
- (if born on or after 1 January 1983 and before 21 May 2002) 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
- 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
- the relevant documents related to parents', grandparents', spouse's birth, adoption, marriage, death, registration or naturalisation, which establish the parent's claim to British citizenship

31.4.5.2 If the applicant was born on or after 21 May 2002, the following documents may also be accepted as evidence of a parent's British citizenship:

- a passport issued before 21 May 2002 describing the holder as a British Dependent Territories citizen or a British overseas territories citizen and evidence that the holder

was such a citizen by connection with a qualifying territory (see Annex F to **Chapter 6**); or

- (if born before 1 January 1983) a birth certificate showing his or her parents' details and that the person was born in a qualifying territory; or
- (if born on or after 1 January 1983) a birth certificate showing his or her parents' details and that the person was born in a qualifying territory and evidence that, at the time of the birth, either parent was a British overseas territories citizen or settled in a qualifying territory; or
- an adoption certificate issued by a court in a qualifying territory and evidence that, at the time of the adoption, one of the adoptive parents was a British citizen or, if the adoption took place before 21 May 2002, a British overseas territories citizen by connection with a qualifying territory; or
- a certificate of registration or naturalisation, issued before 21 May 2002, describing the holder as a British Dependent Territories citizen or a British overseas territories citizen or a citizen of the United Kingdom and Colonies and evidence that the holder acquired that citizenship by connection with a qualifying territory

31.4.5.3 Evidence of a parent's British overseas territories citizenship is:

- a passport describing the holder as either a British Dependent Territories citizen or a British overseas territories citizen; or
- a birth certificate showing his or her parents' details and

birth in a British overseas territory before 1 January 1983;  
or

- (if born on or after 1 January 1983) a British overseas territories birth certificate showing his or her parents' details and evidence that, at the time of the birth, either parent was a British overseas territories citizen or settled in a British overseas territory; or
- an adoption certificate issued by a court in a British overseas territory and evidence that, at the time of the adoption, one of the adoptive parents was a British overseas territories citizen; or
- a certificate of registration or naturalisation describing the holder as a British Dependent Territories citizen or a British overseas territories citizen; or
- a certificate of registration or naturalisation issued in a British overseas territory describing the holder as a citizen of the United Kingdom and Colonies; or
- the relevant documents related to parents', grandparents', spouse's birth, adoption, marriage, death, registration or naturalisation, which establish the parent's claim to British overseas territories citizenship

31.4.5.4 Evidence of a parent's British Overseas citizenship is:

- a passport describing the holder as a British Overseas citizen; or
- a certificate of registration describing the holder as a British Overseas citizen; or

- similar relevant documents as those required to establish British citizenship or British overseas territories citizenship, but which establish that the parent was a citizen of the United Kingdom and Colonies who did not, on 1 January 1983, become either a British citizen (see **Chapter 2**) or a British Dependent Territories citizen (**see Chapter 22**)

31.4.5.5 Evidence that a parent is a British subject under the 1981 Act is:

- a passport describing the holder as a British subject; or
- a certificate of registration describing the holder as a British subject; or
- an acknowledgement of a claim to remain a British subject under **s.2** of the **British Nationality Act 1948** or **s.31(3)** of the British Nationality Act 1981 (see **Chapter 43** or **46**); or
- similar relevant documents as those required to establish British citizenship or British overseas territories citizenship, but which establish that the parent became, on 1 January 1949, a British subject without citizenship under **s.13** or **16** of the **British Nationality Act 1948**, and had that status on 31 December 1982 (see **Chapter 43**)

NB. Except for the persons mentioned in the third category above, a person who is a British subject under the 1981 Act automatically ceases to have that status on acquiring any other citizenship or nationality, which includes the 3 citizenships conferred by the 1981 Act (see **Chapter 49**). Unless there is evidence to the contrary, it should be assumed that the parent has not

acquired another citizenship or nationality and is still a British subject.

31.4.6 Applications under **paragraph 5 of Schedule 2** should also be supported by evidence as follows:

- the relevant birth, marriage, death, adoption, registration, naturalisation certificates or other documents to establish the parent in question's citizenship of the United Kingdom and Colonies or British subject status at the appropriate time
- if necessary, passports and/or other documents to establish the person's ordinary residence in the United Kingdom and/or the British overseas territories for the 3 years immediately before the application

## 31.5 **Checking the application**

### 31.5.1 **Checking for automatic claims**

**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**.

31.5.1.1 A person applying under **paragraph 3, 4 or 5 of Schedule 2** may already be a British citizen or a British overseas territories citizen. Only those applying under **paragraph 5 of Schedule 2** are likely to have an automatic claim to British Overseas

citizenship or British subject status.

31.5.1.2 A person applying under **paragraph 3** of **Schedule 2** will already be:

- a British citizen, if he or she meets the requirements of **s.1(1)**, **s.2(1)** or **paragraph 2** of **Schedule 2** (see **Chapters 3, 4 or 5**)
- a British overseas territories citizen, if he or she meets the requirements of **s.15(1)**, **s.16(1)** or **paragraph 1** of **Schedule 2** (see **Chapters 23, 24 or 25**) - NB. Such a person may also have a claim to British citizenship under **s.3** of the **British Overseas Territories Act 2002**.

31.5.1.3 A person applying under **paragraph 4** of **Schedule 2** will already be:

- a British citizen, if he or she meets the requirements of **s.2(1)** or **s.50(7)(a)(i)** (see **Chapter 4**) or, if born on or after 21 May 2002, **s.50(7A)** (see **Chapter 25**)
- a British overseas territories citizen, if he or she meets the requirements of **s.16(1)** or **s.50(7)(a)(i)** (as applied to the British overseas territories and British overseas territories citizenship) (see **Chapter 24**) or, if born on or after 21 May 2002, **s.50(7A)** or **s.50(7B)** - NB. If the person is a British overseas territories citizen, he or she may also have a claim to British citizenship under **s.3** of the **British Overseas Territories Act 2002**

31.5.1.4 A person applying under **paragraph 5** of **Schedule 2** will already be:

- a British citizen, if he or she meets the requirements of **s.11** or **s.50(7)(a)(ii)** (see **Chapter 2**)
- a British overseas territories citizen, if he or she meets the requirements of **s.23** or **s.50(7)(a)(ii)** (as applied to the British overseas territories and British overseas territories citizenship) (see **Chapter 22**) - NB. Such a person may also have a claim to British citizenship under **s.3** of the **British Overseas Territories Act 2002**
- a British citizen and/or a British overseas territories citizen, if he or she meets the requirements of **s.6** of the **British Overseas Territories Act 2002**

31.5.1.5 A person applying under **paragraph 5** of **Schedule 2**, who is not already a British citizen or a British overseas territories citizen, will be:

- a British Overseas citizen, if he or she was a citizen of the United Kingdom and Colonies on 31 December 1982 (see **Chapter 37**); or
- a British subject, if the requirements of **s.30** or **31(2)** are met (see **Chapter 43**)

31.5.1.6 Unless it is absolutely clear from papers already available that the person is already a British citizen, a British overseas territories citizen, a British Overseas citizen or a British subject, it is not necessary to investigate this possibility. Equally, it is unnecessary to ask for proof that the person did not acquire any of these citizenships or status automatically before considering the application.

31.5.1.7 If the person 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 **Chapter 22, 23, 24** or **25** as appropriate); and
- refund in full any fee submitted with the application (see **Chapter 21**)

31.5.1.8 If the person does not have an automatic claim to British overseas territories citizenship, but has an automatic claim to:

- British citizenship; or
- British Overseas citizenship; or
- British subject status; or
- any other nationality or citizenship

the person is not entitled to registration under **paragraph 3, 4** or **5** of **Schedule 2** because he or she is not stateless. In these circumstances, consideration should be given to whether the person:

- has an entitlement to registration as a British overseas territories citizen under another provision (see 31.5.2 below); or
- can be registered as a British overseas territories citizen at discretion (see 31.5.3.1 below); or

- must proceed by way of naturalisation (see 31.5.3.2 below)

## 31.5.2 Checking for another entitlement to British overseas territories citizenship

### A. **Schedule 2, paragraph 3**

31.5.2.1 If there is no automatic claim to British overseas territories citizenship, and no entitlement to registration as a British overseas territories citizen under **paragraph 3 of Schedule 2**, the person may be entitled to registration as a British overseas territories citizen under another provision.

31.5.2.2 If the person was born in a British overseas territory there may be an entitlement:

- under **s.15(3)**, if the person's father or mother have become either a British overseas territories citizen or settled in a British overseas territory since the birth (see **Chapter 26**)
- under **s.15(4)**, on grounds of residence, if the person was aged 10 or over at the date of application (see **Chapter 27**)

31.5.2.3 If the person was born outside the British overseas territories, there may be an entitlement under **s.17(5)** (see **Chapter 30**). NB. If the minor was born outside the qualifying territories on or after 21 May 2002, there may also be an entitlement to registration as a British citizen under **s.3(5)** (see **Chapter 11**).

### B. **Schedule 2, paragraph 4**

31.5.2.4 If there is no automatic claim to British overseas territories

citizenship, and no entitlement to registration as a British overseas territories citizen under **paragraph 4 of Schedule 2**, there may be an entitlement under **s.17(2)** (see **Chapter 29**) or **s.17(5)** (see **Chapter 30**). NB. If the minor was born outside the qualifying territories on or after 21 May 2002, there may also be an entitlement to registration as a British citizen under **s.3(2)** (see **Chapter 10**) or **s.3(5)** (see **Chapter 11**).

### C. Schedule 2, paragraph 5

31.5.2.5 If there is no automatic claim to British overseas territories citizenship, and no entitlement to registration as a British overseas territories citizen under **paragraph 5 of Schedule 2**, there is no other entitlement to British overseas territories citizenship.

### 31.5.3 No entitlement

31.5.3.1 If it is decided that there is no entitlement to registration as a British overseas territories citizen:

- under **paragraph 3, 4 or 5 of Schedule 2, or**
- under any other provision of the British Nationality Act 1981, and
- the person was a minor at the date of application,

he or she should be considered for registration at discretion under **s.17(1)** of the 1981 Act (see **Chapter 28**).

31.5.3.2 If there is no entitlement to registration as:

- a British citizen, a British overseas territories citizen, a

British Overseas citizen or a British subject; and

- the person was an adult at the date of application,

it should be considered whether it can be accepted as an application for naturalisation as a British overseas territories citizen under **s.18**. (See **Chapter 34**)

### 31.6 **Exercise of discretion to allow excess absences**

31.6.1 **Paragraph 6 of Schedule 2** gives discretion to allow absences of:

- more than 450 days if the application is made under **paragraph 3 of Schedule 2**; or
- more than 270 days if the application is made under **paragraph 4 of Schedule 2**

31.6.2 Excess absences should normally be waived if:

- they are the result of circumstances beyond the person's control (e.g. serious illness or accident) which prevented the person from returning from a visit to a country outside the UK or the British overseas territories; or
- they amount to no more than 30 days; or
- refusal would seriously disadvantage the person (statelessness alone is not enough: the person must show some serious disadvantage because of statelessness)

31.6.3 Excess absences should not normally be waived simply because:

- persons or their parents were unaware of the requirements; or

- the absences were entirely voluntary; or
- a refusal would cause inconvenience, such as difficulty in travelling, rather than serious disadvantage

### 31.7 **Re-declaration**

- 31.7.1 If an applicant for registration under **Schedule 2 paragraph 3** or **4** misses the requirement to have been in the United Kingdom or a British overseas territory on the date 5 or 3 years prior to the application date, consideration may be given to offering re-declaration in the circumstances described in **Chapter 18**, Annex B.

### 31.8 **Consent to minors' applications**

- 31.8.1 It is not necessary for minors applying under **paragraphs 3, 4** or **5** of **Schedule 2** to obtain the consent of their parents or the person having responsibility for them.
- 31.8.2 If they meet the requirements, they are entitled to registration, and the application cannot be refused even if their parents or responsible person do not consent to it.

### 31.9 **Granting the application**

#### 31.9.1 **Registration authority**

- 31.9.1.1 The Home Secretary is the only authority for the granting of British citizenship, British Overseas citizenship and British subject status.
- 31.9.1.2 British overseas territories citizenship is normally granted by the Governor of the British overseas territory with which the

person being registered is connected by residence or parentage.

31.9.1.3 But the Home Secretary has power to grant British overseas territories citizenship himself. Therefore, if any application made to the Home Office under **paragraph 3, 4 or 5 of Schedule 2** can result in British overseas territories citizenship being the status, or one of the statuses, being acquired, it should be granted in the UK and not transferred to the Governor of the relevant territory. However, applications based mainly on residence in Gibraltar should be transferred to the Civil Status and Registration Office in Gibraltar (to ensure that the applicant becomes a United Kingdom national for European Community purposes and thus eligible for registration as a British citizen under **s.5**).

31.9.1.4 If the Home Office registers someone as a British overseas territories citizen, the nationality caseworker should notify the Governor of the territory concerned using the draft letter at Annex B to **Chapter 21**. The letter should be typed and a copy kept on file.

## 31.9.2 Fees

31.9.2.1 An applicant under **paragraph 3 of Schedule 2** can only acquire either British citizenship or British overseas territories citizenship. The fee for registration in the United Kingdom is the same in either case, and only one fee is therefore payable in every case.

31.9.2.2 An applicant under **paragraph 4 of Schedule 2** may be able to acquire British citizenship, British overseas territories citizenship or British Overseas citizenship. It is up to the applicant to say which citizenship is sought, and a separate

fee is therefore payable for each citizenship sought.

31.9.2.3 An applicant under **paragraph 5** of **Schedule 2** may be entitled to both British citizenship and British overseas territories citizenship. In such cases, as this is not a matter of choice on the applicant's part, only one fee is payable.

31.9.2.4 Fees for BNA 1981 applications to be decided in the British overseas territories are a matter for the governments of the territories concerned.

### 31.9.3 Oath and pledge

31.9.3.1 If the application is made before 1 January 2004 and the person is an adult at the time it is decided to register under **paragraphs 3, 4 or 5** of **Schedule 2**, an oath of allegiance will have to be taken. If the application is made on or after 1 January 2004 and the person is an adult at the time the application is decided, he or she will have to make a citizenship oath and pledge. (See **Chapter 21**)

## 31.10 Issuing of certificates

31.10.1 Where more than one citizenship or status is to be acquired, separate certificates of registration, one for each citizenship or status, should be issued.