

PART II: BRITISH OVERSEAS TERRITORIES CITIZENSHIP

CHAPTER 32: REGISTRATION FOLLOWING RENUNCIATION OF CITIZENSHIP OF THE UNITED KINGDOM AND COLONIES

SECTION 22 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.

32.1 The Law

32.1.1 **Section 22** of the British Nationality Act 1981 provides for certain citizens of the United Kingdom and Colonies who lost that status before 1 January 1983 as a result of making a declaration of renunciation to be registered as British overseas territories citizens.

32.1.2 Under **s.22(1)**, a person is entitled to registration as a British overseas territories citizen if, before 1 January 1983, he or she:

- was of full capacity; and
- (in the case of an application made 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 18, Annexes D and H); and
- had ceased to be a citizen of the United Kingdom and Colonies as a result of making a declaration of renunciation; and
- at the time of making the declaration was, or was about to become, a citizen of a country listed in Annex A; and
- could not have remained or become such a citizen unless citizenship of the

United Kingdom and Colonies was renounced; or

- reasonably believed that he or she would otherwise be deprived of the other citizenship; and
- had a qualifying connection with a British overseas territory; or
- was married to a person who had, or would but for his or her death have had, such a connection (but see also 32.1.8 below)

32.1.3 Under **s.22(2)**, a person may be registered as a British overseas territories citizen at the Home Secretary's/Governor's discretion if:

- of full capacity; and
- (in the case of an application made 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 18, Annexes D and H); and
- had ceased to be a citizen of the United Kingdom and Colonies as a result of making a declaration of renunciation; and
- on the date of application, has a qualifying connection with a British overseas territory; or
- was, at any time before the date of application, married to or civil partner of a person who has, or would but for his or her death have had, such a connection (but see also 32.1.8 below)

32.1.4 **Section 22(3)** explains that a person cannot be registered under **s.22(1)** more than once. This means that a person who has been registered under **s.22(1)**, and who then renounced British Dependent Territories citizenship or, on or after 26 February 2002, British overseas territories citizenship, can be registered only under **s.22(2)** or under **s.24** (see **Chapter 33**).

32.1.5 **Section 22(4)** explains the qualifying connections with a British overseas territory required under **s.22(1)** and **s.22(2)**. These are that the person, or his or her father or father's father:

- was born in a British overseas territory; or
- is, or was, a person naturalised in a British overseas territory (as defined in **s.50(6)**); or
- was registered as a citizen of the United Kingdom and Colonies in a British overseas territory; or
- became a British subject by reason of the annexation of any territory included in a British overseas territory

32.1.6 "Of full capacity" is defined in **s.50(11)(a)** as meaning that a person is not of unsound mind. A detailed explanation of how this is interpreted for the purposes of the Act, and how the requirement to be of full capacity may be waived in certain circumstances, is given in **Chapter 18** Annex A.

32.1.7 The reference to the term "father" does not include the father of an illegitimate child, but an illegitimate child may be legitimated by the subsequent marriage of the parents.

32.1.8 Before 7 November 2002, it was only possible for women to qualify for registration on the basis of marriage or civil partnership to a man who had an appropriate qualifying connection. The **Nationality, Immigration and Asylum Act 2002** extended this requirement to include men who were married to or civil partners of CUKCs as regards applications made either:

- on or after 7 November 2002; or
- before 7 November 2002 but still undetermined on that date

32.1.9 Registration under **s.22** gives British overseas territories citizenship otherwise than by descent unless, had the person not renounced citizenship of the United Kingdom and Colonies, he or she would have become a British Dependent Territories citizen by descent on 1 January 1983 under **s.25(1)(b), (d) or (e)**. In such cases, registration gives British overseas territories citizenship by descent (see **Chapter 36**).

32.2 **Application form**

32.2.1 See **Chapter 21**.

32.3 **Evidence to be supplied**

32.3.1 All applications should be supported by evidence as follows:

- passport/travel document and the relevant certificates of birth, marriage, death, adoption, registration, naturalisation to establish the applicant's:
 - i. current nationality/citizenship; and
 - ii. qualifying connection with a British overseas territory; and
- the declaration of renunciation of citizenship of the United Kingdom and Colonies (see 32.3.6 and 32.3.7 below)

32.3.2 Applications under **s.22(1)** should also be supported by evidence as follows:

- a. a letter from the authorities of a country listed in Annex A stating that the applicant's renunciation of citizenship of the United Kingdom and Colonies was:
 - i. necessary in order to acquire or retain that country's citizenship;
or

- ii. in the reasonable belief that the applicant would otherwise have been deprived of citizenship of that country.

NB. In cases of 32.3.2.a.ii, other evidence to show a reasonable belief is acceptable.

- 32.3.3 Applications under **s.22(2)** should also, when necessary, be supported by evidence as set out in 32.3.2 above and/or evidence to support any other reasons for the renunciation of citizenship of the United Kingdom and Colonies and the wish to acquire British overseas territories citizenship (see 32.5 below).
- 32.3.4 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 or avenue to registration. It should be remembered, in particular, that a birth certificate is evidence not of identity, but of an event.
- 32.3.5 Nationality caseworkers should take into account any evidence already on file. If documents have been examined in the past it is unnecessary to ask to see them again. If a particular marriage or 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 it is not necessary 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.
- 32.3.6 In the absence of some or all of the documentary evidence required to establish a qualifying connection with the United Kingdom as set out in 32.3.1 above, certain types of secondary evidence may be acceptable.
- 32.3.7 If the declaration of renunciation was registered at the Home Office, this will be

recorded on the file together with any information and documentary evidence provided at the time. Nationality General Enquiries have details of all renunciations of citizenship of the United Kingdom and Colonies whether registered here or abroad.

- 32.3.8 If the applicant is unable to produce his copy of the declaration of renunciation, the details given on the application form should be checked either with the information on the file or held in Nationality General Enquiries.

32.4 **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 personal or ancestral connection with the British Indian Ocean Territory, it is necessary to consider the effects of the **British Overseas Territories Act 2002**.

32.4.1 **Checking the validity of the renunciation**

- 32.4.1.1 Citizenship of the United Kingdom and Colonies was lost on registration of the declaration if the person then had another nationality or citizenship.
- 32.4.1.2 If, after 25 May 1964, the declaration was made in order to acquire another nationality or citizenship, and no such nationality or citizenship was acquired within 6 months of the date of registration of the declaration, the renunciation was void and the person remained a citizen of the United Kingdom and Colonies. But unless the evidence or information available indicates that the other nationality or citizenship was not acquired within the 6

month period, it should be assumed that the renunciation was valid and that citizenship of the United Kingdom and Colonies was lost.

32.4.1.3 If the renunciation was void and citizenship of the United Kingdom and Colonies was not lost, nationality caseworkers should:

- a. follow the procedure in **Chapter 35.8**; and
- b. consult **Chapter 2, 22** and **37** and determine whether the person is:
 - a British citizen under **s.11**; and/or
 - a British overseas territories citizen under **s.23**; or
 - a British Overseas citizen under **s.26**

32.4.1.4 If the person is a British overseas territories citizen, nationality caseworkers should:

- write to say so; and
- explain that registration is not necessary (using the procedure in **Chapter 22**); and
- refund in full any fee submitted with the application (see **Chapter 21**)

32.4.1.5 If the person is not a British overseas territories citizen, but is a British citizen or a British Overseas citizen, nationality caseworkers should:

- write to say so; and
- explain that registration as a British overseas territories citizen under **s.22** is not possible because the person did not cease to be a citizen of the United Kingdom and Colonies as a result of the declaration of renunciation; and
- explain that the only avenue to British overseas territories citizenship is by naturalisation under **s.18** (see **Chapter 34**); and
- refund the registration fee and retain the application fee (see **Chapter 21**)

32.4.2 Checking the reason for renunciation

32.4.2.1 In order for a person to be entitled to registration under **s.22(1)**, the renunciation of citizenship of the United Kingdom and Colonies must have been:

- necessary in order to retain or acquire citizenship of a country listed in Annex A; or
- in the reasonable belief that the person would otherwise be deprived of the citizenship of such a country

32.4.2.2 If:

- renunciation of citizenship of the United Kingdom and Colonies was unnecessary; or
- the person's belief about deprivation was unreasonable; or
- the renunciation was for any other reason

the application must be considered under **s.22(2)** (see 32.5 below).

32.4.3 Checking the qualifying connection

32.4.3.1 If the person does not have a qualifying connection with a British overseas territory, but has a qualifying connection with the United Kingdom, he or she may be able to be registered as a British citizen under **s.10** of the British Nationality Act 1981 (see **Chapter 16**).

32.4.3.2 In refusing the application under **s.22**, the nationality caseworker should explain the possibility of registration as a British citizen under **s.10** and send an application Form RS1.

32.4.4 Checking for previous registration

32.4.4.1 If the person has previously been registered as a British overseas territories citizen under **s.22(1)**, he or she cannot be registered again under this provision. The application should therefore be considered either:

- under **s.22(2)** (see 32.5 below); or
- under **s.24** (see **Chapter 35**)

32.5 Exercise of discretion

32.5.1 **Section 22(2)** gives the Home Secretary/Governor discretion to register as a British overseas territories citizen, if he thinks fit, persons who ceased to be a citizen of the United Kingdom and Colonies as a result of making a declaration of renunciation, provided they have a qualifying connection with a British overseas territory.

32.5.2 This discretion is intended, primarily, to benefit those:

- whose renunciation of citizenship of the United Kingdom and Colonies was necessary in order to retain or acquire the citizenship of a country not listed in Annex A; or
- who reasonably believed they would be deprived of such citizenship if they did not renounce citizenship of the United Kingdom and Colonies

32.5.3 Therefore, applications under **s.22(2)** may normally be granted if the applicants renounced citizenship of the United Kingdom and Colonies:

- because they could not otherwise have remained or become a citizen of a country not listed in Annex A; or
- because they reasonably believed they would be deprived of the citizenship of such a country if they did not renounce citizenship of the United Kingdom and Colonies

32.5.4 If:

- renunciation of citizenship of the United Kingdom and Colonies was not necessary in order to retain or acquire the citizenship of another country (including those listed in Annex A); or
- the person had no reason to believe that renunciation of citizenship of the United Kingdom and Colonies was necessary to prevent him or her being deprived of the citizenship of another country (including those listed in Annex A); or
- the person has already been registered as a British overseas territories citizen under **s.22(1)**,

the application should be considered under **s.22(2)** on its merits, taking into account the reasons given for the renunciation and/or the reasons for wishing to become a British overseas territories citizen. If no reasons have been given, they should be requested.

32.5.4.1 Examples of the circumstances in which it may be appropriate to register are:

- renunciation was in order to acquire the citizenship of a spouse/civil partner, and the marriage/civil partnership has now ended; or
- renunciation was in order to acquire another citizenship to assist in a career; and
- the person now wishes to return or come to a British overseas territory for settlement, and nationality caseworkers are satisfied that his or her future is likely to lie there if registered

32.5.5 In exercising his discretion under **s.22(2)**, the Home Secretary/Governor has to have regard to the character of the applicant and suitability for registration. Applicants will not be expected to meet exacting standards, but it is necessary to try to identify those whose activities may suggest registration would not be appropriate and where registration would attract criticism.

32.5.6 If, therefore, the applicant is eligible for registration under **s.22(2)**, further enquiries may be needed.

32.6 **Oath and pledge**

32.6.1 Where the application is made before 1 January 2004, the applicant will have to take an oath of allegiance before registration unless:

- a British citizen; or
- a British National (Overseas); or
- a British Overseas citizen; or
- a British subject under the 1981 Act; or
- a citizen of any country of which Her Majesty is Queen (see **Chapter 21**)

32.6.2 Where the application is made on or after 1 January 2004, the application will, before registration, have to make an appropriate citizenship oath and pledge (see **Chapter 21**).