

PART I: BRITISH CITIZENSHIP

CHAPTER 4: AUTOMATIC ACQUISITION BY BIRTH:

- (A) OUTSIDE THE UNITED KINGDOM AND THE FALKLAND ISLANDS ON OR AFTER 1 JANUARY 1983 AND BEFORE 21 MAY 2002; OR
- (B) OUTSIDE THE UNITED KINGDOM AND QUALIFYING TERRITORIES ON OR AFTER 21 MAY 2002

SECTION 2 BRITISH NATIONALITY ACT 1981

4.1 Introduction

4.1.1 This Chapter deals only with the acquisition of British citizenship at birth by people born:

- outside the United Kingdom and the Falkland Islands on or after 1 January 1983 and before 21 May 2002; **OR**
- outside the United Kingdom and the qualifying territories (see Annex F to **Chapter 6**) on or after 21 May 2002

4.1.2 The status of those born before 1 January 1983 is dealt with in **Chapter 2**.

4.1.2 The status of those born (or deemed to have been born) or adopted:

- in the United Kingdom or the Falkland Islands on or after 1 January 1983 and before 21 May 2002; or
- in the United Kingdom or a qualifying territory on or after 21 May 2002; or
- (in the case of adoption) under a Convention adoption

is dealt with in **Chapter 3**.

4.1.4 The status of those born (or deemed to have been born) on or after 1 January 1983 either:

- in the United Kingdom; or
- in a British overseas territory; or

- on board a British ship or aircraft,

and who would otherwise be stateless, is dealt with in **Chapter 5**.

4.2 The Law

4.2.1 **Section 2(1)** of the British Nationality Act 1981, as amended by the **British Overseas Territories Act 2002**, explains which people born outside the United Kingdom on or after 1 January 1983 acquired British citizenship automatically at birth. It is to be read in conjunction with:

- **s.1** of the **British Nationality (Falkland Islands) Act 1983**, which makes special provision in respect of those born or adopted in the Falkland Islands on or after 1 January 1983 (see **Chapter 3**); and
- the **British Overseas Territories Act 2002**, which makes special provision in respect of those who, immediately before 21 May 2002, were either British overseas territories citizens or had a connection with the British Indian Ocean Territory
- **Schedule 2** to the 1981 Act, concerning people who would otherwise be stateless (see **Chapter 5**)

4.2.2 Children born before 21 May 2002

4.2.2.1 Under **s.2(1)(a)**, a person born outside the United Kingdom on or after 1 January 1983 and before 21 May 2002 is a British citizen at birth if, at the time of the birth, either parent (see Annex F to **Chapter 6**) is a British citizen "otherwise than by descent".

4.2.2.2 Under **s.2(1)(b)**, a person born outside the United Kingdom on or after 1 January 1983 and before 21 May 2002 is a British citizen at birth if, at the time of the birth:

- a. either parent is a British citizen; and

b. that parent is serving outside the United Kingdom:

- in Crown service under the government of the United Kingdom (see Annex F to **Chapter 6**); or
- in service of any description designated under **s.2(3)** (see Annex A); and
- was recruited in the United Kingdom for that service (see Annex F to **Chapter 6**)

4.2.2.3 Under **s.2(1)(c)**, a person born outside the United Kingdom on or after 1 January 1983 and before 21 May 2002 is a British citizen at birth if, at the time of the birth:

a. either parent is a British citizen; and

b. that parent is serving outside the United Kingdom:

- in service under a Community institution (see Annex B); and
- was recruited for that service in a country which at the time was a member of the Communities (see Annex F to **Chapter 6**)

4.2.3 Children born on or after 21 May 2002

4.2.3.1 Under **s.2(1)(a)**, a person born outside the United Kingdom and the qualifying territories on or after 21 May 2002 is a British citizen at birth if, at the time of the birth, either parent is a British citizen "otherwise than by descent".

4.2.3.2 Under **s.2(1)(b)**, as amended by the **2002 Act**, a person born outside the United Kingdom and the qualifying territories on or after 21 May 2002 is a British citizen at birth if, at the time of the birth:

- a. either parent is a British citizen; and
- b. that parent is serving outside the United Kingdom and the qualifying territories:
 - in Crown service under the government of the United Kingdom or of a qualifying territory; or
 - in service of any description designated under **s.2(3)** (see Annex A); and
 - was recruited for that service in the United Kingdom or a qualifying territory

4.2.3.3 Under **s.2(1)(c)**, as amended by the **2002 Act**, a person born outside the United Kingdom and the qualifying territories on or after 21 May 2002 is a British citizen at birth if, at the time of the birth:

- a. either parent is a British citizen; and
- b. that parent is serving outside the United Kingdom and the qualifying territories:
 - in service under a Community institution (see Annex B); and
 - was recruited for that service in a country which at the time was a member of the Communities

4.2.4 **Section 2(2)** explains the service referred to in **s.2(1)(b)**.

4.2.5 **Section 2(3)**, as amended by the **2002 Act**, explains that the Home Secretary may make an order by statutory instrument designating any service which he thinks is closely associated with the activities outside the United Kingdom and the qualifying territories of Her Majesty's government in the United Kingdom or in a qualifying territory.

4.2.6 **Section 2(4)** explains that an order made under **s.2(3)** can be

annulled by a resolution to that effect passed by either House of Parliament.

4.2.7 An explanation of the terms listed below is given in Annex F to **Chapter 6**:

- "United Kingdom"
- "British overseas territory"
- "qualifying territory"
- "parent"
- "Crown Service"
- "Crown Service under the government of the United Kingdom"
- "Crown service under the government of a qualifying territory"
- "designated service"
- "Community" and "Communities"
- "a member of the Communities"
- "a Community institution"
- "service under a Community institution"
- "recruitment in the United Kingdom"
- "recruitment in a qualifying territory"
- "recruitment in the Communities"

4.2.8 A person who is a British citizen under **s.2(1)** of the 1981 Act is:

- a British citizen by descent, if a British citizen by virtue of **s.2(1)(a)** only (see **Chapter 20**)
- a British citizen otherwise than by descent in all other circumstances (see **Chapter 20**)

4.3 **Claims to British citizenship**

4.3.1 We will need to investigate claims to British citizenship when:

- a person writes about his or her own status and that of a child; or
- an enquiry is made about the status of a child born abroad;

or

- adult or minor applicants for British citizenship appear already to be British citizens

4.4 Procedure for establishing claims

4.4.1 To recognise a claim to British citizenship under **s.2(1)** of the 1981 Act, we need to establish that the person EITHER:

- a. was born outside the United Kingdom on or after 1 January 1983; and
- b. had a parent who, at the time of the person's birth, either:
 - was a British citizen otherwise than by descent; or
 - was a British citizen (whether by descent or otherwise) who was serving outside the United Kingdom in:
 - i. Crown service under the government of the United Kingdom; or
 - ii. designated service (see Annex A); or
 - iii. service under a Community institution (see Annex B); and
 - was recruited for that service:
 - i. in the United Kingdom if in Crown or designated service; or
 - ii. in a country which was a member of the Communities if in Community institution service.

OR

- c. was born outside the United Kingdom and the qualifying territories on or after 21 May 2002; and

- d. had a parent who, at the time of the person's birth, was either:
- a British citizen otherwise than by descent; or
 - a British citizen (whether by descent or otherwise) who was serving outside the United Kingdom and the qualifying territories in:
 - i. Crown service under the government of the United Kingdom or of a qualifying territory; or
 - ii. designated service (see Annex A); or
 - iii. service under a Community institution (see Annex B); and
 - was recruited for that service:
 - i. in the United Kingdom or a qualifying territory (if in Crown or designated service); or
 - ii. in a country which was a member of the Communities (if in Community institution service)

4.5 Evidence required

4.5.1 A person born either outside the United Kingdom on or after 1 January 1983 and before 21 May 2002 or outside the United Kingdom and the qualifying territories on or after 21 May 2002 may be regarded as a British citizen on production of:

- a passport describing the holder as a British citizen; or
- a passport issued before 21 May 2002 describing the holder as a British Dependent Territories citizen or British overseas territories citizen and evidence that the person was such a citizen by connection with a qualifying territory; or
- a birth certificate showing parents' details; and

- evidence that at the time of the birth either parent:
 - i. was a British citizen otherwise than by descent; or
 - ii. was a British citizen; and
 - iii. was serving outside the United Kingdom (and the qualifying territories, if born on or after 21 May 2002) in Crown, designated or Community institution service; and
 - iv. (if born before 21 May 2002) was recruited for that service in the United Kingdom (Crown and designated service) or in a member state of the Communities (Community institution service); or
 - v. (if born on or after 21 May 2002) was recruited for that service in the United Kingdom or a qualifying territory (Crown and designated service) or in a member state of the Communities (Community institution service); or
- an adoption certificate issued by a court in the United Kingdom or, if issued on or after 21 May 2002, by a court in a qualifying territory, and evidence that one of the adoptive parents was a British citizen; or
- (if adopted on or after 1 June 2003) a Convention adoption certificate and evidence that one or both of the adoptive parents, as the case may be, was a British citizen and habitually resident in the United Kingdom

4.5.2 Evidence of a parent's British citizenship is:

- a passport describing the holder as a British citizen; or
- a passport issued before 21 May 2002 describing the holder as a British Dependent Territories citizen and evidence that the person was such a citizen by connection with a qualifying territory; 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 birth certificate showing his or her parents' details and that he or she was born in the United Kingdom or a qualifying territory before 1 January 1983; or
- (if born on or after 1 January 1983) a birth certificate showing his or her parents' details and that he or she was born in the United Kingdom or a qualifying territory and evidence that either parent was a British citizen or settled in the United Kingdom or that territory (as the case may be); or
- a certificate of registration or naturalisation issued in the United Kingdom or a qualifying territory describing the holder as either a British citizen or a British Dependent Territories citizen (if issued before 21 May 2002) 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 his or her parents', grandparents', spouse's birth, adoption, marriage, death, registration, or naturalisation

NB. **Chapter 20** of these Instructions on **s.14** of the British Nationality Act 1981 and **s.3** of the **British Nationality (Falkland Islands) Act 1983** should be consulted in every case to confirm whether the parent in question is a British citizen by descent or otherwise than by descent.

4.5.3 Evidence of a parent's service and recruitment is a letter or certificate from:

- a. a government department in the United Kingdom or, if applicable, a qualifying territory; or
- b. a designated organisation; or
- c. a Community institution,

confirming that the parent was:

- i. in its service outside the United Kingdom and, if applicable, the qualifying territories on the date of the child's birth; and
- ii. recruited either:
 - in the United Kingdom (in the case of a. or b. above - if the child was born before 21 May 2002); or
 - in the United Kingdom or a qualifying territory (in the case of a. or b. above - if the child was born on or after 21 May 2002); or
 - in a member state of the Communities (in the case of c. above)

4.5.4 We should take into account any evidence already on file. If documents have been examined in the past we do not 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 Officer, Immigration Officer, Home Office or Falkland Islands or other qualifying territories official, or any tribunal or court in the United Kingdom, the Falkland Islands or another qualifying 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.

4.5.5 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 not of identity, but of an event.

4.5.6 In the absence of some or all of the documentary evidence set out in 4.5.2 above related to a parent's British citizenship, secondary evidence may be acceptable.

4.5.7 Any doubts about either the parent's service or their place of recruitment should, if possible, be resolved with them and the department, organisation or institution concerned. The possibility of an earlier precedent should be considered.

4.5.8 If doubts remain, the case should be referred to INPD(L) Policy Section for advice.

4.6 Confirmation of claims

4.6.1 In response to an enquiry about British citizenship:

- 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 C
- if it is a complicated claim to citizenship (e.g. involving difficult legitimacy or marriage law, several independence acts etc); or
- 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**)

4.6.2 Where we cannot accept that the person became a British citizen we should:

- briefly explain why; and
- explain how that person may become a British citizen (see flow-chart at Annex D)

4.6.3 If we notice that an applicant for British citizenship is already a British citizen under **s.2** 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 E); and
- refund, in full, any fee submitted with the application (see **Chapter 6**)