

Part IV: British Subjects

Chapter 47: Registration by entitlement of stateless persons born outside the United Kingdom and the British overseas territories on or after 1 January 1983

schedule 2, paragraph 4 British Nationality Act 1981

47.1 Introduction

47.1.1 To meet our obligations under the **United Nations Convention on the Reduction of Statelessness, Schedule 2** to the British Nationality Act 1981 makes provision for the acquisition of the citizenships and statuses, created by the Act, by certain persons who are or would otherwise be stateless.

47.1.2 The provisions of **Schedule 2** are applied by **s.36** of the Act.

47.1.3 This Chapter deals with the provisions for acquisition by registration. The provisions for automatic acquisition are explained in **Chapter 44**.

47.1.4 For the meaning of “parent”, “father and “mother” see **Chapter 6** Annex F.

47.2 General information

47.2.1 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 **paragraph 4 of Schedule 2**.

47.2.2 In relation to any time before 26 February 2002, references in this Chapter to British overseas territories citizenship and the British overseas territories should be read as references to British Dependent Territories citizenship and the British dependent territories.

47.3 The Law

47.3.1 Persons are entitled to registration under **Schedule 2, paragraph 4** if:

- they were born on or after 1 January 1983; and
- they were born outside the United Kingdom and the British overseas territories; and
- they were born stateless; and
- they have remained stateless; and
- at the time of their birth, their father or mother was:
 - i. a British citizen; or
 - ii. a British overseas territories citizen; or
 - iii. a British Overseas citizen; or
 - iv. a British subject under the 1981 Act; and
- they were in the United Kingdom or a British overseas territory at the beginning of the period of 3 years ending with the date of application; and
- they were not absent from both the United Kingdom and the British overseas territories for more than 270 days in that 3 year period

47.3.2 Persons who meet these requirements are entitled to registration as:

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

- a British Overseas citizen; or
- any combination of these 3 citizenships depending on which one or more of them their father or mother possessed at the time of the birth. For example:
 - i. A person whose mother, or father, or both, was a British overseas territories citizen only will be entitled to registration as a British overseas territories citizen only
 - ii. A person with a British overseas territories citizen father, and a mother who is both a British overseas territories citizen and a British citizen, will be entitled to registration as a British overseas territories citizen and as a British citizen
 - iii. A person with a British Overseas citizen father, and a mother who is both a British overseas territories citizen and a British citizen, will be entitled to registration as a British citizen and as a British overseas territories citizen and as British Overseas citizen

or

- a British subject

47.3.3 A person may not be registered as a British subject as well as a British citizen, British overseas territories citizen or British Overseas citizen. Persons are entitled to registration as a British subject only if:

- one or both of their parents is a British subject; and
- neither parent is:
 - i. a British citizen; or

- ii. a British overseas territories citizen; or
- iii. a British Overseas citizen.

For example:

- 1. A person whose father is a British subject, and whose mother has no form of British nationality, will be entitled to be registered as a British subject
- 2. A person whose father is a British subject, and whose mother is a British citizen, will be entitled to registered as a British citizen only

47.3.4 A person is required to state in the application which citizenship or status is being applied for.

47.3.5 There is discretion under **paragraph 6 of Schedule 2** to allow absences in excess of 270 days in the 3 year qualifying period (see 47.7 below).

47.3.6 Registration under this provision gives British citizenship and/or British overseas territories citizenship otherwise than by descent (see **Chapter 20** or **Chapter 36**).

47.3.7 British Overseas citizenship or British subject status is not transmissible, and the question of descent or otherwise does not therefore arise.

47.4 **Application forms**

47.4.1 An application should normally be made:

- on Form S2; or

- by being included in a parent's application for citizenship

47.5 **Evidence to be supplied**

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

47.5.2 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 Office, Immigration Office, official in the Home Office or in a British overseas territory, or any Tribunal or Court in the United Kingdom or a 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.

47.5.3 Applications under **paragraph 4 of Schedule 2** should be supported by evidence as follows:

- the person's birth certificate showing parents' details; and
- a letter from the authorities of the person's country of birth (other than the United Kingdom and the British overseas territories) stating that he or she is not, and never has been, a citizen of that country; and
- if either or both of the person's parents is not a national of that country, a letter from the authorities of the country of which either or both parent(s) is a national (other than the United Kingdom and the British overseas territories) stating that the person is not, and never has been, a citizen of that country; and

- passports and/or other documents to establish:
 - i. the person's 3 years residence in the United Kingdom or a British overseas territory prior to the application; and
 - ii. that the person was not absent from both the United Kingdom and the British overseas territories for more than 270 days in that 3 year period; and
- if the parent in question is the father, appropriate evidence of paternity (see **Chapter 6** Annex F) ; and
- a parent's citizenship or status at the time of the person's birth

47.5.3.1 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 or Falkland Islands birth certificate showing his or her parents' details and birth before 1 January 1983; or
- (if born on or after 1 January 1983) a United Kingdom or Falkland Islands birth certificate showing his or parents' details and evidence that, at the time of the birth, either parent was a British citizen or settled in the United Kingdom or Falkland Islands (as the case may be); or

- a certificate of registration or naturalisation, issued in the United Kingdom, describing the holder as either a British 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
- the relevant documents related to parents', grandparents', spouse's birth, adoption, marriage, death, registration or naturalisation, which establish the parent's claim to British citizenship

47.5.3.2 If the applicant was born on or after 21 May 2002, the following additional documents may be accepted as evidence of a parent's British citizenship:

- a passport issued before 21 May 2002, describing the holder as a British Dependent Territories citizen or a British overseas territories citizen, and evidence that the holder was such a citizen by connection with a qualifying territory (see Annex F to **Chapter 6**); or
- (if born before 1 January 1983) a birth certificate showing his or her parents' details and that the person was born in a qualifying territory; or
- (if born on or after 1 January 1983) a birth certificate showing his or her parents' details and that the person was born in a qualifying territory and evidence that, at the time of the birth, either parent was a British overseas territories citizen or settled in a qualifying territory; or
- an adoption certificate issued by a court in a qualifying territory and evidence that, at the time of the adoption, one of the adoptive parents was a British citizen or, if the adoption

took place before 21 May 2002, a British overseas territories citizen by connection with a qualifying territory; or

- a certificate of registration or naturalisation, issued before 21 May 2002, describing the holder as a British Dependent Territories citizen or a British overseas territories citizen or a citizen of the United Kingdom and Colonies and evidence that the holder acquired that citizenship by connection with a qualifying territory

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

- a passport describing the holder as either a British Dependent Territories citizen or a British overseas territories citizen; or
- a birth certificate showing his or her parents' details and birth in a British overseas territory before 1 January 1983; or
- (if born on or after 1 January 1983) a birth certificate showing his or her parents' details and birth in a British overseas territory 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
- an adoption certificate issued by a court in a British overseas territory and evidence that, at the time of the adoption, one of the adoptive parents was a British overseas territories citizen; or
- a certificate of registration or naturalisation describing the holder as a British Dependent Territories citizen or 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 parents', grandparents', spouse's birth, adoption, marriage, death, registration or naturalisation, which establish the parent's claim to British overseas territories citizenship

47.5.3.4 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 citizenship or British overseas territories citizenship, but which establish that the parent 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**)

47.5.3.5 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 citizenship or British overseas territories citizenship, but which establish that he 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 the persons mentioned in the third category above, a person who is a British subject under the 1981 Act automatically ceases to have that status on acquiring any other citizenship or nationality, which includes the 3 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.

47.6 Checking the application

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**). Where an apparent claim or entitlement derives from a personal or ancestral connection with the British Indian Ocean Territory, it is necessary to consider the effects of the **British Overseas Territories Act 2002**.

47.6.1 Checking for automatic claims

47.6.1.1 A person applying under **paragraph 4** of **Schedule 2** may already be a British citizen or a British overseas territories citizen. Such a person cannot have an automatic claim to British

Overseas citizenship or British subject status.

47.6.1.2 A person applying under **paragraph 4** of **Schedule 2** will already be:

- a British citizen, if he or she meets the requirements of **s.2(1)** or **s.50(7)(a)(i)** (see **Chapter 4**) or, if born on or after 21 May 2002, **s.50(7A)** (see **Chapter 44**)
- a British overseas territories citizen, if he or she meets the requirements of **s.16(1)** or **s.50(7)(a)(i)** (as applied to the British overseas territories and British overseas territories citizenship) (see **Chapter 24**) or, if born on or after 21 May 2002, **s.50(7A)** or **s.50(7B)** - NB. If the person is a British overseas territories citizen, he or she may also have a claim to British citizenship under **s.3** of the **British Overseas Territories Act 2002**

47.6.1.3 Unless it is absolutely clear from the papers we have that the person is already a British citizen, or a British overseas territories citizen, we need not investigate this possibility. Equally, we need not ask for proof that the person did not acquire any of these citizenships or status automatically before we consider the application.

47.6.1.4 Persons who have an automatic claim to British citizenship, British overseas territories citizenship, or any other nationality or citizenship, have no entitlement to registration under **paragraph 4** of **Schedule 2** because they are not stateless. In these circumstances, we should consider whether:

- they can be registered as a British subject at discretion (see 47.6.2.1 below); or

- they must proceed by way of naturalisation (see 47.6.2.2 below)

47.6.2 No entitlement

47.6.2.1 If it is decided that:

- there is no entitlement to registration as a British subject under **paragraph 4 of Schedule 2**; and
- the person was a minor at the date of application,

he or she should be considered for registration at discretion under **s.32** of the 1981 Act (see **Chapter 45**).

47.6.2.2 If:

- there is no entitlement to registration as a British citizen, a British overseas territories citizen, a British Overseas citizen or a British subject, and
- the person was an adult at the date of application,

we should consider whether an application for naturalisation as a British citizen under **s.6** (see **Chapter 18**) or as a British overseas territories citizen under **s.18** (see **Chapter 34**) can be accepted.

47.7 Exercise of discretion to allow excess absences

47.7.1 **Paragraph 6 of Schedule 2** gives discretion to allow absences of more than 270 days if the application is made under **paragraph 4 of Schedule 2**.

47.7.2 We should normally waive excess absences if:

- they are the result of circumstances beyond the person's control (e.g. serious illness or accident which prevented the person from returning from a visit to a country outside the UK or the British overseas territories); or
- they amount to no more than 30 days; or
- refusal would seriously disadvantage the person (statelessness alone is not enough: the person must show some serious disadvantage because of statelessness)

47.7.3 We should not normally waive excess absences simply because:

- the applicant (or a parent or guardian) was unaware of the requirements; or
- the absences were entirely voluntary; or
- a refusal would cause inconvenience, such as difficulty in travelling, rather than serious disadvantage

47.8 **Re-declaration**

47.8.1 If an applicant for registration under **Schedule 2 paragraph 4** misses the requirement to have been in the United Kingdom or a British overseas territory on the date 3 years prior to the application date, we may consider offering re-declaration in the circumstances described in **Chapter 18**, Annex B.

47.9 **Consent to minors' applications**

47.9.1 It is not necessary for a minor applying under **paragraph 4** of **Schedule 2** to obtain the consent of parents or person(s) having parental responsibility.

47.9.2 If the requirements are met, the minor is entitled to registration, and the application cannot be refused even if the parents or responsible person(s) do

not consent to it.

47.10 **Granting the application**

47.10.1 **Registration authority**

47.10.1.1 The Home Secretary is the only authority for the granting of British citizenship, British Overseas citizenship and British subject status.

47.10.1.2 British overseas territories citizenship is normally granted by the Governor of the British overseas territory with which the person being registered is connected by residence or parentage.

47.10.1.3 But the Home Secretary has power to grant British overseas territories citizenship himself. Therefore, if any application made to the Home Office under **paragraph 4 of Schedule 2** can result in British overseas territories citizenship being the status, or one of the statuses, to be acquired, it should be granted here and not transferred to the Governor of the relevant territory. However, applications based mainly on residence in Gibraltar should be transferred to the Civil Status and Registration Office in Gibraltar (to ensure that the applicant becomes a United Kingdom national for European Community purposes, and thus eligible for registration as a British citizen under **s.5**).

47.10.1.4 If we register someone as a British overseas territories citizen, we should notify the Governor of the territory concerned using the draft letter at Annex B to **Chapter 21**. The letter should be typed and a copy kept on file.

47.10.2 **Fees**

47.10.2.1 An applicant under **paragraph 4 of Schedule 2** may be able to

acquire British citizenship, British overseas territories citizenship or British Overseas citizenship. It is up to the applicant to say which citizenship is sought, and a separate fee is therefore payable for each citizenship sought.

47.10.3 Oath of allegiance

47.10.3.1 If the person is an adult at the time it is decided to register under **paragraph 4 of Schedule 2**, an oath of allegiance will have to be taken (see **Chapter 6**).

47.11 Issuing of certificates

47.11.1 Where more than one citizenship or status is to be acquired, separate certificates of registration, one for each citizenship or status, should be issued.