

Protectorates and Protected States

1. Meaning of the expression

1.1 Protectorates and Protected States, like mandated/trust territories (see "MANDATED AND TRUST TERRITORIES"), were foreign territories to which British protection was extended in one form or another. However, while mandated/trust territories were established under the auspices of the League of Nations/United Nations, protectorates and Protected States were proclaimed at the will of the Crown.

1.2 Protected States were places in which:

- there was a properly organised internal government; and
- Britain controlled only the state's external affairs

1.3 Protectorates were protected territories in which

- there was no properly organised internal government; and
- Britain not only controlled external matters, such as the protectorate's defence and foreign relations, but also
- established an internal administration

1.4 In this sense, the extent of the Crown's involvement in a protectorate was similar to the extent of its involvement in a colony. The distinction was that the territories concerned were not brought formally within the Crown's dominions.

2. Significance in British nationality law

2.1 As protectorates and Protected States were foreign soil, birth in such places could not, in itself, confer British subject status or, after 1 January 1949, CUKC. However, certain persons were, nevertheless, able to acquire different forms of British nationality by virtue of their connection with a protectorate or Protected State.

2.2 During the second half of the 1800s, persons who were indigenous to a protectorate and, in a Protected State, the subjects of the local ruler, became known as British protected persons (BPPs). Although, initially, this may have been a term of convenience, it soon became a form of British nationality. The status was conferred not by statute but under the Royal Prerogative. The "indigenous person" test, being unsatisfactorily vague, was replaced by a more sophisticated "belonging" test set out in the British Protected Persons Order 1934/499.

2.3 Although birth in such places could not confer British subject status at common law (as they were outside the Crown's dominions and allegiance), the practice was that where the children of British subjects were born in protectorates or Protected States, they would be treated as British subjects. This was not, strictly, acquisition by descent, because the children would acquire British subject status even where the parents' status was not transmissible. Nor was it simply acquisition by birth. Rather, it was something of a hybrid: the parent's status compensated for the inadequacies of the territory and vice versa.

2.4 Under the British Nationality and Status of Aliens Acts 1914-1943, persons continued to be or become prerogative BPPs and, regarding British subject status, the earlier practice was put on a statutory basis. Section 2 of the 1943 Act, which

was retrospective to all dates, provided that:

"Any person born, whether before or after the commencement of this Act, in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty was at the time of that person's birth exercising jurisdiction over British subjects, shall, if at the time of his birth his father was a British subject, be deemed to be and, in the case of a person born before the commencement of this Act, always to have been, a natural-born British subject" (s.2(1)).

The section went on to provide that "any such person as aforesaid shall be deemed to have been born within His Majesty's allegiance" (s.2(2)).

2.5 It should be noted that there were certain Protected States in which the Crown did not exercise extra-territorial jurisdiction over British subjects, and in respect of which this special provision did not therefore apply. These were:

British North Borneo

Brunei

the Malay States (except during the period 1 April 1946 to 31 January 1948 inclusive, when extra-territorial jurisdiction was exercised)

the Maldiv Islands

Sarawak

Swaziland

2.6 Under the BNA 1948, British subjects born in a place which, on 1 January 1949, was a protectorate or Protected State were automatically re-classified as CUKCs (s.12(3)). Further, s.5(1)(a) of the 1948 Act made much the same provision as s.2 of the British Nationality and Status of Aliens Act 1943. So children born after 1 January 1949 became CUKCs if their father was born in a place which, at the time of the birth (their or their father's, as the case may be), was a protectorate, Protected State, mandated/trust territory or foreign country in which the Crown exercised extra-territorial jurisdiction over British subjects. Additionally, the father had to be a CUKC by descent.

2.7 Furthermore, a person was able to register or naturalise as a CUKC on the basis of a connection with a protectorate or Protected State under s.8, s.10 and Schedule 2 of the BNA 1948.

2.8 BPP status was statutorily defined (s.32(1), and the British Protectorates, Protected States and Protected Persons Order 1949) and, therefore, in addition to becoming a CUKC, a person connected with a protectorate or Protected State was able to become a statutory BPP.

2.9 One further point concerning protectorates should be noted. The British Protectorates, Protected States and Protected Persons Orders not only identified, as BPPs, persons with a particular connection with an existing protectorate, but also persons connected with former protectorates. So when, for example, the Bechuanaland Protectorate attained independence as Botswana, statutory BPPs who failed to acquire citizenship of Botswana remained BPPs, and where such a person was a man, BPP status was also acquired by his children born prior to 16 August 1978 (when the 1978 Order, which restricted acquisition, commenced). BPPs by virtue of a connection with a former protectorate retained BPP status so long as they did not acquire citizenship of the country comprising, or including, the territory of the former protectorate.

2.10 The same approach was taken towards former trust territories, but not Protected States or mandated territories. So when, for example, Bahrain ceased to be a

Protected State, all those who had been statutory BPPs by virtue of their connection with Bahrain automatically ceased to possess that status. No person could be a statutory BPP by virtue of a connection with a former Protected State or mandated territory.

3. Chronology

3.1 When states and territories have attained independence, the general rule has been that, subject to certain exceptions, those who became citizens of the newly independent country ceased to possess British nationality. The excepted persons have often been those who retained a particular connection with a place which remained, for example, a protectorate on the date of independence.

3.2 The British Protectorates, Protected States and Protected Persons Order 1949/140 identified the following places as protectorates or Protected States:

Protectorates

Aden Protectorate
Bechuanaland Protectorate
British Solomon Islands Protectorate
Gambia Protectorate
Kenya Protectorate
Nigeria Protectorate
Northern Rhodesia
Northern Territories of the Gold Coast
Nyasaland Protectorate
Sierra Leone Protectorate
Somaliland Protectorate
Swaziland
Uganda Protectorate
Zanzibar Protectorate

Protected States

Brunei
Canton Island
The Malay States (i.e. Johore, Pahang, Negri Sembilan, Selangor, Perak, Kedah, Perlis, Kelantan, and Trengganu)
The Maldives
The New Hebrides
The Persian Gulf States (i.e. Kuwait, Bahrain, Qatar, and the Trucial Sheikdoms of Oman (i.e. Abu Dhabi, Ajman, Dibai, Kalba, Ras al Khaimah, Sharjah, and Umm al Qaiwain))
Tonga

3.3 Since the passing of the 1949 Order the following changes have occurred:

30.7.1952: KALBA ceased to be a Protected (Trucial) State having merged with SHARJAH; FUJAIRAH became a new Protected (Trucial) State

1.1.1954: KAMARAN became a new protectorate

6.3.1957: The NORTHERN TERRITORIES OF THE GOLD COAST ceased to be a protectorate

31.8.1957: The MALAY STATES ceased to be Protected States

1.3.1958: NORTHERN RHODESIA and the NYASALAND PROTECTORATE ceased to be included in the term "protectorate" wherever it appeared in the BNA 1948, but they remained protectorates for the purposes of the definition of a "BPP" and the 1949 Order

26.6.1960: SOMALILAND PROTECTORATE ceased to be a protectorate

1.10.1960: NIGERIA PROTECTORATE ceased to be a protectorate

27.4.1961: SIERRA LEONE PROTECTORATE ceased to be a protectorate

1.7.1961: KUWAIT ceased to be a Protected (Persian Gulf) State

9.10.1962: UGANDA PROTECTORATE ceased to be a protectorate

10.12.1963: ZANZIBAR PROTECTORATE ceased to be a protectorate

12.12.1963: KENYA PROTECTORATE ceased to be a protectorate

1.1.1964: NORTHERN RHODESIA and the NYASALAND PROTECTORATE once again became protectorates for all purposes

6.7.1964: The NYASALAND PROTECTORATE ceased to be a protectorate

24.10.1964: NORTHERN RHODESIA ceased to be a protectorate

18.2.1965: GAMBIA PROTECTORATE ceased to be a protectorate

27.7.1965: MALDIVE ISLANDS ceased to be a Protected State

30.9.1966: BECHUANALAND PROTECTORATE ceased to be a protectorate

24.4.1967: SWAZILAND ceased to be a protectorate and became a Protected State

30.11.1967: KAMARAN and the SOUTH ARABIAN PROTECTORATE ceased to be protectorates

6.9.1968: SWAZILAND ceased to be a Protected State

4.6.1970: TONGA ceased to be a Protected State

16.8.1971: BAHRAIN ceased to be a Protected (Persian Gulf) State

4.9.1971: QATAR ceased to be a Protected (Persian Gulf) State

2.12.1971: The TRUCIAL SHEIKDOMS OF OMAN (or TRUCIAL STATES) ceased to be Protected (Persian Gulf) States

1.1.1975: CANTON ISLAND and, for certain purposes only, BRUNEI ceased to be Protected States

7.7.1978: BRITISH SOLOMON ISLANDS PROTECTORATE ceased to be a protectorate

16.8.1978: The NEW HEBRIDES ceased to be a Protected State

1.1.1984: BRUNEI ceased (for all purposes) to be a Protected State