

PART III: BRITISH OVERSEAS CITIZENSHIP

CHAPTER 38: AUTOMATIC ACQUISITION BY PEOPLE OTHERWISE BORN STATELESS

SCHEDULE 2, PARAGRAPHS 1 & 2, BRITISH NATIONALITY ACT 1981

ARTICLE 6(1) & 6(2), HONG KONG (BRITISH NATIONALITY) ORDER 1986

SECTION 50(7), BRITISH NATIONALITY ACT 1981

NB. As regards any time before 26 February 2002, references in this Chapter to British overseas territories citizenship or the British overseas territories should be read as references to British Dependent Territories citizenship and the British dependent territories.

38.1 Introduction

38.1.1 To meet our obligations under the United Nations Convention on the Reduction of Statelessness, **s.36** and **Schedule 2** to the British Nationality Act 1981, and **Article 6** of the **Hong Kong (British Nationality) Order 1986**, make provision for the acquisition of the citizenships and status created by the Act by certain persons who are or would otherwise be stateless.

38.1.2 This Chapter deals with the provisions for automatic acquisition of British Overseas citizenship. **Chapter 40** deals with the provisions for acquisition of British Overseas citizenship by registration.

38.1.3 Guidance on the acquisition of British citizenship is contained in **Chapters 5** and **15**. Guidance on the acquisition of British overseas territories citizenship is contained in **Chapters 25** and **31**. Guidance on the acquisition of British subject status is contained in **Chapters 44** and **47**.

38.1.4 The form of British nationality acquired under **paragraphs 1** and **2** of **Schedule 2** to the 1981 Act is the same as that of the parent or parents. If, between them, the parents hold more than one form of British nationality, then both will be acquired, except for British subject status. A person cannot become a British subject under **paragraphs 1** and **2** of **Schedule 2** if he or she acquires another form of British nationality.

38.2 The Law

A. Schedule 2, paragraph 1

38.2.1 A person born in the United Kingdom on or after 1 January 1983, who would otherwise have been born stateless, will be:

- a British overseas territories citizen; or
- a British Overseas citizen; or
- both; or
- a British subject under the 1981 Act

if, at the time of the birth, either of the parents was:

- i. a British overseas territories citizen; and/or
- ii. a British Overseas citizen; or
- iii. neither, but one or both of them was a British subject under the 1981 Act.

38.2.2 A person cannot be a British subject under the 1981 Act under **paragraph 1** of **Schedule 2** if:

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

38.2.3 A person cannot benefit from the provisions of **paragraph 1** of **Schedule 2** if, at birth:

- a British citizen under **s.1(1)** (see **Chapter 3**); or
- a British overseas territories citizen under **s.16(1)** (see **Chapter 24**); or
- holding any other nationality or citizenship

B. Schedule 2, paragraph 2

38.2.4 A person born in a British overseas territory on or after 1 January 1983, who would otherwise have been born stateless, will be:

- a British citizen; or
- a British Overseas citizen; or
- both; or
- a British subject under the 1981 Act

if, at the time of the birth, either of the parents was:

- i. a British citizen; and/or
- ii. a British Overseas citizen; or
- iii. neither, but one or both of them was a British subject under the 1981 Act.

38.2.5 A person cannot be a British subject under the 1981 Act under **paragraph 2** of **Schedule 2** if:

- a British citizen; or
- a British Overseas citizen; or
- both

38.2.6 A person cannot benefit from the provisions of **paragraph 2** of **Schedule 2** if, at birth:

- a British overseas territories citizen under **s.15(1)** (see **Chapter 23**); or
- a British citizen under **s.2(1)** of the British Nationality Act 1981 or **s.1(2)** of the **British Nationality (Falkland Islands) Act 1983** (see **Chapter 4**); or
- (if born in a qualifying territory on or after 21 May 2002) a British citizen under **s.1(1)** of the British Nationality

Act 1981, as amended by the **British Overseas Territories Act 2002** (see **Chapter 3**); or

- holding any other nationality or citizenship

C. Article 6(1) & 6(2), Hong Kong (British Nationality) Order 1986

38.2.7 Under **Article 6(1)**, a person who, by virtue of **Article 3**, ceased, on 1 July 1997, to be a British Dependent Territories citizen by connection with Hong Kong (see Annex A to **Chapter 51**) became a British Overseas citizen on that date if he or she would then otherwise have been stateless.

38.2.8 Under **Article 6(2)**, a person born on or after 1 July 1997, who would otherwise have been born stateless, will be a British Overseas citizen if, at the time of the birth, either of the parents was:

- a British National (Overseas) (see **Chapter 51**); or
- a British Overseas citizen under **Article 6(1)** (see 38.2.7 above)

D. Section 50(7)

38.2.9 Birth on a ship or aircraft

38.2.9.1 Under **s.50(7)**, a person born outside the United Kingdom on or after 1 January 1983 aboard a ship (including a hovercraft) or aircraft is regarded, for the purposes of the 1981 Act, as having been born in the United Kingdom if, at the time of the birth:

- the ship or aircraft was registered in the United Kingdom; or
- the ship or aircraft was unregistered, but belonged to the Government of the United Kingdom; and either
 - a. his or her father or mother was a British citizen; or

b. he or she would otherwise have been born stateless

38.2.9.2 In relation to any time between 1 January 1983 and 20 May 2002 (inclusive), the provisions of **s.50(7)** apply to the British overseas territories by substituting references to a British overseas territory and British overseas territories citizen for references to the United Kingdom and British citizen respectively.

38.2.9.3 Under **s.50(7A)**, a person born outside a qualifying territory on or after 21 May 2002 aboard a ship (including a hovercraft) or aircraft is regarded, for the purposes of the Act, as having been born in that territory if, at the time of the birth:

- the ship or aircraft was registered in the that territory; or
- the ship or aircraft was unregistered but belonged to the Government of that territory; and either

a. his or her father or mother was a British citizen or a British overseas territories citizen; or

b. he or she would otherwise have been born stateless

38.2.9.4 Under **s.50(7B)**, a person born outside a British overseas territory, other than a qualifying territory, on or after 21 May 2002 aboard a ship (including a hovercraft) or aircraft is regarded, for the purposes of the Act, as having been born in that territory if, at the time of the birth:

- the ship or aircraft was registered in that territory; or
- the ship or aircraft was unregistered but

belonged to the Government of that territory;
and either

a. his or her father or mother was a British overseas territories citizen; or

b. he or she would otherwise have been born stateless

38.2.9.5 If the person can be regarded as having been born in the United Kingdom, he or she may be:

- a British citizen under **s.1(1)** (see **Chapter 3**); or
- a British overseas territories citizen, a British Overseas citizen or a British subject under **paragraph 1** of **Schedule 2** (see 38.2.1-38.2.3 above)

38.2.9.6 If the person cannot be regarded as having been born in the United Kingdom, he or she may be:

- a British citizen under **s.1(1)** (if born in a qualifying territory on or after 21 May 2002) (see **Chapter 3**); or
- a British citizen under **s.2(1)** of the British Nationality Act 1981 (if born before 21 May 2002 or on or after 21 May 2002 outside the qualifying territories) or under **s.1(2)** of the **British Nationality (Falkland Islands) Act 1983** (see **Chapter 4**); or
- a British citizen, a British Overseas citizen or a British subject under **paragraph 2** of **Schedule 2** (see 38.2.4-38.2.6 above)

38.2.9.7 If the person can be regarded as having been born in a British overseas territory, he or she may be:

- a British citizen under **s.1(1)** (if born in a qualifying territory on or after 21 May 2002)

(see **Chapter 3**); or

- a British overseas territories citizen under **s.15(1)** (See **Chapter 23**); or
- a British citizen (if born before 21 May 2002 or outside the qualifying territories on or after 21 May 2002), a British Overseas citizen or a British subject under **paragraph 2** of **Schedule 2** (see 38.2.4-38.2.6 above)

38.2.9.8 If the person cannot be regarded as having been born in a British overseas territory, he or she may be:

- a British citizen under **s.2(1)** (see **Chapter 4**); or
- a British overseas territories citizen under **s.16(1)** (see **Chapter 24**); or
- a British overseas territories citizen, a British Overseas citizen or a British subject under **paragraph 1** of **Schedule 2** (see 38.2.1-38.2.3 above)

38.2.10 A person who is a British citizen under **paragraph 2** of **Schedule 2** is a British citizen by descent (see **Chapter 20**).

38.2.11 A person who is a British overseas territories citizen under **paragraph 1** of **Schedule 2** is a British overseas territories citizen by descent (see **Chapter 36**).

38.2.12 An explanation of the terms 'United Kingdom', 'British overseas territory', 'qualifying territory', 'parent' and 'settled' is in Annex F to **Chapter 6**.

38.3 **Claims to British Overseas citizenship**

38.3.1 Claims to British Overseas citizenship will need to be investigated when:

- someone writes about his or her own status and/or that of a

child; or

- a question is raised about a child found abandoned in the United Kingdom or in a British overseas territory; or
- an enquiry is made about the position of a child adopted in the United Kingdom or in a British overseas territory; or
- adult or minor applicants for British Overseas citizenship appear already to hold that citizenship

38.4 Procedure for establishing 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).

38.4.1 To recognise a person's claim to British citizenship, British overseas territories citizenship, British Overseas citizenship or British subject status under the provisions described in this Chapter, we must establish that **EITHER:**

a. the person:

- was born in the United Kingdom on or after 1 January 1983; and
- at birth, would otherwise have had no nationality or citizenship; and
- had a parent who, at the time of the person's birth, was neither a British citizen nor settled in the United Kingdom; and
- had a parent who, at the time of the person's birth, was either:

i. a British overseas territories citizen; or

ii. a British Overseas citizen; or

iii. neither, but one or both parents was a British subject under the 1981 Act; OR

b. the person:

- was born in a British overseas territory on or after 1 January 1983; and
- at birth, would otherwise have had no nationality or citizenship; and
- had a parent who, at the time of the person's birth, was neither a British overseas territories citizen nor settled in a British overseas territory; and
- had a parent who, at the time of the person's birth, was either:

i. a British citizen; or

ii. a British Overseas citizen; or

iii. neither, but one or both parents was a British subject under the 1981 Act; OR

c. the person:

- was, on 30 June 1997, a British Dependent Territories citizen by connection with Hong Kong (see Annex A to **Chapter 51**); and
- on 1 July 1997, had no other nationality or citizenship; OR

d. the person:

- was born on or after 1 July 1997; and
- at birth, would otherwise have had no nationality or citizenship; and

- had a parent who, at the time of the person's birth, was either:
 - i. a British National (Overseas) (see **Chapter 51**); or
 - ii. a British Overseas citizen under c. above.

38.5 Evidence required

38.5.1 Persons born in the United Kingdom

38.5.1.1 A person born in the United Kingdom on or after 1 January 1983 may be regarded as a British overseas territories citizen, a British Overseas citizen or a British subject under the 1981 Act on production of:

- a passport describing the holder as:
 - i. a British overseas territories citizen; or
 - ii. a British Overseas citizen; or
 - iii. a British subject,

OR

- a United Kingdom birth certificate showing parents' details; and
- evidence that at the time of the birth a parent was either:
 - i. a British overseas territories citizen; or
 - ii. a British Overseas citizen; or
 - iii. neither, but was a British subject under the 1981 Act.

NB. If either or both of the parents of the person born in the United Kingdom is a citizen of the Republic of Ireland, or a foreign or Commonwealth country, it will be necessary to have a statement from the authorities of the country concerned confirming that the person did not at birth become a citizen of that country.

38.5.1.2 A United Kingdom birth certificate showing parents' details will establish the relationship to the parent(s) and indicate whether the child was born legitimate. A guide to the interpretation of the entries on a United Kingdom birth certificate is at Annex A to **Chapter 3**.

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

- a passport describing the holder as a British Dependent Territories citizen or a British overseas territories citizen; or
- a birth certificate showing his or her parents' details and that he or she was born 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
- 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 his or her and/or their parents', grandparents', spouse's birth, adoption, marriage, death, registration or naturalisation

38.5.1.4 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 overseas territories citizenship, but which establish that he or she 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**)

38.5.1.5 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 overseas territories citizenship, but which establish that he or she 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 persons who remained British subjects under **s.2** of the **1948 Act** or **s.31(3)** of the 1981 Act, a person who is a British subject under the 1981 Act automatically ceases to have that status if he or she acquires any other citizenship or nationality, which includes the three 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.

38.5.2 Persons born in a British overseas territory

38.5.2.1 A person born in a British overseas territory on or after 1 January 1983 may be regarded as a British citizen, a British Overseas citizen or a British subject on production of:

- a passport describing the holder as:
 - i. a British citizen; or
 - ii. a British Overseas citizen; or
 - iii. a British subject,

OR

- a full British overseas territories birth certificate showing parents' details; and
- evidence that at the time of the birth a parent was either:
 - i. a British citizen; or
 - ii. a British Overseas citizen; or

iii. neither, but was a British subject under the 1981 Act.

NB. If either or both of the parents of the person born in a British overseas territory is a citizen of the Republic of Ireland, or a foreign or Commonwealth country, it will be necessary to have a statement from the authorities of the country concerned confirming that the person did not, at birth, become a citizen of that country.

38.5.2.2 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 birth certificate showing his or her parents' details and that he or she was born before 1 January 1983; or
- (if born on or after 1 January 1983) a United Kingdom 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
- (if born in a qualifying territory on or after 21 May 2002) a 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 that territory; or
- a certificate of registration or naturalisation, issued in the United Kingdom, describing the holder as either a British citizen, or a British Dependent Territories 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

- a certificate of registration or naturalisation, issued in a qualifying territory before 21 May 2002, describing the holder as either a British citizen or a British Dependent Territories citizen or a citizen of the United Kingdom and Colonies; or
- the relevant documents related to his or her and/or their parents', grandparents', spouse's birth, adoption, marriage, death, registration or naturalisation

38.5.2.3 Evidence of a parent's British Overseas citizenship (see 38.5.1.4 above).

38.5.2.4 Evidence that a parent is a British subject (see 38.5.1.5 above).

38.5.3 Former BDTs by connection with Hong Kong and their descendants

38.5.3.1 A person may be regarded as a British Overseas citizen on production of:

- a. a passport, issued on or after 1 July 1997, describing the holder as such a citizen; or
- b. evidence that:
 - on 30 June 1997, he or she was a British Dependent Territories citizen by connection with Hong Kong (see Annex A to **Chapter 51**); and
 - on 1 July 1997, he or she had no other nationality or citizenship; or
- c. a birth certificate showing his or her

parents' details, and evidence that, at the time of the birth, he or she had no other nationality or citizenship, and had a parent who was either:

- a British National (Overseas); or
- a British Overseas citizen as in b. above

NB. If the person has a connection by birth, descent, etc with the Republic of Ireland or a foreign or Commonwealth country, it will be necessary to have a statement from the authorities of the country concerned confirming that the person did not on that date, have its nationality or citizenship. Written confirmation of non-acquisition of Chinese citizenship should be obtained in all paragraph 38.5.3.1.b. and c. cases.

38.5.4 Birth aboard a ship or aircraft

38.5.4.1 Births which occur on UK ships are reported to the Registrar General of Shipping at Cardiff by the master of the ship. Similarly, births on UK aircraft are reported to the Civil Aviation Authority, and those on hovercraft to the Department of Trade and Industry. In each case, records are sent to the General Register Office, from which certified copies may be obtained.

38.5.5 General principles

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

38.5.5.2 Any evidence already on the file should be taken into account. 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, an Immigration Officer, or other official in the United Kingdom or a British overseas territory, 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.

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

38.6 Entitlement to British Overseas citizenship

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**).

38.6.1 Persons born stateless

38.6.1.1 A person born stateless on or after 1 July 1997 may be entitled to registration as a British Overseas citizen:

- under **Article 6(3) - 6(5)** of the **Hong Kong (British Nationality) Order 1986** (see **Chapter 40**), if:
 - i. the person was born outside the British overseas territories, and

- ii. the person had a parent who, at the time of the birth, was a British Overseas citizen as described in 38.2.8 above, and
 - iii. that parent had a parent who, on 30 June 1997, was a British Dependent Territories citizen otherwise than by descent (see **Chapter 36**) by connection with Hong Kong (see Annex A to **Chapter 51**)
- under **paragraph 4** of **Schedule 2** to the BNA 1981, if born stateless outside the United Kingdom and British overseas territories after 1.1.83 (see **Chapter 40**)
 - under **paragraph 5** of **Schedule 2** to the BNA 1981, if born stateless before 1.1.83 (see **Chapter 40**)

38.6.2 If a person does not have an entitlement to registration as a British Overseas citizen under any of the provisions described in 38.6.1 above, and is still a minor, we should consider whether it would be right to offer registration at discretion under **s.27(1)** (see **Chapter 39**).

38.7 Confirmation of claims

38.7.1 In response to an enquiry about British Overseas citizenship:

- if a claim to British Overseas citizenship under **paragraph 1** or **2** of **Schedule 2** of the British Nationality Act 1981 has been established, we should issue a status letter (quoting the relevant paragraph) - see Annex H to **Chapter 2**
- if a claim under **Article 6(1)** or **6(2)** of the **Hong Kong (British Nationality) Order 1986** has been established, we should issue a status letter (quoting the relevant Article) - see Annex H to **Chapter 2**

38.7.2 If we cannot accept that a person has a claim to British Overseas citizenship, we should:

- explain briefly why; and
- explain how that person may become a British Overseas citizen (see 38.6 above)

38.7.3 If we notice that an applicant for British Overseas citizenship already holds that citizenship under a provision of either the British Nationality Act 1981 or the **Hong Kong (British Nationality) Order 1986**, we should:

- write to explain that the application is not necessary; and
- refund in full any fee submitted with the application (see **Chapter 6**)