PART IV: BRITISH SUBJECTS

CHAPTER 45: REGISTRATION OF MINORS AT DISCRETION

SECTION 32 BRITISH NATIONALITY ACT 1981

PART 1: INTRODUCTION

45.1 **General information**

45.1.1 With obvious adjustments where the context requires (e.g. references to British citizen and British citizenship should be read as references to British subject and British subject status), the contents of **Chapter 6** apply to applications for British subject status under **s.32**.

45.2 **The Law**

45.2.1 Persons may be registered under **s.32** if:

- an application is made while they are minors; and
- (if aged 10 or over at the date of application, this being a date on or after 4 December 2006) the Secretary of State is satisfied that they are of good character (see Chapter 9, Annex B); and
- the Secretary of State thinks fit to register them

45.2.2 These are the only statutory requirements.

45.2.3 But in practice a number of other factors are normally taken into account in deciding whether or not to register a minor under this provision. This Chapter gives guidance about how discretion should normally be used under the law.

45.2.4 **IT IS IMPORTANT TO REMEMBER** that the guidance in this Chapter does not

amount to hard and fast rules. It will enable the majority of cases to be dealt with, but, because the law gives complete discretion, each case must be considered on its merits. We must take into account all the relevant factors, together with any representations made to us. If we do not, we are open to criticism for not exercising our discretion reasonably.

45.2.5 It is therefore possible to register a minor under circumstances which would normally lead to refusal of an application, or to refuse when a child might normally be registered, if this is justified in the particular circumstances of any case.

45.2.6 British subject status is not transmissible, and the question of whether a person is a British subject by descent or otherwise does not arise.

45.3 How to use this Chapter

45.3.1 Part 2 of this Chapter is designed to follow the way in which applications would normally and logically be considered.

45.3.2 It should not be assumed that because an application has been made the minor is in need of registration. The minor may already be a British subject without the parents realising it, in which case there is no need to register. So, before considering registration, we should check whether the child is already a British subject (see 45.5 below).

45.3.3 It is not always possible to tell just by looking at an application form what section of the Act is applicable. Different applications for minors are made on the same type of form, and the parents will not necessarily know under what section they are applying. So, before considering whether to exercise discretion to register under **s.32**, we must consider whether the minor has an entitlement to registration under another section of the Act (see 45.6 below).

45.3.4 When it has been decided that the application properly one under **s.32**, the minor's circumstances should be considered. The criteria which we normally

expect minors to meet is set out in 45.8 below.

45.3.5 To sum up, when an application is first examined we should consider whether:

- the minor has an automatic claim to British subject status (45.5); if not
- the minor has an entitlement to registration (45.6); if not
- the criteria in 45.8 are met; if not
- there are any grounds for making an exception to the normal criteria

45.4 Application forms and who may apply

45.4.1 Applications will normally be made either:

- on Form MN4; or
- by being included in a parent's or someone else's application for registration or naturalisation

45.4.2 Anyone who has assumed responsibility for a minor may apply for the minor's registration under **s.32**, but, in practice, it is expected that an application will be made by:

- one or both parents; or
- a guardian; or
- a local authority which, because of the existence of a care order, shares parental responsibility for a child with the parents

45.4.3 In some cases, it may be appropriate for an application to be made by:

- someone else who has the responsibility for the minor (e.g. another relation)

- the minor

- someone who shares parental responsibility for the minor with the parents (e.g. another relation or someone appointed to act as a custodian before the commencement of the **Children Act 1989** or equivalent legislation outside England and Wales)

PART 2: HOW TO CONSIDER APPLICATIONS

45.5 **Checking for automatic 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**).

45.5.1 There is always the possibility that an applicant minor is already a British subject under **Schedule 2**, **paragraph 1** or **2** - born stateless in the United Kingdom or a British overseas territory of a British subject parent (see **Chapter 44**).

45.5.2 As the person making the application may not know if the minor is a British subject, this possibility should be checked first. If someone is already a British subject, it follows that this person cannot be registered.

45.5.3 The checks do not need to be very detailed but are centred on the information already to hand. **IT IS IMPORTANT** to remember that the minor may have an automatic claim to British subject status as the child of a void marriage or

legitimated by the subsequent marriage of the parents.

45.5.4 If it is not clear from the papers that the minor is a British subject, it should be assumed that he or she is not.

45.5.5 If the minor has an automatic claim to British subject status, we should:

- write to explain that the application is not necessary (using the procedure in **Chapter 44**); and

- refund in full any fee submitted with the application (see **Chapter 6**)

45.6 Checking for possible entitlement to registration

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**).

45.6.1 The 1981 Act contains one provision which gives minors in certain circumstances an entitlement to registration as British subjects - **paragraph 4** of **Schedule 2** (see **Chapter 47**).

45.6.2 Once it has been established that the applicant is not already a British subject, we should consider whether he or she is entitled to registration under this provision.

45.6.3 **IT IS IMPORTANT** to ensure that a minor is registered under the appropriate provision. As a matter of principle, a minor with an entitlement should be registered at entitlement, and not by use of the discretion under **s.32**.

45.6.4 It will not normally be possible to tell whether a minor is entitled to registration just by seeing what form is used. This is because:

- the same form may be used for a number of different provisions; or
- the person making the application may not know whether a minor has an entitlement; or
- the person making the application may not use the correct form; or
- the minor application is included in a parent's application form (see **Chapter 6**)

45.6.5 Each application should be checked to see whether the minor meets the requirements for registration at entitlement. In most cases this will be a fairly simple job. As a rough and ready guide, a minor cannot have an entitlement under **paragraph 4** of **Schedule 2** if he or she:

- was born in the United Kingdom or a British overseas territory on or after 1 January 1983; or
- was not born stateless; or
- has not remained stateless since birth

45.6.6 **IT IS IMPORTANT** to remember that the minor may have an entitlement to registration as a British subject as the child of a void marriage or legitimated by the subsequent marriage of the parents.

45.6.7 If a minor is not entitled to registration, the application should be considered under **s.32**.

45.7 Evidence to be supplied

45.7.1 Applications should be supported by evidence as follows:

- the minor's birth certificate showing parents' details; and

- the relevant passports, birth, marriage, death, adoption, registration, naturalisation certificates and other relevant documents to establish:

  i. the child's current nationality status; and

  ii. the parents' current nationality status; and

  iii. the relationship of the child to the parents; and

  iv. (if the child is adopted) full details of the adoption; and

  v. any connections the parents and/or the child have with the United Kingdom.

NB. It is, of course, for us to determine whether or not the child has any claim to any form of British nationality.

45.7.2 To guard against the possibility of fraud we should also expect to see evidence of identity over and above that required to determine the application. It should be remembered, in particular, that a birth certificate is evidence not of identity, but of an event.

45.7.3 We should take into account any evidence already on the file. If documents have been seen and noted 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 British overseas territories official, or any tribunal or court in the United Kingdom or a British overseas territory, there is no need to ask for 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/civil partnership is needed.

45.7.4 The majority of applications for registration under **s.32** will be sent from abroad. These will normally be submitted to us through a British Diplomatic Post, and should be accompanied by a report giving:

- particulars as set out in 45.7.1; and
- particulars of the relevant documentary evidence produced (with photocopies where possible), together with confirmation that the originals have been seen; and
- confirmation that the registration fee has been collected and is being credited to the Home Office in the Post's accounts

45.8 **Criteria for exercise of discretion**

45.8.1 We should normally agree to register if:

- at least one parent is a British subject; and
- the child has no nationality or citizenship, and cannot acquire one; and
- the child is facing genuine difficulties through lack of a passport (e.g. inability to benefit from state facilities, such as health care and education); and
- the post confirms that the family's continued stay in the country in which they live is at risk to the point of deportation (regardless of whether deportation proceedings have actually started), and there is no country other than the United Kingdom where the family could go if they were deported; and

- (in the case of a person aged 10 or over on the date of application, this being a date on or after 4 December 2006), the Secretary of State is satisfied that the applicant is of good character (see Chapter 9, Annex B).

45.8.2 Applications not meeting these criteria should normally be refused unless there are other reasons for registration (e.g. links with the United Kingdom). Where one parent holds citizenship of another country, we should satisfy ourselves that the child could not obtain the citizenship of that country.

45.8.3 Brothers and sisters of certain children already registered

45.8.3.1 We are sometimes asked to register the brothers and sisters of children who were registered in error under **s.32** even though they did not meet the criteria in 45.8.1 (this does not include children who had an entitlement to registration as a British subject but, due to administrative error, were registered under **s.32**).

45.8.3.2 It would be difficult to explain a refusal in such cases if there had been no apparent change in the children's circumstances. We should normally agree to register in such cases if:

- the circumstances of the family remain the same; and
- there are no other grounds which suggest that registration would be inappropriate

45.8.4 Noting of applications

45.8.4.1 Cases which are considered under criteria in 45.8, whether registered or refused, should be sent to INPD(L) Policy Section for noting.

PART 3: OTHER MATTERS

45.9 **Parental consent**

45.9.1 We normally expect the consent of both parents to a minor's registration, irrespective of where the child or the parents are living, or whether the child is natural or adopted. While it is not a legal requirement for applications under **s.32**, it is reasonable that the view of both parents should be considered as it is consistent with the assumptions which now underlie much of our family law. Where there is a conflict between the parents, the courts will put the welfare of the child first. This may be relevant in cases where a parent objects to registration.

45.9.2 It is usually a straightforward matter to secure the consent of both parents where the child is legitimate or legally adopted and is living with its parents. It is where the marriage has temporarily or permanently broken down, or where the child is illegitimate, that difficulty is most likely to arise.

45.9.3 Where the parents are **legally separated or divorced**, it will have been decided with whom the child should live. If the parents could not agree on this, a court will normally have granted a residence order (under **s.8** of the **Children Act 1989**, if in England and Wales). This will usually be to one parent, but it could be to both, in which case the order will specify the periods the child will spend with each parent. Both parents retain parental responsibility for the child, and so both should be consulted regarding any major change in the child's life. We therefore need to take reasonable steps to obtain and consider the views of the other parent.

45.9.4 Where a court has awarded a residence order solely to one parent (or other individual), the consent of the other parent (or parents) retaining or having continuing parental responsibility will need to be sought.

45.9.5 Where separation has not been formalised by a court, the consent of both parents, or any other person having parental responsibility, should be sought.

45.9.6 In the case of an **illegitimate** child (in England and Wales), the mother (but not the father) will automatically acquire parental responsibility. The father may acquire it:

- by applying to the courts for a parental responsibility order under **s.4(1)(a)** of the **Children Act 1989**; or

- by making an agreement with the mother in a prescribed form under **s.4(1)(b)** of the **Children Act 1989**; or

- by having a residence order made in his favour, following which the court must make a parental responsibility order as well; or

- by being appointed guardian

45.9.7 Where we are informed that the father has parental responsibility in one of these ways, we should seek the father's consent. There is no need to ask the mother to confirm that a parental responsibility order does not exist. If necessary, advice on the legal position, in a particular country or British overseas territory, of the father of an illegitimate child should be sought from the authorities of that country/territory.

45.9.8 Guidance on the steps we should normally take to obtain the other parent's views and the circumstances in which we can dispense with the other parent's views are set out in **Chapter 9.16**.