

## **Birth before 1 January 1983**

### **Section 11 British Nationality Act 1981 Section 1(1) British Nationality (Falkland Islands) Act 1983 Sections 3 & 6 British Overseas Territories Act 2002**

#### **2.1 Introduction**

2.1.1 This chapter deals only with the status of people born before 1 January 1983.

2.1.2 The status of those born on or after 1 January 1983 is dealt with in Chapters 3, 4 and 5.

#### **2.2 The Law**

2.2.1 Section 11 of the British Nationality Act 1981 explains which people born before 1 January 1983 acquired British citizenship automatically on that date.

2.2.2 Under s.11(1), a person automatically became a British citizen on 1 January 1983 if immediately before that date he or she:

- was a citizen of the United Kingdom and Colonies; and
- had the right of abode in the United Kingdom under s.2 of the Immigration Act 1971 as then in force

2.2.3 There is one exception and two additions to this general rule.

2.2.3.1 The exception is set out in s.11(2). This provides that any person registered under s.1(1)(a) of the British Nationality (No. 2) Act 1964 did not become a British citizen on 1 January 1983 under s.11(1) unless:

- a. his or her mother became or but for her death would have become a British citizen under s.11(1); or
- b. he or she had the right of abode in the United Kingdom under s.2(1)(c) of the Immigration Act 1971 as then in force.

2.2.3.2 The first addition is set out in s.11(3). This provides that anyone registered under s.12(6) of the British Nationality Act 1948 on the grounds of descent in the male line from a person born or naturalised in the United Kingdom became a British citizen on 1 January 1983 whether or not he or she had the right of abode immediately before that date.

2.2.3.3 The second addition is set out in s.1(1) of the British Nationality (Falkland Islands) Act 1983 passed on 28 March 1983. This provides that a person who on 1 January 1983 became a British Dependent Territories citizen under s.23 of the British Nationality Act 1981 also became on that date a British citizen if:

- he or she was a citizen of the United Kingdom and Colonies who had that citizenship by birth, naturalisation or registration in the Falkland Islands; or
- one of the parents or grandparents was, or but for death would have been, a CUKC who had that citizenship by birth, naturalisation or registration in the Falkland Islands; or

- (in the case of a woman) she was, or had previously been, the wife of a man who is a British citizen under either of the categories above or would have been but for his death; and
- he or she had not renounced or been deprived of British Dependent Territories citizenship between 1 January 1983 and 27 March 1983 inclusive

## **2.2.4 The British Overseas Territories Act 2002**

2.2.4.1 The British Overseas Territories Act 2002 added 2 further categories of persons who automatically became British citizens after 1 January 1983:

a. British overseas territories citizens (i.e. former British Dependent Territories citizens) became British citizens automatically on 21 May 2002 under s.3 of the 2002 Act provided they had that citizenship by connection with a "qualifying territory" (i.e. a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia)

b. A person became a British citizen automatically on 21 May 2002 under s.6 of the 2002 Act if he or she:

- was born on or after 26 April 1969 and before 1 January 1983; and
- was born to a woman who, at the time of the birth, was a citizen of the United Kingdom and Colonies by virtue of her birth in the British Indian Ocean Territory; and
- immediately before 21 May 2002, was neither a British citizen nor a British overseas territories citizen

2.2.5 Chapter 20 explains who is a British citizen "by descent" and who is a British citizen "otherwise than by descent".

## **2.3 Claims to British citizenship**

2.3.1 We will need to investigate claims to British 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, civil partner, child or grandchild) who may, as a result, either:
  - derive citizenship automatically from that person; or
  - be able to apply for British citizenship because that person is a British citizen
- adult or minor applicants for British citizenship or British overseas territories citizenship appear already to be British citizens

## **2.4 Procedure for establishing claims**

2.4.1 To recognise a person's claim to British citizenship under s.11 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
- had the right of abode in the United Kingdom, or is a person identified by s.11(3) of the Act (see 2.2.3.2 above); and
- is not a person identified by s.11(2) of the Act (see 2.2.3.1 above)

2.4.2 To recognise a claim to British citizenship under s.1(1) of the British Nationality (Falkland Islands) Act 1983, we need to establish that a person:

- on 1 January 1983 became a British Dependent Territories citizen under s.23 of the British Nationality Act 1981 (Chapter 22); and
- meets the requirements in 2.2.3.3 above

2.4.3 To recognise a claim to British citizenship under the British Overseas Territories Act 2002, we need to establish that a person:

- was a British overseas territories citizen immediately before 21 May 2002 by connection with a "qualifying territory"; or
- meets the requirements in 2.2.4.1.b above

2.4.4 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.

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

2.4.6 If the person concerned was a citizen of the United Kingdom and Colonies, Annex D and the accompanying Notes should be consulted to establish if the person had the right of abode in the United Kingdom. If so, we should then consult Annex E to establish whether the person became a British citizen on 1 January 1983 under s.11 of the British Nationality Act 1981. If not, the person would have become either a British Dependent Territories citizen or a British Overseas citizen and should be advised accordingly (see Chapters 22 and 37 respectively).

2.4.7 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 2.2.3.3 above); or
- (on 21 May 2002) under the British Overseas Territories Act 2002 (see 2.2.4 above)

## **2.5 Evidence required**

2.5.1 A person born in the United Kingdom (see Note B to Annex D) before 1 January 1983 may be regarded as a British citizen on production of:

- a passport issued on or after 1 January 1983 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 parents' details (but see also paragraphs 2.5.3 - 2.5.5 below)

2.5.2 A person born in the Falkland Islands before 1 January 1983 may be regarded as a British citizen on production of:

- a passport issued on or after 1 January 1983 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; or
- a passport issued on or after 1 January 1983 describing the holder as a British Dependent Territories citizen or a British overseas territories citizen; or
- a Falkland Islands birth certificate showing parents' details

2.5.3 Because of the terms of the British Nationality and Status of Aliens Act 1914 and the British Nationality Act 1948, the person may not have been a citizen of the United Kingdom and Colonies by reason of birth in the United Kingdom if, at the time of the person's birth, the father was either a diplomat or an enemy alien.

2.5.4 If the father's occupation is given on the birth certificate as "diplomat" or the description otherwise suggests it is of a "diplomatic" nature, we should determine whether the person had a claim to citizenship of the United Kingdom and Colonies.

2.5.5 If the birth took place in the Channel Islands during the German occupation in the Second World War and the father was German, we should determine whether the person had a claim to citizenship of the United Kingdom and Colonies.

2.5.6 A person born outside the United Kingdom or the Falkland Islands before 1 January 1983 may be regarded as a British citizen on production of:

- a passport issued on or after 1 January 1983 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 had the right of abode in the United Kingdom. (But see 2.2.3.1 and 2.2.3.3 above and Annex E); or
- a passport describing the holder as a British Dependent Territories citizen or British overseas territories citizen and evidence that the person held that

citizenship by connection with a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia; or

- a birth certificate showing parents' details and that the person was born in a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia
- the relevant documents related to the person's, his or her parents', grandparents', spouse's birth, adoption, marriage, death, registration or naturalisation

2.5.7 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, Immigration Officer, Home Office, Falkland Islands or other British overseas territories official, or any tribunal or court in the United Kingdom, the Falkland Islands or other 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.

2.5.8 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.

2.5.9 In the absence of some or all of the documentary evidence set out in 2.5.1, 2.5.2 and 2.5.6 above, secondary evidence may be acceptable.

## **2.6 Confirmation of claims**

2.6.1 Where we can accept that a person became a British citizen on 1 January 1983 or 21 May 2002 (if appropriate), 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 F
- 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, as explained in Annex H

2.6.2 Where we cannot accept that the person became a British citizen on 1 January 1983 or 21 May 2002 (if appropriate), we should:

- briefly explain why; and
- explain how that person may become a British citizen

2.6.3 If we notice that an applicant for British citizenship is already a British citizen under s.11 of the British Nationality Act 1981, or s.1(1) of the British Nationality (Falkland Islands) Act 1983 or s.3 or s.6 of the British Overseas Territories Act 2002, we should:

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