

# BRITISH OVERSEAS TERRITORIES ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 5 and Schedule 1: Acquisition of British citizenship by reference to the British overseas territories*

18. *Section 5 and Schedule 1* make a series of amendments to the 1981 Act relating to the acquisition of British citizenship by reference to the overseas territories.
- The amendments introduce two new terms into the 1981 Act: “the appointed day” and “qualifying territory” (see *paragraph 5* of Schedule 1, amending section 50(1) of the 1981 Act).
- The “appointed day” is the date of commencement of Schedule 1 (that is, the date appointed by the Secretary of State by order under section 8(2)).
  - A “qualifying territory” is a British overseas territory other than the Sovereign Base Areas.
19. *Schedule 1, paragraph 1* deals with acquisition of British citizenship by birth or adoption. In general it amends section 1 of the 1981 Act so as to put the qualifying territories in the same position as the United Kingdom. *Paragraph 1(2)* has the effect that a person born on or after the appointed day in a qualifying territory will become a British citizen if at the time of the birth his or her father or mother is either a British citizen or settled in that territory. This reflects the basic rule on acquisition of British citizenship by birth in the United Kingdom.
20. *Paragraph 1(3)* deals with foundlings. The effect is that a new-born infant who is found on or after the appointed day abandoned in a qualifying territory is (unless the contrary is shown) to be deemed to have been born in that territory on or after the appointed day to a parent who at the time of birth was a British citizen or settled in that territory. Such a foundling would therefore acquire British citizenship in the same way as a new-born infant found abandoned in the United Kingdom in similar circumstances.
21. *Paragraphs 1(4) and (5)* deal with adoption. The effect is that a minor adopted on or after the appointed day by order of a court in a qualifying territory will become a British citizen if the adopter is a British citizen (or in the case of a joint adoption, one of the adopters is a British citizen). *Paragraph 1(5)* will have effect until the new section 1(5) of the 1981 Act, inserted by the Adoption (Intercountry Aspects) Act 1999, comes into force. *Paragraph 1(4)* will then have effect instead, but the legal effect of the two subparagraphs is the same.
22. *Schedule 1, paragraph 2* deals with citizenship by descent. It amends section 2 of the 1981 Act to assimilate the qualifying territories to the United Kingdom for the purpose of acquisition of British citizenship by descent. The effect is that a person born outside the United Kingdom and the qualifying territories (on or after the appointed day) will become a British citizen if at the time of the birth his or her father or mother is either –

*These notes refer to the British Overseas Territories Act 2002  
(c.8) which received Royal Assent on 26 February 2002*

- (a) a British citizen otherwise than by descent; or
- (b) a British citizen serving abroad in Crown service under the Government of the UK or of a qualifying territory having been recruited in the UK or a qualifying territory; or
- (c) a British citizen serving abroad in service designated under section 2(3) of the 1981 Act by the Secretary of State (service closely associated with the activities outside the UK of HM Government in the UK or a qualifying territory) having been recruited in the UK or a qualifying territory; or
- (d) a British citizen serving abroad in service under a European Community institution, having been recruited in a European Community Member State.

The provision made by this paragraph only affects persons born after the commencement of the Schedule, not those already born.

23. *Schedule 1, paragraph 3* amends section 3 of the 1981 Act, which deals with the registration of minors as British citizens. The effect is to assimilate the qualifying territories with the United Kingdom for the purpose of calculating periods of presence which would entitle an infant or a minor, who was born outside the UK or the qualifying territories on or after the appointed day, to be registered as a British citizen.

This provision also only affects persons born after the commencement of the Schedule, not those already born.

24. *Schedule 1, paragraph 5* amends section 50(1) of the 1981 Act (list of defined terms), as noted in paragraph 18 above. It also amends section 50(7) of the 1981 Act to make equivalent provision as between the United Kingdom and the qualifying territories for determining when a person born aboard a ship or aircraft is to be deemed born in the United Kingdom or a qualifying territory.

25. *Schedule 1, paragraphs 4 and 6* make consequential amendments to the 1981 Act to take account of the acquisition of British citizenship by virtue of the Act.