

BRITISH OVERSEAS TERRITORIES ACT 2002

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the British Overseas Territories Act which received Royal Assent on 26 February 2002. They have been prepared by the Foreign and Commonwealth Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. There are fourteen British overseas territories: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St Helena and Dependencies, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, and the Turks and Caicos Islands.
4. After consultation with these territories, the British Government published in March 1999 a White Paper entitled “Partnership for Progress and Prosperity: Britain and the Overseas Territories” (Cm 4264). This dealt with several aspects of Britain’s relationship with the territories, including the decision that they should be known as “overseas territories” in place of outdated terms such as “dependent territories” or “colonies”. The term “overseas territories” is now in common use both within the territories and as between their governments and the British Government.
5. A key feature of the White Paper is the question of citizenship. Under the British Nationality Act 1981 (“the 1981 Act”) most of the people of the overseas territories have British Dependent Territories citizenship. This status is acquired as a result of a connection with one or more territories (such as birth, adoption, registration or naturalisation there) or by descent. British Dependent Territories citizens (BDTC) do not have the right of abode in the United Kingdom. Most live in the West Indian overseas territories, Bermuda, St Helena, Gibraltar and the Falkland Islands. Some live outside the territories, including BDTC who are former inhabitants of the British Indian Ocean Territory. The Government decided to include these persons in the offer of British citizenship following a judgment in the High Court in November 2000 which upheld their right to return to that territory. The total number of BDTC is around 200,000.
6. Under section 5 of the 1981 Act BDTC from Gibraltar are, upon application, entitled to be registered as British citizens. The British Nationality (Falkland Islands) Act 1983 granted British citizenship to BDTC from the Falkland Islands. Accordingly many BDTC from Gibraltar and the Falklands also possess British citizenship, and as British citizens they have the right of abode in the United Kingdom. Without disturbing these arrangements, the White Paper determined that British citizenship, and with it the right of abode, should be granted to BDTC of most other territories. In accordance with

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the White Paper, the Act excludes BDTC connected with the Sovereign Base Areas in Cyprus, because of the special position of this territory as a military base.

7. The Act is designed to give effect to these arrangements, by supplementing or amending the 1981 Act so as –
 - (a) to replace references to “dependent territory” with “British overseas territory” and to rename “British Dependent Territories citizenship” as “British overseas territories citizenship”;
 - (b) to grant British citizenship to everyone who is a British overseas territories citizen (BOTC) at commencement (except for BOTC of the Sovereign Base Areas);
 - (c) to prescribe how a person who becomes a BOTC after commencement can acquire British citizenship by registration;
 - (d) to prescribe how, after commencement, a person can acquire British citizenship by virtue of a connection with a British overseas territory (for example, by being born or adopted there).

BOTC who become British citizens will retain their status as BOTC unless they renounce it; and they will be able to renounce British citizenship if they do not want it. This is the position Falkland Islanders already enjoy, and it requires no amendment of the 1981 Act.

8. The Act will extend to the United Kingdom, the Channel Islands and the Isle of Man, and all the overseas territories.

THE ACT

9. The Act has six substantive sections and one substantive Schedule.

COMMENTARY ON SECTIONS

Sections 1 and 2: Change of names

10. *Section 1* changes references to “dependent territory” in the 1981 Act (and related references) to “British overseas territory”. It also introduces the latter term into the Interpretation Act 1978 so that it can be conveniently used in future legislation.
11. *Section 2* changes the name of “British Dependent Territories citizenship” and “British Dependent Territories citizen” to “British overseas territories citizenship” and “British overseas territories citizen” respectively. References to the old terms in existing legislation are to be read as the new terms.
12. These name changes are simply alterations of labels; they involve no change of substantive law.

Section 3: Conferral of British citizenship on British overseas territories citizens

13. *Subsection (1)* sets out the basic rule that anyone who is a British overseas territories citizen (BOTC) (as renamed) immediately before commencement is to become a British citizen on commencement. The commencement date is to be appointed by the Secretary of State by order made by statutory instrument: see section 8(2).
14. *Subsection (2)* sets out the only exception to the basic rule. Subsection (1) is not to apply to a person who is a BOTC by virtue only of a connection with the Sovereign Base Areas in Cyprus. So, for example, a person who is a BOTC solely because of birth in the Sovereign Base Areas is excluded from acquiring British citizenship under subsection (1). But such a person would not be excluded if, having been born in the

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Sovereign Base Areas on or after 1 January 1983, he was also a BOTC by virtue of a parental connection with, say, Anguilla or Bermuda.

15. *Subsection (3)* defines which of the persons who become British citizens under subsection (1) are to be treated as “British citizens by descent” for the purposes of the 1981 Act. A person becoming a British citizen under subsection (1) is a British citizen by descent if --
- (a) immediately before commencement he was a BOTC by descent, and
 - (b) if he was already a British citizen by virtue of the application of existing nationality law, he was a British citizen by descent.

In other words, if you are a BOTC by descent at commencement you will be a British citizen by descent, unless you are also a British citizen otherwise than by descent at commencement.

It is necessary to define those persons who are to be British citizens by descent, because under the 1981 Act British citizenship can in general only be passed by descent to one generation; in other words British citizens by descent cannot normally pass their citizenship on to their children automatically.

Section 4: Acquisition of British citizenship by British overseas territories citizens by registration

16. *Section 4* inserts into the 1981 Act a new section 4A to deal with future applications to register as a British citizen a person who is a BOTC. The Secretary of State is to have discretion to register a BOTC as a British citizen, subject to the exceptions listed in the new section 4A(2).
17. These exceptions are –
- (a) a BOTC who has that status solely by virtue of a connection with the Sovereign Base Areas in Cyprus;
 - (b) a BOTC who has formally renounced British citizenship.

A BOTC falling into either of these categories will not be able to acquire British citizenship under the new section 4A of the 1981 Act. This is without prejudice to other provisions of the 1981 Act which might avail such a person.

Section 5 and Schedule 1: Acquisition of British citizenship by reference to the British overseas territories

18. *Section 5 and Schedule 1* make a series of amendments to the 1981 Act relating to the acquisition of British citizenship by reference to the overseas territories.
- The amendments introduce two new terms into the 1981 Act: “the appointed day” and “qualifying territory” (see *paragraph 5* of Schedule 1, amending section 50(1) of the 1981 Act).
- The “appointed day” is the date of commencement of Schedule 1 (that is, the date appointed by the Secretary of State by order under section 8(2)).
 - A “qualifying territory” is a British overseas territory other than the Sovereign Base Areas.

19. *Schedule 1, paragraph 1* deals with acquisition of British citizenship by birth or adoption. In general it amends section 1 of the 1981 Act so as to put the qualifying territories in the same position as the United Kingdom. *Paragraph 1(2)* has the effect that a person born on or after the appointed day in a qualifying territory will become

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a British citizen if at the time of the birth his or her father or mother is either a British citizen or settled in that territory. This reflects the basic rule on acquisition of British citizenship by birth in the United Kingdom.

20. *Paragraph 1(3)* deals with foundlings. The effect is that a new-born infant who is found on or after the appointed day abandoned in a qualifying territory is (unless the contrary is shown) to be deemed to have been born in that territory on or after the appointed day to a parent who at the time of birth was a British citizen or settled in that territory. Such a foundling would therefore acquire British citizenship in the same way as a new-born infant found abandoned in the United Kingdom in similar circumstances.
21. *Paragraphs 1(4) and (5)* deal with adoption. The effect is that a minor adopted on or after the appointed day by order of a court in a qualifying territory will become a British citizen if the adopter is a British citizen (or in the case of a joint adoption, one of the adopters is a British citizen). *Paragraph 1(5)* will have effect until the new section 1(5) of the 1981 Act, inserted by the Adoption (Intercountry Aspects) Act 1999, comes into force. *Paragraph 1(4)* will then have effect instead, but the legal effect of the two subparagraphs is the same.
22. *Schedule 1, paragraph 2* deals with citizenship by descent. It amends section 2 of the 1981 Act to assimilate the qualifying territories to the United Kingdom for the purpose of acquisition of British citizenship by descent. The effect is that a person born outside the United Kingdom and the qualifying territories (on or after the appointed day) will become a British citizen if at the time of the birth his or her father or mother is either –
 - (a) a British citizen otherwise than by descent; or
 - (b) a British citizen serving abroad in Crown service under the Government of the UK or of a qualifying territory having been recruited in the UK or a qualifying territory; or
 - (c) a British citizen serving abroad in service designated under section 2(3) of the 1981 Act by the Secretary of State (service closely associated with the activities outside the UK of HM Government in the UK or a qualifying territory) having been recruited in the UK or a qualifying territory; or
 - (d) a British citizen serving abroad in service under a European Community institution, having been recruited in a European Community Member State.

The provision made by this paragraph only affects persons born after the commencement of the Schedule, not those already born.

23. *Schedule 1, paragraph 3* amends section 3 of the 1981 Act, which deals with the registration of minors as British citizens. The effect is to assimilate the qualifying territories with the United Kingdom for the purpose of calculating periods of presence which would entitle an infant or a minor, who was born outside the UK or the qualifying territories on or after the appointed day, to be registered as a British citizen.

This provision also only affects persons born after the commencement of the Schedule, not those already born.

24. *Schedule 1, paragraph 5* amends section 50(1) of the 1981 Act (list of defined terms), as noted in paragraph 18 above. It also amends section 50(7) of the 1981 Act to make equivalent provision as between the United Kingdom and the qualifying territories for determining when a person born aboard a ship or aircraft is to be deemed born in the United Kingdom or a qualifying territory.
25. *Schedule 1, paragraphs 4 and 6* make consequential amendments to the 1981 Act to take account of the acquisition of British citizenship by virtue of the Act.

Section 6: The Ilois: Citizenship

26. *Section 6* confers British citizenship and/or British overseas territories citizenship, with effect from commencement of this section, on persons connected by descent with the British Indian Ocean Territory who fulfil certain conditions. The commencement date is to be appointed by the Secretary of State by order made by statutory instrument: see section 8(2).
27. The conditions which must be fulfilled for conferral of British citizenship are set out in *subsection (1)*.
- They are that the person -
- (a) was born on or after 26 April 1969 and before 1 January 1983, and
 - (b) was born to a woman who at the time was a citizen of the United Kingdom and Colonies by virtue of her birth in the British Indian Ocean Territory, and
 - (c) immediately before commencement was neither a British citizen nor a

Botc.

Subsection (2) provides that a person who becomes a British citizen under subsection (1) is a British citizen by descent for the purposes of the 1981 Act.

28. The conditions which must be fulfilled for conferral of British overseas territories citizenship are set out in *subsection (3)*.

The first two are the same as for conferral of British citizenship under subsection (1): see paragraph 27(a) and (b) above. The third is that the person was not a BOTC immediately before commencement.

Subsection (4) deems a BOTC by virtue of subsection (3) a BOTC by descent for the purposes of the 1981 Act.

Section 7 and Schedule 2: Repeals

29. *Schedule 2* repeals provisions of the British Nationality Act 1981 and the British Nationality (Falkland Islands) Act 1983.
- The words “which is for the time being a colony” in section 43(1)(b) of the 1981 Act are removed because they are unnecessary;
 - the definition of “dependent territory” in section 50(1) of the 1981 Act is repealed because the territories are now known as “British overseas territories”, which has its own definition;
 - section 1(2) to (5) of the 1983 Act is repealed as being superseded entirely by the amendments to section 1 of the 1981 Act (in other words, the provision that section 1(2) to (5) makes for the Falkland Islands is now made for all the qualifying territories, including the Falkland Islands, by section 1 of the 1981 Act, as amended);
 - section 2 of the 1983 Act is repealed because the persons who could have applied under that section for registration as British citizens can now apply more easily under the new section 4A of the 1981 Act.

COMMENCEMENT

30. The provisions relating to citizenship (*sections 3 to 6, Schedule 1* and the related repeals) will come into force on a day to be appointed by the Secretary of State by order made by statutory instrument. The other provisions will come into force on Royal Assent.

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HANSARD REFERENCES

31. The following table sets out the date and Hansard references for each stage of this Act's passage through Parliament.

House of Lords		
Introduction	21 June 2001	Vol 626, Col 26
Second Reading	10 July 2001	Vol 626, Cols 1014-1037
Committee	24 July 2001	Vol 626, Cols 1862-1895
Report	23 October 2001	Vol 627, Col 944
Third Reading	30 October 2001	Vol 627, Cols 1299-1301
Consideration of Commons amendment	26 February 2002	Vol 631, Cols 1319-1322
House of Commons		
Introduction	30 October 2001	
Second Reading	22 November 2001	Vol 375, Cols 477-546
Committee	6 December 2001	Hansard Standing Committee D
Report and Third Reading	13 February 2002	Vol 380, Cols 270-283

Royal Assent - 26 February 2002	House of Lords Hansard Vol 631, Col 1409
	House of Commons Hansard Vol 380, Col 679