

STATUTORY INSTRUMENTS

1986 No. 948

BRITISH NATIONALITY

The Hong Kong (British Nationality) Order 1986

*Laid before Parliament in draft**Made* - - - - - *5th June 1986**Coming into Operation* *1st July 1987*

ARRANGEMENT OF ARTICLES

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At the Court at Buckingham Palace, the 5th day of June 1986

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament and has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in pursuance of paragraph 2 of the Schedule to the Hong Kong Act 1985(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

(a) 1985 c.15.

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Hong Kong (British Nationality) Order 1986 and shall come into operation on 1st July 1987.

(2) This Order extends to Northern Ireland.

(3) This Order extends to the Channel Islands and the Isle of Man and to all dependent territories.

(4) Section 50 of the British Nationality Act 1981(a) (interpretation) shall apply to the interpretation of this Order as it applies to the interpretation of that Act.

Connections with Hong Kong

2.—(1) For the purposes of this Order a person shall be taken to have a connection with Hong Kong if—

- (a) subject to paragraph (3) below, he, his father or his mother was born, naturalised or registered in Hong Kong or found abandoned there as a new-born infant; or
- (b) he, his father or his mother was adopted (whether or not in Hong Kong) and the adopter or, in the case of a joint adoption, one of the adopters was at the time of the adoption a British Dependent Territories citizen by virtue of his having a connection with Hong Kong as specified in this Article; or
- (c) he, his father or his mother was registered outside Hong Kong on an application based (wholly or partly) on any of the following:—
 - (i) residence in Hong Kong;
 - (ii) descent from a person born in Hong Kong;
 - (iii) descent from a person naturalised, registered or settled in Hong Kong (whether before or after the birth of the person registered);
 - (iv) descent from a person adopted (whether or not in Hong Kong) in the circumstances specified in sub-paragraph (b) above;
 - (v) marriage to a person who is a British Dependent Territories citizen by virtue of his having a connection with Hong Kong as specified in this Article or would have been so but for his death or renunciation of citizenship;
 - (vi) Crown service under the government of Hong Kong;
 - (vii) where citizenship has been renounced and subsequently resumed, birth, naturalisation or registration in Hong Kong; or
- (d) at the time of his birth his father or mother was settled in Hong Kong; or
- (e) his father or mother was born to a parent who at the time of the birth was a citizen of the United Kingdom and Colonies by virtue of his having a connection with Hong Kong as specified in this Article; or
- (f) being a woman, she was married before 1st January 1983 to a man who is a British Dependent Territories citizen by virtue of his having a connection with Hong Kong as specified in this Article or would have been so but for his death.

(2) In paragraph (1) above “registered” means registered as a British Dependent Territories citizen or, before 1st January 1983, as a citizen of the United Kingdom and Colonies; and “registration” shall be construed accordingly.

(a) 1981 c.61.

(3) A person born in Hong Kong on or after 1st January 1983 shall not be taken to have a connection with Hong Kong under paragraph (1)(a) above by virtue of his birth there unless, at the time of his birth, one of his parents was—

- (a) settled in Hong Kong; or
- (b) a British Dependent Territories citizen by virtue of his having a connection with Hong Kong as specified in this Article.

Loss of British Dependent Territories citizenship

3. Any person who, immediately before 1st July 1997—

- (a) is a British Dependent Territories citizen by virtue (wholly or partly) of his having a connection with Hong Kong; and
- (b) but for his having a connection with Hong Kong would not be a British Dependent Territories citizen,

shall on that date cease to be such a citizen.

Right to acquire new status of British National (Overseas)

4.—(1) On and after 1st July 1987 there shall be a new form of British nationality the holders of which shall be known as British Nationals (Overseas).

(2) Any person who is a British Dependent Territories citizen by virtue (wholly or partly) of his having a connection with Hong Kong and who, but for his having a connection with Hong Kong, would not be such a citizen shall be entitled, before 1st July 1997 (or before the end of 1997 if born in that year before that date), to be registered as a British National (Overseas) and to hold or be included in a passport appropriate to that status.

(3) Any person who, having become a British National (Overseas) by virtue of paragraph (2) above, ceases at any time before 1st July 1997 to be a British Dependent Territories citizen shall at the same time cease to be a British National (Overseas).

Removal of Hong Kong from list of dependent territories

5. On and after 1st July 1997 the British Nationality Act 1981 shall have effect as if in Schedule 6 to that Act (British Dependent Territories) the words “Hong Kong” were omitted.

Provisions for reducing statelessness

6.—(1) Where a person ceases on 1st July 1997 by virtue of Article 3 to be a British Dependent Territories citizen and would, but for this paragraph, thereby be rendered stateless, he shall become on that date a British Overseas citizen.

(2) Where a person born on or after 1st July 1997 would, but for this paragraph, be born stateless, then, if at the time of the birth his father or mother is a British National (Overseas) or a British Overseas citizen by virtue of paragraph (1) above, he shall be a British Overseas citizen.

(3) A person born stateless on or after 1st July 1997 outside the dependent territories shall be entitled, on an application for his registration as a British Overseas citizen made within the period of twelve months from the date of the birth, to be registered as such a citizen if the requirements specified in paragraph (4) below are fulfilled in the case of either that person’s father or his mother (“the parent in question”).

- (4) The requirements referred to in paragraph (3) above are—
- (a) that the parent in question was a British Overseas citizen by virtue of paragraph (2) above at the time of the birth; and
 - (b) that the father or mother of the parent in question was, immediately before 1st July 1997, a British Dependent Territories citizen otherwise than by descent by virtue of having a connection with Hong Kong or would have been so but for his or her death.
- (5) If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat paragraph (3) above as if the reference to twelve months were a reference to six years.

British Nationality Acts

7.—(1) The British Nationality Act 1981 (“the 1981 Act”) and the British Nationality (Falkland Islands) Act 1983(a) (“the 1983 Act”) shall have effect subject to the following provisions of this Article.

(2) Section 4(1) of the 1981 Act (acquisition by registration: British Dependent Territories citizens, etc.) shall have effect as if after the words “British Dependent Territories citizen,” there were inserted the words “a British National (Overseas),”.

(3) Section 37 of the 1981 Act (Commonwealth citizenship) shall have effect as if in subsection (1)(a)—

- (a) the reference to the 1981 Act included a reference to this Order;
- (b) after the words “British Dependent Territories citizen,” there were inserted the words “a British National (Overseas),”.

(4) Section 41 of the 1981 Act (regulations and Orders in Council) shall have effect as if—

- (a) any reference in it to the 1981 Act included a reference to this Order;
- (b) in subsection (1)(f) after the word “citizenship” there were inserted the words “or of the status of a British National (Overseas)”;
- (c) in subsection (1)(i) after the words “British Dependent Territories citizens,” there were inserted the words “British Nationals (Overseas),”;
- (d) in subsection (2)—
 - (i) at the end of paragraph (a) there were inserted the words “other than an application for the purpose of acquiring the status of a British National (Overseas)”;
 - (ii) at the end of paragraph (b) there were inserted the words “other than registration as a British National (Overseas)”.

(5) Section 42 of the 1981 Act (registration and naturalisation: general provisions) shall have effect as if—

- (a) in subsection (2)(b) after the words “British Dependent Territories citizen,” there were inserted the words “a British National (Overseas),”;
- (b) in subsection (4)—
 - (i) the reference to the 1981 Act included a reference to this Order;
 - (ii) after the words “British Dependent Territories citizen” there were inserted the words “, or as a British National (Overseas),”;
 - (iii) after the words “as the case may be,” there were inserted the words “a British National (Overseas) or”.

(a) 1983 c.6.

(6) Section 43 of the 1981 Act (exercise of functions of Secretary of State by Governors and others) shall have effect as if—

- (a) any reference in it to the 1981 Act included a reference to this Order;
- (b) in subsection (1)(b) at the end there were inserted the words “and in cases concerning British Nationals (Overseas) or the status of a British National (Overseas)”;
- (c) in subsection (2) at the end there were inserted the following paragraph:—
“(c) renunciation and deprivation of the status of a British National (Overseas).”.

(7) The following provisions of the 1981 Act shall have effect as if any reference in them to the 1981 Act included a reference to this Order, namely—

- (a) section 45 (evidence);
- (b) section 46(1) (offences);
- (c) sections 47 and 48 (legitimated and posthumous children).

(8) Section 50 of the 1981 Act (interpretation) shall have effect as if in paragraph (1) after the definition of “association” there were inserted the following definitions:—

“British National (Overseas)” means a person who is a British National (Overseas) under the Hong Kong (British Nationality) Order 1986, and “status of a British National (Overseas)” shall be construed accordingly;

“British Overseas citizen” includes a person who is a British Overseas citizen under the Hong Kong (British Nationality) Order 1986.

(9) Section 51 of the 1981 Act (meaning of certain expressions relating to nationality in other Acts and instruments) shall have effect as if in subsection (3)—

- (a) at the end of paragraph (a)(ii) there were inserted the words “or who under the Hong Kong (British Nationality) Order 1986 is a British National (Overseas)”;
- (b) in paragraph (b) after the words “British Dependent Territories citizen” there were inserted the words “nor a British National (Overseas)”.

(10) The provisions of section 12 of the 1981 Act (renunciation) shall apply in relation to British Nationals (Overseas) and the status of a British National (Overseas) as they apply in relation to British citizens and British citizenship.

(11) The provisions of section 40 of the 1981 Act (deprivation of citizenship) shall apply in relation to persons registered as British Nationals (Overseas) under this Order and the status of a British National (Overseas) as they apply in relation to persons registered as British citizens under the 1981 Act and British citizenship.

(12) Section 2 of the 1983 Act (acquisition of British citizenship by registration) shall have effect as if—

- (a) in subsection (1)(a) at the end there were inserted the words “or who, having become such a citizen by virtue of that section, is a British National (Overseas)”;
- (b) in subsection (2)(a) at the end there were inserted the words “or who, having become such a citizen by virtue of registration or naturalisation under the 1981 Act, is a British National (Overseas)”.

Consequential amendments

8. The enactments specified in the Schedule to this Order shall have effect subject to the amendments there specified, being amendments consequential on the provisions of this Order.

G. I. de Deney,
Clerk of the Privy Council.

SCHEDULE

ARTICLE 8

CONSEQUENTIAL AMENDMENTS

WEST INDIES ACT 1967(a)

In section 13(3) (power to make changes in nationality or citizenship law in certain events), after "British Dependent Territories citizens" insert ", British Nationals (Overseas)" and after "such citizens" in both places where those words occur insert "or Nationals".

MARINE ETC BROADCASTING (OFFENCES) ACT 1967(b)

In section 3(3) (persons prohibited from broadcasting whilst on or over high seas), after "British Dependent Territories citizen" insert ", a British National (Overseas)".

ANTARCTIC TREATY ACT 1967(c)

In section 1(3) (persons prohibited from harming Antarctic flora and fauna), after "British Dependent Territories citizen" insert ", a British National (Overseas)".

CONSULAR RELATIONS ACT 1968(d)

In section 1(2) (meaning of certain terms in Schedule 1), after "British Dependent Territories citizen" insert ", a British National (Overseas)".

CHILDREN ACT 1975(e)

1. In Part II of Schedule 1 (adoption orders), in paragraph 7(2)(d) after "British Dependent Territories citizenship" insert ", the status of a British National (Overseas)".

2. In Schedule 2 (status conferred in Scotland by adoption), in paragraph 1(4)(d) after "British Dependent Territories citizenship" insert ", the status of a British National (Overseas)".

ADOPTION ACT 1976(f)

In section 47(2) (nationality enactments), after "British Dependent Territories citizenship" insert ", the status of a British National (Overseas)".

(a) 1967 c.4; section 13(3) was amended by the British Nationality Act 1981, Schedule 7.

(b) 1967 c.41; section 3(3) was amended by the British Nationality Act 1981, Schedule 7.

(c) 1967 c.65; section 1(3) was amended by the British Nationality Act 1981, Schedule 7.

(d) 1968 c.18; section 1(2) was amended by the British Nationality Act 1981, Schedule 7.

(e) 1975 c.72; Schedules 1 and 2 were amended by the British Nationality Act 1981, Schedule 7.

(f) 1976 c.36; section 47(2) was amended by the British Nationality Act 1981, Schedule 7.

ADOPTION (SCOTLAND) ACT 1978(a)

In section 41(2) (nationality enactments), after "British Dependent Territories citizenship" insert ", the status of a British National (Overseas)".

STATE IMMUNITY ACT 1978(b)

In section 4(5) (definition of "national of the United Kingdom"), after "British Dependent Territories citizen" insert ", a British National (Overseas)".

DEEP SEA MINING (TEMPORARY PROVISIONS) ACT 1981(c)

1. In section 1(6) (meaning of certain terms in section 1), after "British Dependent Territories citizen" insert ", a British National (Overseas)".

2. In section 14(3) (persons who may be guilty of offences under regulations), after "British Dependent Territories citizen" insert ", a British National (Overseas)".

CIVIL AVIATION ACT 1982(d)

In section 105(1) (general interpretation), in the definition of "United Kingdom national" after "a British Dependent Territories citizen" insert ", a British National (Overseas)".

AVIATION SECURITY ACT 1982(e)

In section 38(1) (interpretation, etc.), in the definition of "United Kingdom national" after "British Dependent Territories citizen" insert ", a British National (Overseas)".

CAPITAL TRANSFER TAX ACT 1984(f)

In section 155(1) (visiting forces, etc.), after "British Dependent Territories citizen" insert ", a British National (Overseas)".

COMPANY SECURITIES (INSIDER DEALING) ACT 1985(g)

In section 15(3) (expressions used in section 6), after "British Dependent Territories citizens" insert ", British National (Overseas)".

(a) 1978 c.28; section 41(2) was amended by the British Nationality Act 1981, Schedule 7.

(b) 1978 c.33; section 4(5) was amended by the British Nationality Act 1981, Schedule 7.

(c) 1981 c.53; sections 1(6) and 14(3) were amended by the British Nationality Act 1981, Schedule 7.

(d) 1982 c.16.

(e) 1982 c.36.

(f) 1984 c.51.

(g) 1985 c.8.

ADOPTION (SCOTLAND) ACT 1978(a)

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(d) 1982 c.16.

(e) 1982 c.36.

(f) 1984 c.51.

(g) 1985 c.8.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision with regard to the British nationality status of persons who are British Dependent Territories citizens by virtue of a connection with Hong Kong in accordance with the terms of the Joint Declaration on the Question of Hong Kong reached between Her Majesty's Government and the Government of the People's Republic of China, under which British sovereignty and jurisdiction over Hong Kong will end on 1st July 1997.

Under Articles 3 and 4 those persons will cease to be British Dependent Territories citizens on that date but will before then be entitled to acquire a new form of British nationality, except where they are such citizens independently of a Hong Kong connection. The holders of the new status will be known as British Nationals (Overseas). The relevant connections with Hong Kong for the purposes of the Order are set out in Article 2.

Article 5 removes Hong Kong from the list of British Dependent Territories in Schedule 6 to the British Nationality Act 1981.

Article 6 contains provisions relating to statelessness.

Articles 7 and 8 amend various existing enactments so as to take account of the new status of a British National (Overseas).

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