



Nationality and Borders Act 2022

2022 CHAPTER 36

PART 1

NATIONALITY

British overseas territories citizenship

1 Historical inability of mothers to transmit citizenship

- (1) Part 2 of the British Nationality Act 1981 (British overseas territories citizenship) is amended as follows.
- (2) After section 17, insert—

“17A Registration: remedying inability of mothers to transmit citizenship

- (1) On an application for registration under this section, a person (“P”) is entitled to be registered as a British overseas territories citizen if the following three conditions are met.
- (2) The first condition is that—
 - (a) P would have become a citizen of the United Kingdom and Colonies under any of the following provisions of the British Nationality Act 1948—
 - (i) section 5 (person born on or after 1 January 1949: citizenship by descent);
 - (ii) section 12(2) (person born before 1 January 1949: citizenship by descent);
 - (iii) section 12(3) (person born before 1 January 1949 in British protectorate etc);
 - (iv) section 12(4) (person born before January 1949 not becoming citizen of other country);

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- (v) section 12(5) (woman married before 1 January 1949 to a man who became or would have become a citizen of the United Kingdom and Colonies);
 - (vi) paragraph 3 of Schedule 3 (person born on or after 1 January 1949 to a British subject without citizenship);
- had P’s parents been treated equally, by that Act or by any relevant previous provision, for the purposes of determining P’s nationality status; or
- (b) P would have been a citizen of the United Kingdom and Colonies immediately before commencement had P’s parents been treated equally, for the purposes of determining P’s nationality status, by any independence legislation that caused P to lose that citizenship.
- (3) In subsection (2)—
- “relevant previous provision” means a provision of the law that was in force at some time before 1 January 1949 which provided for a nationality status to be transmitted from a parent to a child without the need for an application to be made for the child to be registered as a person with that nationality status;
- “independence legislation” means an Act of Parliament or any subordinate legislation (within the meaning of the Interpretation Act 1978) forming part of the law in the United Kingdom (whenever passed or made, and whether or not still in force)—
- (a) providing for a country or territory to become independent from the United Kingdom, or
 - (b) dealing with nationality, or any other ancillary matters, in connection with a country or territory becoming independent from the United Kingdom.
- (4) In determining for the purposes of subsection (2) whether a person would have become a citizen of the United Kingdom and Colonies under section 5 of the British Nationality Act 1948, the requirement that a person’s birth was registered at a United Kingdom consulate, as set out in subsection (1)(b) of that section, is to be ignored.
- (5) The second condition is that, if P had become or been a citizen of the United Kingdom and Colonies as mentioned in subsection (2), P would at commencement have become a British Dependent Territories citizen under section 23(1)(b) or (c).
- (6) The third condition is that, if P had become a British Dependent Territories citizen as mentioned in subsection (5), P would have become a British overseas territories citizen on the commencement of section 2 of the British Overseas Territories Act 2002.”
- (3) In section 25 (meaning of British overseas territories citizen “by descent”), in subsection (1), after paragraph (c) insert—
- “(ca) the person is a British overseas territories citizen by virtue of registration under section 17A; or”.

2 Historical inability of unmarried fathers to transmit citizenship

- (1) Part 2 of the British Nationality Act 1981 (British overseas territories citizenship) is amended as follows.
- (2) After section 17A (as inserted by section 1), insert—

“17B Registration: unmarried fathers; the general conditions

For the purposes of sections 17C to 17F, a person (“P”) meets the general conditions if—

- (a) at the time of P’s birth, P’s mother—
 - (i) was not married, or
 - (ii) was married to a person other than P’s natural father;
- (b) no person is treated as the father of P under—
 - (i) section 28 of the Human Fertilisation and Embryology Act 1990, or
 - (ii) section 35 or 36 of the Human Fertilisation and Embryology Act 2008;
- (c) no person is treated as a parent of P under section 42 or 43 of the Human Fertilisation and Embryology Act 2008; and
- (d) P has never been a British overseas territories citizen or a British Dependent Territories citizen.

17C Person unable to be registered under other provisions of this Act

- (1) A person (“P”) is entitled to be registered as a British overseas territories citizen on an application made under this section if—
 - (a) P meets the general conditions; and
 - (b) P would be entitled to be registered as a British overseas territories citizen under—
 - (i) section 15(3),
 - (ii) section 17(2),
 - (iii) section 17(5),
 - (iv) paragraph 4 of Schedule 2, or
 - (v) paragraph 5 of Schedule 2,had P’s mother been married to P’s natural father at the time of P’s birth.
- (2) In the following provisions of this section, “relevant registration provision” means the provision under which P would be entitled to be registered as a British overseas territories citizen (as mentioned in subsection (1)(b)).
- (3) If the relevant registration provision is section 17(2), a person who is registered as a British overseas territories citizen under this section is a British overseas territories citizen by descent.
- (4) If the relevant registration provision is section 17(5), the Secretary of State may, in the special circumstances of the particular case, waive the need for any or all of the parental consents to be given.
- (5) For that purpose, the “parental consents” are—

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- (a) the consent of P’s natural father, and
- (b) the consent of P’s mother,

insofar as they would be required by section 17(5)(c) (as read with section 17(6)(b)), had P’s mother been married to P’s natural father at the time of P’s birth.

17D Person unable to become citizen automatically after commencement

- (1) A person (“P”) is entitled to be registered as a British overseas territories citizen on an application made under this section if—
 - (a) P meets the general conditions;
 - (b) at any time in the period after commencement, P would have automatically become a British Dependent Territories citizen or a British overseas territories citizen at birth by the operation of—
 - (i) section 15(1),
 - (ii) section 16, or
 - (iii) paragraph 1 of Schedule 2,
 had P’s mother been married to P’s natural father at the time of P’s birth; and
 - (c) in a case where P would have become a British Dependent Territories citizen as mentioned in paragraph (b), P would then have automatically become a British overseas territories citizen by the operation of section 2 of the British Overseas Territories Act 2002.
- (2) A person who is registered as a British overseas territories citizen under this section is a British overseas territories citizen by descent if the citizenship which the person would have acquired at birth (as mentioned in subsection (1) (b)) would (by virtue of section 25) have been citizenship by descent.
- (3) If P is under the age of 18, no application may be made unless the consent of P’s natural father and mother to the registration has been signified in the prescribed manner.
- (4) But if P’s natural father or mother has died on or before the date of the application, the reference in subsection (3) to P’s natural father and mother is to be read as a reference to either of them.
- (5) The Secretary of State may, in the special circumstances of a particular case, waive the need for any or all of the consents required by subsection (3) (as read with subsection (4)) to be given.
- (6) The reference in this section to the period after commencement does not include the time of commencement (and, accordingly, this section does not apply to any case in which a person was unable to become a British Dependent Territories citizen at commencement).

17E Citizen of UK and Colonies unable to become citizen at commencement

- (1) A person (“P”) is entitled to be registered as a British overseas territories citizen on an application made under this section if—
 - (a) P meets the general conditions;

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- (b) P—
 - (i) was a citizen of the United Kingdom and Colonies immediately before commencement, or
 - (ii) would have become such a citizen as mentioned in section 17A(2)(a), or
 - (iii) would have been such a citizen immediately before commencement as mentioned in section 17A(2)(b);
 - (c) P would then have automatically become a British Dependent Territories citizen at commencement by the operation of section 23, had P's mother been married to P's natural father at the time of P's birth; and
 - (d) P would then have automatically become a British overseas territories citizen by the operation of section 2 of the British Overseas Territories Act 2002.
- (2) A person who is registered as a British overseas territories citizen under this section is a British overseas territories citizen by descent if the citizenship which the person would have acquired at commencement (as mentioned in subsection (1)(c)) would (by virtue of section 25) have been citizenship by descent.

17F Other person unable to become citizen at commencement

- (1) A person (“P”) is entitled to be registered as a British overseas territories citizen on an application made under this section if—
- (a) P meets the general conditions;
 - (b) P is either—
 - (i) an eligible former British national, or
 - (ii) an eligible non-British national; and
 - (c) had P's mother been married to P's natural father at the time of P's birth, P—
 - (i) would have been a citizen of the United Kingdom and Colonies immediately before commencement,
 - (ii) would have automatically become a British Dependent Territories citizen at commencement by the operation of section 23, and
 - (iii) would have automatically become a British overseas territories citizen by the operation of section 2 of the British Overseas Territories Act 2002.
- (2) In determining for the purposes of subsection (1)(c)(i) whether a person would have been a citizen of the United Kingdom and Colonies, the requirement that a person's birth was registered at a United Kingdom consulate, as set out in section 5(1)(b) of the British Nationality Act 1948, is to be ignored.
- (3) P is an “eligible former British national” if P was not a citizen of the United Kingdom and Colonies immediately before commencement and either—
- (a) P ceased to be a British subject or a citizen of the United Kingdom and Colonies by virtue of the commencement of any independence legislation, but would not have done so had P's mother been married to P's natural father at the time of P's birth, or

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- (b) P was a British subject who did not automatically become a citizen of the United Kingdom and Colonies at commencement of the British Nationality Act 1948 by the operation of any provision of it, but would have done so had P’s mother been married to P’s natural father at the time of P’s birth.
- (4) P is an “eligible non-British national” if—
- (a) P was never a British subject or citizen of the United Kingdom and Colonies; and
- (b) had P’s mother been married to P’s natural father at the time of P’s birth, P would have automatically become a British subject or citizen of the United Kingdom and Colonies—
- (i) at birth, or
- (ii) by virtue of paragraph 3 of Schedule 3 to the British Nationality Act 1948 (child of male British subject to become citizen of the United Kingdom and Colonies if father becomes such a citizen).
- (5) A person who is registered as a British overseas territories citizen under this section is a British overseas territories citizen by descent if the citizenship which the person would have acquired at commencement (as mentioned in subsection (1)(c)(ii)) would (by virtue of section 25) have been citizenship by descent.
- (6) In determining for the purposes of subsection (1)(c)(i) whether P would have been a citizen of the United Kingdom and Colonies immediately before commencement, it must be assumed that P would not have—
- (a) renounced or been deprived of any notional British nationality, or
- (b) lost any notional British nationality by virtue of P acquiring the nationality of a country or territory outside the United Kingdom.
- (7) A “notional British nationality” is—
- (a) in a case where P is an eligible former British national, any status as a British subject or a citizen of the United Kingdom and Colonies which P would have held at any time after P’s nationality loss (had that loss not occurred and had P’s mother been married to P’s natural father at the time of P’s birth);
- (b) in a case where P is an eligible non-British national—
- (i) P’s status as a British subject or citizen of the United Kingdom and Colonies as mentioned in subsection (4)(b), and
- (ii) any other status as a British subject or citizen of the United Kingdom and Colonies which P would have held at any time afterwards (had P’s mother been married to P’s natural father at the time of P’s birth).
- (8) In this section—
- “British subject” has any meaning which it had for the purposes of the British Nationality and Status of Aliens Act 1914;
- “independence legislation” means an Act of Parliament or any subordinate legislation (within the meaning of the Interpretation Act

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1978) forming part of the law in the United Kingdom (whenever passed or made, and whether or not still in force)—

(a) providing for a country or territory to become independent from the United Kingdom, or

(b) dealing with nationality, or any other ancillary matters, in connection with a country or territory becoming independent from the United Kingdom;

“P’s nationality loss” means P’s—

(a) ceasing to be a British subject or citizen of the United Kingdom and Colonies (as mentioned in subsection (3)(a)), or

(b) not becoming a citizen of the United Kingdom and Colonies (as mentioned in subsection (3)(b)).

17G Sections 17B to 17F: supplementary provision

(1) In sections 17B to 17F and this section, a person’s “natural father” is a person who satisfies the requirements as to proof of paternity that are prescribed in regulations under section 50(9B).

(2) The power under section 50(9B) to make different provision for different circumstances includes power to make provision for the purposes of any provision of sections 17B to 17F which is different from other provision made under section 50(9B).

(3) The following provisions apply for the purposes of sections 17B to 17F.

(4) A reference to a person automatically becoming a citizen of a certain type is a reference to the person becoming a citizen of that type without the need for—

(a) the person to be registered as such a citizen by the Secretary of State or any other minister of the Crown;

(b) the birth of the person to be registered by a diplomatic or consular representative of the United Kingdom; or

(c) the person to be naturalised as such a citizen.

(5) If the mother of a person could not actually have been married to the person’s natural father at the time of the person’s birth (for whatever reason), that fact does not prevent an assumption being made that the couple were married at the time of the birth.”

(3) In section 25 (meaning of British overseas territories citizen “by descent”), in subsection (1), after paragraph (ca) (as inserted by section 1), insert—

“(cb) the person is a British overseas territories citizen by descent by virtue of section 17C(3), 17D(2), 17E(2) or 17F(5); or”.

(4) In Part 5 of that Act (miscellaneous and supplementary), in section 41A (registration: requirement to be of good character), after subsection (2) insert—

“(2A) An application for registration of an adult or young person as a British overseas territories citizen under section 17C, so far as the relevant registration provision (as defined in section 17C(2)) is section 15(3), 17(2) or 17(5), must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.”

3 Provision for Chagos Islanders to acquire British Nationality

In Part 2 of the British Nationality Act 1981 (British overseas territories citizenship), after section 17G (as inserted by section 2), insert—

“17H Acquisition by registration: descendants of those born in British Indian Ocean Territory

- (1) A person is entitled to be registered as a British overseas territories citizen on an application made under this section if—
 - (a) they are a direct descendant of a person (“P”) who was a citizen of the United Kingdom and Colonies by virtue of P’s birth in the British Indian Ocean Territory or, prior to 8 November 1965, in those islands designated as the British Indian Ocean Territory on that date, and
 - (b) they have never been a British overseas territories citizen or a British Dependent Territories citizen.
- (2) An application under this section must be made—
 - (a) in the case of a person aged 18 years or over on the commencement date, before the end of the period of five years beginning with the commencement date;
 - (b) in the case of a person aged under 18 on the commencement date, or a person who is born before the end of the period of five years beginning with the commencement date, before they reach the age of 23 years.
- (3) In subsection (2), “the commencement date” means the date on which this section comes into force.”

4 Sections 1 to 3: related British citizenship

- (1) Part 1 of the British Nationality Act 1981 (British citizenship) is amended as follows.
- (2) After section 4J, insert—

“4K Acquisition by registration: certain British overseas territories citizens

- (1) A person is entitled to be registered as a British citizen on an application made under this section if—
 - (a) they are entitled to be registered as a British overseas territories citizen under section 17A, 17C, 17D, 17E, 17F or 17H, or
 - (b) they would be entitled to be registered as a British overseas territories citizen under any of those sections but for the fact that they have already become a British overseas territories citizen under a different provision.
- (2) Subsection (1) does not apply in the case of a person—
 - (a) who is or would be entitled to be registered as a British overseas territories citizen by virtue only of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia, or
 - (b) who has previously been a British citizen.

- (3) The Secretary of State may not register a person as a British citizen on an application under subsection (1)(a) unless the person is also registered as a British overseas territories citizen.”
- (3) In section 14 (meaning of British citizen “by descent”), in subsection (1), after paragraph (da) insert—
- “(db) the person is a British citizen by virtue of registration under section 4K and is—
- (i) a British overseas territories citizen by virtue of registration under section 17A, or
- (ii) a British overseas territories citizen by descent by virtue of section 17C(3), 17D(2), 17E(2) or 17F(5); or”.
- (4) In Part 5 of that Act (miscellaneous and supplementary), in section 41A (registration: requirement to be of good character), after subsection (2A) (inserted by section 2) insert—
- “(2B) Subsection (2C) applies to an application for registration of an adult or young person as a British citizen under section 4K who is, or would have been, entitled to be registered as a British overseas territories citizen under section 17C, so far as the relevant registration provision (as defined in section 17C(2)) is section 15(3), 17(2) or 17(5).
- (2C) The application must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.”

5 Period for registration of person born outside the British overseas territories

- (1) In section 17 of the British Nationality Act 1981 (acquisition of British overseas territories citizenship by registration: minors)—
- (a) in subsection (2), for “within the period of twelve months from the date of the birth” substitute “while the person is a minor”;
- (b) omit subsection (4).
- (2) In section 41A of that Act (registration: good character requirement), in subsection (2), after “17(1)” insert “, (2)”.