



Home Office

Registration as a British overseas territories citizen in special circumstances

Version 3.0

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About this guidance

This guidance tells caseworkers about registration as a British overseas territories citizen in special circumstances.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email Nationality Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Review, Atlas and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **3.0**
- published for Home Office staff on **07 May 2025**

Changes from last version of this guidance

Updated to clarify the position where a person has another route to citizenship.

Related content

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Registration in special circumstances

Section 17I of the British Nationality Act 1981 was introduced by the Nationality and Borders Act 2022. It is a registration route for adults who would have been, or would have been able to become, a British overseas territories citizen (BOTC) but for one or more of three specific reasons which are set out in statute.

The 2022 Act also created registration routes (sections 17A-F) for people who did not become BOTCs, because women or unmarried fathers connected to an overseas territory could not pass on citizenship at the time of their birth. (They can also register as a British citizen where they missed out on that status.) There is also a discretionary registration route for children under section 17(1), although it should be noted that provision is broader and section 17I is not intended to mirror it. Instead, section 17I allows us to grant BOTC in special circumstances where, in the Secretary of State's opinion, a person would have been, or would have been able to become, a BOTC but was prevented from doing so by a limited and specific set of scenarios.

Section 17I is not intended for situations where the law changed over time but applied equally to everyone in the same way, as was the case when the British Nationality Act 1981 itself became law.

The law

Under [section](#) 17I of the British Nationality Act 1981, a person may be registered as a BOTC if:

- they are of full age and capacity
- in the Secretary of State's opinion, they would have been, or would have been able to become, a BOTC but for at least one of:
 - [historical legislative unfairness](#)
 - [an act or omission of a public authority](#)
 - [exceptional circumstances relating to that person](#)

Section 17I(2) states that “historical legislative unfairness” includes, but is not limited to, where the person would have become, or not ceased to be, a British subject, citizen of the United Kingdom and Colonies, British Dependent Territories citizen or BOTC, if an Act of Parliament, or subordinate legislation, had:

- treated men and women equally
- treated children of unmarried couples in the same way as children of married couples
- treated children of couples where the mother was married to someone other than the natural father in the same way as children of couples where the mother was married to the natural father

In relation to an act or omission of a public authority, section 17I(3) defines “a public authority” as any public authority within the meaning of section 6 of the [Human Rights Act 1998](#), other than a court or tribunal. For UK purposes, this means any

person whose functions are of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament (for example, MPs and members of the House of Lords). This definition can include a government department or local authority. In the overseas territories it will apply to equivalent government bodies.

In considering whether to grant an application under section 17I, the Secretary of State may take into account whether the applicant is of good character.

“Of full age” means a person who is 18 or over. Only adults can apply under this provision, although registration may be based on events when a person was a minor

‘Of full capacity’ is defined in the [British Nationality Act 1981](#) as meaning that a person is not of unsound mind. For a detailed explanation of how this is interpreted for the purposes of the Act, and how the requirement to be of full capacity may be waived in certain circumstances see the full capacity requirement guidance.

A person who is registered under this provision will become a BOTC otherwise than by descent. This means they will be able to pass on citizenship to a child born outside of the overseas territories.

Fees

Applications for registration as a BOTC are decided by the Governor of the relevant territory, who exercises nationality functions on behalf of the Secretary of State. Fees for BOTC applications are set by the territories.

Checking the application

It is essential that the person applying shows:

- that they would have been, or would have been able to become, a BOTC – taking into account the legislation in force at the time and citing the section or sections which would have applied to them
- they did not become, or were unable to become, a British overseas territories citizen because of at least one of the 3 statutory reasons set out in section 17I
- they are of [good character](#) if applicable

If the person can show that they meet those requirements, registration may be appropriate. The decision to register is, however, subject to the Home Secretary’s discretion.

Checking whether the person would have been, or would have been able to become, a British overseas territories citizen

You must first check whether the person would have been, or would have been able to become, a BOTC but for historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances relating to the applicant.

You must consider whether the person would have otherwise:

- become a BOTC automatically – by birth, descent or adoption
- qualified for registration or naturalisation as a BOTC

To assess whether the person would have become a BOTC automatically, you must look at their date and place of birth, and their parents' status at the time, to see if they could otherwise have become a BOTC under the relevant nationality legislation. Further information on previous nationality laws can be found in the historical background information on nationality.

To assess whether the person could otherwise have qualified for registration or naturalisation you must consider whether they would have been able to meet the statutory requirements at the relevant time.

You must then assess the reasons put forward why the person was not able to acquire that status, to see if they fit within the conditions set out in the legislation:

- historical legislative unfairness
- an act or omission of a public authority
- exceptional circumstances relating to that person

In considering whether one of those 3 criteria prevented a person from being or becoming a British overseas territories citizen you must make a decision based on their circumstances without relying on hypothetical assumptions about what a person might have done had the law been different. The courts in the case of *R (APD) v Secretary of State for the Home Department* [2025] EWHC 246 (Admin) stated that we need to look at “what “would” have occurred if the putative causal event had not taken place, not what “might” have occurred”. The judge recognised that there needs to be “a degree of certainty about what would have happened as opposed to mere speculation about what might have happened.”

Historical legislative unfairness

If a person is citing historical legislative unfairness, you must check whether their inability to have been, or been able to become, a BOTC was as a result of the provisions of the historical legislation.

A piece of legislation will be considered to be “unfair” if it treated one group differently to another, particularly on the basis of a protected characteristic. In the UK, “protected characteristics” are set out in the Equalities Act 2010. That Act does not directly apply to the overseas territories, but you must similarly consider whether people were treated differently on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.

The legislation states that this might include where:

- men and women were treated differently
- children of unmarried couples were not treated in the same way as children of married couples
- children of couples where the mother was married to someone other than the natural father were not treated in the same way as children of couples where the mother was married to the natural father

This gives an indication of the sorts of situations Parliament intended to address but is not exhaustive. Additional examples of legislative unfairness will generally be of a similar nature to those set out above. For example, it may additionally extend to scenarios which suggest inequality of treatment between individuals because of a protected characteristic. You must carefully consider any application where a person claims that their failure to become a BOTC was due to unfairness in the law. Cases that do not fit within the examples above should be referred to Nationality Policy Team.

You must take care not to equate situations where a person feels that their position within the law is unfair with “legislative unfairness”. For example, a person born abroad to a parent who was a BOTC by descent might think it is unfair that they do not acquire BOTC automatically. However, it has been Parliament’s intention for many years that citizenship should normally only be passed on to one generation born overseas. The law itself is not unfair as it does not distinguish between people in the same circumstances on grounds of protected characteristics - [age](#), [disability](#), [gender reassignment](#), [marriage and civil partnership](#), [pregnancy and maternity](#), [race](#), [religion or belief](#), [sex](#), or [sexual orientation](#).

Parliament has made conscious decisions about nationality law, and so cases where a person did not become a BOTC because of a legislative change will not normally fall within this provision. For example, some people born in a territory on or after 1 January 1983 to non-settled parents might feel that it is not fair that they did not acquire BOTC whereas if they had been born before that date they would. Following that change, however, all children born on or after that date were treated the same on that basis.

Most cases involving BOTC mothers and unmarried fathers will be covered by sections 17A and 17C-F. In terms of people with BOTC grandparents, Parliament’s intention was that citizenship will normally only be passed on for one generation born overseas, and section 17I is not intended to change that, although you must consider each case on its merits and assess if there are exceptional circumstances.

Act or omission of a public authority

You must check whether the person’s inability to become a BOTC was as a result of an act or omission of a public authority.

“Public authority” can include a government department or local authority, but not a court or tribunal. If you are unsure whether an organisation or individual meets the definition of “public authority” you must refer the case, via your senior caseworker, to Nationality Policy Team.

The act or omission must have resulted in the person missing out on being, or being able to become, a BOTC, for example failing to make a time bound application or failing to meet statutory requirements because of official error. The person must clearly show how the claimed act or omission prevented them from being, or being able to become, a BOTC.

Exceptional circumstances

Section 17I also allows for registration where the person did not become, or was not able to become, a BOTC because of exceptional circumstances relating to them. This is to be used where those exceptional circumstances prevented the person from acquiring citizenship: it is not intended to be used to cover cases where a person does not meet the requirements for other routes. Similarly, where a person's circumstances might be exceptional or compelling, we cannot grant citizenship under this provision unless those circumstances prevented them from becoming a BOTC. There needs to be a clear link between their particular and exceptional circumstances and the failure to be, or become, a BOTC.

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Considering an application

The following are scenarios where you might decide to grant an application, but this is not an exhaustive list. Each case must be considered on its own merits to see if the person would have been, or would have been able to become, a British overseas territories citizen (BOTC) but for historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances relating to that person.

Children born in an overseas territory to foreign diplomats

Section 4 of the British Nationality Act 1948 provided that a person born in the UK and colonies between 1949 and 1983 would be a citizen of the United Kingdom and Colonies (CUKC). They would go on to become a British overseas territories citizen under the British Nationality Act 1981, if born in an overseas territory. However, children of diplomats did not benefit from birth in an overseas territory.

Section 7 of the Consular Relations Act 1968 created an exception to this and sought to address the issue of children born to diplomats who had a father who was a citizen of the UK and Colonies at the time. It stated that a person born within the UK and Colonies would not be a CUKC if their parent both:

- was serving within the United Kingdom and Colonies as a member of a consular post of any state
- was a national of that state

The child would, however, be a CUKC if their **father** was a citizen of the United Kingdom and Colonies.

This created an anomaly in that a person born in an overseas territory to a dual national CUKC mother who was a foreign diplomat would be prevented from acquiring CUKC status, whereas a child born to a CUKC father in the same situation would not.

Similarly, if a person was born in an overseas territory to a father who was a diplomat but not a CUKC, they would not have become a CUKC even if their mother was a CUKC.

Such cases are likely to be very unusual, but you should normally grant on the basis that the person would have become a BOTC but for historical legislative unfairness.

Evidence to be provided:

- the person's overseas territory birth certificate
- evidence that the mother was a CUKC at the time of the birth – passport, naturalisation or registration certificate, or overseas territory birth certificate
- evidence of the mother's employment (this may have already been established if the person had applied for a passport)

Children with British grandmothers in Crown Service

Section 25(2) of the British Nationality Act 1981 provided that a BOTC born before 1 January 1983 would not hold that status “by descent” if his father was in Crown or designated at the time of the birth. This meant that a number of people were reclassified as BOTCs “otherwise than by descent” from that date, and could pass their citizenship on.

There may be people who missed out on BOTC because this section did not apply to women in the same way as men.

Applications based on the inability of women to pass on citizenship should normally be considered under section 17A, but if you have a case where a woman was in Crown or designated service and her grandchild did not become a BOTC, whereas the grandchild of a man in the same position would, you should normally register on the basis of **historical legislative unfairness**.

Evidence to be provided:

- the person’s birth certificate
- the mother’s birth certificate
- evidence that the grandmother was a CUKC at the time of the birth – passport, naturalisation or registration certificate, or territory birth certificate
- evidence that at the time of the mother’s birth the grandmother was in Crown or designated service, and was recruited in a territory as per section 25(2) of the Act

People prevented from qualifying for citizenship because of an immigration or nationality department act or omission

It may be appropriate to register a person using this provision if they had been wrongly prevented from resuming permanent residence in a territory following an absence. For example, if a mistake was made about their eligibility to enter the territory as a returning resident, a person may be unable to meet the statutory requirements for naturalisation.

There may be other exceptional cases where person cannot qualify for citizenship as a result of an incorrect government decision. In such cases it may be right to register under section 17I on the basis of an act or omission of a public authority.

Evidence to be provided:

Much of the information required will be on official systems, but you may need to see additional documentation to establish the circumstances.

Children in the care of a public body

It may be appropriate to register a person under section 17I if they would have had an age-related opportunity to register as a BOTC (for example under section 15(3) of the British Nationality Act 1981 before they were 18), but this was missed because a public body responsible for their care did not realise that an application needed to be made.

You must consider whether action could have been taken at the time that would have allowed the child to have been, or been able to become, a BOTC. It is possible that the temporary nature of care, and changes in parental responsibility, might have meant that citizenship matters were not considered. If it is clear that the child missed out on being, or being able to become, a BOTC as a result, you must normally register under section 17I on the basis of an act or omission of a public authority.

Evidence to be provided:

- evidence that the child would have had an entitlement to citizenship – birth certificate, details of the parents and their status, evidence of residence in the territory, and the parent's immigration status if appropriate
- evidence that the child was cared for by a local authority

Young adults adopted by BOTCs in the territory

Applications involving an adoption should be considered by a specialist caseworker,, or referred to Nationality Policy Team for advice.

Section 15(5) of the British Nationality Act 1981 states that a child will become a BOTC automatically if both:

- a court in a British overseas territory approves their adoption
- at least one of the adoptive parents is a BOTC when the adoption order is made

The child becomes a BOTC from the date the order is made. That section only applies to “minors” and so a child can only benefit if they are under the age of 18 on the date of adoption.

However, adoption law in some territories may allow an adoption to take place after the young person's eighteenth birthday.

General information about adoption of children can be found in the adoption guidance.

When considering a case, you must bear in mind that the court has determined that the young person is now part of the family of the BOTC parent and so deal with the application as sensitively and quickly as possible. The relationship between the young person and the adopter has already been accepted by the family court, and

the courts will likely have heard directly from parties and considered evidence of the relationship that may not be available to the caseworker.

You should normally grant an application under section 17I where a child is adopted by Order in a territory and:

- the application for adoption was made before the person's eighteenth birthday.
- the adoption order is made after the young person has turned 18
- the adoptive parent is a BOTC, and the child would have become a BOTC under section 15(5) of the British Nationality Act 1981 if they had been under 18 at the time the adoption order was made
- no information has come to light to prompt concerns about the genuineness of the relationship with the adoptive parent - if you have any concerns in respect of the relationship, these must be weighed against the fact that a court has decided that adoption was appropriate, taking into account all the relevant information

You must discuss the case with a senior caseworker if you are proposing to refuse the application.

You must normally register under section 17I. This is on the basis of **exceptional circumstances relating to that person**.

Evidence to be provided:

- the adoption order
- documentation that shows when the adoption application was made - this might be a copy or acknowledgement of the adoption application made to a Family Court, official paperwork, or stated on the order itself
- any additional information about the adoption and its timing that the parents wish to provide
- evidence of the parent's BOTC status – passport, naturalisation or registration certificate, or territory birth certificate issued before 1983

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Good character

Section 17I(4) states that, in considering whether to grant an application under this section, the Secretary of State may take into account whether the applicant is of good character.

If the person would have been able to acquire BOTC through registration or naturalisation (but for historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances relating to that person), under a [provision that had a good character requirement](#), you must assess whether they are of good character. Any assessment must be made based on the date of decision, rather than at the time they could have applied.

The relevant provisions are:

- naturalisation under section 18(1) or 18(2)
- registration under section 15(3) or (4), 17(1), 17(2) or 17(5), 22(1) or (2), 24 or 27(1)
- registration under section 17C, if the registration was on the basis that the person could have qualified under section 15(3), 17(2) or 17(5), had their parents been married

Where a person would have acquired citizenship automatically (but for historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances relating to that person), we will not ask them to provide evidence that they are of good character as part of their application. A person who missed out on an automatic claim to citizenship will not normally be refused on character grounds. If you have a case where the person could have become a citizen automatically, but you have serious concerns about their character, the case should be referred to a senior caseworker.

Case studies

The following are fictional examples that illustrate how we expect to consider applications under this provision. References to immigration laws are very generic and the fictional examples may not accurately represent the laws or routes available in a specific territory. References to permanent permission to stay or remain in a territory are intended to include any status formally granted in that territory which is broadly equivalent to indefinite leave to enter or remain in the UK under the Immigration Act 1971.

These case studies are very high level: when considering a case, you should look at the full facts available to assess whether the person falls within one of the 3 limbs of section 17I and consider each case on its own merits.

Example 1– child in care

Sara was born in Anguilla in 2002. Her parents were in the territory with temporary permission at the time and so Sara did not become a BOTC automatically. From the age of 11 to 18 Sara was in the care of a public body. Sara has learned that her parents were granted permanent residence (settled) status before she was taken into care. As such, an application could have been made to register her under section 15(3) before her eighteenth birthday. The department providing care has said that they had not realised that she would have qualified.

As Sara could have become a BOTC but for an act or omission of a public authority, it may be appropriate to register her under section 17I.

Example 2– kidnapped as a child

Tom went to live in Bermuda aged 3 in 2005. His mother was there on a work route and Tom was given permission to remain in line. When he was 8, his parents split up, and Tom was kidnapped by his father and taken overseas. Despite the efforts of the police, international agencies and the relevant authorities in the overseas territory, Tom was not able to return to Bermuda until after the age of 18. In the meantime, his mother was granted settled status in 2012 and then naturalised as a BOTC in 2013.

Tom would have been in Bermuda but for the exceptional circumstances of having been kidnapped (as opposed to family decisions to live elsewhere). If he had been in Bermuda, he could have applied for registration under section 17(1). It may therefore be appropriate to register under section 17I.

Example 3 – mother in civil partnership

Alfie was born in the USA in 2008. At the time his birth mother was a US citizen and her female civil partner a BOTC. From 6 April 2009, a mother's female partner is treated as the parent of the child for nationality purposes, and British women in civil partnerships can pass on nationality. Alfie claims his parents intended to apply to register him as a BOTC under section 17(1), but one of them had been seriously ill and so they did not get round to it before his eighteenth birthday. He has never lived in a territory.

Alfie could have applied for registration before his eighteenth birthday and would have met the criteria set out in guidance for when registration would normally be appropriate (see the guidance on registering children of civil partners). As the law treated children of civil partners differently than those of married partners before 2009, it may be appropriate to register on the basis of historical legislative unfairness.

Example 4 – absences beyond applicant's control

Nadiya arrived in Cayman Islands in 2012 with a work visa. It has been established that she was a victim of modern slavery, working for a family who took her with them

when they moved to the United Arab Emirates in 2018. Nadiya has been back in the Cayman Islands since 2021 and has been granted permanent permission to stay on exceptional grounds. Because of her absences, she will not qualify for naturalisation until 2026.

Had Nadia not been removed from the Cayman Islands whilst enslaved, she may have been able to apply for naturalisation from 2018, had she been able to meet all of the requirements. You would need to assess whether she would have been able to first qualify for settlement and been able to meet the language requirement.

Nadiya may now qualify for naturalisation, taking into account the changes made by the Nationality and Borders Act 2022 which allow you to exercise discretion over the requirement to have been in the territory at the start of the qualifying period in special circumstances. She may wish to apply for naturalisation now, if she considers it may be more straightforward than trying to show that she would have qualified at an earlier point for the purposes of a 17I application.

Example 5 – passport issued in error

Hannah was born in Montserrat in 1983. She has been issued with BOTC passports since the age of 4. When she applied to renew her passport earlier this year, she presented her full birth certificate and it was realised that her parents were not in fact settled in the territory at the time. This means that Hannah did not become a BOTC. The family have been living/working in Montserrat since Hannah's birth.

Hannah's parents might have applied to register her as a BOTC whilst she was a child, had she not been issued British passports in error. However, as she was resident in Montserrat for the first 10 years of her life, she will still have an entitlement to [registration under section 17\(4\)](#) of the British Nationality Act 1981.

Hannah could apply under section 15(4) - or section 17I on the basis that she could have qualified for registration under section 15(4) from the age of 10. Both those options would potentially require a fee and the same documents (birth certificate and evidence of residence), and both would give BOTC otherwise than by descent. The more straightforward option for Hannah is likely to be an application under section 15(4), as she would only need to provide the documents and not establish that one of the 3 statutory limbs was met.

Example 6 – earlier application refused

Ravi applied to move to Pitcairn on a work visa in 2018 but his application was refused as he did not meet the requirements. He then applied again in 2020 and was granted. He entered Pitcairn in September 2020. He claims that if his earlier application had been granted he would now be able to apply for naturalisation.

Ravi does not meet one of the 3 limbs for section 17I: he was not prevented from becoming a BOTC by historical legislative unfairness, or an act or omission of a public authority, and his particular circumstances are not exceptional.

Example 7 – born after 1 January 1983

Aisha was born on 2 January 1983 in Turks and Caicos. Her parents were not settled in the territory at the time, and so she is not a BOTC. She claims that had she been born on her due date of 28 December 1982 she would have been a BOTC automatically, as a person born in the territory before 1 January 1983 became a BOTC irrespective of their parents' status (unless a diplomat).

Aisha does not meet any of the 3 limbs for section 17I. The change in legislation was not historical legislative unfairness: it applied to all those born after the British Nationality Act came into force. Her particular circumstances are not exceptional as many people were born on or after 1 January 1983. There are registration routes for those born in a territory after that date: Aisha may be able to apply under [section 17\(4\)](#).

Example 8 – working overseas

Charles would have met the requirements for naturalisation in 2015 – he had been in British Virgin Islands for over 5 years and had permanent permission to remain in BVI for more than 12 months, and would have met the knowledge of language requirement. However, he lost his job and could not afford to apply. He found another job with an international company and has been posted to the USA for the last 5 years. He therefore does not meet the requirements for naturalisation. He claims that, but for the fact that he had lost his job and had to work overseas, he would have been able to naturalise in 2015.

Charles does not meet any of the 3 limbs for section 17I: his working overseas would not normally be recognised as exceptional circumstances for section 17I.

Example 9 – pandemic absences

Duncan would have been able to meet the requirements for naturalisation in 2020 – he had been living in the Falklands for over 5 years and had permanent permission to stay for more than 12 months and would meet the knowledge of language requirement. However, he had gone to visit family in Australia and was stranded there during the pandemic. Having returned to the Falklands, he wants to apply under section 17I on the basis that he could have become a BOTC but for exceptional circumstances.

Duncan can still make an application for naturalisation. Excess absences as a result of the pandemic can be taken into consideration – see the naturalisation guidance. As such, his absence overseas are unlikely to be recognised as exceptional circumstances for registration under section 17I.

Example 10 – child born overseas because of medical complications

Rachel's grandfather was born in St Helena in 1945. Her mother was born in the USA in 1965, and is a BOTC by descent, but has lived in St Helena all her life.

Rachel was born in South Africa in 1996 as there were complications with her birth and no emergency maternity facilities in the territory. She is now living in South Africa. Rachel claims that but for the fact that there were no major hospitals in St Helena, she would have been born there and become a BOTC automatically. You must take into account all the information provided and the local situation consider whether it is appropriate to register her.

Example 11 – lost CUKC on independence

Clive was born in Guyana in 1955. Both his parents and all his grandparents were born in Guyana. Clive's family moved to the Cayman Islands in 1965, where they lived for 5 years. In 1966 Guyana became an independent Commonwealth country, and Clive became a citizen of Guyana. As neither Clive nor his father or grandfather was born, naturalised or registered as a citizen in a country that remained part of the UK and Colonies at that time, or a protectorate or protected state, Clive lost his citizenship of the UK and Colonies (CUKC). He claims that his parents could have registered as citizens of the UK and Colonies while they were resident in the Cayman Islands and registered him as a child.

Clive ceased to be a CUKC as a result of the independence arrangements of Guyana. It was not historical legislative unfairness: it applied to all those connected to that territory irrespective of any protected characteristics and was in line with independence arrangements of other countries. The fact that Clive's family did not apply to register him as a citizen would not normally be considered exceptional circumstances.

Example 12 – grandmother born in Bermuda

Dwight was born in the USA in 1950. His maternal grandmother was born in Bermuda in 1925. Dwight's father was born in the USA. If women had been able to pass on citizenship at the time, Dwight's father would have become a CUKC by descent and could have registered Dwight's birth at a UK consulate within a year of the birth.

Under section 5 of the British Nationality Act 1948 there were certain scenarios where a person could have become a CUKC, despite their father being a CUKC by descent. The Supreme Court's decision in the case of *Romein* took into account the fact that British mothers could not register their children's birth at a British consulate, and we have recently legislated to allow a person who would have qualified under section 5(1)(b) to benefit under section 17A, despite the fact that no registration took place. If Dwight can establish that he would have had a claim under section 5(1)(b), having been born in a foreign (and not Commonwealth) country, had women been able to pass on citizenship in the same way as men, registration under section 17I might be appropriate.

Example 13 – man married to CUKC woman

George was born in the USA in 1952. In 1975 he married Eleanor, who was a CUKC, because her father had been born in Turks and Caicos. George claims that if

the law had treated men and women equally, he would have been able to register as a CUKC under section 6(2) of the British Nationality Act 1948 – in the same way as a foreign woman married to a CUKC man.

Section 171 defines ‘historical legislative unfairness’ as including circumstances where a person:

“would have become, or not ceased to be, a British subject, citizen of the United Kingdom and Colonies, British Dependent Territories citizen or BOTC, if an Act of Parliament, or subordinate legislation, had

- treated men and women equally
- treated children of unmarried couples in the same way as children of married couples
- treated children of couples where the mother was married to someone other than the natural father in the same way as children of couples where the mother was married to the natural father”

This was generally intended to cover cases where people would have become British automatically rather than by registration or naturalisation.

The fact that women could acquire British nationality simply through marriage was reflective of society at that time, and that certain rights and entitlements derived from a woman’s marriage to her husband (and women previously lost British subject status based on a husband’s nationality). Section 171 predominantly seeks to address previous unfairness where women or their children missed out on citizenship. However, the intention in addressing inequalities in such circumstances is to ‘level-up’ so that a woman has the same rights as a man. Section 6(2) of the 1948 Act reflected the then assumption that a woman’s status should follow that of her husband, which in turn, reflected the wider underlying policy that citizenship could only be acquired via the male line. We do not think it appropriate to replicate that position for men. Unless there are exceptional circumstances, it would not normally be considered appropriate to register George under section 171.

Example 14 – section 21 of the British Nationality Act 1981

Hanif was born in the USA in 1985. His mother was a British dependent territories citizen. Section 21 of the British Nationality Act 1981 was a transitional provision that lasted for 5 years after the Act came into force on 1 January 1983. It continued the acquisition of citizenship by descent to a second generation, where a child’s birth was registered at a British consulate in a foreign country. A man who was a British dependent territories citizen by descent could register his child’s birth at a consulate within 12 months of the birth, and the child would become a British dependent territories citizen

If women had been able to pass on citizenship equally with men, Hanif could have become a BOTC through registration. Registration under section 171 might therefore be reasonable.

As section 21 was a registration route in the legislation, rather than automatic acquisition, Hanif would need to pay the relevant fee and meet the good character requirement.

Example 15 – renounced CUKC status

Grace was born in Kenya Colony in 1955 and so was a citizen of the UK and Colonies by birth. Her mother was born in Anguilla. Grace did not become Kenyan on independence, as she did not have a parent or grandparent born there. However, she acquired Kenyan citizenship by registration and renounced her citizenship of the UK and Colonies in 1980. Section 22 of the British Nationality Act 1981 allows a person to resume British overseas territories citizenship where they acquired that status through a qualifying connection to an overseas territory, including having a father born there. Grace claims that she should be able to benefit under section 22, on the basis of her Anguilla born mother.

The legal requirement for section 17I is about someone who would have been or been able to become a citizen. Grace was already a CUKC but renounced that status. She did not miss out on becoming a citizen because she had a mother born in a territory rather than a father. Instead, she acquired citizenship in her own right, but actively chose to renounce it. We would not therefore expect to register Grace under section 17I.

Example 16– did not apply to be registered

Aiko was born in Japan in 1988. Her father was a British dependent territories citizen by descent: his father was born in Bermuda. Aiko's parents did not make an application for registration within 12 months of her birth (the 12-month time limit was removed in 2022, allowing an application to be made at any time before a person's 18th birthday). Aiko claims that if the law had changed earlier, her parents could have applied to register her while she was under the age of 18.

If there were exceptional reasons, there was discretion to register a child up until the age of 6 under section 17(2), or an application could be made up to the age of 18 under section 17(1). Aiko does not meet any of the three limbs for section 17I. We do not normally expect to use section 17I where people were simply born before or after a change in the law, and so this would not be considered to be historical legislative unfairness.

Example 17- grandmother born in a territory - child born before 1949

Ingrid was born in Sweden in 1939. Her mother was also born in Sweden, and her maternal grandfather was born in Turks and Caicos. If women had been able to pass on citizenship in the same way as men, Ingrid claims her mother would have registered her birth, allowing Ingrid to become a BOTC.

We introduced legislation at section 17A of the British Nationality Act 1981 to reflect the judgement in the Supreme Court case of *The Advocate General for Scotland*

(Appellant) v Romein (Respondent) (Scotland). That judgement applies to consular registration cases where the applicant would have qualified under section 5(1)(b) of the 1948 Act. Ingrid was born before the 1948 Act came into force in 1949, but if women had been able to pass on nationality in the same way as men, she could have become a British subject through consular registration. It may be appropriate to register Ingrid under section 17I if such consular registration would have meant that she went on to become a BOTC.

Example 18 – grandmother born in Montserrat

Alan was born in South Africa in 1984. Alan's maternal grandmother was born in Montserrat and his mother was born in South Africa. Alan's mother lived in Montserrat for 3 years while she was a student from 1979 to 1982. Alan's mother has recently registered as a BOTC under Section 17A. Alan claims that if his mother had been able to register as a BOTC before he was 18, he would have been able to register as a BOTC under section 17(2) of the British Nationality Act 1981.

You must consider the circumstances of Alan's case. If you are satisfied that he missed out on becoming a BOTC because of gender discrimination, registration under 17I might be appropriate. However, you would need to be satisfied that there would have been a definite section 17(2) entitlement, based on actual events, rather than relying on speculation that his mother might have moved to a territory if she was a BOTC.

Example 19 – woman married to a man with a CUKC mother

Margaret, a Canadian national, married her Canadian husband Hank in 1965. Hank's mother was born in Bermuda in 1920. Margaret claims that if women had been able to pass on citizenship before 1983, Hank would have been a citizen of the UK and Colonies and she could have applied for registration under section 6(2) of the British Nationality Act 1948.

The definition in Section 17I of 'historical legislative unfairness' includes circumstances: "where a person would have become, or would not have ceased to be, a British subject, a citizen of the United Kingdom and Colonies, a British dependent territories citizen or a British overseas territories citizen, if an Act of Parliament or subordinate legislation... had, for the purposes of determining a person's nationality status... treated males and females equally".

We cannot be certain in this case that Margaret would have become a citizen, as it would have been conditional on her choosing to make an application (with the possibility of losing another nationality that she might have held). As this would rely on hypothetical assumptions about potential behaviour many years ago, the application would not normally be successful.

Example 20 - birth not registered

Kurt was born in the USA in 1967. His paternal grandfather was born in Pitcairn and his father was a CUKC by descent. Kurt's birth father did not register Kurt's birth at

the British consulate within 12 months, and so Kurt did not become a CUKC. Kurt has referred to the changes made in the Nationality and Borders Act which allow us to overlook the fact that a person's birth was not registered at a British consulate when considering an application under section 17I. He suggests that he should also be able to benefit on that basis.

The fact that a person with a British 'by descent' mother, or unmarried British father, could not have their birth registered at a British consulate amounted to historical legislative unfairness. This was in contrast to a child with a British father, who did have that opportunity but was not registered. In applying section 17I we would want to register those who did not have an opportunity to become British because of historical legislative unfairness, but not those whose parents had that opportunity but did not take it. Kurt did not miss out on BOTC because of historical legislative unfairness, but because his parent failed to act. As such, Kurt does not meet the requirements for registration under section 17I.

Example 21 – person from St Kitts who did not qualify under the unmarried fathers provisions

Mary was born in St Kitts before the British Nationality Act 1981 came into force on 1 January 1983. Her father was born in Montserrat. Mary became a British dependent territories citizen (BDTC) under that Act, but when St Kitts became independent she did not retain British dependent territories citizenship, as her parents were not married. If her parents had been married, she would have remained a BDTC.

Mary cannot register as a British overseas territories citizen under section 17F of the British Nationality Act 1981 on the basis of her BOTC father. This is because the general conditions for that section (at section 17B) state that the person must never have been a British overseas territories citizen or a British dependent territories citizen. (That requirement was intended to cover people who had renounced or been deprived of British dependent/overseas citizenship.)

People who became a BDTC through a St Kittitian father would not now be BOTCs, even if unmarried fathers had been able to pass on citizenship before July 2006. However, Mary's father was born in Montserrat and so she would have become a BOTC had her parents been married.

It may therefore be appropriate to register Mary under section 17I.

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