

PART I: BRITISH CITIZENSHIP

CHAPTER 5: AUTOMATIC ACQUISITION BY PEOPLE OTHERWISE BORN STATELESS

SECTION 50(7) BRITISH NATIONALITY ACT 1981

SCHEDULE 2, PARAGRAPH 2, 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.

5.1 Introduction

5.1.1 To meet our obligations under the United Nations Convention on the Reduction of Statelessness, **s.50(7)** and **Schedule 2** to the British Nationality Act 1981 make provision for the acquisition of the citizenships and status created by the Act by certain persons who are or would otherwise be stateless.

5.1.2 This Chapter deals with the provisions for automatic acquisition of British citizenship. **Chapter 15** deals with the provisions for acquisition of British citizenship by registration.

5.1.3 Guidance on the acquisition of British overseas territories citizenship is contained in **Chapters 25** and **31**. Guidance on the acquisition of British Overseas citizenship is contained in **Chapters 38** and **40**. Guidance on the acquisition of British subject status is contained in **Chapters 44** and **47**.

5.1.4 The form of British nationality acquired under **paragraph 2** of **Schedule 2** 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 **paragraph 2** of **Schedule 2** if acquiring another form of British nationality.

5.2 The Law

A. Schedule 2, paragraph 2

5.2.1 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.

5.2.2 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.

5.2.3 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
- having any other nationality or citizenship

B. Section 50(7)

5.2.4 Birth on a ship or aircraft

5.2.4.1 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 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. either parent was a British citizen; or
 - b. he or she would otherwise have been born stateless

5.2.4.2 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.

5.2.4.3 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 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

5.2.4.4 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

5.2.4.5 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**

5.2.4.6 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)** of the British Nationality Act 1981 (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 either before 21 May 2002 or on or after 21 May 2002 outside the qualifying territories) or **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 5.2.1 - 5.2.3 above)

5.2.4.7 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 5.2.1-5.2.3 above)

5.2.4.8 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**

5.2.5 A person who is a British citizen under **paragraph 2** of

Schedule 2 is a British citizen by descent (see **Chapter 20**).

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

5.3 Claims to British citizenship

5.3.1 Claims to British 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, in other cases, under a Convention adoption; or
- adult or minor applicants for British citizenship appear already to hold that citizenship or status

5.4 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**)

5.4.1 To recognise a person's claim to British citizenship, British Overseas citizenship or British subject status under **paragraph 2** of **Schedule 2**, we must establish that the person:

- was either born in a British overseas territory on or after 1 January 1983 and before 21 May 2002 or born in the Sovereign Base Areas of Akrotiri and Dhekelia on or after 21 May 2002; 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.

5.5 **Evidence required**

5.5.1 Persons born in the United Kingdom

5.5.1 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 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.

5.5.2 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
- 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
- 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

5.5.3 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 to those required to establish British 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**)

5.5.4 Evidence that a parent is a British subject 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 to those required to establish British citizenship but which establish that he or she became on 1 January 1949 a British subject without citizenship under **s.13** or **s.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 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.

5.5.5 General principles

5.5.5.1 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 not of identity, but of an event.

5.5.5.2 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.

5.5.5.3 In the absence of some or all of the documentary evidence set out above, secondary evidence may be acceptable.

5.6 Entitlements to British 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)

5.6.1 A person born in a British overseas territory on or after 1 January 1983 who is not a British citizen under **s.1(1)**, **s.2(1)** or **paragraph 2** of **Schedule 2** of the British Nationality Act 1981 or **s.1(2)** of the **British Nationality (Falkland Islands) Act 1983** may have an entitlement to registration as a British citizen:

- under **s.3(2)**, if under the age of 6 (see **Chapter 10**)
- under **s.3(5)**, if still a minor (see **Chapter 11**)
- under **paragraph 3** of **Schedule 2**, if aged under 21 (see **Chapter 15**)
- under **s.4**, if a British overseas territories citizen, a British Overseas citizen or a British subject (see **Chapter 12**)
- under **s.5**, if a British overseas territories citizen by a connection with Gibraltar (see **Chapter 13**)

NB. A person who was a British overseas territories citizen immediately before 21 May 2002 by connection with a qualifying territory will have become a British citizen automatically on that date under **s.3** of the **British Overseas Territories Act 2002**.

5.6.2 If the person has no entitlement to registration and he or she is still a minor, we should consider whether it would be right to offer registration at discretion under **s.3(1)** (see **Chapter 9**). If the person is an adult, it may be appropriate to offer naturalisation (see **Chapter 18**). If the person is a British overseas territories citizen, whether an adult or minor, it may be appropriate to offer registration under **s.4A** (see **Chapter 12**).

5.7 Confirmation of claims

5.7.1 In response to an enquiry about British citizenship:

- if a claim to British citizenship under **paragraph 2** of **Schedule 2** has been established, we should issue a status letter (see Annex H to **Chapter 2**). The letter should

clearly show that the claim is under **paragraph 2** of **Schedule 2**

- if a claim to British citizenship under **s.1(1)** has been established, the procedure in **Chapter 3.6.1** should be followed
- if a claim to British citizenship under **s.2(1)** of the British Nationality Act 1981 or **s.1(2)** of the **British Nationality (Falkland Islands) Act 1983** has been established, the procedure in **Chapter 4.6.1** should be followed

5.7.2 If we cannot accept that a person has a claim to British citizenship we should:

- explain briefly why; and
- explain how that person may become a British citizen (see 5.6.1-5.6.2 above)

5.7.3 If we notice that an applicant for British citizenship is already a British citizen under **s.1(1)**, **2(1)** or **paragraph 2** of **Schedule 2** of the British Nationality Act 1981 or **s.1(2)** of the **British Nationality (Falkland Islands) Act 1983**, we should write to explain that the application is not necessary (along the lines of the draft at Annex A) and refund in full any fee submitted with the application (see **Chapter 6**).