

## PART III: BRITISH OVERSEAS CITIZENSHIP

### CHAPTER 37: AUTOMATIC ACQUISITION ON 1 JANUARY 1983

#### SECTION 26 BRITISH NATIONALITY ACT 1981

#### 37.1 Introduction

37.1.1 This Chapter deals only with the automatic acquisition of British Overseas citizenship on 1 January 1983.

37.1.2 The automatic acquisition of British Overseas citizenship after 1 January 1983 is dealt with in **Chapter 38**.

#### 37.2 The Law

37.2.1 **Section 26** of the British Nationality Act 1981 explains which people born before 1 January 1983 acquired British Overseas citizenship automatically on that date.

37.2.2 Under **s.26**, a person automatically became a British Overseas citizen on 1 January 1983 if, immediately before that date, he or she:

- was a citizen of the United Kingdom and Colonies; and
- did not on that date become either:
  - i. a British citizen under **s.11** of the British Nationality Act 1981 or **s.1(1)** of the **British Nationality (Falkland Islands) Act 1983** (see **Chapter 2**); and/or
  - ii. a British Dependent Territories citizen under **s.23** (see **Chapter 22**).

37.2.3 British Overseas citizenship is not transmissible, and the question of whether a person is such a citizen by descent or otherwise does not arise.

#### 37.3 Claims to British Overseas citizenship

37.3.1 We will need to investigate claims to British Overseas

citizenship when:

- a person has written to enquire about his or her own status
- a person's own status affects someone else (e.g. a spouse, child or grandchild) who may, as a result, derive citizenship automatically from that person
- adult or minor applicants for British Overseas citizenship appear already to hold that status

#### 37.4 **Procedure for establishing claims**

37.4.1 To recognise a person's claim to British Overseas citizenship under **s.26** of the British Nationality Act 1981, we need to establish that, on 31 December 1982, he or she:

- was a citizen of the United Kingdom and Colonies; and
- did not, on 1 January 1983, become either:
  - i. a British citizen under **s.11** of the British Nationality Act 1981 or **s.1(1)** of the **British Nationality (Falkland Islands) Act 1983** (see **Chapter 2**); and/or
  - ii. a British Dependent Territories citizen under **s.23** (see **Chapter 22**).

37.4.2 Annex A, B & C of this Chapter should be consulted to establish whether the person was a citizen of the United Kingdom and Colonies. The term 'father' in those charts means the natural father of a legitimate child. An illegitimate child may be legitimated by the subsequent marriage of the parents.

37.4.3 When citizenship of the United Kingdom and Colonies was derived from a connection with a former British overseas territory particular care should be taken to establish that the person concerned retained that status when the territory in question gained independence.

37.4.4 If the person concerned was a citizen of the United Kingdom

and Colonies, Annex D should be consulted to establish whether, on 1 January 1983, the person became a British Overseas citizen under s.26 of the British Nationality Act 1981. If not, the person would have become either a British citizen or a British Dependent Territories citizen and should be advised accordingly. (See **Chapters 2** and **22** respectively)

37.4.5 If the person became a British Dependent Territories citizen, it may be necessary to check whether the person also became a British citizen either on 1 January 1983 by connection with the Falkland Islands (see **Chapter 2**) or on 21 May 2002 by connection with a qualifying territory (see **Chapter 3**). If so, the person should be advised accordingly.

### 37.5 Evidence required

37.5.1 A person born before 1 January 1983 may be regarded as a British Overseas citizen on production of:

- a passport, issued on or after 1 January 1983, describing the holder as a British Overseas citizen; or
- a passport, issued before 1 January 1983, describing the holder as a citizen of the United Kingdom and Colonies; and
- the relevant documents related to the person's, his or her parents', grandparents', spouse's birth, adoption, marriage, death, registration or naturalisation which establish that the person did not, on 1 January 1983, become a British citizen and/or a British Dependent Territories citizen

37.5.2 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 acknowledging a claim. It should be remembered, in particular, that a birth certificate is evidence of an event, not of identity.

37.5.3 We should take into account any evidence already on file. If documents have been examined in the past it is not always necessary 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, an Immigration Officer, a Home

Office official or an official in an existing or former British overseas territory, or any tribunal or court in the United Kingdom or an existing or former British overseas territory, we do not need 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.

37.5.4 In the absence of some or all of the documentary evidence set out in the preceding paragraphs, secondary evidence may be acceptable.

### 37.6 Confirmation of claims

37.6.1 Where we can accept that a person became a British Overseas citizen on 1 January 1983, then:

- 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 E
- 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 (see Annex H to **Chapter 2**)

37.6.2 If we cannot accept that the person became a British Overseas citizen on 1 January 1983 because he or she was not a citizen of the United Kingdom and Colonies on 31 December 1982, we should explain this and, if appropriate, advise how that person may become a British citizen. If we cannot accept the person became a British Overseas citizen because he or she became a British citizen and/or a British Dependent Territories citizen, the person should be advised accordingly (see **Chapters 2** and/or **22** respectively).

37.6.3 If we notice that an applicant for British Overseas citizenship is already a British Overseas citizen under **s.26** of the British Nationality Act 1981, we should:

- write to explain that the application is not necessary (along the lines of the draft at Annex F); and
- refund in full any fee submitted with the application (see **Chapter 6**)