

Part II: British overseas territories citizenship

Chapter 36: British overseas territories citizenship "by descent" and "otherwise than by descent"

section 25 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.

36.1 Introduction

36.1.1 Every person who is a British overseas territories citizen is so either "by descent" or "otherwise than by descent".

36.1.2 The distinction between the two affects a British overseas territories citizen's ability to transmit that citizenship to children born outside the British overseas territories. It does not affect any of the other rights or duties that go with British overseas territories citizenship.

36.1.3 British overseas territories citizens "by descent" cannot transmit their citizenship to children born outside the British overseas territories except in the circumstances described in **Chapter 24**. British overseas territories citizens "otherwise than by descent" automatically transmit their citizenship to children born outside the British overseas territories.

36.1.4 As a general principle:

- People who are British overseas territories citizens by birth, adoption, registration or naturalisation **in a British overseas territory** are British overseas territories citizens "otherwise than by descent"
- People who are British overseas territories citizens by birth or other means **elsewhere** are British overseas territories citizens "by descent"

36.1.5 But there are a number of exceptions in both categories, so this Chapter needs to be consulted in all cases where it is necessary to know whether a person is a British overseas territories citizen "by descent" or "otherwise than by descent".

36.1.6 It is important to remember that no one can acquire British overseas territories citizenship under **s.25** of the 1981 Act. British overseas territories citizenship is acquired either automatically or by registration or naturalisation under other provisions of the Act.

36.1.7 It is necessary to define only one category of British overseas territories citizens, because all other British overseas territories citizens must, without exception, fall into the other category. Because the category of those who are British overseas territories citizens "by descent" is the smaller of the two, **s.25(1)** of the 1981 Act defines this category.

36.1.8 Nationality caseworkers do not normally have to concern themselves with this when granting British overseas territories citizenship. But some people (mostly minors) may be eligible for registration under more than one provision of the 1981 Act. By the operation of **s.25(1)** of the 1981 Act, registration under one provision of that Act would give British overseas territories citizenship "by descent" and under another, British overseas territories citizenship "otherwise than by descent". In such cases, caseworkers should, whenever possible, choose the one which gives British overseas territories citizenship "otherwise than by descent". This is made clear in the relevant Chapter of these Instructions.

36.2 **The Law**

A. British overseas territories citizens born on or after 1 January 1983

36.2.1 Under **s.25(1)** of the 1981 Act, a British overseas territories citizen born on or after 1 January 1983 is a British overseas territories citizen "by descent" if he

or she is a British overseas territories citizen:

- automatically under **s.16(1)(a)** only (**s.25(1)(a)**); or
- by registration under **s.17(1)** and, at the time of the birth, the father or mother was a British overseas territories citizen (**s.25(1)(c)**); or
- by registration under **s.17(2)** (**s.25(1)(a)**); or
- by registration under **s.21** (**s.25(1)(a)**); or
- by registration under **s.13** (as applied by **s.24**) and, immediately before renunciation of British overseas territories citizenship, was a British overseas territories citizen "by descent" (**s.25(1)(h)**); or
- automatically under **paragraph 1 of Schedule 2** (**s.25(1)(i)**)

36.2.2 The reference in 36.2.1 above to father or mother does not include an adoptive father or mother. This means that adopted children, registered under **s.17(1)**, are British overseas territories citizens "otherwise than by descent" unless one of their natural parents was a British overseas territories citizen at the time of the birth. For the definition of 'father' and 'mother', see Annex F to **Chapter 6**.

B. British overseas territories citizens born before 1 January 1983

36.2.3 **Section 25(1)** and **25(2)** of the 1981 Act must be read together. **Section 25(1)** lists those British overseas territories citizens who are so by descent. **Section 25(2)** sets out exceptions for certain people born before 1 January 1983 (see 36.2.4 a, b. and c. below).

36.2.4 Subject to the provision made by **s.25(2)**, a British overseas territories citizen, born before 1 January 1983, will be a British overseas territories citizen by descent if he or she is a British overseas territories citizen:

- a. who was a citizen of the United Kingdom and Colonies under **s.5** of the **British Nationality Act 1948 (s.25(1)(b)(i))**; or
- b. who was deemed, or would have been so deemed if male (see, for example, **paragraph 3** of **Schedule 3** to the **British Nationality Act 1948** and **s.1(4)** of the **British Nationality (No.2) Act 1964**) to be a citizen of the United Kingdom and Colonies by descent only for the purposes of the proviso to **s.5(1)** of the **British Nationality Act 1948 (s.25(1)(b)(ii))**; or
- c. who was a citizen of the United Kingdom and Colonies who became a British Dependent Territories citizen on 1 January 1983 under **s.23(1)(b) only: (s.25(1)(d))**; or
- d. who, being a woman, was a citizen of the United Kingdom and Colonies who became a British Dependent Territories citizen on 1 January 1983 under **s.23(1)(c) only**, and did so only by reason of marriage to a man who, on 1 January 1983:
 - became a British Dependent Territories citizen "by descent" under a., b. or c. above (**s.25(1)(e)**); or
 - would, but for his death, have become a British Dependent Territories citizen "by descent" under a., b. or c. above (**s.25(1)(e)**); or
- e. by registration under **s.17(1)** and, at the time of the birth, his or her father or mother (see 36.2.2 above) was a citizen of the United Kingdom and Colonies who became or, but for death, would have become a British Dependent Territories citizen on 1 January 1983 (**s.25(1)(c)**); or
- f. by registration under **s.20** by reason of marriage to a man who, on 1

January 1983:

- became a British Dependent Territories citizen by descent (**s.25(1)(f)**); or
 - would, but for his death, have become a British Dependent Territories citizen by descent (**s.25(1)(f)**); or
 - would, but for having ceased to be a citizen of the United Kingdom and Colonies as a result of a declaration of renunciation, have become a British Dependent Territories citizen by descent (**s.25(1)(f)**); or
- g. by registration under **s.22** and, but for having ceased to be a citizen of the United Kingdom and Colonies as a result of a declaration of renunciation, would have become a British Dependent Territories citizen by descent on 1 January 1983 for any of the reasons set out in a., b., c. or d. above (**s.25(1)(g)**); or
- h. by registration under **s.13** (as applied by **s.24**) and, immediately before renunciation of British Dependent Territories citizenship, was a British Dependent Territories citizen by descent (**s.25(1)(h)**).

36.2.5 Under **s.25(2)**, a British overseas territories citizen born outside the British overseas territories before 1 January 1983 is not a British overseas territories citizen by descent under **s.25(1)** for any of the reasons in 36.2.4.a-d or f. above if, at the time of the birth, his or her father was:

- serving outside the British overseas territories; and
- in Crown service under the government of a British overseas territory; or
- in service of any description at any time designated under **s.16(3)**; and

- recruited in a British overseas territory for the service in question

36.2.6 For the purposes of **s.25(2)**, it is important to remember that:

- the person's father did not have to be a citizen of the United Kingdom and Colonies, or have any form of British nationality; and
- the person's father did not have to become a British Dependent Territories citizen on 1 January 1983; and
- if the person's father was, at the time of the birth, in service which was designated after 1 January 1983, the person became a British overseas territories citizen otherwise than by descent only on the date the service was designated, not on 1 January 1983

Example

36.2.6.1 A person was born in the United Kingdom in 1950. He was therefore a citizen of the United Kingdom and Colonies under **s.4** of the **British Nationality Act 1948**. His father was Australian. His mother was a citizen of the United Kingdom and Colonies by birth in Gibraltar. His father was recruited in Gibraltar in 1948 into Crown service under the Government of Gibraltar. That person would normally have become, on 1 January 1983, a British Dependent Territories citizen by descent under **s.25(1)(d)**. But, in fact, he became a British Dependent Territories citizen otherwise than by descent under **s.25(2)** because of his father's Crown service, even though his father was not a British Dependent Territories citizen.

C. British overseas territories citizens under the British Overseas Territories Act 2002

36.2.7 The status of persons who became British overseas territories citizens automatically under **s.6(3)** of the **British Overseas Territories Act 2002** is

set out in **s.6(4)** of that Act.

36.2.8 A person who became a British overseas citizen under **s.6(3)** of the **2002 Act** is a British overseas territories citizen by descent.