British Nationality Act 1981

1981 CHAPTER 61

PART V

MISCELLANEOUS AND SUPPLEMENTARY[F1]

Textual Amendments

F1 Ss. 40, 40A substituted (1.4.2003) for s. 40 by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 4(1)(4)**, 162 (with s. 159); S.I. 2003/754, **art. 2(1)**, Sch. 1 (with arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, art. 2 and S.I. 2003/1339, art. 4))

Modifications etc. (not altering text)

C1 Pt. V (ss. 36–53) extended by S.I. 1983/882, **art. 3(5)**

36 Provisions for reducing statelessness.

The provisions of Schedule 2 shall have effect for the purpose of reducing statelessness.

Modifications etc. (not altering text)

C2 S. 37 extended by British Nationality (Hong Kong) Act 1990 (c. 34, SIF 87), **s. 2(3)**

37 Commonwealth citizenship.

(1) Every person who—

(a) under **[**[F2]the British Nationality Acts 1981 and 1983**][**[F3]or the British Overseas Territories Act 2002**]** is a British citizen, a **[**[F4]British overseas territories citizen**]** , **[**[F5]a British National (Overseas),**]** a British Overseas citizen or a British subject; or

(b) under any enactment for the time being in force in any country mentioned in Schedule 3 is a citizen of that country,

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shall have the status of a Commonwealth citizen.

(2) Her Majesty may by Order in Council amend Schedule 3 by the alteration of any entry, the removal of any entry, or the insertion of any additional entry.

(3) Any Order in Council made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) After commencement no person shall have the status of a Commonwealth citizen or the status of a British subject otherwise than under this Act.

Textual Amendments

F2 Words substituted by British Nationality (Falkland Islands) Act 1983 (c. 6, SIF 87), **s. 4(3)**

F3 Words in s. 37(1)(a) inserted (21.5.2002) by British Overseas Territories Act 2002 (c. 8), s. 5, **Sch. 1 para. 4**; S.I. 2002/1252, **art. 2**

F4 Words in s. 37(1) substituted (26.2.2002) by British Overseas Territories Act 2002 (c. 8), **s. 2(2)(b)**

F5 By S.I. 1986/948, **art. 7(3)**(*b*) it is provided that s. 37 shall have effect as if in subsection (1)(*a*) after the words "British Dependent Territories citizen," there were inserted the words "a British National (Overseas),"

Modifications etc. (not altering text)

C3 S. 37 modified (19.3.1997) by 1997 c. 20, **s. 2(3)**

C4 S. 37 amended (18.7.1996) by 1996 c. 41, **s. 2(2)**

C5 S. 37(1)(*a*) amended by S.I. 1986/948, **art. 7(3)**(*a*)

38 British protected persons.

(1) Her Majesty may by Order in Council made in relation to any territory which was at any time before commencement—

(a) a protectorate or protected state for the purposes of the 1948 Act; or

(b) a United Kingdom trust territory within the meaning of that Act,

declare to be British protected persons for the purposes of this Act any class of persons who are connected with that territory and are not citizens of any country mentioned in Schedule 3 which consists of or includes that territory.

(2) Any Order in Council made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

X1 39 Amendment of Immigration Act 1971.

(1) The Immigration Act 1971 shall be amended in accordance with the following provisions of this section.

(2) For section 2 (statement of right of abode) there shall be substituted—

"**2 Statement of right of abode in United Kingdom.**

(1) A person is under this Act to have the right of abode in the United Kingdom if—

(a) he is a British citizen; or

(b) he is a Commonwealth citizen who—

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(i) immediately before the commencement of the British Nationality Act 1981 was a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(d) or section 2(2) of this Act as then in force; and

(ii) has not ceased to be a Commonwealth citizen in the meanwhile.

(2) In relation to Commonwealth citizens who have the right of abode in the United Kingdom by virtue of subsection (1)(b) above, this Act, except this section and sections 3(9) and (9A), 5(2) and 13(3), shall apply as if they were British citizens; and in this Act, (except as aforesaid) "British citizen" shall be construed accordingly."

[F6](3) . . . . . .

(4) In section 8 (except for special cases), after subsection (5) there shall be inserted—

"(5A) An order under subsection (2) above may, as regards any person or class of persons to whom it applies, provide for that person or class to be in specified circumstances regarded (notwithstanding the order) as settled in the United Kingdom for the purposes of section 1(1) of the British Nationality Act 1981."

[F6](5) . . . . . .

(6) Schedule 4 (which contains further amendments of the [M1]Immigration Act 1971) shall have effect.

(7) In section 90 of the [M2]Mental Health Act 1959 and section 82 of the [M3]Mental Health (Scotland) Act 1960 (removal of non-patrial in-patients to places outside the United Kingdom), for the words from "any patient" to "1971 and" (which were susbtituted for "any person being an alien" by section 30(1) of the Immigration Act 1971) there shall be substituted "any patient who is neither a British citizen nor a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(b) of the Immigration Act 1971, being a patient".

(8) A certificate of patriality issued under the [M4]Immigration Act 1971 and in force immediately before commencement shall have effect after commencement as if it were a certificate of entitlement issued under that Act **[**[F7]as in force after commencement**]**, unless at commencement the holder ceases to have the right of abode in the United Kingdom.

Editorial Information

X1 The text of s. 39(1)-(7) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Textual Amendments

F6 S. 39(3)(5) repealed by Immigration Act 1988 (c. 14, SIF 62), **s. 3(3)**

F7 Words substituted by Immigration Act 1988 (c. 14, SIF 62), **s. 3(3)**

Modifications etc. (not altering text)

C6 S. 39(1) extended (Isle of Man) (13.3.2008 for specified purposes and otherwise 1.5.2008) by The Immigration (Isle of Man) Order 2008 (S.I. 2008/680), arts. 1(2), 5, **8(2)(a)**

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C7 S. 39(2) extended (Isle of Man) (13.3.2008 for specified purposes and otherwise 1.5.2008) by The Immigration (Isle of Man) Order 2008 (S.I. 2008/680), arts. 1(2), 5, **8(2)(a)**

C8 S. 39(4) extended (Isle of Man) (13.3.2008 for specified purposes and otherwise 1.5.2008) by The Immigration (Isle of Man) Order 2008 (S.I. 2008/680), arts. 1(2), 5, **8(2)(a)**

C9 S. 39(6) extended in part (Isle of Man) (13.3.2008 for specified purposes and otherwise 1.5.2008) by The Immigration (Isle of Man) Order 2008 (S.I. 2008/680), arts. 1(2), 5, **8(2)(b)**

Marginal Citations

M1 1971 c. 77.

M2 1959 c. 72.

M3 1960 c. 61.

M4 1971 c. 77.

[F8 40 Deprivation of citizenship.

(1) In this section a reference to a person's "citizenship status" is a reference to his status as—

(a) a British citizen,

(b) a British overseas territories citizen,

(c) a British Overseas citizen,

(d) a British National (Overseas),

(e) a British protected person, or

(f) a British subject.

(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that the person has done anything seriously prejudicial to the vital interests of—

(a) the United Kingdom, or

(b) a British overseas territory.

(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—

(a) fraud,

(b) false representation, or

(c) concealment of a material fact.

(4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.

(5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying—

(a) that the Secretary of State has decided to make an order,

(b) the reasons for the order, and

(c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).

(6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of

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the citizenship status if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—

(a) fraud,

(b) false representation, or

(c) concealment of a material fact.**]**

Textual Amendments

F8 Ss. 40, 40A substituted (1.4.2003) for s. 40 by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 4(1)(4)**, 162 (with s. 159); S.I. 2003/754, **art. 2(1)**, Sch. 1 (with arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, art. 2 and S.I. 2003/1339, art. 4))

Modifications etc. (not altering text)

C10 S. 40 extended by S.I. 1986/948, **art.7(11)**

C11 Ss. 40–42, 44–48, 50 extended by British Nationality (Hong Kong) Act 1990 (c. 34, SIF 87), **s. 2(3)**

C12 S. 40 amended (18.7.1996) by 1996 c. 41, **s. 2(2)**

C13 S. 40 modified (19.3.1997) by 1997 c. 20, **s. 2(3)**

[F1 40A Deprivation of citizenship: appeal

(1) A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against the decision to an adjudicator appointed under section 81 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal).

(2) Subsection (1) shall not apply to a decision if the Secretary of State certifies that it was taken wholly or partly in reliance on information which in his opinion should not be made public—

(a) in the interests of national security,

(b) in the interests of the relationship between the United Kingdom and another country, or

(c) otherwise in the public interest.

(3) A party to an appeal to an adjudicator under subsection (1) may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator's determination on a point of law.

(4) A party to an appeal to the Immigration Appeal Tribunal under subsection (3) may bring a further appeal on a point of law—

(a) where the decision of the adjudicator was made in Scotland, to the Court of Session, or

(b) in any other case, to the Court of Appeal.

(5) An appeal under subsection (4) may be brought only with the permission of—

(a) the Tribunal, or

(b) if the Tribunal refuses permission, the court referred to in subsection (4)(a) or (b).

(6) An order under section 40 may not be made in respect of a person while an appeal under this section or section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68)—

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(a) has been instituted and has not yet been finally determined, withdrawn or abandoned, or

(b) could be brought (ignoring any possibility of an appeal out of time with permission).

(7) Rules under section 106 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal: rules) may make provision about an appeal under this section.

(8) Directions under section 107 of that Act (practice directions) may make provision about an appeal under this section.**]**

41 Regulations and Orders in Council.

(1) The Secretary of State may by regulations make provision generally for carrying into effect the purposes of this Act, and in particular provision—

(a) for prescribing anything which under this Act is to be prescribed;

(b) for prescribing the manner in which, and the persons to and by whom, applications for registration or naturalisation under any provision of this Act may or must be made;

(c) for the registration of anything required or authorised by or under this Act to be registered;

(d) for the administration and taking of oaths of allegiance under this Act, as to the time within which oaths of allegiance must be taken, and for the registration of oaths of allegiance;

(e) for the giving of any notice required or authorised to be given to any person under this Act;

(f) for the cancellation of the registration of, and the cancellation and amendment of certificates of naturalisation relating to, persons deprived of citizenship **[**[F9]or of the status of a British National (Overseas)**]** under this Act, and for requiring such certificates to be delivered up for those purposes;

(g) for the births and deaths of persons of any class or description born or dying in a country mentioned in Schedule 3 to be registered there by the High Commissioner for Her Majesty's government in the United Kingdom or by members of his official staff;

(h) for the births and deaths of persons of any class or description born or dying in a foreign country to be registered there by consular officers or other officers in the service of Her Majesty's government in the United Kingdom;

(i) for enabling the births and deaths of British citizens, **[**[F10]British overseas territories citizens**]** , **[**[F11]British Nationals (Overseas),**]** British Overseas citizens, British subjects and British protected persons born or dying in any country in which Her Majesty's government in the United Kingdom has for the time being no diplomatic or consular representatives to be registered—

(i) by persons serving in the diplomatic, consular or other foreign service of any country which, by arrangement with Her Majesty's government in the United Kingdom, has undertaken to represent that government's interest in that country, or

(ii) by a person authorised in that behalf by the Secretary of State.

(2) The Secretary of State may with the consent of the Treasury by regulations make provision for the imposition, recovery and application of fees in connection with any of the following matters, namely—

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(a) any application made to the Secretary of State under this Act **[**[F12]other than an application for the purpose of acquiring the status of a British National (Overseas)**]**;

(b) the effecting in the United Kingdom of any registration authorised by or under this Act **[**[F13]other than registration as a British National (Overseas)**]**;

(c) the making in the United Kingdom of any declaration, the grant there of any certificate, or the taking there of any oath of allegiance authorised to be made, granted or taken by or under this Act;

(d) the supplying in the United Kingdom of a certified or other copy of any notice, certificate, order, declaration or entry given, granted or made under or by virtue of this Act or any of the former nationality Acts;

(e) the carrying out of searches in or of any registers or other records, being registers or records held in the United Kingdom by or on behalf of the Secretary of State, which are or may be relevant for the purpose of determining the status of any person under this Act or any of the former nationality Acts;

(f) the supplying by or on behalf of the Secretary of State of an opinion in writing concerning the status of any person under this Act or any of the former nationality Acts, or a certified or other copy of such an opinion.

(3) Regulations under subsection (1) or (2) may make different provision for different circumstances; and—

(a) regulations under subsection (1) may provide for the extension of any time-limit for the taking of oaths of allegiance; and

(b) regulations under subsection (2) may provide for any fees imposed by the regulations to be payable at such times as may be prescribed.

(4) Her Majesty may by Order in Council provide for any Act or Northern Ireland legislation to which this subsection applies to apply, with such adaptations and modifications as appear to Her necessary, to births and deaths registered—

(a) in accordance with regulations made in pursuance of subsection (1)(g) to (i) of this section or subsection (1)(f) and (g) of section 29 of the 1948 Act; or

(b) at a consulate of Her Majesty in accordance with regulations made under the British Nationality and Status of Aliens Acts 1914 to 1943 or in accordance with instructions of the Secretary of State; or

(c) by a High Commissioner for Her Majesty's government in the United Kingdom or members of his official staff in accordance with instructions of the Secretary of State;

and an Order in Council under this subsection may exclude, in relation to births and deaths so registered, any of the provisions of section 45.

(5) Subsection (4) applies to—

(a) the [M5]Births and Deaths Registration Act 1953, the [M6]Registration Service Act 1953 and the [M7]Registration of Births, Deaths and Marriages (Scotland) Act 1965; and

(b) so much of any Northern Ireland legislation for the time being in force (whether passed or made before or after commencement) as relates to the registration of births and deaths.

(6) The power to make regulations under subsection (1) or (2) shall be exercisable by statutory instrument.

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(7) Any regulations or Order in Council made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F9 By S.I. 1986/948, **art. 7(4)**(*b*) it is provided that s. 41 shall have effect as if in subsection (1)(*f*) after the word "citizenship" there were inserted the words "or of the status of a British National (Overseas)"

F10 Words in s. 41(1)(i) substituted (26.2.2002) by British Overseas Territories Act 2002 (c. 8), **s. 2(2)(b)**

F11 By S.I. 1986/948, **art. 7(4)**(*c*), it is provided that s. 41 shall have effect as if in subsection (1)(*i*) after the words "British Dependent Territories citizens," there were inserted the words "British Nationals (Overseas),"

F12 By S.I. 1986/948, **art. 7(4)**(*d*)(i) it is provided that s. 41 shall have effect as if in subsection (2) at the end of para. (*a*) there were inserted the words "other than an application for the purpose of acquiring the status of a British National (Overseas)"

F13 By S.I. 1986/948, **art. 7(4)**(*d*)(ii) it is provided that s. 41 shall have effect as if in subsection (2) at the end of para. (*b*) there were inserted the words "other than registration as a British National (Overseas)"

Modifications etc. (not altering text)

C14 Ss. 41, 42, 44–48 extended by British Nationality (Falkland Islands) Act 1983 (c. 6, SIF 87), **s. 4(2)**(*a*)–(*f*)

C15 Ss. 40–42, 44–48, 50 extended by British Nationality (Hong Kong) Act 1990 (c. 34, SIF 87), **s. 2(3)**

C16 S. 41 amended by S.I. 1986/948, **art. 7(4)(a)**

C17 S. 41 modified (19.3.1997) by 1997 c. 20, **s. 2(3)**

C18 S. 41 amended (18.7.1996) by 1996 c. 41, **s. 2(2)**

Marginal Citations

M5 1953 c. 20.

M6 1953 c. 37.

M7 1965 c. 49.

VALID FROM 13/01/2010

[F14 41A Registration: requirement to be of good character

(1) An application for registration of an adult or young person as a British citizen under section 1(3), (3A) or (4), 3(1), (2) or (5), 4(2) or (5), 4A, 4C, 4D, 5, 10(1) or (2) or 13(1) or (3) must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.

(2) An application for registration of an adult or young person as a British overseas territories citizen under section 15(3) or (4), 17(1) or (5), 22(1) or (2) or 24 must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.

(3) An application for registration of an adult or young person as a British Overseas citizen under section 27(1) must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.

(4) An application for registration of an adult or young person as a British subject under section 32 must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.

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(5) In this section, "adult or young person" means a person who has attained the age of 10 years at the time when the application is made.**]**

Textual Amendments

F14 S. 41A inserted (13.1.2010) by Borders, Citizenship and Immigration Act 2009 (c. 11), **ss. 47(1)**, 58; S.I. 2009/2731, **art. 4(f)**

42 Registration and naturalisation: general provisions.

(1) Subject to subsection (2)—

(a) a person shall not be registered under any provision of this Act as a citizen of any description or as a British subject; and

(b) a certificate of naturalisation shall not be granted to a person under any provision of this Act,

unless—

(i) any fee payable by virtue of this Act in connection with the registration or, as the case may be, the grant of the certificate has been paid; and

(ii) the person concerned has within the prescribed time taken an oath of allegiance in the form indicated in Schedule 5.

(2) So much of subsection (1) as requires the taking of an oath of allegiance shall not apply to a person who—

(a) is not of full age; or

(b) is already a British citizen, a **[**[F15]British overseas territories citizen**]** , **[**[F16]a British National (Overseas),**]** a British Overseas citizen, a British subject, or a citizen of any country of which Her Majesty is Queen.

(3) Any provision of this Act which provides for a person to be entitled to registration as a citizen of any description or as a British subject shall have effect subject to the preceding provisions of this section.

(4) A person registered under any provision of this Act as a British citizen, or as a **[**[F15]British overseas territories citizen**][**[F17], or as a British National (Overseas),**]** or as a British Overseas citizen, or as a British subject, shall be a citizen of that description or, as the case may be, **[**[F17]a British National (Overseas) or**]** a British subject as from the date on which he is so registered.

(5) A person to whom a certificate of naturalisation as a British citizen or as a **[**[F15]British overseas territories citizen**]** is granted under any provision of this Act shall be a citizen of that description as from the date on which the certificate is granted.

[[F18](6) A person who applies for registration or naturalisation as a **[**[F15]British overseas territories citizen**]** under any provision of this Act by virtue (wholly or partly) of his having a connection with Hong Kong, may not be naturalised or registered, as the case may be, unless he makes his application on or before 31st March 1996.**]**

Textual Amendments

F15 Words in s. 42 substituted (26.2.2002) by British Overseas Territories Act 2002 (c. 8), **s. 2(2)(b)**

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F16 By S.I. 1986/948, **art. 7(5)**(*a*) it is provided that s. 42 shall have effect as if in sub-section (2)(*b*) after the words "British Dependent Territories citizen," there were inserted the words "a British National (Overseas),"

F17 By S.I. 1986/948, **art. 7(5)**(*b*)(ii) (iii) it is provided that s. 42 shall have effect as if in subsection (4) after the words "British Dependent Territories citizen" there were inserted the words ", or as a British National (Overseas)," and after the words "as the case may be," there were inserted the words "a British National (Overseas) or"

F18 S. 42(6) inserted (21.7.1993) by S.I. 1993/1795, **art. 3**.

Modifications etc. (not altering text)

C19 Ss. 40-42, 44-48, 50 extended by British Nationality (Hong Kong) Act 1991 (c.34, SIF 87), **s.2(3)**

C20 Ss. 41, 42, 44-48 extended by British Nationality (Falkland Islands) Act 1983 (c.6, SIF 87), **s. 4(2)(a)-(f)**

C21 S. 42 modified (19.3.1997) by 1997 c. 20, **s. 2(3)**

C22 S. 42 amended (18.7.1996) by 1996 c. 41, **s. 2(2)**

C23 S. 42(4) amended by S.I. 1986/948, **art. 7(5)**(*b*)(i)

VALID FROM 01/01/2004

[F19 42A Registration and naturalisation: fee

(1) A person shall not be registered under a provision of this Act as a citizen of any description or as a British subject unless any fee payable by virtue of this Act in connection with the registration has been paid.

(2) A certificate of naturalisation shall not be granted to a person under a provision of this Act unless any fee payable by virtue of this Act in connection with the grant of the certificate has been paid.]

Textual Amendments

F19 Ss. 42-42B substituted (1.1.2004) for s. 42 by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 3, 162, **Sch. 1 para. 1** (with s. 159); S.I. 2003/3156, **art. 2(a)** (with arts. 3, 4)

VALID FROM 01/01/2004

[F20 42B Registration and naturalisation: timing

(1) A person who is registered under this Act as a citizen of any description or as a British subject shall be treated as having become a citizen or subject—

(a) immediately on making the required citizenship oath and pledge in accordance with section 42, or

(b) where the requirement for an oath and pledge is disapplied, immediately on registration.

(2) A person granted a certificate of naturalisation under this Act as a citizen of any description shall be treated as having become a citizen—

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(a) immediately on making the required citizenship oath and pledge in accordance with section 42, or

(b) where the requirement for an oath and pledge is disapplied, immediately on the grant of the certificate.

(3) In the application of subsection (1) to registration as a British Overseas citizen or as a British subject the reference to the citizenship oath and pledge shall be taken as a reference to the citizenship oath.**]**

Textual Amendments

F20 Ss. 42-42B substituted (1.1.2004) for s. 42 by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 3, 162, **Sch. 1 para. 1** (with s. 159); S.I. 2003/3156, **art. 2(a)** (with arts. 3, 4)

43 Exercise of functions of Secretary of State by Governors and others.

(1) Subject to subsection (3), the Secretary of State may, in the case of any of his functions under this Act with respect to any of the matters mentioned in subsection (2), make arrangements for that function to be exercised—

(a) in any of the Islands, by the Lieutenant-Governor in cases concerning British citizens or British citizenship;

(b) in any **[**[F21]British overseas territory**]**[F22]. . . , by the Governor in cases concerning **[**[F23]British overseas territories citizens**]** or **[**[F24]British overseas territories citizenship**][**[F25]and in cases concerning British Nationals (Overseas) or the status of a British National (Overseas)**]**

(2) The said matters are—

(a) registration and naturalisation; and

(b) renunciation, resumption and deprivation of British citizenship or **[**[F24]British overseas territories citizenship**]**.

[[F26](c) renunciation and deprivation of the status of a British National (Overseas).**]**

(3) Nothing in this section applies in the case of any power to make regulations or rules conferred on the Secretary of State by this Act.

(4) Arrangements under subsection (1) may provide for any such function as is there mentioned to be exercisable only with the approval of the Secretary of State.

Textual Amendments

F21 Words in s. 43(1)(b) substituted (26.2.2002) by British Overseas Territories Act 2002 (c. 8), **s. 1(1)(b)**

F22 Words in s. 43(1)(b) repealed (26.2.2002) by British Overseas Territories Act 2002 (c. 8), s. 7, **Sch. 2**

F23 Words in s. 43(1)(b) substituted (26.2.2002) by British Overseas Territories Act 2002 (c. 8), **s. 2(2)(b)**

F24 Words in s. 43 substituted (26.2.2002) by British Overseas Territories Act 2002 (c. 8), **s. 2(2)(a)**

F25 By S.I. 1986/948, **art. 7(6)**(*b*) it is provided that s. 43 shall have effect as if 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)"

F26 By S.I. 1986/948, **art. 7(6)**(*c*) it is provided that s. 43 shall have effect as if in sub-section (2) at the end there were inserted paragraph (*c*)

Status: *Point in time view as at 01/04/2003. This version of this part contains provisions that are not valid for this point in time.*
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Modifications etc. (not altering text)

C24 S. 43 amended by S.I. 1986/948, **art. 7(6)(a)**

44 Decisions involving exercise of discretion.

(1) Any discretion vested by or under this Act in the Secretary of State, a Governor or a Lieutenant-Governor shall be exercised without regard to the race, colour or religion of any person who may be affected by its exercise.

(2) [F27] . . . . . .

(3) [F27] . . . . . .

Textual Amendments

F27 S. 44(2)(3) ceased to have effect (7.11.2002) and repealed (prosp.) by virtue of Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 7(1)**, 161, 162, **Sch. 9** (with s. 159)

Modifications etc. (not altering text)

C25 Ss. 41, 42, 44–48 extended by British Nationality (Falkland Islands) Act 1983 (c. 6, SIF 87), **s. 4(2)**(*a*)–(*f*)

C26 Ss. 40–42, 44–48, 50 extended by British Nationality (Hong Kong) Act 1990 (c. 34, SIF 87), **s. 2(3)**

C27 S. 44(1)(2) amended (18.7.1996) by 1996 c. 41, **s. 2(2)**

VALID FROM 31/08/2006

[F28 44A Waiver of requirement for full capacity

Where a provision of this Act requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests.]

Textual Amendments

F28 S. 44A inserted (31.8.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 49**, 62; S.I. 2006/2226, **art. 3**, Sch. 1 (subject to transitional provisions in art. 4)

45 Evidence.

(1) Every document purporting to be a notice, certificate, order or declaration, or an entry in a register, or a subscription of an oath of allegiance, given, granted or made under this Act or any of the former nationality Acts shall be received in evidence and shall, unless the contrary is proved, be deemed to have been given, granted or made by or on behalf of the person by whom or on whose behalf it purports to have been given, granted or made.

(2) Prima facie evidence of any such document may be given by the production of a document purporting to be certified as a true copy of it by such person and in such manner as may be prescribed.

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(3) Any entry in a register made under this Act or any of the former nationality Acts shall be received as evidence (and in Scotland as sufficient evidence) of the matters stated in the entry.

(4) A certificate given by or on behalf of the Secretary of State that a person was at any time in Crown service under the government of the United Kingdom or that a person's recruitment for such service took place in the United Kingdom shall, for the purposes of this Act, be conclusive evidence of that fact.

Modifications etc. (not altering text)

C28 Ss. 41, 42, 44–48 extended by British Nationality (Falkland Islands) Act 1983 (c. 6, SIF 87), **s. 4(2)**(*a*)–(*f*)

C29 S. 45 amended by S.I. 1986/948, **art. 7(7)(a)**
S. 45 amended (18.7.1996) by 1996 c. 41, **s. 2(2)**

C30 Ss. 40–42, 44–48, 50 extended by British Nationality (Hong Kong) Act 1990 (c. 34, SIF 87), **s. 2(3)**

C31 S. 45 modified (19.3.1997) by 1997 c. 20, **s. 2(3)**

46 Offences and proceedings.

(1) Any person who for the purpose of procuring anything to be done or not to be done under this Act—

(a) makes any statement which he knows to be false in a material particular; or

(b) recklessly makes any statement which is false in a material particular,

shall be liable on summary conviction in the United Kingdom to imprisonment for a term not exceeding three months or to a fine not exceeding **[**[F29]level 5 on the standard scale**]**, or both.

(2) Any person who without reasonable excuse fails to comply with any requirement imposed on him by regulations made under this Act with respect to the delivering up of certificates of naturalisation shall be liable on summary conviction in the United Kingdom to a fine not exceeding **[**[F29]level 4 on the standard scale**]**.

(3) In the case of an offence under subsection (1)—

(a) any information relating to the offence may in England and Wales be tried by a magistrates' court if it is laid within six months after the commission of the offence, or if it is laid within three years after the commission of the offence and not more than two months after the date certified by a chief officer of police to be the date on which evidence sufficient to justify proceedings came to the notice of an officer of his police force; and

(b) summary proceedings for the offence may in Scotland be commenced within six months after the commission of the offence, or within three years after the commission of the offence and not more than two months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify proceedings came to his knowledge; and

(c) a complaint charging the commission of the offence may in Northern Ireland be heard and determined by a magistrates' court if it is made within six months after the commission of the offence, or if it is made within three years after the commission of the offence and not more than two months after the date certified by an officer of police not below the rank of assistant chief constable

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to be the date on which evidence sufficient to justify the proceedings came to the notice of the police in Northern Ireland.

(4) For the purposes of subsection (3)(b) proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay; and a certificate of the Lord Advocate as to the date on which such evidence as is mentioned in subsection (3)(b) came to his knowledge shall be conclusive evidence.

(5) For the purposes of the trial of a person for an offence under subsection (1) or (2), the offence shall be deemed to have been committed either at the place at which it actually was committed or at any place at which he may be.

(6) In their application to the Bailiwick of Jersey subsections (1) and (2) shall have effect with the omission of the words "on summary conviction".

Textual Amendments

F29 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**, (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G** and (N.I.) S.I. 1984/703 (N.I. 3), **art. 5**

Modifications etc. (not altering text)

C32 Ss. 41, 42, 44–48 extended by British Nationality (Falkland Islands) Act 1983 (c. 6, SIF 87), **s. 4(2)**(*a*)–(*f*)

C33 Ss. 40–42, 44–48, 50 extended by British Nationality (Hong Kong) Act 1990 (c. 34, SIF 87), **s. 2(3)**

C34 S. 46 modified (19.3.1997) by 1997 c. 20, **s. 2(3)**

C35 S. 46(1) amended by S.I. 1986/948, **art. 7(7)**(*b*)

47 Legitimated children.

(1) A person born out of wedlock and legitimated by the subsequent marriage of his parents shall, as from the date of the marriage, be treated for the purposes of this Act as if he had been born legitimate.

(2) A person shall be deemed for the purposes of this section to have been legitimated by the subsequent marriage of his parents if by the law of the place in which his father was domiciled at the time of the marriage the marriage operated immediately or subsequently to legitimate him, and not otherwise.

Modifications etc. (not altering text)

C36 Ss. 41, 42, 44–48 extended by British Nationality (Falkland Islands) Act 1983 (c. 6, SIF 87), **s. 4(2)**(*a*)–(*f*)

C37 Ss. 40–42, 44–48, 50 extended by British Nationality (Hong Kong) Act 1990 (c. 34, SIF 87), **s. 2(3)**

C38 Ss. 47, 48 amended by S.I. 1986/948, **art. 7(7)**(*c*)

C39 S. 47 modified (19.3.1997) by 1997 c. 20, **s. 2(3)**

48 Posthumous children.

Any reference in this Act to the status or description of the father or mother of a person at the time of that person's birth shall, in relation to a person born after the death of his father or mother, be construed as a reference to the status or description of the parent

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in question at the time of that parent's death; and where that death occurred before, and the birth occurs after, commencement, the status or description which would have been applicable to the father or mother had he or she died after commencement shall be deemed to be the status or description applicable to him or her at the time of his or her death.

Modifications etc. (not altering text)

C40 Ss. 41, 42, 44-48 extended by British Nationality (Falkland Islands) Act 1983 (c. 6, SIF 87), **s.4(2)(a)-(f)**

C41 Ss. 47, 48 amended by S.I. 1986/948, **art. 7(7)(c)**

C42 Ss. 40-42, 44-48, 50 extended by British Nationality (Hong Kong) Act 1990 (c.34, SIF 87), **s. 2(3)**

C43 S. 48 modified (19.3.1997) by 1997 c. 20, **s. 2(3)**

[F30]49 . . . . . .

Textual Amendments

F30 S. 49 repealed by British Nationality Act 1981 (c. 61, SIF 87), s. 52(7)(8), Sch. 8 para. 8, **Sch. 9**

50 Interpretation.

(1) In this Act, unless the context otherwise requires—

"the 1948 Act" means the British Nationality Act 1948;

"alien" means a person who is neither a Commonwealth citizen nor a British protected person nor a citizen of the Republic of Ireland;

[[F31]"appointed day" means the day appointed by the Secretary of State under section 8 of the British Overseas Territories Act 2002 for the commencement of Schedule 1 to that Act;

"association" means an unincorporated body of persons;

[[F32]"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.

[[F33]"British overseas territory" means a territory mentioned in Schedule 6;

"British protected person" means a person who is a member of any class of persons declared to be British protected persons by an Order in Council for the time being in force under section 38 or is a British protected person by virtue of the [M8]Solomon Islands Act 1978;

"commencement", without more, means the commencement of this Act;

"Commonwealth citizen" means a person who has the status of a Commonwealth citizen under this Act;

"company" means a body corporate;

"Crown service" means the service of the Crown, whether within Her Majesty's dominions or elsewhere;

"Crown service under the government of the United Kingdom" means Crown service under Her Majesty's government in the United Kingdom or

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under Her Majesty's government in Northern Ireland **[**[F34]or under the Scottish Administration**]**;

[F35] . . . . . .

"enactment" includes an enactment comprised in Northern Ireland legislation;

"foreign country" means a country other than the United Kingdom, a **[**[F36]British overseas territory**]**, a country mentioned in Schedule 3 and the Republic of Ireland;

"the former nationality Acts" means—

(a) the British Nationality Acts 1948 to 1965;

(b) the British Nationality and Status of Aliens Acts 1914 to 1943; and

(c) any Act repealed by the said Acts of 1914 to 1943 or by the [M9]Naturalization Act 1870;

"Governor", in relation to a **[**[F36]British overseas territory**]**, includes the officer for the time being administering the government of that territory;

"High Commissioner" includes an acting High Commissioner;

"immigration laws"—

(a) in relation to the United Kingdom, means the [M10]Immigration Act 1971 and any law for purposes similar to that Act which is for the time being or has at any time been in force in any part of the United Kingdom;

(b) in relation to a **[**[F36]British overseas territory**]** , means any law for purposes similar to the Immigration Act 1971 which is for the time being or has at any time been in force in that territory;

"the Islands" means the Channel Islands and the Isle of Man;

"minor" means a person who has not attained the age of eighteen years;

"prescribed" means prescribed by regulations made under section 41;

[[F37]"qualifying territory" means a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia;

"settled" shall be construed in accordance with subsections (2) to (4);

"ship" includes a hovercraft;

"statutory provision" means any enactment or any provision contained in—

(a) subordinate legislation (as defined in section 21(1) of the [M11]Interpretation Act 1978); or

(b) any instrument of a legislative character made under any Northern Ireland legislation;

"the United Kingdom" means Great Britain, Northern Ireland and the Islands, taken together;

"United Kingdom consulate" means the office of a consular officer of Her Majesty's government in the United Kingdom where a register of births is kept or, where there is no such office, such office as may be prescribed.

(2) Subject to subsection (3), references in this Act to a person being settled in the United Kingdom or in a **[**[F36]British overseas territory**]** are references to his being ordinarily resident in the United Kingdom or, as the case may be, in that territory without being subject under the immigration laws to any restriction on the period for which he may remain.

(3) Subject to subsection (4), a person is not to be regarded for the purposes of this Act—

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(a) as having been settled in the United Kingdom at any time when he was entitled to an exemption under section 8(3) or (4)(b) or (c) of the [M12]Immigration Act 1971 or, unless the order under section 8(2) of that Act conferring the exemption in question provides otherwise, to an exemption under the said section 8(2), or to any corresponding exemption under the former immigration laws; or

(b) as having been settled in a **[**[F36]British overseas territory**]** at any time when he was under the immigration laws entitled to any exemption corresponding to any such exemption as is mentioned in paragraph (a) (that paragraph being for the purposes of this paragraph read as if the words from "unless" to "otherwise" were omitted).

(4) A person to whom a child is born in the United Kingdom after commencement is to be regarded for the purposes of section 1(1) as being settled in the United Kingdom at the time of the birth if—

(a) he would fall to be so regarded but for his being at that time entitled to an exemption under section 8(3) of the Immigration Act 1971; and

(b) immediately before he became entitled to that exemption he was settled in the United Kingdom; and

(c) he was ordinarily resident in the United Kingdom from the time when he became entitled to that exemption to the time of the birth;

but this subsection shall not apply if at the time of the birth the child's father or mother is a person on whom any immunity from jurisdiction is conferred by or under the [M13]Diplomatic Privileges Act 1964.

(5) It is hereby declared that a person is not to be treated for the purpose of any provision of this Act as ordinarily resident in the United Kingdom or in a **[**[F36]British overseas territory**]** at a time when he is in the United Kingdom or, as the case may be, in that territory in breach of the immigration laws.

(6) For the purposes of this Act—

(a) a person shall be taken to have been naturalised in the United Kingdom if, but only if, he is—

(i) a person to whom a certificate of naturalisation was granted under any of the former nationality Acts by the Secretary of State or, in any of the Islands, by the Lieutenant-Governor; or

(ii) a person who by virtue of section 27(2) of the [M14]British Nationality and Status of Aliens Act 1914 was deemed to be a person to whom a certificate of naturalisation was granted, if the certificate of naturalisation in which his name was included was granted by the Secretary of State; or

(iii) a person who by virtue of section 10(5) of the [M15]Naturalization Act 1870 was deemed to be a naturalised British subject by reason of his residence with his father or mother;

(b) a person shall be taken to have been naturalised in a **[**[F36]British overseas territory**]** if, but only if, he is—

(i) a person to whom a certificate of naturalisation was granted under any of the former nationality Acts by the Governor of that territory or by a person for the time being specified in a direction given in relation to that territory under paragraph 4 of Schedule 3 to the [M16]West Indies Act 1967 or for the time being holding an office so specified; or

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(ii) a person who by virtue of the said section 27(2) was deemed to be a person to whom a certificate of naturalisation was granted, if the certificate of naturalisation in which his name was included was granted by the Governor of that territory; or

(iii) a person who by the law in force in that territory enjoyed the privileges of naturalisation within that territory only;

and references in this Act to naturalisation in the United Kingdom or in a **[**[F36]British overseas territory**]** shall be construed accordingly.

(7) For the purposes of this Act a person born outside the United Kingdom aboard a ship or aircraft—

(a) shall be deemed to have been born in the United Kingdom if—

(i) at the time of the birth his father or mother was a British citizen; or

(ii) he would, but for this subsection, have been born stateless,

and (in either case) at the time of the birth the ship or aircraft was registered in the United Kingdom or was an unregistered ship or aircraft of the government of the United Kingdom; but

(b) subject to paragraph (a), is to be regarded as born outside the United Kingdom, whoever was the owner of the ship or aircraft at that time, and irrespective of whether or where it was then registered.

[[F38](7A) For the purposes of this Act a person born outside a qualifying territory aboard a ship or aircraft—

(a) shall be deemed to have been born in that territory if—

(i) at the time of the birth his father or mother was a British citizen or a British overseas territories citizen; or

(ii) he would, but for this subsection, have been born stateless,

and (in either case) at the time of the birth the ship or aircraft was registered in that territory or was an unregistered ship or aircraft of the government of that territory; but

(b) subject to paragraph (a), is to be regarded as born outside that territory, whoever was the owner of the ship or aircraft at the time, and irrespective of whether or where it was then registered.

(7B) For the purposes of this Act a person born outside a British overseas territory, other than a qualifying territory, aboard a ship or aircraft—

(a) shall be deemed to have been born in that territory if—

(i) at the time of the birth his father or mother was a British overseas territories citizen; or

(ii) he would, but for this subsection, have been born stateless,

and (in either case) at the time of the birth the ship or aircraft was registered in that territory or was an unregistered ship or aircraft of the government of that territory; but

(b) subject to paragraph (a), is to be regarded as born outside that territory, whoever was the owner of the ship or aircraft at the time, and irrespective of whether or where it was then registered.**]**

(8) For the purposes of this Act an application under any provision thereof shall be taken to have been made at the time of its receipt by a person authorised to receive it on behalf of the person to whom it is made; and references in this Act to the date of such an application are references to the date of its receipt by a person so authorised.

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(9) For the purposes of this Act—

(a) the relationship of mother and child shall be taken to exist between a woman and any child (legitimate or illegitimate) born to her; but

(b) subject to section 47, the relationship of father and child shall be taken to exist only between a man and any legitimate child born to him;

and the expressions

"mother",
"father",
"parent",
"child" and
"descended" shall be construed accordingly.

(10) For the purposes of this Act—

(a) a period "from" or "to" a specified date includes that date; and

(b) any reference to a day on which a person was absent from the United Kingdom or from a **[**[F36]British overseas territory**]** or from the **[**[F39]British overseas territories**]** is a reference to a day for the whole of which he was so absent.

(11) For the purposes of this Act—

(a) a person is of full age if he has attained the age of eighteen years, and of full capacity if he is not of unsound mind; and

(b) a person attains any particular age at the beginning of the relevant anniversary of the date of his birth.

(12) References in this Act to any country mentioned in Schedule 3 include references to the dependencies of that country.

(13) Her Majesty may by Order in Council subject to annulment in pursuance of a resolution of either House of Parliament amend Schedule 6 in any of the following circumstances, namely—

(a) where the name of any territory mentioned in it is altered; or

(b) where any territory mentioned in it is divided into two or more territories.**]]]]**

Textual Amendments

F31 Definition in s. 50(1) inserted (21.5.2002) by British Overseas Territories Act 2002 (c. 8), s. 5, **Sch. 1 para. 5(2)**; S.I. 2002/1252, **art. 2**

F32 By S.I. 1986/948, **art. 7(8)** it is provided that s. 50 shall have effect as if in para. (1) after the definition of "association" there were inserted the definitions of "British National (Overseas)" and "British Overseas citizen"

F33 Definition in s. 50(1) inserted (26.2.2002) by British Overseas Territories Act 2002 (c. 8), **s. 1(1)(a)**

F34 S. 50: words in definition of "Crown service under the government of the United Kingdom" inserted (6.5.1999) by S.I. 1999/1042, art. 3, **Sch. 1 Pt. I para. 10**

F35 Definition in s. 50(1) repealed (26.2.2002) by British Overseas Territories Act 2002 (c. 8), s. 7, **Sch. 2**

F36 Words in s. 50 substituted (26.2.2002) by British Overseas Territories Act 2002 (c. 8), **s. 1(1)(b)**

F37 Definition in s. 50(1) inserted (21.5.2002) by British Overseas Territories Act 2002 (c. 8), s. 5, **Sch. 1 para. 5(2)**; S.I. 2002/1252, **art. 2**

F38 S. 50(7A)(7B) substituted (21.5.2002) for words by British Overseas Territories Act 2002 (c. 8), s. 5, **Sch.1 para. 5(3)**

F39 Words in s. 50 substituted (26.2.2002) by British Overseas Territories Act 2002 (c. 8), **s. 1(1)(b)**

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Modifications etc. (not altering text)

C44 S. 50 extended by British Nationality (Falkland Islands) Act 1983 (c.6, SIF 87), **s. 4(2)(g)**

C45 S. 50 applied by S.I. 1986/948, **art. 1(4)**

C46 S. 50 applied (21.7.1993) by S.I. 1993/1795, **art. 1(4)**.

C47 S. 50 modified (19.3.1997) by 1997 c. 20, **s. 2(3)**

C48 S. 50 amended (18.7.1996) by 1996 c. 41, **s. 2(2)**

C49 S. 50(5) modified (7.11.2002, partly retrospective) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 11**

C50 S. 50(8) applied (8.12.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 6) Order 2003 (S.I. 2003/3156), **art. 4**

Marginal Citations

M8 1978 c. 15.

M9 1870 c. 14.

M10 1971 c. 77.

M11 1978 c. 30.

M12 1971 c. 77.

M13 1964 c. 81.

M14 1914 c. 17.

M15 1970 c. 14.

M16 1967 c. 4.

VALID FROM 13/01/2010

[F40 50A Meaning of references to being in breach of immigration laws

(1) This section applies for the construction of a reference to being in the United Kingdom "in breach of the immigration laws" in—

(a) section 4(2) or (4);

(b) section 50(5); or

(c) Schedule 1.

(2) It applies only for the purpose of determining on or after the relevant day—

(a) whether a person born on or after the relevant day is a British citizen under section 1(1),

(b) whether, on an application under section 1(3) or 4(2) made on or after the relevant day, a person is entitled to be registered as a British citizen, or

(c) whether, on an application under section 6(1) or (2) made on or after the relevant day, the applicant fulfils the requirements of Schedule 1 for naturalisation as a British citizen under section 6(1) or (2).

(3) But that is subject to section 48(3)(d) and (4) of the Borders, Citizenship and Immigration Act 2009 (saving in relation to section 11 of the Nationality, Immigration and Asylum Act 2002).

(4) A person is in the United Kingdom in breach of the immigration laws if (and only if) the person—

(a) is in the United Kingdom;

(b) does not have the right of abode in the United Kingdom within the meaning of section 2 of the Immigration Act 1971;

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(c) does not have leave to enter or remain in the United Kingdom (whether or not the person previously had leave);

(d) does not have a qualifying CTA entitlement;

(e) is not entitled to reside in the United Kingdom by virtue of any provision made under section 2(2) of the European Communities Act 1972 (whether or not the person was previously entitled);

(f) is not entitled to enter and remain in the United Kingdom by virtue of section 8(1) of the Immigration Act 1971 (crew) (whether or not the person was previously entitled); and

(g) does not have the benefit of an exemption under section 8(2) to (4) of that Act (diplomats, soldiers and other special cases) (whether or not the person previously had the benefit of an exemption).

(5) For the purposes of subsection (4)(d), a person has a qualifying CTA entitlement if the person—

(a) is a citizen of the Republic of Ireland,

(b) last arrived in the United Kingdom on a local journey (within the meaning of the Immigration Act 1971) from the Republic of Ireland, and

(c) on that arrival, was a citizen of the Republic of Ireland and was entitled to enter without leave by virtue of section 1(3) of the Immigration Act 1971 (entry from the common travel area).

(6) Section 11(1) of the Immigration Act 1971 (person deemed not to be in the United Kingdom before disembarkation, while in controlled area or while under immigration control) applies for the purposes of this section as it applies for the purposes of that Act.

(7) This section is without prejudice to the generality of—

(a) a reference to being in a place outside the United Kingdom in breach of immigration laws, and

(b) a reference in a provision other than one specified in subsection (1) to being in the United Kingdom in breach of immigration laws.

(8) The relevant day for the purposes of subsection (2) is the day appointed for the commencement of section 48 of the Borders, Citizenship and Immigration Act 2009 (which inserted this section).**]**

Textual Amendments

F40 S. 50A inserted (13.1.2010) by Borders, Citizenship and Immigration Act 2009 (c. 11), **ss. 48(1)**, 58 ; S.I. 2009/2731, **art. 4(g)**

Modifications etc. (not altering text)

C51 S. 50A excluded (13.1.2010) by Borders, Citizenship and Immigration Act 2009 (c. 11), **ss. 48(4)**, 58; S.I. 2009/2731, **art. 4(g)**

[[F41]50B Immigration restrictions to be disregarded in certain cases

(1) A person exercising a freedom of movement right at any time falling within the remedial period is treated for the purposes of this Act as not subject at that time under

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the immigration laws to any restriction on the period for which they may remain in the United Kingdom.

(2) In this section—

"freedom of movement right" means—

(a) a right to reside in Great Britain and Northern Ireland that arises under or by virtue of—

(i) section 2(1) or (2) of the European Communities Act 1972, or

(ii) any other enactment so far as passed or made, or operating, for a purpose mentioned in section 2(2)(a) or (b) of that Act, or

(b) a right to reside in any of the Islands that is conferred by reference to, or that otherwise corresponds to or is similar to, a right within paragraph (a);

"the remedial period" means—

(a) where the freedom of movement right is a right to reside in Great Britain and Northern Ireland, the period beginning with 1 January 1983 and ending with 1 October 2000;

(b) where the freedom of movement right is a right to reside in the Bailiwick of Guernsey, the period beginning with 1 August 1993 and ending with 30 September 2004;

(c) where the freedom of movement right is a right to reside in the Bailiwick of Jersey, the period beginning with 1 January 1983 and ending with 8 February 2004;

(d) where the freedom of movement right is a right to reside in the Isle of Man, the period beginning with 1 October 1994 and ending with 1 October 2000.**]**

Textual Amendments

F41 S. 50B inserted (retrospectively) by British Nationality (Regularisation of Past Practice) Act 2023 (c. 27), **s. 1**

51 Meaning of certain expressions relating to nationality in other Acts and instruments.

(1) Without prejudice to subsection (3)(c), in any enactment or instrument whatever passed or made before commencement

"British subject" and

"Commonwealth citizen" have the same meaning, that is—

(a) in relation to any time before commencement—

(i) a person who under the 1948 Act was at that time a citizen of the United Kingdom and Colonies or who, under any enactment then in force in a country mentioned in section 1(3) of that Act as then in force, was at that time a citizen of that country; and

(ii) any other person who had at that time the status of a British subject under that Act or any other enactment then in force;

(b) in relation to any time after commencement, a person who has the status of a Commonwealth citizen under this Act.

(2) In any enactment or instrument whatever passed or made after commencement—

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"British subject" means a person who has the status of a British subject under this Act;

"Commonwealth citizen" means a person who has the status of a Commonwealth citizen under this Act.

(3) In any enactment or instrument whatever passed or made before commencement—

(a) "citizen of the United Kingdom and Colonies"—

(i) in relation to any time before commencement, means a person who under the 1948 Act was at that time a citizen of the United Kingdom and Colonies;

(ii) in relation to any time after commencement, means a person who under **[**[F42]the British Nationality Acts 1981 and 1983**]**[F43]or the British Overseas Territories Act 2002**]** is a British citizen, a **[**[F44]British overseas territories citizen**]** or a British Overseas citizen **[**[F45]or who under the Hong Kong (British Nationality) Order 1986 is a British National (Overseas)**]**;

(b) any reference to ceasing to be a citizen of the United Kingdom and Colonies shall, in relation to any time after commencement, be construed as a reference to becoming a person who is neither a British citizen nor a **[**[F44]British overseas territories citizen**]**[F46]nor a British National (Overseas)**]** nor a British Overseas citizen;

(c) any reference to a person who is a British subject (or a British subject without citizenship) by virtue of section 2, 13, or 16 of the 1948 Act or by virtue of, or of section 1 of, the [M17]British Nationality Act 1965 shall, in relation to any time after commencement, be construed as a reference to a person who under this Act is a British subject.

(4) In any statutory provision, whether passed or made before or after commencement, and in any other instrument whatever made after commencement

"alien", in relation to any time after commencement, means a person who is neither a Commonwealth citizen nor a British protected person nor a citizen of the Republic of Ireland.

(5) The preceding provisions of this section—

(a) shall not apply in cases where the context otherwise requires; and

(b) shall not apply to this Act or to any instrument made under this Act.

Textual Amendments

F42 Words substituted by British Nationality (Falkland Islands) Act 1983 (c. 6, SIF 87), **s. 4(3)**

F43 Words in s. 51(3)(a)(ii) inserted (21.5.2002) by British Overseas Territories Act 2002 (c. 8), s. 5, **Sch. 1 para. 6**; S.I. 2002/1252, **art. 2**

F44 Words in s. 51 substituted (26.2.2002) by British Overseas Territories Act 2002 (c. 8), **s. 2(2)(b)**

F45 By S.I. 1986/948, **art. 7(9)**(*a*) it is provided that s. 51 shall have effect as if in subsection (3) at the end of para. (*a*)(ii) there were inserted the words "or who under the Hong Kong (British Nationality) Order 1986 is a British National (Overseas)"

F46 By S.I. 1986/948, **art. 7(9)**(*b*) it is provided that s. 51 shall have effect as if in subsection (3) in para. (*b*) after the words "British Dependent Territories citizen" there were inserted the words "nor a British National (Overseas)"

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Modifications etc. (not altering text)

C52 S. 51(3) modified (19.3.1997) by 1997 c. 20, **s. 2(3)**

C53 S. 51(3) amended (18.7.1996) by 1996 c. 41, **s. 2(2)**

Marginal Citations

M17 1965 c. 34.

52 Consequential amendments, transitional provisions, repeals and savings.

(1) In any enactment or instrument whatever passed or made before commencement, for any reference to section 1(3) of the 1948 Act (list of countries whose citizens are Commonwealth citizens under that Act) there shall be substituted a reference to Schedule 3 to this Act, unless the context makes that substitution inappropriate.

(2) Subject to subsection (3), Her Majesty may by Order in Council make such consequential modifications of—

(a) any enactment of the Parliament of the United Kingdom passed before commencement;

(b) any provision contained in any Northern Ireland legislation passed or made before commencement; or

(c) any instrument made before commencement under any such enactment or provision,

as appear to Her necessary or expedient for preserving after commencement the substantive effect of that enactment, provision or instrument.

(3) Subsection (2) shall not apply in relation to—

(a) the [M18]Immigration Act 1971; or

(b) any provision of this Act not contained in Schedule 7.

(4) Any Order in Council made under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Any provision made by Order in Council under subsection (2) after commencement may be made with retrospective effect as from commencement or any later date.

[X2](6) The enactments specified in Schedule 7 shall have effect subject to the amendments there specified, being amendments consequential on the provisions of this Act.

(7) This Act shall have effect subject to the transitional provisions contained in Schedule 8.

[X2](8) The enactments mentioned in Schedule 9 are hereby repealed to the extent specified in the third column of that Schedule.

(9) Without prejudice to section 51, nothing in this Act affects the operation, in relation to any time before commencement, of any statutory provision passed or made before commencement.

(10) Nothing in this Act shall be taken as prejudicing the operation of sections 16 and 17 of the [M19]Interpretation Act 1978 (which relate to the effect of repeals).

(11) In this section

"modifications" includes additions, omissions and alterations.

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Editorial Information

X2 The text of s. 52(6)(8) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

M18 1971 c. 77.
M19 1978 c. 30.

53 Citation, commencement and extent.

(1) This Act may be cited as the British Nationality Act 1981.

(2) This Act, except the provisions mentioned in subsection (3), shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and references to the commencement of this Act shall be construed as references to the beginning of that day.

(3) Section 49 and this section shall come into force on the passing of this Act.

(4) This Act extends to Northern Ireland.

(5) The provisions of this Act, except those mentioned in subsection (7), extend to the Islands and all **[**[F47]British overseas territories**]** ; and section 36 of the [M20]Immigration Act 1971 (power to extend provisions of that Act to Islands) shall apply to the said excepted provisions as if they were provisions of that Act.

[F48](6) . . . . . .

(7) The provisions referred to in subsections (5) [F49]. . . are—

(a) section 39 and Schedule 4;

(b) section 52(7) and Schedule 8 so far as they relate to the Immigration Act 1971; and

(c) section 52(8) and Schedule 9 so far as they relate to provisions of the Immigration Act 1971 other than Schedule 1.

Subordinate Legislation Made

P1 Power of appointment under s. 53(2) fully exercised: 1.1.1983 appointed by S.I. 1982/933

Textual Amendments

F47 Words in s. 53(5) substituted (26.2.2002) by British Overseas Territories Act 2002 (C. 8), {s. 1(1)(b)}
F48 S. 53(6) repealed (8.11.1995) by 1995 c. 44, s. 1, **Sch. 1 Pt.II**
F49 Words in s. 53(7) repealed (8.11.1995) by 1995 c. 44, s. 1, **Sch. 1 Pt.II**

Marginal Citations

M20 1971 c. 77.

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