

## THE BRITISH NATIONALITY ACTS

### 1. General

- 1.1 A list of the main Acts up to 2002 is given below, with brief outlines of their provisions. (\* indicates legislation which is currently in force.)

### 2. Aliens Act 1844

- 2.1 The first Act under which the Secretary of State was given the power to issue a certificate of naturalisation. Applicants, known as a "memorialists" were required to present a memorial "praying" for the grant of a certificate of naturalisation and stating their:

- age
- profession
- residence in the United Kingdom etc
- grounds for seeking naturalisation

2.2 This form of application continued until 1930, when the first application form for naturalisation was introduced. The Act also allowed aliens to hold any property except real estate. The Act came into force on 6 August 1844.

### 3. Naturalization Act 1870

- 3.1 The first Act to provide for the renunciation of British nationality by means of a declaration of alienage. Residence and the intention to remain resident in the United Kingdom were introduced as qualifications for naturalisation. Provision was also made for:

- naturalisation of children who were resident in the United Kingdom with a naturalised parent
- re-acquisition of British nationality by widows who had lost it on marriage to an alien

- 3.2 The Act came into effect on 12 May 1870, and repealed the earlier legislation.

### 4. British Nationality and Status of Aliens Act 1914

- 4.1 Made fresh provision for:
  - granting of certificates of naturalisation in the United Kingdom
  - revocation of naturalisation by the Governments of British possessions overseas
  - declarations of retention and resumption
  - increasing the capacity of aliens to own property of all kinds, including real estate
- 4.2 The Act came into effect on 1 January 1915, and repealed the earlier legislation.
5. **British Nationality and Status of Aliens Act 1918**
  - 5.1 Amended the **1914 Act** by extending the grounds on which the Secretary of State could revoke a certificate of naturalisation. This Act became law on 8 August 1918.
6. **British Nationality and Status of Aliens Act 1922**
  - 6.1 Amended the **1914 Act** to include, as natural-born British subjects, children born while their father was in the service of the Crown and children born abroad whose births were registered, within specified periods, at a British Consulate. The Act came into force on 4 August 1922.
7. **British Nationality and Status of Aliens Act 1933**
  - 7.1 Provided that a woman should not cease to be a British subject on marriage to an alien, or to a man who later ceased to be a British subject, unless she acquired her husband's nationality. It also introduced declarations of acquisition of British nationality for alien women whose husbands had been naturalised. The Act came into effect on 17 November 1933.
8. **British Nationality and Status of Aliens Act 1943**
  - 8.1 The Act, which came into force on 22 April 1943:
    - relaxed the law relating to the nationality of children born abroad of British fathers

- allowed for the naturalisation during World War II of French nationals serving in HM Forces
- restricted the making of declarations of alienage in time of war

9. **British Nationality Act 1948** \*(s.3 - criminal liability-only)

9.1 The Act, which came into force on 1 January 1949:

- introduced citizenship of the United Kingdom and Colonies and the acquisition of such citizenship by registration
- allowed for the retention of British subject status by a citizens of the Republic of Ireland
- restored British nationality to women who had become aliens upon marriage, and made the acquisition of CUKC by the alien or Commonwealth wives of such citizens dependent upon registration
- introduced the status of British subject without citizenship
- allowed for declarations of intention to resume British nationality to be made by people who had ceased to be British subjects on the loss of that status by a parent
- allowed for the inheritance of nationality by legitimated children
- introduced special provisions for the naturalisation of British protected persons

9.2 For detailed guidance on the provisions of the Act, see "**THE BRITISH NATIONALITY ACT 1948**" and "**BRITISH NATIONALITY: SUMMARY**".

10. **British Nationality Act 1958**

10.1 This Act, which became law on 20 February 1958, provided for:

- the substitution of the Federation of Rhodesia and Nyasaland for Southern Rhodesia in the list of countries at **s.1(3)** of the **BNA 1948**
- the loss of CUKC by certain citizens of Ghana

- the revival of lapsed registration entitlements for certain Commonwealth citizens and British subjects without citizenship and extension of the closing date from 1 January 1950 to 31 December 1962
- the extension of **s.6(1)** of the **1948 Act** to allow for the registration of people with close connections with this country who were serving abroad in an international organisation of which the United Kingdom is a member or a company etc established in the United Kingdom

11. **Commonwealth Immigrants Act 1962**

11.1 The Act, which came into operation on 31 May 1962:

- extended the period of ordinary residence required for registration under **s.6(1)** of the **BNA 1948** from one year to 5 years
- removed any entitlement to registration under that section for a person who had been recommended for deportation

12. **British Nationality Act 1964**

12.1 The Act, which came into force on 25 May 1964, made provision for:

- resumption of citizenship of the United Kingdom and Colonies by people with certain qualifying connections who had been obliged to renounce the status in order to become Commonwealth citizens
- retention of citizenship of the United Kingdom and Colonies by people who did not become a citizen of another country within 6 months of the date when their declarations of renunciation were registered

13. **British Nationality (No 2) Act 1964**

13.1 The Act, which came into effect on 16 September 1964:

- provided for the automatic acquisition of CUKC at birth where the person would otherwise be stateless
- provided for the acquisition of CUKC by registration by persons who would otherwise be stateless

- provided that a person could not be deprived of citizenship on the grounds of a conviction for a criminal offence if that person would, as a result, become stateless
- repealed 2 sections of the **1948 Act** concerning deprivation of citizenship on the grounds of residence in foreign countries and deprivation of citizenship elsewhere

13.2 For detailed guidance on the registration provisions of the Act, see Volume 1, **Chapter 15**.

14. **British Nationality Act 1965**

14.1 Provided for the acquisition of the status of British subject by alien women married to a British subject without citizenship or a citizen of the Republic of Ireland who was a British subject by virtue of **s.2** of the **BNA 1948**. The Act became law on 5 October 1965.

15. **Immigration Act 1971** \*

15.1 Although the 1971 Act does not constitute nationality legislation, **Schedule 1** to the Act revised the **BNA 1948** in a number of ways, most notably:

- inserting, as **s.5A(1)**, a provision for the registration, after 5 years' ordinary residence in the United Kingdom or relevant employment abroad, of Commonwealth citizens who were patrial
- inserting, as **s.5A(2)**, the discretionary registration of Commonwealth citizens or citizens of the Republic of Ireland who:
  - i. were of good character, and
  - ii. had sufficient knowledge of the English or Welsh language, and
  - iii. intended to live in the United Kingdom or an existing colony or protectorate
- amending the residence requirements for registration under **s.6(1)**.

15.2 **Schedule 1** came into force on 1 January 1973.

16. **British Nationality Act 1981** \*

16.1 The 1981 Act came into force on 1 January 1983, with the exception of **s.49** which came into force on 30 October 1981. On 1 January 1983, **s.49** was replaced by the corresponding permanent provisions contained in the Act. The 1981 Act:

- replaced citizenship of the United Kingdom and Colonies with 3 separate citizenships: British citizenship, British Dependent Territories citizenship and British Overseas citizenship
- re-defined the status of British subject
- amended the **Immigration Act 1971** so as to cast the right of abode in the United Kingdom in terms of British citizenship
- repealed the **British Nationality Acts 1958-1965** and most of the **1948 Act**

16.3 For more detailed guidance on the provisions of the 1981 Act, see "**BRITISH NATIONALITY: SUMMARY**". For information about the background to the 1981 Act, see "**THE BRITISH NATIONALITY ACT 1981**".

17. **British Nationality (Falkland Islands) Act 1983** \*

17.1 Provided for the acquisition of British citizenship, either automatically or on registration, by British Dependent Territories citizens with an appropriate connection with the Falkland Islands before 1983, and automatically by persons born or adopted in the Islands after 1983. The Act is deemed to have come into force on 1 January 1983.

18. **Hong Kong Act 1985** \*

18.1 Ended British sovereignty and jurisdiction over Hong Kong with effect from 1 July 1997 (subject to the exchange of instruments of ratification with China). The Act also empowered the Queen to make provision by Order in Council for:

- withdrawal of British Dependent Territories citizenship, on 1 July 1997, from persons appropriately connected with Hong Kong
- acquisition, by registration, of the status of British National (Overseas)
- avoidance of statelessness arising from the transfer of sovereignty over Hong Kong to the People's Republic of China

18.2 Provision was accordingly made by the **Hong Kong (British Nationality) Order 1986**, which came into force on 1 July 1987, and by the **Hong Kong (British Nationality) (Amendment) Order 1993**, which came into force on 21 July 1993.

19. **British Nationality (Hong Kong) Act 1990** \*

19.1 Provided for the registration as British citizens of up to 50,000 selected Hong Kong residents (the "Selection Scheme"), their spouses and minor children, and for the withdrawal of British Dependent Territories citizenship from persons registered under the Act.

19.2 For detailed guidance on the provisions of the Act, see "**BRITISH NATIONALITY (HONG KONG) ACT 1990**".

20. **Hong Kong (War Wives and Widows) Act 1996** \*

20.1 The Act, which came into force on 18 July 1996, provides for the discretionary registration as British citizens of the wives, widows and divorcees of men who fought in the defence of Hong Kong during the Second World War. A woman would be eligible for registration if she:

- was resident in Hong Kong; and
- a recipient of a letter from the Home Secretary confirming she could settle in the UK on the basis of the man's wartime service; and
- (if she was no longer married to the man concerned) had not remarried

21. **British Nationality (Hong Kong) Act 1997** \*

21.1 The Act, which came into force on 19 March 1997, and gave a registration entitlement to solely British nationals ordinarily resident in Hong Kong, resulted from lobbying by the Hong Kong Legislative Council (LEGCO), the Hong Kong Governor, the Foreign Secretary and others on behalf of the approx. 8000 people from the ethnic minorities in Hong Kong. Persons registered under the **1997 Act** became British citizens by descent unless they were previously British Dependent Territories citizens otherwise than by descent.

22. **British Overseas Territories Act 2002** \*

22.1 The Act supplements or amends the British Nationality Act 1981 so

as -

- to replace references to "dependent territory" with "British overseas territory" and to rename "British Dependent Territories citizenship" as "British overseas territories citizenship" (from 26 February 2002)
- to grant British citizenship to everyone who was a British overseas territories citizen (BOTC) at commencement (but not BOTCs from the Sovereign Base Areas) (from 21 May 2002)
- to grant both British citizenship and British overseas territories citizenship to certain persons connected with the British Indian Ocean Territory, who would not otherwise have had those citizenships (from 21 May 2002)
- to assimilate (albeit with exceptions) a connection with a British overseas territory to a connection with the United Kingdom for the purpose of post-commencement acquisition of British citizenship (from 21 May 2002); and
- to prescribe how certain BOTCs, not being also British citizens under the Act, can acquire British citizenship by registration (from 21 May 2002)

23. **Nationality, Immigration and Asylum Act 2002** \*

23.1 Part 1 of the Act:

- introduced citizenship ceremonies and a citizenship pledge for aspiring British citizens, and a citizenship pledge for aspiring British overseas territories citizens (from 1 January 2004)
- requires those who apply for naturalisation as a British citizen to have sufficient knowledge about life in the United Kingdom, allow for regulations to be made which would specify how this requirement - and the requirement for knowledge of English, Welsh or Scottish Gaelic - is to be met, and extends the language requirement to those applying for naturalisation as the spouse of a British citizen or a British overseas territories citizen (not yet in force)
- amended the grounds and scope for deprivation of citizenship, and introduced new rights of appeal against deprivation (from 1 April 2003)
- removed provisions which allowed for discrimination on grounds of nationality or national or ethnic origin in the exercise of nationality functions (from 7 November 2002)

- provides for the removal of distinctions between legitimate and illegitimate children and a new procedure for establishing paternity in certain cases (not yet in force)
- repealed statutory exemptions from the duty to give reasons for certain decisions and restrictions on the ability of the courts to review such decisions (from 7 November 2002)
- removed the minimum age requirement for applications under **Schedule 2 paragraph 3** of the BNA 1981 (from 1 April 2003)
- clarified the meaning of the expression "in the United Kingdom in breach of the immigration laws", where it occurs in the BNA 1981 (from 7 November 2002)
- enabled men as well as women who renounced British nationality before 1983, and who now wish to re-gain it, to rely on a marital connection with the United Kingdom or a British overseas territory (from 7 November 2002)
- conferred an entitlement to registration as a British citizen on certain British Overseas citizens, British subjects and British protected persons (from 30 April 2003 - see **Chapter 12**); and
- conferred a similar entitlement on certain persons who, but for gender discrimination in the law before a January 1983, would have acquired British citizenship automatically on that date (from 30 April 2003 - see **Chapter 7**)

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## THE BRITISH NATIONALITY ACT 1948

### 1. British nationality (general)

- 1.1 The concept of "British nationality" originated from that of "British subject" (i.e. a person owing allegiance to the Sovereign). In earlier times, the Sovereign claimed the allegiance of all persons born within the dominions, and Parliament later extended this in various ways to persons of British descent born elsewhere.
- 1.2 As the Commonwealth developed, the countries which became self-governing Dominions enacted their own nationality legislation; but until 1946, all such legislation within the Commonwealth was, by mutual agreement, framed in practically identical terms. In 1946-47, it was agreed at Commonwealth meetings that the previous arrangement should be replaced by a system under which each Commonwealth country should define its own citizenship and recognise citizens of every Commonwealth country as possessing the common status of British subject or Commonwealth citizen. Thus the common status of British nationality would remain, but it would in future be obtained by possessing the citizenship of any of the constituent parts of the Commonwealth.
- 1.3 So far as concerns the United Kingdom and Colonies (which formed a single unit for citizenship purposes), the changes agreed in 1947 were given effect by the **British Nationality Act 1948**, which came into force on 1 January 1949. The Act defined who was a citizen of the United Kingdom and Colonies, and listed the other parts of the Commonwealth whose citizens were British subjects or Commonwealth citizens in United Kingdom law. The list of such countries was as follows:

|                   |                  |                   |        |
|-------------------|------------------|-------------------|--------|
| Antigua & Barbuda | Kenya            | South             | Africa |
| (removed)         |                  |                   |        |
| Australia         | Kiribati         | 31.5.62)          |        |
| The Bahamas       | Lesotho          | Sierra Leone      |        |
| Bangladesh        | Malawi           | Singapore         |        |
| Barbados          | Malaysia         | Solomon Islands   |        |
| Belize            | Malta            | Sri Lanka         |        |
| Botswana          | Mauritius        | Swaziland         |        |
| Canada            | Nauru            | Tanzania          |        |
| Cyprus            | New Zealand      | Tonga             |        |
| Dominica          | Nigeria          | Trinidad & Tobago |        |
| Fiji              | Pakistan         | Tuvalu            |        |
| The Gambia        | (removed 1.9.73) | Uganda            |        |

|         |                  |               |
|---------|------------------|---------------|
| Ghana   | Papua New Guinea | Vanuatu       |
| Grenada | Saint Lucia      | Western Samoa |
| Guyana  | St Vincent & the | Zambia        |
| India   | Grenadines       | Zimbabwe      |
| Jamaica | Seychelles       |               |

1.4 Under the **1948 Act**, there were 2 additional classes of British subjects:

- British subjects without citizenship

These were people connected with former British India either by birth, naturalisation, or ancestry in the male line, who did not, on 1 January 1949 or subsequently, become citizens of any Commonwealth country or of the Irish Republic.

- British subjects (of Southern Irish origin)

Eire (as the Irish Republic was then known) was not included in the list of countries whose citizens were to be British subjects. Consequently, her citizens ceased to be British subjects, if they possessed no citizenship within the Commonwealth. However, provision was made by which any such persons might, at any time, give notice to the Home Secretary of their claim to remain a British subject if connected with the United Kingdom and Colonies by descent, residence or otherwise. Anyone who formally made such a claim was deemed never to have ceased to be a British subject.

1.5 Under the **British Nationality Act 1965**, alien women who had been married to persons described in paragraph 1.4 above were entitled on application to be registered as British subjects. (The provisions described in this paragraph were continued by **s.30**, **s.31** and (for a 5 year period) **s.33** of the British Nationality Act 1981.)

## 2. Consequences of British nationality

2.1 In general, all British subjects were to be treated alike in United Kingdom law. They had the right to vote at Parliamentary and local government elections if they had the necessary residence qualifications regardless of whether they were citizens of the United Kingdom and Colonies. Those citizens of the Irish Republic who were not British subjects had, in general, all the rights of British subjects in the United Kingdom.

## 3. Acquisition of citizenship of the United Kingdom & Colonies

- 3.1 The **1948 Act** conferred citizenship of the United Kingdom and Colonies on the following persons who, immediately before 1 January 1949, were British subjects or who were deemed to be such (i.e. women who had lost their British nationality on, or during the continuance of, a marriage to an alien were deemed to be British subjects immediately before 1 January 1949):
- Persons born or naturalised in the United Kingdom and Colonies as constituted on 1 January 1949
  - Persons born elsewhere, whose fathers were so born or naturalised
  - British subjects born in a place which, on 1 January 1949, was a protectorate, protected state or United Kingdom trust territory
  - Other British subjects (except those mentioned in paragraph 1.4 above) who were not, at that date, citizens of any self-governing Commonwealth country, and did not subsequently become such citizens when the citizenship laws of another Commonwealth country took effect in accordance with **s.32(8)** of the Act
  - Women who had been married to persons who either acquired citizenship of the United Kingdom and Colonies under one of the categories above, or who would have done so if they had still been alive on 1 January 1949
- 3.2 From 1 January 1949, it was possible to acquire citizenship of the United Kingdom and Colonies in the following ways:
- i. By birth. All persons born in the United Kingdom and Colonies were citizens by birth, except the children of parents possessing certain degrees of diplomatic immunity, and persons born to enemy alien fathers in places then under enemy occupation. (The **British Nationality (No.2) Act 1964**, which came into force on 16 September 1964, provided that a new-born infant found abandoned in the UK and Colonies after that date would be regarded as having been born within the UK and Colonies.)
  - ii. By descent. Persons born outside the United Kingdom and Colonies became citizens by descent if, at the time of their birth, their father was a citizen otherwise than by descent. If, at the time of the birth, the person's father was a citizen by descent, the person became a citizen only if:

- the person, or the person's father, was born either in a place then under United Kingdom protection or in a foreign country where the Crown then exercised jurisdiction over British subjects
  - the person was born in a foreign country, and the birth was registered (normally within one year of the occurrence) at a British Consulate
  - the father was in Crown service
  - the person was born in a Commonwealth country where a citizenship law had taken effect (**s.32(8)**), and was not a citizen of that country at birth
- iii. By naturalisation. Foreign nationals and British protected persons could acquire citizenship by naturalisation. The grant of a certificate of naturalisation was at the discretion of the Home Secretary and the qualifications included:
- 5 years' (in aggregate) residence or Crown service
  - Good character
  - Sufficient knowledge of English, and
  - Certain intentions as to future residence or employment. (Comparable provisions are included in the British Nationality Act 1981.)
- iv. By registration. Commonwealth citizens, citizens of the Irish Republic and, after 1 January 1973 (when the **Immigration Act 1971** came into force), British subjects without citizenship or women who were British subjects under **s.1** of the **BNA 1965** could acquire citizenship by registration on grounds of ordinary residence, Crown service or certain other kinds of employment (see a. to d. below). Foreign women married to citizens, and minors, could also be registered as citizens (see e. and f. below). Separate provisions were introduced in 1964 in respect of persons who were stateless or who had previously renounced citizenship see g. and h. below).

**NB.** In a colony, the naturalisation and registration functions of the Home Secretary were exercised by the Governor and, in an independent Commonwealth country, the British High

Commissioner exercised certain registration functions in respect of persons living there.

- a. Prior to 1.1.73, Commonwealth citizens and citizens of the Irish Republic who had been ordinarily resident for 12 months (a shorter period could be accepted in special circumstances), or who were alternatively in Crown service, had an entitlement to be registered under **s.6(1)**. However, if they had previously renounced or been deprived of citizenship, registration was at the discretion of the Home Secretary (**s.6(3)**). **Schedule 1** of the **1971 Act** replaced **s.6(1)** with the requirements described in c. and d. below, although certain persons were still eligible to apply under **s.6(1)** if they satisfied the requirements described in b. below.
- b. After 1.1.73, Commonwealth citizens and citizens of the Irish Republic who, immediately before 1 January 1973, were ordinarily resident in the United Kingdom without being subject to any restriction on the period for which they might remain, and who had so resident for 5 years (if more than 5 years, since 1.1.73), had a continuing entitlement to registration under **s.6(1)** unless they had renounced or been deprived of citizenship (in which case, registration was at the discretion of the Home Secretary). There were no other requirements.
- c. After 1.1.73, Commonwealth citizens, British subjects without citizenship and women who were British subjects under the **1965 Act** who were patial (i.e. had a right of abode in the United Kingdom under **s.2** of the **Immigration Act 1971**) generally had an entitlement to be registered under **s.5A(1)** after 5 years' ordinary residence and/or, in certain circumstances, relevant employment. There were no other requirements. In special circumstances, ordinary residence etc for less than 5 years could be accepted.
- d. After 1.1.73, the registration of Commonwealth citizens, British subjects without citizenship, citizens of the Irish Republic, and women who were British subjects under the **1965 Act** on grounds of residence or relevant employment (i.e. Crown service, service under certain international organisations, or employment with a company etc established in the United Kingdom) was otherwise at the discretion of the Home Secretary

under **s.5A(2)**. The requirements were, generally speaking, 5 years' ordinary residence and/or relevant employment, good character, a sufficient knowledge of English or Welsh and certain intentions as to future residence or employment. In special circumstances, ordinary residence etc for less than 5 years could be accepted.

- e. A woman, whatever her nationality or citizenship, who had at any time been married to a citizen of the United Kingdom and Colonies was entitled to registration as such a citizen under **s.6(2)**. However, if she had previously renounced or been deprived of citizenship registration was instead at the discretion of the Home Secretary.
- f. Minor children could be registered as citizens at the discretion of the Home Secretary under **s.7**.
- g. A person who had previously renounced citizenship of the United Kingdom and Colonies as a condition of acquiring or retaining the citizenship of another Commonwealth country could resume it, in certain circumstances, by registration under **s.1** of the **British Nationality Act 1964**.
- h. Certain persons possessing defined connections with the United Kingdom and Colonies were entitled to be registered as citizens under **s.1** of the **British Nationality (No.2) Act 1964** if they were and always had been stateless (see "**BRITISH NATIONALITY (NO.2) ACT 1964**").
- v. By adoption. Under **s.19** of the **Adoption Act 1958**, (as amended by **s.1(3)** of the **Adoption Act 1964**), citizenship of the United Kingdom and Colonies was automatically acquired if the person concerned was adopted in the United Kingdom, Channel Islands or Isle of Man by a citizen of the United Kingdom and Colonies or jointly by a husband and wife, the husband being such a citizen.

#### 4. **British protected person status**

- 4.1 A British protected person (a person born, or whose father was born, in a protectorate, or who was the subject of a Protected State) was not a British subject or Commonwealth citizen. In order to become a

citizen of the United Kingdom and Colonies a British protected person had to apply for naturalisation. As a general rule:

- British protected persons by connection with a protectorate which later became an independent country ceased to be British protected persons upon becoming a citizens of the independent country concerned
- British protected persons by connection with a Protected State ceased to be British protected persons if they ceased to be subjects of that state, or if the state ceased to be protected (see Annex A to **Chapter 54**, Volume 1)

## 5. Newly independent countries within the Commonwealth

5.1 When a territory achieved independence within the Commonwealth, it was usual for a separate citizenship to be embodied in its constitution, and for the name of the new country to be included in the list in **s.1(3)** of the **1948 Act** of Commonwealth countries whose citizens were Commonwealth citizens in United Kingdom law. At the same time, it was usual for citizenship of the United Kingdom and Colonies to be withdrawn from any person who possessed it who automatically became a citizen of the new country, unless the person possessed a specified connection with the United Kingdom or a remaining colonial territory (in which case the person retained citizenship of the United Kingdom and Colonies).

## 6. Loss of citizenship

6.1 Citizenship of the United Kingdom and Colonies could be lost in any of 3 ways:

- By legislation passed by the United Kingdom Parliament (e.g. when a colonial territory attained independence - see paragraph 5.1 above)
- By a voluntary act of renunciation formally made by a person who possessed, or was about to acquire, another citizenship
- By an order of deprivation, which could be made in special circumstances by the Home Secretary or a Governor of a colony, taking away the citizenship of a person who had been naturalised or registered as a citizen of the United Kingdom and Colonies

6.2 Citizenship of the United Kingdom and Colonies could not otherwise be lost. Such citizenship was not forfeited (as was British nationality

in most cases before 1949) by naturalisation in a foreign country or, in the case of women, as a result of marriage to an alien.

7. **Citizens of Pakistan**

7.1 Under the **Pakistan Act 1973**, which recognised Pakistan's withdrawal from the Commonwealth, citizens of Pakistan ceased, in general, to be British subjects or Commonwealth citizens on 1 September 1973. There were various methods (depending upon their circumstances) by which they could apply to become citizens of the United Kingdom and Colonies, thus regaining the status of British subject. Some of these methods were transitional ones laid down in the **Pakistan Act** and were available for only a limited period; others were permanent provisions contained in the **British Nationality Act 1948**. Pakistan was re-admitted to the Commonwealth on 1.10.89, but this had no retrospective effect.

8. **Citizens of South Africa**

8.1 Under the **South Africa Act 1962**, which recognised South Africa's withdrawal from the Commonwealth, citizens of South Africa ceased, in general, to be British subjects or Commonwealth citizens on 31 May 1962. They could apply to become CUKCs in similar ways to citizens of Pakistan.

## THE BRITISH NATIONALITY (No 2) ACT 1964

1. **Section 1** of the **British Nationality (No 2) Act 1964**, which came into force on 16 September 1964, provided an entitlement to registration as a citizen of the United Kingdom and Colonies to a person of any age who was, and always had been, stateless if:

- a. The person's mother was a citizen of the United Kingdom and Colonies at the time of the person's birth. Illegitimacy was no bar. This category accounted for most of the registrations under the **1964 Act** and included only persons born after 1948. The commonest cases were illegitimate children born in certain European countries to a British mother, and legitimate children of a British mother and a stateless father. (For children of UK born mothers born before 1.1.83, see Volume 1 **Chapter 9**)
- b. The person's birthplace was, at the time of the application, within the United Kingdom and Colonies. The most likely examples were a foreign diplomat's child born before 16 September 1964, whatever the nationality of the wife, or on or after that date if the wife was not a citizen of the United Kingdom and Colonies. (See paragraph 7.1 below)
- c. The person possessed one of the qualifications in paragraphs 2-5 below. This category covered people born before 1949 whose mothers subsequently became, or would have become, citizens of the United Kingdom and Colonies, as well as the children of British subjects without citizenship

### 2. Persons born before 1 January 1949

#### 2.1 Mother:

- (a) was a British subject at applicant's birth, or } and became (or but } for death would have } become) a citizen of
- (b) was covered by s.14 of the } the United Kingdom } and Colonies on } 1 January 1949
- (c) was (or father was) a } } British subject under s.15 } or s.17 of the **1948 Act** }

as (a) } and became (or but } and applicant had

- (d) } for death would } been ordinarily  
as (b) } have become) a } resident in the  
} British subject } United Kingdom and  
as (c) } without citizenship } Colonies (or in a  
on 1 January 1949 } protectorate) for  
and so remains, or } the 3 years  
} immediately  
(d) remained a British subject } preceding the  
under **s.2** of the **1948 Act**, } application  
or }  
}  
(e) was a British subject }  
without citizenship under }  
**s.16(2)** and has not since }  
become a citizen of a **s.1(3)** }  
country }

3. **Persons born on or after 1 January 1949**

3.1 Mother or father:

- (a) was a British subject } and applicant had  
without citizenship at time } been ordinarily  
of applicant's birth, or } resident in the  
} United Kingdom and  
(b) became a British subject } Colonies (or a  
without citizenship under } protectorate) for  
**s.16(2)** of the **1948 Act** } the 3 years  
after the applicant's } immediately  
birth, or } preceding the  
} application  
(c) was at the time of }  
applicant's birth a British }  
subject by virtue of a }  
notice under **s.2**, whether }  
given before or after }  
applicant's birth. }

4. **Persons born before or after 1 January 1949**

4.1 Mother or father:

became (or but for death would have become) a citizen of the United Kingdom and Colonies under **ss.13(2)** or **16(2)** of the **1948 Act**.

5. **Persons born after 5 October 1965**

5.1 **Mother:**

was a British subject by virtue of **s.1(1)** of the **BNA 1965** at the time of the birth, and the applicant had been ordinarily resident in the United Kingdom and Colonies or a protectorate for the 3 years immediately preceding the application.

6. **Children born illegitimate**

6.1 The above qualifications applied in the case of illegitimate as well as legitimate children, but only if the relevant parent was the mother.

7. **Additional grounds for citizenship by birth**

7.1 **Section 2(1)** provided that if the mother was a citizen of the United Kingdom and Colonies the child would automatically have had the same status at birth.

7.2 **Section 2(2)** provided that a new-born infant found abandoned in the UK and Colonies would be deemed to have been born in the UK and Colonies unless the contrary was shown.

8. **Restrictions on deprivation**

8.1 **Section 4(1)** provided that the Secretary of State could not deprive a person of CUKC under **s.20(3)(c)** of the **BNA 1948**, on the grounds of a conviction for a criminal offence, if it appeared to him that the person would, as a result, become stateless.

8.2 **Section 4(2)** repealed **s.20(4)** of the **BNA 1948** (deprivation on the grounds of long residence in foreign countries) and **s.21** of the **BNA 1948** (deprivation where the person has been deprived of citizenship elsewhere).

9. **Transmission of citizenship**

9.1 A male person who was registered under the provisions described in paragraph 1.a or b. above was regarded as a citizen of the United Kingdom and Colonies by descent for the purposes of **s.5(1)** of the **BNA 1948**.

## THE BRITISH NATIONALITY ACT 1981

### 1. Reasons for introduction

1.1 Since the previous Act (the **British Nationality Act 1948**) came into force on 1 January 1949 there had been great changes in the structure of the Commonwealth. Ideas of citizenship which were suitable in 1948 were no longer so, and the 1981 Act marked the culmination of a long process which had made citizenship of the United Kingdom and Colonies created by the **1948 Act** outmoded and irrelevant.

### 2. Changes in immigration law

2.1 The **Commonwealth Immigrants Act 1962**, amongst other things, made citizens of the United Kingdom and Colonies whose passports were not issued by the United Kingdom Government subject to immigration control, and thus created a distinction between groups of citizens of the United Kingdom and Colonies. The awkwardness of a unitary citizenship became more apparent as British possessions in East Africa gained independence. The citizenship arrangements for these territories failed to ensure that all citizens of the United Kingdom and Colonies who had links with these territories acquired local citizenship on independence. As a result, there were significant numbers of citizens of the United Kingdom and Colonies who had in fact no links with either the United Kingdom or with any existing dependent territory. Initially, those in this group were able to enter the United Kingdom freely, since the **1962 Act** did not make them subject to immigration control.

2.2 However, the size of the influx from East Africa, both actual and potential, led to the **Commonwealth Immigrants Act 1968**, which imposed immigration control on this group. There were now citizens of the United Kingdom and Colonies who had no right of abode anywhere. Furthermore, the **1968 Act** sharpened the distinction between those citizens of the United Kingdom and Colonies who had close ties with the United Kingdom and were free to enter, and those citizens who had no such ties and were therefore subject to immigration control.

2.3 The **Immigration Act 1971** developed this distinction by creating the concept of patriality. Patriots, who had the right of abode and were free of immigration control, included not only citizens of the United Kingdom and Colonies with ties with the United Kingdom

but also other Commonwealth citizens with connections with the United Kingdom through parentage or, in the case of women, marriage.

3. **The position under the 1981 Act**

3.1 To take into account the distinctions introduced by the **1968** and **1971 Acts**, the British Nationality Act 1981 replaced the unitary citizenship of the United Kingdom and Colonies with three separate citizenships:

- British citizenship, for those with ties with the United Kingdom
- British Dependent Territories citizenship, for those with ties with an existing dependent territory
- British Overseas citizenship, for those citizens of the United Kingdom and Colonies who had ties with neither

3.2 The 1981 Act has also retained the "Common Code" by saying (in **s.37**) that anyone who:

- has one of the successor citizenships to citizenship of the United Kingdom and Colonies; or
- is a citizen of a Commonwealth country; or
- is a British subject,

has the status of a "Commonwealth citizen". This is now no longer interchangeable with the status of British subject which has been given a specific meaning under **Part IV** of the Act, although those having that status also have the status of Commonwealth citizen (see **s.37**).

## THE BRITISH NATIONALITY (HONG KONG) ACT 1990

### 1. History

- 1.1 Hong Kong Island was ceded to Britain on 20 January 1841 under the Convention of Chuanbi (Chuenpi) during the first opium war of 1840-42, which ended with the signing of the Treaty of Nanjing (Nanking) on 29 August 1842. The second Anglo-Chinese war of 1856-58 was ended by the Treaty of Tianjim (Tientsin) in 1858. Hostilities broke out again the following year, and under the Convention of Peking, which ended hostilities in 1860, the British Government secured the perpetual lease of Stonecutters Island in Hong Kong harbour and the Kowloon peninsula as far as Boundary Street.
- 1.2 Further concessions were demanded of China during the second half of the century both by Japan and by European countries, and under the second Convention of Peking, which was signed on 9 June 1898, the territory of Hong Kong was extended. An area to the north of Kowloon extending as far as the Shum Chun River and known as the New Territories, as well as 235 islands, was leased for 99 years.
- 1.3 With the approach of the end of the lease of the New Territories in 1997 and the need, as far as possible, to ensure the integrity of Hong Kong, HMG entered into negotiations with the Chinese Government which resulted in the Sino-British Joint Declaration of 1984.
- 1.4 Given the expiry of the lease on the New Territories, there was little point in HMG seeking to retain Hong Kong Island and the Kowloon peninsula which had been ceded in perpetuity under earlier treaties. These areas, representing only some 8% of the land area, could not be viable on their own - the New Territories contain most of the territory's agriculture and industry, its power stations, the airport and the container port.

### 2. Nationality background

- 2.1 There were some 3.5 million residents of Hong Kong who held British Dependent Territories citizen (BDTC) status by virtue of their connection with Hong Kong. About 2 million other Hong Kong residents are believed to have been eligible to apply for naturalisation or registration as BDTCs. BDTC status by virtue of a connection with Hong Kong ceased when Hong Kong reverted

to China on 30 June 1997, but any Hong Kong BDTC who wished to do so was able to acquire the (non-transmissible) status of British National (Overseas).

### 3. The 1990 Act

#### 3.1 Background

3.1.1 In view of Britain's special obligation to Hong Kong as the one dependent territory whose people were unable to exercise the fundamental right of self-determination, it was considered necessary to devise a scheme to enable some, at least, of the population to be given the opportunity to obtain British citizenship both to maintain confidence in the Colony and to counteract the effects of the emigration of many of its most talented residents in the run-up to 1997.

#### 3.2 The 1990 Act

3.2.1 Under **s.1(1)** of the **British Nationality (Hong Kong) Act 1990**, the Home Secretary was required to register as British citizens, before 30 June 1997, up to 50,000 persons recommended by the Governor of Hong Kong under a scheme, or schemes, made and approved in accordance with **Schedule 1** to the Act.

3.2.2 Under **s.1(4)**, the spouse and minor children of a person registered under **s.1(1)** of the Act could also be registered as British citizens.

3.2.3 A person registered as a British citizen under **s.1(1)** is to be treated, for the purposes of the British Nationality Act 1981, as a British citizen otherwise than by descent, whereas a person registered under **s.1(4)** is to be treated as a British citizen by descent.

3.2.4 An applicant under **s.1(1)** was required to be settled in Hong Kong and either:

- a. a BDTC by virtue of a connection with Hong Kong; or
- b. a person who had applied for registration or naturalisation as a BDTC, and whose

application would have been successful were it not for registration under the **1990 Act**; or

- c. a British National (Overseas), or a British Overseas citizen, or a British subject by virtue of **Part IV** of the British Nationality Act 1981, or a British protected person.

3.2.5 In a direction made under **s.1(3)** of the **1990 Act**, the Home Secretary specified 13 November 1993 as the date by which, for the purposes of a. and b. above, a prospective **s.1(1)** applicant had either to have become a BDTC by virtue of a connection with Hong Kong or to have applied for naturalisation or registration as such a citizen.

3.2.6 With regard to registration under **s.1(4)** of the Act, a spouse whose marriage took place after the registration of the principal beneficiary under **s.1(1)** had to have been settled in Hong Kong at the time of the marriage (**Schedule 2, paragraph 3**).

3.2.7 A "child" included an adopted child if the adoption order was made by a court in Hong Kong (**Schedule 2, paragraph 4(2)(a)**).

3.2.8 An illegitimate child could be registered if the principal applicant was the mother (**Schedule 2, paragraph 4(2)(b)**).

3.2.9 No person could be recommended for registration under the Act, or in fact be registered as a British citizen, if either the Governor or, as the case may be, the Home Secretary had reason to believe that the person was not of good character (**s.6(2)**).

#### 4. Hong Kong Government system

##### 4.1 The Scheme

4.1.1 The original scheme for carrying out the selection of the 50,000 heads of families was set out in the **British Nationality (Hong Kong) (Selection Scheme) Order 1990**. Applicants were divided into 4 categories:

- General occupational class (GOC)

- Entrepreneurs class (EC)
- Disciplined services class (DSC)
- Sensitive service class (SSC)

4.1.2 The Governor was assisted by a steering group chaired by the Chief Secretary of the Hong Kong Government, which included independent representatives of the community and the Commissioner of the Independent Commission Against Corruption (ICAC).

#### 4.2 Selection procedures

4.2.1 Selection was on a points basis and was carried out in 2 tranches. The majority of the places were allocated in the first phase for which applications were to be made to the Hong Kong Immigration Department (HKID) between 1 December 1990 and 28 February 1991, so that early confidence could be given to key personnel who might otherwise have left Hong Kong.

4.2.2 Some places were reserved for allocation in the second (and final) phase of the Scheme, which began on 3 January 1994. Applications were to be made to HKID between that date and 31 March 1994 (**regulation 3, British Nationality (Hong Kong) (Recommendations for Citizenship) (Amendment) Regulations 1993**). The Governor nevertheless retained the power, under **regulation 4** of the **British Nationality (Hong Kong) (Recommendations for Citizenship) Regulations 1990**, to invite an application at any time.

4.2.3 The **British Nationality (Hong Kong) (Selection Scheme) (Amendment) Order 1993** made certain amendments to the original Scheme which applied during the second phase of its operation. It enabled the Governor to invite a second application in either the EC or the SSC, and to transfer places between classes if it appeared to him that the number of persons recommended under any one of them would fall short of the quota allocated to it. The **Order** also made various changes to the number of points that could be given for particular attributes and in the way

the quotas for each service within the DSC and for each occupation within the GOC were to be determined.

#### 4.3 The General Occupational Class (GOC)

4.3.1 Selection under both the GOC and the DSC was by means of a points system and determined by a number of criteria (age, experience, education/training, special circumstances, proficiency in English, British links and public or community service).

4.3.2 Over 70% of the available places were allocated under the GOC which covered 7 broad areas of work:

- Business and management
- Accounting
- Engineering
- Information services
- Medicine and science
- Law
- Education

4.3.3 For the purposes of the detailed administration of the GOC, these 7 areas were further sub-divided into 20 occupational groups.

4.3.4 Data on all candidates in each occupational group was entered into a specially designed computer system which produced an initial group profile by occupation, age, experience and qualifications and ranked the candidates in initial order of points scored.

4.3.5 The profile for each group was examined by the Steering Group, which recommended to the Governor how "special circumstances" points might be allocated in each group to take account, for example, of the propensity of persons serving in that occupation to emigrate.

4.3.6 In order to avoid any possible concern that the Steering Group's recommendations might be influenced by their knowledge of individual applicants, the data considered by the Group at this stage contained no names.

4.3.7 After the award of the special circumstances points, a revised anonymous ranking of candidates within each group was produced. Taking account of the number of places available within the group, HKID then produced for each group a list of named candidates who appeared to be qualified and a list of likely rejects. Both lists were submitted to the Steering Group for examination.

4.3.8 The Steering Group then recommended to the Governor that those candidates who appeared, on first inspection, to be qualified would be interviewed by HKID in order to verify the information on their application forms.

4.3.9 Character checks were also made at this stage.

4.3.10 Subject to the satisfactory completion of these checks, details of the qualifying candidates were put forward by the Steering Group to the Governor who, if satisfied, recommended them to the Home Secretary for registration as British citizens.

4.3.11 If a candidate failed to satisfy these checks the application was rejected and the next candidate in order of points ranking was interviewed and similar checks carried out.

4.3.12 In the event that a number of candidates scored equal points, and all could not be accommodated within the places available for each group, the Governor had discretion to choose whom to recommend for citizenship.

4.3.13 All candidates were advised of the results of their applications by HKID.

#### 4.4 Entrepreneurs Class (EC)

4.4.1 Hong Kong had a number of well-known and respected entrepreneurs, with an established reputation for

large-scale investment and employment in the territory, whose activities made them a stabilising force in Hong Kong and whose departure would have done much to undermine confidence there. The EC offered places to persons in this category.

4.4.2 The Governor invited those he considered might be qualified under this Scheme to submit an application, together with supporting documents, by a specified date. Others who wished to be considered under this category were able to indicate their interest on an application form submitted under the GOC.

4.4.3 A special sub-committee of the Steering Group, including representatives of the business community and senior Government officials with responsibilities in the fields of trade and finance, evaluated the applications on the basis of the information provided and submitted a report on each applicant to the Governor, who decided whether to make a recommendation for citizenship. HKID notified the persons concerned of the outcome.

#### 4.5 The Disciplined Services Class (DSC)

4.5.1 Under this section, places were provided for established members of the disciplined services. These comprised:

- the Correctional Services (Prisons) Department
- the Customs and Excise Department
- the Fire Services Department
- the Royal Hong Kong Auxiliary Air Force (under the **1993 Order**, the Royal Hong Kong Auxiliary Air Force was replaced by the Government Flying Service)
- the Hong Kong Immigration Department (HKID)
- the Operations Department of the ICAC
- the Royal Hong Kong Police Force

- uniformed members of the Garrison

4.5.2 The available places were allocated to the service concerned in proportion to its staff numbers. Within each service places were allocated to individuals by a points system similar to that used under the GOC.

4.5.3 The Steering Group advised on the allocation of the special circumstances points which took account of commendations for outstanding service etc.

4.5.4 Points were awarded to each applicant using the marking system previously recommended by the Steering Group and tailored to the needs of each service. Additional information provided by the services themselves was also incorporated.

4.5.5 A list of applicants ranked in order of points scored, but omitting their names, was then produced by HKID for examination by the Steering Group, which recommended to the Governor any necessary adjustments in the special circumstances points for each service.

4.5.6 After any further necessary adjustments, 2 lists of named candidates were submitted to the Steering Group for scrutiny:

- Those who appeared to be qualified
- Those who appeared likely to be rejected

4.5.7 Thereafter the procedures as outlined under the GOC applied.

#### 4.6 The Sensitive Service Class (SSC)

4.6.1 This class catered for persons who had, in the course of serving Hong Kong and United Kingdom interests, in either a civilian or a military role, been exposed to special considerations and special factors during the course of their duties.

4.6.2 The class also extended to those in the private sector who considered themselves vulnerable on account of their work or activities.

4.6.3 Many of the individuals concerned had already been identified by virtue of their rank, position and area of work, and were invited to submit applications once the information has been verified. HKID scrutinised the applications and, if all was in order, submitted their names to a sub-committee of the Steering Group and thence to the Governor who, if satisfied, recommended them for registration.

4.6.4 Others were able to qualify for inclusion under this part of the Scheme on the basis of information coming to the notice of the Governor in other ways. Such persons were invited to apply under this class and their applications processed as described above. HKID notified candidates of the results of their applications.

#### 4.7 Spouses and children

4.7.1 Spouses and children who wished to apply for registration under s.1(4) of the Act were required to do so by 31 December 1996 (**Schedule 2, paragraph 2**).

4.7.2 Children born after the registration of the head of household, including those born after 30 June 1997, became BCs automatically (including children born to couples where the spouse is not a BC).

#### 4.8 Responsibility for registration

4.8.1 The registration of successful applicants recommended to the Home Secretary for citizenship, and any subsequent issue of British passports, was supervised by a small team of Home Office officials based in Hong Kong and acting on the Home Secretary's behalf. The Hong Kong Government provided support staff.

#### 4.9 Funding

4.9.1 The Scheme was self-funding from the application fees charged by the Hong Kong Government for

consideration under the Scheme and from fees charged for the registration of successful applicants.

4.9.2 The Hong Kong Government met the costs incurred by the team of Home Office officials (e.g. hardware, software, certificates, staffing costs and accommodation).

#### 4.10 Anti-corruption measures

4.10.1 Safeguards were incorporated to minimise the risk of corrupt practices.

4.10.2 The Steering Group had an important role in overseeing the operation of the Scheme. The ICAC, whose Commissioner was a member of the Group, had been closely involved in the design of the computer system and the Scheme's procedures and continued to be involved in its operation.

4.10.3 No decision on the award of points could be taken by any one officer acting alone.

4.10.4 Members of HKID had no role in processing their own applications under the DSS.

#### 4.11 Report to Parliament

4.11.1 The Governor submitted an Annual Report to the Home Secretary on the operation of the Scheme.

#### 4.12 Records of successful applications

4.12.1 Details of those granted British citizenship under the **1990 Act** may be accessed from selected terminals in IND. Access is limited for security reasons.

#### 4.13 Requests for information

4.13.1 Enquiries about the **1990 Act** or the status of individuals who may have acquired citizenship under the **1990 Act** should be referred to Nationality Policy and Special Cases Unit.