

BRITISH NATIONALITY: SUMMARY

1. The position at common law

1.1 The forerunner of modern nationality was Allegiance. Feudal lords demanded the allegiance of their local communities and those lords, in turn, swore allegiance to the monarch. As the powers of the monarchy increased, the concept of allegiance broadened into a general allegiance to the Crown. All those who owed allegiance to the Crown were the Crown's subjects, and Common law generally attributed subject status to those born within the Crown's territories. Over time, however, this concept was found to be inadequate and statutory remedies were sought to cope with such matters as the status of the children of English subjects born abroad and the desirability of enabling aliens to acquire subject status.

1.2 After the **Act of Union 1707**, joining England and Scotland, "English subject" became "British subject". Those who were not British subjects were aliens. British protected persons only emerged in the late 1900s as a result of imperial protection being extended to certain people and places. Protected persons were no more than aliens under protection, and protected places, unless annexed, were outside the Crown's dominions. BPPs did not constitute a statutory nationality category until the 20th century.

1.3 Acquisition of British subject status by birth

1.3.1 At Common law, subject status was acquired by birth within the Crown's "dominions and allegiance". The term "dominions" included British ships and referred to all the territories within the British Empire except for protected places. (NB. The term "dominions" should not be confused with "Dominions", which were the forerunners of today's independent Commonwealth countries (see "**THE DOMINIONS**"). At Common law there were certain persons who, although born in the dominions, would not owe allegiance. These were the children of foreign ambassadors (but not other diplomats) on an official posting and the children born to members of foreign, invading armed forces.

1.4 Acquisition of British subject status by descent

1.4.1 At Common law, birth outside the dominions generally meant that birth was outside the Crown's allegiance. The exceptions were:

- Children born outside the dominions to a British Ambassador on an official posting
- Children of the sovereign (**Statute of 1351**)
- Children born on a British ship

1.4.2 The general position was that children born in foreign countries were aliens regardless of the nationality of their parents.

2. 18th Century

2.1 The 1705 Act

2.1.1 In view of the fact that Queen Anne had no heir, and in order to discourage a Jacobite revival, an Act was passed in 1705 for the Naturalisation of the Electress Sophia of Hanover and the "issue of her body" (see "**HANOVER (ELECTRESS SOPHIA OF)**"). It was repealed by the **British Nationality Act 1948**.

2.2 The 1708 Act

2.2.1 The **1708 "Act for naturalising Foreign Protestants"** was passed in the reign of Charles II with the aim of encouraging to this country those Protestant weavers who were fleeing religious persecution in Europe. So many took advantage of it that the national identity was felt to be under attack, and the Act was repealed in 1711.

2.3 Naturalisation by Act of Parliament

2.3.1 Prior to 1708, persons who did not acquire subject status at birth could only acquire it subsequently by means of a special Act of Parliament. Despite the later development of statute law permitting naturalisation by administrative grant at the Home Office, this method continued to be used, albeit sparingly. The last private naturalisation measure was enacted in

1975 (the **James Hugh Maxwell (Naturalisation) Act 1975**).

2.4 Act of 1772

2.4.1 Statutory provisions made in 1350, 1708 and 1730 regarding the acquisition of subject status by children born abroad, were extended in the **Act of 1772** which provided that British subject status could be passed to 2 generations born abroad in the legitimate male line, e.g.

| <u>PGF</u> | <u>F</u> | <u>APP</u> |
|---------------------------|---|---|
| b UK 1850 BS - Born | b France 1875 BS - Descent (1st gen) | b France 1900 BS - Descent (2nd gen) |

3. 19th Century

3.1 The Naturalization Act 1844 (CAP 66)

3.1.1 In the early years of the 19th century, the expansion of Britain's trade created a need for an easy method for foreign merchants, and others settling here, to acquire British subject status. The **1844 Act** marked the introduction of naturalisation by administrative grant at the Home Office. The applicant was treated as being a British subject by birth from the date of naturalisation.

3.1.2 Naturalisation as a British subject gave the right to hold any office except Privy Councillor or Member of Parliament.

3.1.3 The Common law view prior to the **1844 Act** had been that marriage had no effect on the parties' nationality status. However, the **1844 Act** provided that a foreign woman who married a British subject acquired British subject status automatically on marriage. Marriage by a British subject woman to an alien did not, yet, affect her status. There was no provision for the naturalisation of children.

3.2 The Act of 1847 (CAP 83)

3.2.1 Doubts had arisen concerning the value, in the Crown's dominions, of certificates issued under the **1844 Act**. The **1847 Act** provided that the **1844 Act** would not apply to the Colonies.

3.2.2 Naturalisation in the United Kingdom conferred British subject status valid throughout the Empire ("Imperial Naturalisation"). Naturalisation in a colony conferred British subject status in that colony only ("Local Naturalisation").

3.3 The Naturalization Act 1870

3.3.1 The **1870 Act** dealt a final blow at the original concept of allegiance by providing that certain persons of dual nationality might divest themselves of their British status (see "**RENUNCIATION (history)**").

3.3.2 The **1870 Act** also provided that the children under 21 of a naturalised father (or widowed mother) were deemed to be naturalised if resident in the United Kingdom with the father (or widowed mother).

3.3.3 A British subject woman marrying a foreign man now lost her British subject status on marriage.

4. Between 1870-1914

4.1 The years 1870-1914 were a period of great expansion in the British Empire. The old settlements and colonies increased in importance and population, and many of them came to rival the UK in power and effectiveness. The fact that nationality was still governed by Parliament in Westminster caused considerable dissatisfaction among the Dominions, and it was finally determined that the time had come to attempt a codification of British nationality law which would recognise the position and status of the Dominions.

4.2 The basis of this codification was to be the recognition of a common status of British subject throughout the Commonwealth, and this should be maintained by a Common Code in all Commonwealth countries. The status was based upon allegiance, and acquisition was chiefly by birth within the Dominions.

5. **The British Nationality and Status of Aliens Act 1914**

5.1 The **1914 Act** (and the **1918, 1922, 1933** and **1943 Acts** which amended it) was concerned with defining those people who were British subjects. It defined in statute the nature of British nationality which, until 1915, had been enshrined, for the most part, in common law.

5.2 The **1914 Act** provided that, from 1 January 1915 onwards, the transmission of British subject status would be restricted to one generation in the legitimate male line, e.g.:

| <u>PGF</u> | <u>E</u> | <u>APP</u> |
|----------------------------------|---------------------------------|----------------------|
| b Gibraltar 1870 BS - Born | b Spain 1895 BS - Descent | b Spain 1920 - |

5.3 Widows and divorcees were allowed to resume British subject status. Children who lost British subject status as a result of their parents' naturalisation as an alien or Declaration of Alienage were allowed to resume British subject status by personal declaration within one year of reaching the age of 21.

5.4 Imperial naturalisation was introduced for the colonies with Dominion status (listed in the **1st Schedule** to the **1914 Act**) provided that they adopted the conditions for naturalisation set out in **Part II** of the **BNA 1914**. The dates on which the dominions adopted **Part II** are:

Canada and Newfoundland - 1 January 1915
Australia - 1920
South Africa - 1926
New Zealand - 1929
Burma - 1937 (immediately on gaining Dominion status)

5.5 The status of children no longer depended on their place of residence; they lost British subject status if their parent lost it and they acquired the parent's other nationality. Acquisition of British subject status depended on the children being included in the parent's naturalisation application.

6. **The 1918 Act**

6.1 The **1914 Act** left open the question of the status of children born in a foreign country while their father was serving there. During

the First World War, a number of cases occurred of serving soldiers who were British by descent having children born to them out of the UK.

- 6.2 The children of diplomatic families had also to be considered, and these were provided for in the **British Nationality and Status of Aliens Act 1918**. The **1918 Act** amended the **1914 Act** and introduced the transmission of British subject status to children born abroad whose fathers were British subjects by descent and who were in Crown Service at the time of their birth, e.g.:

| <u>PGF</u> | <u>E</u> | <u>APP</u> |
|---------------------------|---|----------------------------------|
| b UK 1870 BS - Born | b France 1900 BS - Descent (In Crown Service 1920-1930) | b France 1925 BS - Descent |

7. **The 1922 Act**

- 7.1 The various British communities abroad thought it wrong to limit transmission by descent to one generation only. The UK and Dominion Governments agreed on indefinite transmission by descent provided that:

- the child's birth was registered at a British Consulate within one year of birth; and
- upon reaching the age of 21, the child expressed the desire to remain British

- 7.2 However, the **1922 Act** excluded children born between 1915 and 1922.

8. **The 1933 Act**

- 8.1 The **1933 Act** provided that women would no longer lose British subject status on marriage to a foreign man unless they acquired the husband's nationality as a result of the marriage.

9. **The 1943 Act**

- 9.1 The defects of the **1914 Act** were finally overcome by the **1943 Act**, which was essentially a tidying-up measure.

9.2 Again in response to consequences of the First World War, the **1943 Act** provided that children born after their father's death (posthumous children) could inherit British subject status if appropriate. The measure was fully retrospective, e.g.:

| <u>E</u> | <u>APP</u> |
|---|--|
| b UK 1890 (died 6 months before the applicant's birth) | b France 1918 Foreign at birth - BS from 1943 |

9.3 Consular birth registration was made fully retrospective with, in practice, no time limit on the registration of births (i.e. deceased ancestors could be registered), e.g.:

| <u>PGGGF</u> | <u>PGGF</u> | <u>PGF</u> | <u>E</u> | <u>APP</u> |
|------------------------------|--|--|--|--|
| b UK 1800 BS - Born | b France 1830 BS - Descent (1st gen) | b France 1860 BS - Descent (2nd gen) | b France 1890 BS - Consular Reg'n (from 1943) | b France 1920 BS - Consu lar Reg'n (from 1943) |

9.4 Consular birth registration was introduced for children born in foreign countries whose fathers were British subjects by descent. This procedure made such children British subjects by descent, e.g.:

| <u>PGGF</u> | <u>PGF</u> | <u>E</u> | <u>APP</u> |
|----------------------------------|------------------------------------|---|---|
| b Gibraltar 1870 BS - Born | b Spain 1900 BS - Descent | b Spain 1922 BS - Descent (Cons reg'n) | b Spain 1946 BS - Descent (Cons reg'n) |

10. On the eve of the 1948 Act

10.1 The imperial ideal which, at the turn of the century, had demanded a universal nationality law, and which had ultimately resulted in

the **1914 Act**, began to crumble as the new century progressed. Growing national consciousness within the Dominions became increasingly irreconcilable with a common nationality status based upon allegiance to the imperial Crown alone. Although a number of nationality laws had been enacted by the Dominions during the first half of the century (e.g. in South Africa), these enactments were not in conflict with the Common Code.

10.2 However, in 1946, the Dominion of Canada created a separate "Canadian citizenship" apart from the status of British subject. As a result, in 1947, an Imperial (or Commonwealth) Conference was convened of all the self-governing Dominions (i.e. Australia, Canada, Ceylon, India, Newfoundland, New Zealand, Pakistan, Southern Rhodesia, and the Union of South Africa) to resolve the growing confusion.

10.3 General agreement was reached on a new scheme to reconcile the citizenships of the individual Commonwealth countries with the overall status of British subject. This formed the basis of the **British Nationality Act 1948**.

11. **Introduction of the 1948 Act** (see also "**THE BRITISH NATIONALITY ACT 1948**")

11.1 The **1948 Act**, which came into force on 1 January 1949, introduced the status of citizen of the United Kingdom and Colonies whilst retaining the term British subject to cover every citizen of a Commonwealth country, including the United Kingdom and the Colonies. Between 1947 and 1951, the 9 Commonwealth countries which became independent (for nationality purposes) on 1 January 1949 introduced their own citizenship laws.

11.2 The dates of the citizenship laws were as follows:

Australia - 26 January 1949
Canada - 1 January 1947
Ceylon - 1 January 1949
India - 26 January 1950
Newfoundland - 31 March 1949
New Zealand - 1 January 1949
Pakistan - 13 April 1951
South Africa - 2 September 1949
Southern Rhodesia - 1 January 1950
United Kingdom - 1 January 1949

11.3 Persons closely connected with the United Kingdom or existing British territories remained British subjects but acquired the additional status of CUKC. In some cases, both CUKC and the citizenship of one or more independent Commonwealth countries was acquired.

11.4 The **1948 Act** provided that:

- Any CUKC or citizen of an independent Commonwealth country was a British subject (**s.1(1)**)
- British subject and Commonwealth citizen meant the same thing (**s.1(2)**)
- 9 countries, which were Dominions, ceased to be part of the United Kingdom and Colonies for nationality purposes on 1 January 1949 (**s.1(3)**). These were:

| | | |
|-------------|--------------|-------------------|
| Canada | South Africa | Pakistan |
| Australia | Newfoundland | Southern Rhodesia |
| New Zealand | India | Ceylon |

11.5 On 1 January 1949, Eire (now Southern Ireland) also ceased to be part of the United Kingdom and Colonies for nationality purposes.

12. **BSWCs**

12.1 The status of British subject without citizenship was created as a temporary measure for those people connected with one of the 6 **s.1(3)** countries (Australia, Newfoundland, South Africa, Southern Rhodesia, India and Pakistan) which had not defined their citizenship laws by 1.1.49.

12.2 Section 13(1)

12.2.1 Under **s.13(1)**, persons were BSWCs if they were:

- British subjects before 1949, and
- “potentially” citizens of a **s.1(3)** country, as defined by **s.32(7)** and
- not CUKCs nor citizens of a **s.1(3)** country or of Eire

12.3 Section 13(2)

12.3.1 **Section 13(2)** made provision for BSWCs to become CUKCs. If BSWCs did not become actual citizens of the **s.1(3)** country of which, by virtue of **s.32(7)**, they were deemed to be a potential citizen when a citizenship law had taken effect there, they became a CUKC.

NB. BSWCs remained after 1950, since effect was never given to the citizenship laws of India and Pakistan. Therefore, to have remained a BSWC after 1950, a person must have been born before 1.1.49 and have been connected with British India.

12.4 Potential citizens

12.4.1 Potential citizens are defined in **s.32(7)** of **BNA 1948** as follows:

- British subjects by birth in one of the **s.1(3)** countries which had not defined its citizenship laws by 1.1.49 (i.e. Australia, Newfoundland, South Africa, Southern Rhodesia, India, and Pakistan)
- Persons whose nearest ancestor in the male line was a British subject by birth in one of those six **s.1(3)** countries
- Women who were, or had been, married to a man who was a "potential" citizen

13. Sections 4 and 5 - BNA 1948

13.1 **Sections 4 and 5** provided for the acquisition of CUKC for those born between 1 January 1949 and 31 December 1982.

13.2 Section 4 (birth)

13.2.1 Under **s.4**, persons became citizens of the United Kingdom and Colonies by birth if they were born within the United Kingdom and Colonies, provided their father was not a diplomat or an enemy alien in occupation.

13.2.2 **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.

13.3 Section 5 (descent)

13.3.1 **Section 5** provided for the acquisition of CUKC status by descent.

13.3.2 Persons born outside the United Kingdom and Colonies would be citizens of the United Kingdom and Colonies by descent, provided that their father was a citizen of the United Kingdom and Colonies by birth (**s.5(1)**).

13.3.3 Persons whose father was a CUKC by descent would still acquire CUKC by descent if they were:

- a person who, or whose father, was born in any place where, at the time of either birth, the Crown exercised extra-territorial jurisdiction (ETJ) (**s.5(1)(a)**); or
- a person born in a foreign country whose birth was registered at a UK Consulate within one year of the birth (**s.5(1)(b)**); or
- a person whose father was in Crown service at the time of the birth (**s.5(1)(c)**); or
- a person born in any country mentioned in **s.1(3)**, where effect had been given to that country's citizenship laws, but who did not become a citizen by birth in that country and - in practice this only referred to someone born in Ceylon who did not become a citizen of Ceylon at birth (**s.5(1)(d)**)

NB. For the purposes of **s.5(1)(a)-(d)**, the father had to be a citizen of the United Kingdom and Colonies by descent. All made the beneficiary a CUKC by descent.

CUKCs by birth

4
12(1)
12(3)

Reg/Nat as a CUKC

CUKCs by descent

5
12(2)
12(4)
12(6)
13(2)
BN(No 2) Act 1964
3rd para of the 3rd
Schedule

13.4 Section 12

13.4.1 CUKC was acquired by the following persons, born before 1 January 1949, who were British subjects immediately prior to 1 January 1949:

- British subjects by birth, annexation or naturalisation in any territory which, on 1 January 1949, was part of the United Kingdom and Colonies (**s.12(1)** - CUKC by birth)
- British subjects, legitimately descended from a father who became a CUKC under **s.12(1)** (**s.12(2)** - CUKC by descent)
- British subjects who were born in a territory that was a protectorate, protected state or UK trust territory on 1 January 1949 - but not a foreign ETJ place (**s.12(3)** - CUKC by birth)
- British subjects who were:
 - i. not a CUKC under **s.12(1)**, **12(2)** or **12(3)**; and
 - ii. not a citizen of Eire; and
 - iii. not a citizen of a **s.1(3)** country; and
 - iv. not a potential citizen of a **s.1(3)** country (**s.12(4)** - CUKC by descent).
- Female British subjects who had been married at any time before 1 January 1949 to a man who became (or would, but for his death, have become) a CUKC under **s.12(1)**, **12(2)**, **12(3)** or **12(4)** (**s.12(5)**)

13.4.2 In addition, **s.12(6)** provided for adults to apply for registration, at the Secretary of State's discretion, as a CUKC by descent, if they:

- i. were descended in the legitimate male line from a **s.12(1)** ancestor; and
- ii. would have become CUKCs under **s.12(4)**, save for their actual or potential citizenship of a **s.1(3)** country.

14. Development of the Right of Abode

14.1 The **British Nationality Act 1948** remained in force throughout the period 1.1.49 to 31.12.82, although it was amended by both nationality and immigration legislation. The first modern immigration statute had been the **Aliens Act 1905** which, as the title indicates, applied only to aliens. British subjects had a right to enter and reside in the UK by virtue, simply, of their nationality. However, the immigration entitlements incorporated within British subject status were removed and independently developed between 1949 and 1983.

14.2 The Commonwealth Immigrants Act 1962

14.2.1 The notion that the British Empire constituted a single territory, and that all British subjects were free to enter the UK, came to an end with the **Commonwealth Immigrants Act 1962**.

14.2.2 Except for "Commonwealth citizens" (a term which included CUKCs) who were born in the UK or who were the holders of UK passports (as opposed to British passports issued by a colonial authority), the right of entry to the UK was fettered by the provisions of the **1962 Act**. The citizens of Commonwealth countries and CUKCs affected were thereafter subject to immigration control, a concept which, prior to 1962, had related to aliens only.

14.3 Independence

14.3.1 In the post war years, the countries of the British Empire increasingly became independent and enacted their own citizenship laws. This process had a crucial effect on the citizenship status of those CUKCs connected with them. When a colony attained independence, citizenship of the UK and Colonies was withdrawn from all but a few (i.e. those who had an exception to loss (see "**EXCEPTIONS TO LOSS**")) and replaced by that country's own national status.

14.3.2 On independence 3 things could happen:

- The person became a citizen of the new country and lost CUKC
- The person became a citizen of the new country and retained CUKC

- The person did not become a citizen of the new country and remained a CUKC (i.e. was unaffected)

14.3.3 For details of the respective dates of independence, see "**COMMONWEALTH COUNTRIES**". For further information about the effects of independence, see "**INDEPENDENCE**".

14.4 The Commonwealth Immigrants Act 1968

14.4.1 CUKCs of Asian descent living in East African dependencies generally retained their citizenship of the UK and Colonies when those territories became independent. They became UK passport holders on independence and were therefore excluded from the scope of the **1962 Act**. During the next few years, discriminatory treatment caused the British Asians in East Africa to enter the UK in increasing numbers. This led to the passage of the **Commonwealth Immigrants Act 1968** which amended the **1962 Act** to define "CUKCs holding UK passports" solely in terms of such citizens who were born, adopted, registered or naturalised in the UK, or who had such a parent or grandparent.

14.5 Patriality and right of abode

14.5.1 The idea of freedom from immigration control for a class of persons defined in terms of birthplace or ancestry culminated in the concept of "patriality". This term was introduced by the **Immigration Act 1971**, which replaced the **1962** and **1968 Acts** in their entirety and, together with the **British Nationality Act 1948**, represented the state of British nationality law from 1 January 1973 to the commencement of the BNA 1981 on 1 January 1983.

14.5.2 The idea of patriality was that it should serve as a secondary status (e.g. an individual CUKC would also have been either a "patrial" or a "non-patrial"). A "patrial" was a person who had a "right of abode" in the UK (**s.2(6)** of the **1971 Act**) and who, as a result, was "free to live in, and to come and go into and from the UK without let or hindrance". A "non-patrial", on the other hand, could only enter and "live, work and settle in the UK by permission".

14.5.3 Those who acquired the right of abode under **s.2** of the **1971 Act** can be summarised as follows:

- CUKCs by birth (see 17.4 below), adoption, naturalisation or registration (see 17.5 below) in the United Kingdom or Islands (**s.2(1)(a)**)
- CUKCs born to a parent who, at the time of their birth, had right of abode under **s.2(1)(a)** (**s.2(1)(b)(i)**)
- CUKCs born to a parent who, at the time of their birth, had right of abode under **s.2(1)(b)(i)** (**s.2(1)(b)(ii)**)
- CUKCs who had been ordinarily resident in the United Kingdom for a continuous period of 5 years or more whilst a CUKC (or a BS if any part of the period of residence was before 1949). Although the 5 year period could include time spent in the United Kingdom on immigration restrictions (periods of unlawful residence did not count), these had to be lifted by the end of the period. The 5 year period had to be completed by 31 December 1982 (**s.2(1)(c)**)
- Commonwealth citizens (does not include CUKCs), one of whose parents or adoptive parents was born in the United Kingdom. Normally applied to Commonwealth citizens with a United Kingdom born mother (**s.2(1)(d)**)
- Female Commonwealth citizens (does include CUKCs) who were, or had been, married to a man who, at any time during the marriage, had a claim to right of abode (**s.2(2)**)

14.5.4 For right of abode purposes, "birth in the United Kingdom" included:

- birth in Southern Ireland prior to 31 March 1922
- birth either on a ship or aircraft registered in the United Kingdom, or on an unregistered ship or aircraft of the Government of the United Kingdom

14.5.5 It should be noted that registration in the United Kingdom or at the High Commission of an independent Commonwealth country always gave right of abode under **s.2(1)(a)** except for:

- registration under **s.6(2)** of the **BNA 1948**, where the marriage took place on or after 28 October 1971

- registration under **s.7** of the **BNA 1948** at a High Commission, where the registration was effected on or after 28 October 1971
- registration under **s.12(6)** of the **BNA 1948** at a High Commission

14.5.6 Persons who had right of abode through being a CUKC normally ceased to have right of abode if they lost CUKC (e.g. on independence). However, persons who renounced CUKC could retain right of abode if they were also Commonwealth citizens (see "**RIGHT OF ABODE**").

15. **Introduction of the British Nationality Act 1981** (see also "**THE BRITISH NATIONALITY ACT 1981**")

15.1 Over the years, it became increasingly urgent to find a ready means, expressed in terms of nationality, of knowing who had the right of entry and settlement in the UK and who had not. The aim of the British Nationality Act 1981 was to create a new law which would give all existing CUKCs a citizenship status which reflected their circumstances, particularly the strength of their connection with the UK.

15.2 The BNA 1981 received Royal Assent on 30 October 1981. Its main provisions came into effect on 1 January 1983. The Act amended the **1971 Act** so as to cast the right of abode in terms of citizenship, and replaced citizenship of the United Kingdom and Colonies with 3 separate citizenships:

- British citizenship, for people closely connected with the United Kingdom (including the Channel Islands and the Isle of Man)
- British Dependent Territories citizenship, for people connected with the dependencies;
- British Overseas citizenship, for CUKCs who did not acquire either of the other citizenships at commencement

15.3 British citizenship

15.3.1 All CUKCs who had the right of abode acquired British citizenship automatically at commencement, except stateless persons who had been registered as CUKCs by virtue of their mother's CUKC - these persons acquired whichever of the 3 new citizenships their mother did.

15.3.2 For information about the provisions in the 1981 Act relating to British citizenship, see Volume 1 **Chapters 2-20**.

15.4 British Dependent Territories citizenship

15.4.1 The provisions of the 1981 Act relating to British Dependent Territories citizens follow a similar pattern to those relating to British citizenship.

15.4.2 For further information about the provisions in the 1981 Act relating to British Dependent Territories citizenship, see Volume 1 **Chapters 21-36**.

15.5 British Overseas citizenship

15.5.1 This citizenship is essentially transitional in its nature. It was acquired at commencement by any CUKC who did not become either a British citizen or a British Dependent Territories citizen. British Overseas citizenship cannot normally be transmitted automatically to children born after commencement.

15.5.2 For further information about the provisions in the 1981 Act relating to British Overseas citizenship, see Volume 1 **Chapters 37-41**.

15.6 British subjects and British protected persons

15.6.1 The use of the term "British subject", as a common description of all Commonwealth citizens, ceased and the term "Commonwealth citizen" alone will be used in future. But the scope of the meaning of the term "British subject" as used in legislation passed before commencement (e.g. that dealing with the right to vote) is preserved. British subjects without citizenship, and British subjects who had that status by reason of a connection with the Republic of Ireland before 1949 who claimed their right to remain British subjects under **s.2** of the **British Nationality Act 1948**, continue to be known as British subjects. For further details of the 1981 Act provisions relating to British subjects, see Volume 1 **Chapters 42-49**.

15.6.2 The status of British protected person is continued by the Act (see Volume 1 **Chapter 54**).

15.7 General points

- 15.7.1 No-one who was formerly a citizen of the United Kingdom and Colonies was left without a citizenship, and the Act contains provisions which comply with the United Kingdom's obligations under the **UN Convention on the Reduction of Statelessness**.
- 15.7.2 The Act did not adversely affect the position under the immigration laws of anyone who was lawfully settled here. The special voucher scheme under which certain United Kingdom passport holders, originally from East Africa, may be admitted to the United Kingdom for settlement, continues (see "**EAST AFRICAN ASIANS**").
- 15.7.3 The Act provides that where the Home Secretary is required to exercise his discretion, he shall do so without regard to the race, colour or religion of the person concerned.

16. Developments since 1983

- 16.1 One of the aims of the 1981 Act was that the acquisition of British citizenship should depend on the strength of a person's connections with the United Kingdom. However, beginning with the **British Nationality (Falkland Islands) Act 1983**, the emphasis placed on UK connections has decreased. The **1983 Act**, passed as a result of the conflict with Argentina in 1982, provided that a connection with the Falkland Islands was sufficient for a BDTC to register as a British citizen. In addition, since the **1983 Act** was deemed to have come into force on 1 January 1983, persons who would have become BDTCs under s.23 of the 1981 Act by virtue of a connection with the Falkland Islands were deemed also to have become British citizens. For details of the provisions of the **1983 Act**, see Volume 1, **Chapter 14**.
- 16.2 In 1986, an Order in Council, passed under the **Hong Kong Act 1985**, provided for BDTCs connected with Hong Kong to register as British Nationals (Overseas) and for the 1981 Act to be amended so as to include this new status in appropriate sections of that Act (see Volume 1, **Chapters 50-53**).
- 16.3 Further legislation was later introduced (in 1990, 1996 and 1997) enabling people to register as a British citizen solely on the basis of a connection with Hong Kong. For further details of these Acts, see

"**BRITISH NATIONALITY (HONG KONG) ACT 1990**" and "**BRITISH NATIONALITY ACTS**". Details of the requirements and criteria for registration under the **1996** and **1997 Acts** can also be found in Volume 1, **Chapter 14**.

- 16.4 The **British Overseas Territories Act 2002** provided for the renaming of dependent territories and British Dependent Territories citizenship as, respectively, British overseas territories and British overseas territories citizenship. A further effect has been that, generally speaking, a connection (by birth etc) with a British overseas territory other than the Sovereign Base Areas on Cyprus is now treated as a connection with the United Kingdom for the purpose of determining acquisition of British citizenship.
- 16.5 The **Nationality, Immigration and Asylum Act 2002** has made several additional changes to British nationality law, principally in the areas of naturalisation and registration *procedure* and deprivation. The details may be found under "**BRITISH NATIONALITY ACTS**" and in the relevant chapters of Volume 1.

Archived