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The British Overseas Territories Bill [HL]

Bill 40 of 2001-2002

The *British Overseas Territories Bill* is intended to enact the Government's commitment, announced in March 1999, to extend full British citizenship to all those who, on enactment, are British Dependent Territories citizens. It will also change references in existing legislation to the name of those territories to British Overseas Territories.

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Summary of main points

The *British Overseas Territories Bill* is intended to enact the Government's commitment, announced in March 1999, to extend full British citizenship to those who, on enactment, are British Dependent Territories citizens. The only British Dependent Territories citizens not to benefit from this change would be those who derive such citizenship only by virtue of a connection with the Sovereign Base Areas of Cyprus.

The Bill would also change references in existing legislation to the name of those territories to British Overseas Territories.

Broadly speaking, the Bill has been well received. Where criticisms have been voiced, these have tended to centre on issues outside the scope of the Bill (which commentators consider should also be dealt with) rather than the measures contained within it.

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I Current nationality law: British Dependent Territories citizenship

The *British Nationality Act 1948* conferred citizenship of the United Kingdom and Colonies (CUKC) on people from the United Kingdom and its remaining colonies.¹ One of the aims of the *British Nationality Act 1981* was to bring citizenship and immigration law into line. The status of CUKC was abolished and three new nationalities created:

- British citizens (for CUKCs who had the right of abode)
- British Dependent Territories citizens (for CUKCs who derived that status from a link with an existing colony or dependency) and
- British Overseas citizens (for CUKCs who did not qualify under either of these headings).

Only the first of these confers right of abode in the United Kingdom.

The other current types of British nationality are:²

- British Nationals (Overseas): people from Hong Kong who applied for this status before 1997 and who did not or could not register as British citizens under one of the 1990-1997 Acts
- British Protected Persons: people from places that were protectorates rather than colonies (mainly in the Indian sub-continent and Africa) and
- British subjects: mainly people from the Indian sub-continent who were born before 1948, were formerly British subjects without citizenship and did not become citizens of the United Kingdom and Colonies or Indian/Pakistani citizens.

The Home Secretary has indicated that he intends to publish a white paper and, in due course, legislation, which will (he has said) provide a comprehensive approach to asylum, nationality and immigration.^{3,4}

Citizens of the British Dependent Territories (BDTCs) can acquire entitlement to British citizenship if they can qualify under the immigration rules to enter and remain for settlement in the UK. They are then entitled to register as British citizens as soon as they

¹ Source: Joint Council for the Welfare of Immigrants (1991) *Immigration, Nationality and Refugee Law Handbook: A User's Guide*

² See Joint Council for the Welfare of Immigrants (1991) *Immigration, Nationality and Refugee Law Handbook: A User's Guide*: page 361

³ HC Deb 29 October 2001 Col 627

⁴ Home Office officials have indicated that the white paper will be published early in 2002 (personal communication: 12 November 2001)

have completed five years' residence. Gibraltarians who are BDTCs enjoy freedom of movement rights in Europe as British nationals.

The UK's dependent territories are:⁵

Inhabited Dependent Territories

Anguilla
Bermuda
British Virgin Islands
Cayman Islands
Falkland Islands
Gibraltar
Montserrat
Pitcairn Islands
St Helena (with sub-dependencies Tristan da Cunha and Ascension Island)
Turks and Caicos Islands

Dependent Territories with no permanent indigenous resident population

British Antarctic Territory
British Indian Ocean Territory
South Georgia and the South Sandwich Islands

II Review of policy towards British Dependent Territories

On 27 August 1997, the then Foreign Secretary, Robin Cook, announced a review of policy towards the dependent territories. Amongst other issues, this considered whether citizens of the territories should be offered full British citizenship (which would confer the right to live and work in the United Kingdom). In February 1998, in answering a question about the progress of the review, he stated:⁶

We have also announced that the Government are exploring the possibility of granting British citizenship to all the citizens of those overseas territories who do not already have it. We are examining the matter sympathetically and urgently. We are currently in discussion on all elements of that package with the Governments of the overseas territories.

[...]

⁵ Source: Foreign Affairs Committee's Dependent Territories Review: Interim Report, January 1998 1997-98, HC 347

⁶ HC Deb 10 February 1998 Col 129-131

Ms Abbott: The Foreign Secretary will be aware that his speech at the dependent territories conference last week was widely appreciated by representatives of the territories that attended. On the question of nationality, does he agree that we are talking only about 180,000 people? The largest single territory, Bermuda, has only 60,000 people, none of whom are likely to want to leave their very high standard of living to come here. Overseas territories simply want help with access to education and an end to the humiliation of black politicians and white politicians having to go through different channels at Heathrow airport. Does he recognise that it would be widely appreciated outside the House, as a graceful gesture as we approach the millennium, if citizenship were granted to overseas territories citizens?

Mr. Cook: I think that I would be wise to welcome my hon. Friend's appreciation while it is available. I fully agree with what she has just said. She slightly overstates the number of people concerned, because citizenship is already available to the citizens of Gibraltar and the Falkland Islands. That of course gives rise to some sensitivity in other territories of a different racial mix. She also rightly identified two points of great irritation to the citizens of dependent territories: when they come to Britain they have to go through the "other nationality" channel, and if they go to Europe, they need a visa. I hope that it will be possible for us to remove those irritations.

[...]

Our proposal is to improve the consistency of treatment of citizens of overseas territories. At present, two territories have citizenship and the rest do not. Our proposal provides even-handed and consistent treatment for all our remaining overseas territories. Those who still represent or live in our overseas territories find it hard to be told that they cannot have citizenship because of what were the rules for Hong Kong, but now it is no longer a dependent territory.

In March 1999, Robin Cook announced the outcome of the review and publication of a white paper *Partnership for Progress and Prosperity: Britain and the Overseas Territories*.^{7,8}

I can announce today that we will be offering British citizenship to all residents of the overseas territories who wish to take it up. That improved status will be welcomed throughout the overseas territories. It will give their residents the right to travel freely throughout the European Union and enable their young people to support themselves through work experience while they study in Britain.

We do not expect that change of status to result in any substantial number of people taking up permanent residence in the United Kingdom--70 per cent. of the

⁷ HC Deb 17 March 1999 Col 1126

⁸ *Partnership for Progress and Prosperity: Britain and the Overseas Territories* Foreign and Commonwealth Office March 1999(Cm 4264) – available at <http://files.fco.gov.uk/otd/wp/main.pdf>

citizens of the overseas territories have a higher per capita income than citizens of the United Kingdom, and their residents have no incentive to leave on a permanent basis.

The offer of right of abode will be made on a non- reciprocal basis. The unanimous view in consultations with the overseas territories was that they were anxious that their small communities did not have the capacity to absorb uncontrolled numbers of new residents. Our decision on that follows the precedent set by Gibraltar and the Falkland Islands, whose existing right of abode is also non-reciprocal.

We are not extending the offer of citizenship to British dependent territories citizens who were associated with the British Indian Ocean territory⁹ and the sovereign base areas in Cyprus, all of whom have alternative nationality.

III British Dependent Territories: immigration issues

The general policy governing entry to and permission to take employment in the United Kingdom is set down in the immigration rules.¹⁰ Additionally, there have been other policies (some still in force, others discontinued) applicable to some or all of the British Dependent Territories.

A. Employment concession for people from St Helena and Tristan da Cunha

There is a concession whereby people from St Helena and Tristan da Cunha may be admitted to the United Kingdom for employment outside the terms of the Immigration Rules. This is described in the Immigration Directorate instructions on the *Race Relations (Amendment) Act 2000*, which permits Ministers to make exceptions in the field of immigration to the requirement not to discriminate on grounds of nationality, ethnic or national origin:¹¹

⁹ Former inhabitants of the British Indian Ocean Territory who are British Dependent Territories citizens have now been brought within the scope of the Bill. The Explanatory Notes observe that:

[...] 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 judgement in the High Court in October 2000 which upheld their right to return to that territory. [*British Overseas Territories Bill [HL]: Explanatory Notes*: Foreign and Commonwealth Office: page 5]

¹⁰ HC 395 (May 1994) and subsequent amendments – available on Home Office website at <http://www.ind.homeoffice.gov.uk/default.asp?PageId=985>

¹¹ *Immigration Directorates' Instructions: Chapter 1 Section 11: Race Relations (General)* - available from IND website at <http://www.ind.homeoffice.gov.uk/default.asp?PageId=1342>

5. MINISTERIAL AUTHORISATIONS

5.1 Ministers have approved authorisations to permit discrimination on the grounds of nationality or ethnic or national origin in specified areas of activity. The full text of the authorisations are reproduced in Annex B. The authorisations can be amended or added to at any time. Where changes in policy or procedure will result in discriminatory activity which is not covered by an existing authorisation, a new authorisation will be needed. The procedure to follow in these instances is set out in paragraph 5.3 below.

B. Quota for unskilled workers

There used to be a work permit quota for unskilled workers from the dependent territories.¹² This quota was phased out between 1991 (when the total was 170) and 1994 (by which time it had been reduced to 80). Announcing its demise in July 1991, the then Home Secretary, Michael Howard, said:¹³

It has been decided that there should be a quota for 1991 of 170 permits for use by dependent territories, with a maximum of 125 for Hong Kong.

We have also taken the opportunity to review the longer-term position of the special dependent territories work permit quota. Our conclusion is that it is now anomalous and inconsistent with our immigration control, in that it grants permits for jobs with skill levels below those required under the general work permit scheme. With increasing pressures on immigration worldwide, it is important that our rules are consistent.

The quota scheme was never intended to continue indefinitely and has now served its purpose. Accordingly, the Government have decided that the quota should end. However, in order that dependent territories should have time to adjust to this, the quota will be phased out gradually as set out in the table.

Citizens from dependent territories will still be covered by the work permit scheme, which allows non-EC nationals to be employed here if they have high-level skills that are in short supply, are participating in an intra-company move or meet other important labour market needs. They will also be eligible for consideration for permits under my Department's training and work experience scheme.

¹² The work permit scheme is described in the Library's standard note *Immigration: The Work Permit Scheme*: 18 October 2001

¹³ HC Deb 24 July 1991 Col 620W

IV The *British Overseas Territories Bill* [HL]: Bill 40 of 2001-2002

Legislation to implement the Government's proposals has been introduced in the shape of the *British Overseas Territories Bill* [HL] (Bill 40 of 2001-2002).

The Bill's stages in the House of Lords were:¹⁴

21 June 2001	Bill published. Presentation and first reading [HL Deb 21 June 2001 Col 26]
5 July 2001	Delegated Powers and Deregulation Select Committee [HL 6 2001/02]
10 July 2001	Lords second reading debate [HL Deb 10 July 2001 Col 1014-37]
24 July 2001	Lords committee stage. Clauses 1 – 7 agreed to. Schedules 1 – 2 agreed to. Bill reported without amendments.
23 October 2001	Lords report stage (formal).
30 October 2001.	Lords third reading and debate on motion that Bill do now pass. Passed on question and sent to the Commons [HL Deb 30 October 2001 Col 1299-301]. Bill brought from the Lords as Bill 40 2001/02.

The Bill, as introduced in the House of Commons on 30 October 2001, is available at <http://pubs1.tso.parliament.uk/pa/cm200102/cmbills/040/2002040.htm>.

The Bill's provisions are concerned with amending existing legislation to take account of the change of name from British Dependent Territories to *British Overseas Territories*. The Bill would also grant British citizenship to all who are British Overseas Territories citizens at commencement, other than those whose only claim to that citizenship is through a connection with the Sovereign Base Areas of Cyprus. For those who remain British Overseas territories citizens, the Secretary of State would (under the terms of the Bill) have discretion to register them as British citizens.¹⁵

¹⁴ The text of the Bill, as it was introduced in the House of Lords on 21 June 2001, is available at <http://www.publications.parliament.uk/pa/ld200102/ldbills/004/2002004.htm>.

¹⁵ This provision would apply to all those people who, after commencement, obtain British Overseas Territories citizenship through naturalisation in the territory. It would then be open to them, if they chose, to apply for registration as British citizens.

The explanatory notes, prepared by the Foreign and Commonwealth Office, summarise the main provisions of the Bill.¹⁶

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

[...]

Clause 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 clause 7(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 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.

¹⁶ *British Overseas Territories Bill [HL]: Explanatory Notes*: Foreign and Commonwealth Office - available at <http://pubs1.tso.parliament.uk/pa/cm200102/cmbills/040/en/02040x--.htm>

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.

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

16. *Clause 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.

[...]

In moving second reading in the Lords, the Parliamentary Secretary at the Foreign and Commonwealth Office, Baroness Amos, suggested that the Bill might affect about 200,000 people. This is in contrast to Robin Cook's suggestion in 1998 that an estimate of 180,000 people potentially affected was too high.^{17,18}

¹⁷ HC Deb 10 February 1998 Col 129-131, quoted on page 10

¹⁸ HL Deb 10 July 2001 Col 1015-6

We estimate that around 200,000 people could become British citizens on commencement of the Act. The number is an estimate because it is as yet impossible to tell exactly how many people will benefit. Nationality is a complicated area and beyond those who already hold British Dependent Territories passports will be others who will come forward after commencement on the basis of the naturalisation or registration criteria in the British Nationality Act 1981.

But I should make clear that there is no compulsion about acquiring British citizenship. We believe that most people will want it, but British Overseas Territories citizens, as the Bill proposes they be known in future, will have the option to renounce British citizenship, and to retain their current status, should they so wish.

[...]

Let me explain more fully the effect of the Bill and the timeframe we envisage. Most people living in the overseas territories are currently British Dependent Territories citizens. As soon as the Bill has passed through Parliament and received Royal Assent, Clauses 1 and 2 which deal with the changes of name to British Overseas Territories and British Overseas Territories citizen, will take effect. At that point all references to the territories will be formally changed. I say "formally" because the description "overseas territories" is already in common usage. Clauses 1 and 2 deal only with changes of name and involve no substantive change of law.

Baroness Amos confirmed that, on enactment, British Overseas Territories citizens would automatically become British Citizens with the right of abode in the United Kingdom, without having to apply for such status:¹⁹

Clause 3 explains how British Overseas Territories citizens will automatically become British citizens, with the right of abode in the UK, on commencement of the citizenship provisions of the Bill. In other words, they will not have to apply for citizenship, although they will have to apply for a British passport to show documentary evidence of their new status and to facilitate travel. The date of commencement will be decided by my right honourable friend the Secretary of State for Foreign and Commonwealth Affairs by statutory instrument, once we are satisfied that the practicalities for implementation of the citizenship provisions are in place. We need, for instance, to ensure that arrangements for passport issue are agreed and that the staff who will deal with passport and nationality questions are properly trained.

For the Conservatives, Baroness Rawlings broadly welcomed the Bill:²⁰

¹⁹ HL Deb 10 July 2001 Col 1016

²⁰ HL Deb 10 July 2001 Col 1019

The main issue of the Bill concerns the granting of citizenship. We welcome the move, as do the overseas territories. There are many benefits which will now be made available to those who are soon to become full British citizens. First, from a development perspective, we should all welcome the easing of the education restrictions currently endured by those wishing to study in the United Kingdom. Noble Lords may not be aware of the differences in the fee structure.

[...]

Secondly, in 1998, my noble friend Lord Waddington, a distinguished former Governor of Bermuda, informed the Foreign Affairs Select Committee that the vast majority of white Bermudians of Anglo-Saxon descent hold British citizenship, but that the vast majority of black Bermudians do not. He went on to point out that,

"At Gatwick the whites go through the British and EU Channel. The black Bermudians, even Premiers and Cabinet Ministers, are lumped in with the foreigners and queue to obtain leave to enter. It is scarcely surprising that this causes immense resentment and black Bermudians simply cannot understand why as a matter of common courtesy those for whom Britain has a responsibility [belonging as they do in a British Dependent Territory] are not treated as favourably as foreigners for whom Britain has no responsibility".

As the Minister said, this situation will no longer exist--and rightly so.

For the Liberal Democrats, Lord Redesdale too broadly welcomed the Bill, whilst voicing concerns about some issues which it did not cover:²¹

[...]

The Minister alluded to two areas of particular concern to us which lie outside the scope of the Bill. Our first concern relates to the issue of British overseas citizens, especially those in Uganda and Kenya. This matter has been on the boil for quite some time. Our major worry is that some children of British overseas citizens--especially in Kenya--are now stateless citizens. They are denied Kenyan citizenship under Kenyan law, and under our own rules they are denied the status of British overseas citizens.

Although it concerns only a small group of children, it is an issue which could be looked at in the area of human rights. I understand that a case may be going before the European Court. The matter obviously does not fall under the jurisdiction of the European Convention on Human Rights because it is happening outside Europe, but it is an issue of great concern. Kenya should be made aware of its responsibilities under the UN convention to reduce the number of stateless persons. However, if no other means can be found to achieve this end, will the Government bring forward a Bill to extend the right granted under this

²¹ HL Deb 10 July 2001 Col 1020-2

Bill to this small group of people? At the moment they are prisoners with no access to travel documents. They have neither a Kenyan passport nor a British passport.

The other area of concern relates to dependants in the British Indian Ocean Territories. When the ruling came about in November or December that the British Indian Ocean Territory (No. 1) Ordinance 1971 was unlawful, it raised a question in my mind. Under the law in Mauritius, those born after 11th March 1968 would become citizens of Mauritius. This affected the children of members of the Ilois tribe who were moved to Mauritius. However, if it turns out that they were moved illegally, does that not change their status? Would they not then be seen as dependent territory citizens? If such is the case, it is quite important because if they are to return to the Chagos Islands, they could be refused entry on the ground that they are Mauritian citizens rather than deported British dependent citizens. Those are the two issues I wish particularly to raise.

As was noted earlier, former inhabitants of the British Indian Ocean Territory who are British Dependent Territories citizens have now been brought within the scope of the Bill.

In its submission on the Bill, the Immigration Law Practitioners' Association argued that the Bill should be welcomed, as it restored some rights which were removed in 1962. It further argued that the rights of British Overseas citizens, British Protected Persons, British Nationals (Overseas) and British subjects should be similarly extended:²²

[...]

ILPA and JUSTICE welcome this Bill, which restores some of the rights of citizenship removed in 1962 and which implements the policy promised in the government's White Paper, Cm 4264 of March 1999. We therefore regret that the opportunity was not taken in the White Paper and this Bill also to restore rights to British Overseas citizens (BOCs) and to bring the position of British protected persons, British subjects and British nationals (overseas) into line with those of British citizens. We urge the government to give a commitment to reconsidering their situation and working towards a single British citizenship again.

Why citizenship rights should be restored:

- the 1968 removal of rights of entry from British nationals (who subsequently became BOCs) who were not born in the UK, and did not have a parent or grandparent who was born in the UK, was found to be so discriminatory as to be inhuman and degrading treatment in breach of Article 3 of the European Convention on Human Rights (reported in 3 EHHR 76).
- the special quota voucher scheme set up to allow some BOCs to enter the UK is inadequate and is sex discriminatory (*R. v. ECO Bombay ex p. Amin*,

²² *ILPA Submission To The Debate On The British Overseas Territories Bill* 9 July 2001 – available on the ILPA website at <http://www.ilpa.org.uk/submissions/overseas.htm>

[1983] 3 WLR 258). It counts any adult BOC man as a 'head of household' who may qualify for a voucher to enter the UK, but a woman only if she is single, widowed or divorced. Because the special voucher scheme was set up before the Sex Discrimination Act came into force it is outside its scope.

- there are very few people still suffering this injustice but it is of importance to them. Most BOCs outside the UK are in East Africa or India or Malaysia. Most of those in East Africa or India who qualify for vouchers and who want to come to the UK have already done so. There is a nominal annual quota of 5000 vouchers per year; it has not been filled for the past 30 years. By 1997, only 220 vouchers were issued worldwide, in 1998, 170, in 1999, 220 and in the first six months of 2000, only 30 (Home Office Statistical Bulletin 22/00, page 22). The British High Commission in Malaysia estimated in August 2000 that there were 'up to 12,000' BOCs in Malaysia, mainly elderly people of Indian descent who would not want to uproot themselves and go to the UK (email to JUSTICE, 3 August 2000). The White Paper estimates a population of 189,531 for all the Overseas Territories, and the Explanatory Notes to the Bill, 200,000, so an extension of citizenship rights to BOCs is not a large additional commitment.
- when the European Court of Justice (in the case of *Kaur*) was asked to rule on the position of BOCs unable to gain entry to the country of their only nationality, it found that the matter was outside EU law. But at the hearing the court expressed concern at their position, describing them as 'Flying Dutchmen': able to travel, but with no rights to settle anywhere. The White Paper stated that the government 'did not intend to offer British citizenship to BOCs... or to [people connected to] the British Indian Ocean Territory.' The Bill does now include Ilois from the BIOT, following a High Court decision that they have the right to return to their homes. The government has agreed to change part of its original proposals and should now do so for all other categories of British nationals. ILPA and JUSTICE hope that the government will recognise that BOCs should have their rights restored, in the same way as it has done for British Overseas Territories citizens. Please do not hesitate to contact either organisation if you have any further queries.