

Macdonald & Blake

The
New Nationality Law

Butterworths

THE
NEW NATIONALITY
LAW

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PREFACE

The British Nationality Act 1981 received the Royal Assent in October 1981, at the end of a session of Parliament that had been especially extended to permit its passage. The government indicated that the likely commencement date for the Act will be the 1st January 1983.

The Act represents a major new departure in British nationality law, and brings to an end a post-war era which started with nationality being seen as a symbol of Commonwealth unity and ended with it being cut up into fine distinctions between citizens who belong and those who do not. It is an era in which the broad principles enshrined in the British Nationality Act 1948 have been steadily and systematically eroded by successive immigration laws. The 1981 Act attempts to bring citizenship law into line with immigration law, as the gap between the two has become wider and the 1948 Act has become a great embarrassment for successive governments.

In addition to giving a detailed description of the new law, this book attempts to show the inter-connection of immigration and nationality law under this Act, and to discuss some of the legal problems raised by immigration law that will now become relevant when someone claims citizenship.

All the previous Nationality Acts will be repealed by the 1981 Act, but a knowledge of citizenship under earlier legislation will still be essential to determine who becomes a British citizen, British Dependent Territories citizen and so forth, and who could benefit under transitional provisions for registration as a citizen of one or other of the new categories of British citizenship. For this reason we have reproduced as an Appendix those provisions of the British Nationality Acts 1948-1965 which were in force up to the commencement of this Act.

The 1981 Act changes the existing structure of nationality law in two principal ways. First, it splits the existing citizenship of the United Kingdom and Colonies into three citizenships. These are British citizen, British Dependent Territories citizen and British Overseas citizen. British citizens are broadly equivalent to citizens of the United Kingdom and Colonies who are present 'patrial' under the Immigration Act 1971. After commencement of the 1981 Act British citizenship (more or less) rather than 'patriality' will be the test of whether a person is liable to immigration control or not. This is probably its main purpose.

Secondly, the methods by which citizenship is acquired are fundamentally altered. Acquisition of citizenship by birth or descent is changed in two broad ways. Birth in the United Kingdom will no longer automatically confer British citizenship upon a person; a person so born will only become a British citizen, if one parent is a British citizen or is settled in the United Kingdom. Similar restrictions are introduced upon birth in a colony. At present, citizenship by descent can only be traced through a child's father. The new Act extends this to permit tracing through the mother as well, and makes other changes in acquisition by descent.

The acquisition of citizenship by registration and naturalisation is also changed. Registration as a British citizen is given in a variety of circumstances

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to people who are connected with the United Kingdom by marriage or through a parent or grandparent or as a result of Crown or similar service. The principal ways in which existing entitlements to register as a citizen are cut down by the new Act are the abolition of the right to register foreign-born children as UK citizens at a British Consulate, and the abolition of a wife's right to register upon her marriage to a UK citizen. After commencement and a short transitional period, a spouse of either sex married to a British citizen or British Dependent Territories citizen will have to apply for naturalisation, which is entirely discretionary. A former entitlement has been made into a discretion and the decision of the Minister or Colony Governor cannot even be called into question in the Courts. One more change. Citizens of independent Commonwealth Countries who could previously be registered after five years' residence can continue to do so in some cases, but in others they can only apply for naturalisation.

The Act has aroused bitter criticism and hostility, principally because it adopts so much of the Immigration Act 1971, which has itself been a subject of considerable public opposition and concern. The Labour Party is committed to repealing the Act, and members of both the Liberal and Social Democratic Party were highly critical of the Bill in its passage through Parliament, though neither have as yet committed themselves to repeal.

Our reading of the Act has been much assisted by the briefings and comments of the Action Group on Immigration and Nationality (AGIN), who took the main responsibility for ensuring informed criticism of the Bill as it went through Parliament. We are indebted to them and in particular to the contributions made to AGIN and other organisations by Ann Dummett.

We would also like to thank Claire Fazan and Dee Adams for their assistance in preparing the text within a few weeks of final amendments being made to the Bill and to our family and friends at work and at home who have had to put up with us during the preparation of the manuscript. Finally, we would like to thank the staff of Butterworths for their assistance in preparing the annotations to the text of the Act and Jane Goodwin, MA, who prepared the index. The law is stated as at the 1st of January 1982.

*Temple
January 1982*

IAN MACDONALD
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CHAPTER 1

INTRODUCTION

Although British law and the British constitution gives no one Act of Parliament higher status than another, an Act defining a country's citizens is generally considered to be a fundamental measure of considerable constitutional importance. Unlike the two main Nationality Acts of this century (1914 and 1948) the British Nationality Act 1981 is a fiercely controversial measure, which has united against it all the opposition parties in Parliament, all the established churches, and all the official bodies concerned with race and community relations. The government only succeeded in keeping to the parliamentary timetable for the Bill, by accepting a variety of amendments made by the House of Lords. The Act is unlikely to be the last word on British citizenship, since the Labour party in Parliament is committed to repealing it when in power. However, what it will replace it with is not clear, and much of the scheme of the new Act originated from a series of White papers published by both Labour and Conservative governments, which had many similarities of approach. [1]

The need to reform the British Nationality Act 1948 and its 40 or so amending Acts has been acknowledged to be acute since 1973. In January of that year, the Immigration Act 1971 had come into force: at about the same time the United Kingdom had joined the European Community and had lodged a definition of United Kingdom national for European Economic Community purposes, which bore more resemblance to the concept of *patrial* under the Immigration Act 1971, than *citizen* under the British Nationality Act 1948. In 1973 also, the European Commission of Human Rights considered thirty-one applications by East African Asians, who were citizens of the United Kingdom and Colonies or British Protected Persons, and found that the provisions of the Commonwealth Immigrants Act 1968 discriminated on the grounds of race and colour, and amounted to a breach of the European Convention on Human Rights. Citizenship and immigration status had become divorced. UK Citizenship no longer carried with it the right of entry to the UK. This was an enormous change from the position operating in 1948. [2]

When the British Nationality Act 1948 was passed, there were no immigration controls for citizens of the United Kingdom or Colonies, or indeed any other category of British subject who wanted to come to the UK. British subjects or Commonwealth citizens were first subjected to immigration control by the Commonwealth Immigrants Act in 1962, but that measure specifically excluded citizens of the United Kingdom and Colonies who held a passport issued by the government of the UK. This changed in 1968 as a result of the amendments to the 1962 Act made by the Labour government in a hasty response to the expulsions from East Africa of UK citizens of Asian origin. The 1968 Act brought under control United Kingdom citizens who did not

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have a defined ancestral connection with the United Kingdom. The Immigration Act of 1971 organised these various measures onto a more permanent footing. It created two distinct groups of UK citizens, those who had a right of abode in the UK, who were called "patrial" and those who did not officially belong and were placed on more or less the same footing as foreigners. The British Nationality Act 1981 attempts to resolve these contradictions by equating citizen with patrial. The cost of achieving this object, while making some provision for inhabitants in British colonies or former British colonies, has been further to confuse an already complex law. Not all patrials become citizens, so that "British citizen" still has a different meaning when it comes to immigration. Secondly "patriality" was and still is a complicated combination of old nationality law, ancestry, lawful presence in the UK, ordinary residence, and valid marriage. The new Act complicates still further what is already a tangle. Its method of cross-referring to repealed provisions in other statutes does not make for easy reading or ready understanding. Thirdly it achieves its object of equating citizens with patrials by casting out into a limbo citizenship those whom the Immigration Act treated as outcast citizens, and the new Act euphemistically calls "overseas citizens". [3]

In place of the single category of Citizen of the United Kingdom and Colonies (hereinafter CUKC) created by the 1948 Act, there are now three kinds of citizenship: British citizenship, British Dependent Territory citizenship, and British Overseas citizenship. In addition, the Act retains the former residual categories of British protected person and British subject without citizenship. For the purpose of Britain's foreign relations all these have British nationality. [4]

Apart from defining who is subject to immigration control and who is free from it, the 1981 Act does not specify what are the rights and duties of the new categories of citizen. There is still no right to a British passport, which remains a matter of executive discretion. The right to vote and sit on a jury is still governed by the status of British subject. Educational, housing, social security and similar benefits are still largely regulated by ordinary residence, but there is nothing in the Act to halt a discernible trend towards equating these entitlements first with immigration status and now with British citizenship. The government failed to give a ministerial assurance, that civic entitlements at present enjoyed by non-citizens would not subsequently be varied. Though nominally British nationality retains its Commonwealth base, in reality the Act breaks with the traditional common law foundation of British nationality, a personal allegiance to the sovereign, but does not replace it with anything other than a rather crude territorial conception of nationality, based principally on birth and settlement in the UK. Others can acquire it by descent, marriage, or long-standing residential connection. In some cases this is a right, but as often as not it is a matter entirely within the discretion of the Minister, who need give no reasons and who cannot be challenged in any court. Indeed many of the disadvantages associated with the residual prerogative powers¹ are expressly retained, notably the absence of any form of appeal and the exclusion of judicial review in discretionary cases. [5]

¹ Even the Prerogative power may now be challenged in the Courts: see *Laker Airways Ltd v Department of Trade* [1977] 2 All ER 182.

Nationality laws have been one of the bastions of sexual discrimination. The status of British subject could only be acquired by birth within British terri-

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tory or descent through a father. A woman who married a British subject would become one upon that marriage, but equally a British subject who married an alien man lost that status. This discrimination was continued with respect to citizenship by descent, by the British Nationality Act 1948. Only fathers could hand down their UK citizenship to their children. The 1981 Act removes this overt discrimination, by allowing citizenship to be traced through either parent. It does nothing, however, to remove the sexual discrimination implicit in the immigration rules, which treat wives as dependants, which allow husbands to bring overseas wives to settle here, but do not accord the same right to wives unless they or a parent was born in the UK, and which give vouchers to settle only to heads of household and so do not give the wives of such men any independent access to this country. These Rules will govern future eligibility for citizenship. [6]

British Dependent Territories citizens gain even less from their citizenship than British citizens. Acquisition of this citizenship does not denote any connection with a particular territory and, consequently, no right of abode under the immigration law of any particular territory. Rights of abode are independent of citizenship. If their citizenship could be described as second class, British Overseas citizenship must be a lower class still. They are British, but have no immigration rights, unless they qualify for entry under the voucher system, which, according to the Government will continue, or under some other rule they also have the right to diplomatic or consular protection. But apart from this there seems to be little or no point in their retention of this citizenship. It cannot in general be passed on, and is intended to die out with the generation at present living. This citizenship will, therefore, only be a benefit to its holder, if he or she enters the United Kingdom in compliance with the immigration laws, settles here and is later registered as a full British citizen. [7]

CHAPTER 2

THE EXISTING CITIZENSHIP LAWS

A knowledge of the citizenship laws under the British Nationality Acts 1948 to 1965 will continue to be essential for an understanding of the British Nationality Act 1981. By far the largest category of British citizens under the new Act will be those persons who were formerly (described as CUKCs) who acquired British citizenship on the commencement of the Act. It will thus be necessary to know how citizenship of the United Kingdom and Colonies could be acquired or lost under the previous legislation. [8]

Before the 1948 Act, the status of British subject belonged to all those who owed allegiance to the Crown, in whichever Crown territory they were born. A subsidiary category was the status of British protected person, that is to say people who had placed themselves under the protection of the British Crown, without becoming the subject of the Sovereign. Unlike British subjects their position was regulated by prerogative rather than common law. With the break-up of the British Empire, it was thought necessary to devise a category of citizenship appropriate to each self-governing unit under the Commonwealth. The universal status of British subject was therefore divided into different citizenships, either citizenship of an independent Commonwealth country, or citizenship of the United Kingdom and Colonies. A CUKC was also a Commonwealth citizen. By s. 1 (2) British Nationality Act 1948, the term British subject was interchangeable with Commonwealth citizen. It was envisaged that as each colony became an independent state, persons who had acquired citizenship of the United Kingdom and Colonies solely as a result of a connection with a particular colony, would become citizens of that independent state. Certain categories of people, notably people of Asian origin in East Africa, could retain citizenship of the United Kingdom and Colonies when a particular colony became independent. It was these residual categories of citizens, combined with persons who acquired citizenship through a connection with a colony that had not become independent, that produced the categories of CUKCs, who had no immediate connection with the United Kingdom itself. One of the principal purposes of the British Nationality Act 1981, is to abolish the unity of citizenship of the United Kingdom and Colonies, and to assign permanently its various constituent parts to new citizenship categories. [9]

The immigration laws have, since 1968, already distinguished between different categories of citizens of the United Kingdom and Colonies. Under the Immigration Act 1971, freedom from immigration control is restricted to those CUKCs and some Commonwealth citizens who are patrial.¹ [10]

¹ Immigration Act 1971, s. 2.

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Although under the 1948 Act the terms British subject and Commonwealth citizen are declared to be inter-changeable,¹ there are certain residual categories of people who are British subjects without being citizens of a Commonwealth country or the UK. Citizens of Ireland, who were born before 1949, could elect to continue as British subjects, notwithstanding that Ireland left the Commonwealth in 1949, by serving notice in writing under s. 2 of the 1948 Act.² People who were British subjects on commencement of the 1948 Act, who had not achieved citizenship under the citizenship laws of one of the independent Commonwealth countries that were in existence on commencement, and who did not acquire citizenship after commencement, remained British subjects without citizenship under s. 13 of the Act. Alien women could also become British subjects through marriage.³ The status of British subject still forms the qualification of entitlement to vote⁴ and sit on a jury.⁵ [11]

¹British Nationality Act 1948, s. 1 (2).

²See chapter 8, post.

³British Nationality Act 1965, s. 1.

⁴Representation of the People Act 1949.

⁵Juries Act 1974.

The British Nationality Act 1981 preserves the status of British subject without citizenship, and British protected person. [12]

Citizenship of the United Kingdom and Colonies by birth

A person born in the United Kingdom and Colonies after the commencement of the 1948 Act became a CUKC¹ by birth unless:

- (i) That person's father was not a CUKC and had diplomatic immunity under the Diplomatic Privileges Act 1964, or
- (ii) That person's father was an enemy alien and the birth occurred in a place then under the occupation of the enemy. [13]

¹British Nationality Act 1948, s. 4.

People who acquired citizenship by birth, by virtue of a birth in a colony, might lose that status when that colony became an independent Commonwealth country. In order to discover whether citizenship ceased automatically it is necessary to look at the Act granting independence to that colony¹ and the constitution of the country concerned. [14]

¹For examples, see the British Nationality Act 1958, Kenya Independence Act 1963, Uganda Independence Act 1962.

The United Kingdom means Great Britain and Northern Ireland.¹ Great Britain means England, Wales and Scotland.² The Channel Islands and Isle of Man were not expressly within the definition of United Kingdom, but they were so included for the purpose of the Immigration Act 1971.³ People who were born in Eire before 31st of March 1922 are also deemed to have been born in the United Kingdom for the purposes of the Immigration Act 1971.⁴ For the purposes of the 1948 Act a person was deemed to have been born in the United Kingdom if born upon a British ship or aircraft.⁵ [15]

¹Royal and Parliamentary Titles Act 1927, s. 2 (1).

²Union with Scotland Act 1707, preamble Art. I, and Wales and Berwick Act 1946, s. 3.

³Power to make Orders in Council under s. 36.

⁴Immigration Act 1971, s. 2 (2) (c).

⁵British Nationality Act 1948, s. 32 (5).

Citizenship of the United Kingdom and Colonies by adoption

There was no provision for citizenship by adoption in the 1948 Act, but s. 19 of the Adoption Act 1958 provided that a child adopted in the United Kingdom by a citizen of the United Kingdom, became a CUKC, if not already one from the date that the adoption order was made. In the case of a joint adoption, where the adopting father had a different nationality from the adopting mother, the child only became a CUKC, if that was the male adopter's nationality.

[16]

Citizenship of the United Kingdom and Colonies by descent

A person who was born outside the United Kingdom and colonies nevertheless became a CUKC if that person's father was a CUKC at the time of birth. Before the 1948 Act this acquisition of citizenship through the male line was unlimited, but after commencement, citizenship by descent¹ was restricted where that person's father himself acquired citizenship by descent. In those circumstances a person only became a CUKC if:

- (i) he or she was born in a protectorate, protected state, mandated territory or trust territory or any foreign country where the Queen had jurisdiction over British subjects, or
- (ii) he or she was born in any other foreign country (not included under (i) above) and the birth was registered at a United Kingdom Consulate within a year, or, with permission of the Secretary of State, later, or
- (iii) that person's father was at the time of the birth in Crown Service, or
- (iv) the person was born in an independent Commonwealth country and did not become a citizen of that country on birth.

[17]

¹British Nationality Act 1948, s. 5.

An illegitimate child was not considered to be the child of its father, unless legitimated by the subsequent marriage of its parents.¹ A child born after the death of his or her father would acquire the status of the father at the time of the father's death.²

[18]

¹British Nationality Act 1948, s. 23.

²Ibid., s. 24.

Citizenship of the United Kingdom and Colonies by registration

Registration as a CUKC was originally designed to be an entitlement, as opposed to the discretionary process of the naturalisation of aliens, and therefore reserved to those who had a special connection with the United Kingdom, namely citizens of the Commonwealth countries or the Republic of Ireland, their children, and non-Commonwealth wives who married CUKCs. The amendments made to the British Nationality Act by the Immigration Act 1971, made registration of certain categories a matter of discretion rather than entitlement and thus more akin to naturalisation.¹

[19]

¹See British Nationality Act 1948, s. 5A added by the Immigration Act 1971, s. 2 (5), Sch. 1, para. 1 (a), Appendix A.

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1 Registration of Commonwealth Citizens

Between 1949 and 1962, a citizen of any Commonwealth country or of the Republic of Ireland, being a person of full age and capacity, could register as a CUKC, if he or she had been ordinarily resident in the United Kingdom for twelve months or had been in Crown Service.¹ The Commonwealth Immigrants Act 1962 increased the period of ordinary residence to five years and barred a registration, if a deportation order had been made against a person and was still in force.² After the Immigration Act 1971 came into force,³ a person who did not qualify under the transitional provisions preserving a previous entitlement,⁴ only qualified as of right for registration if they were patrial⁵ because their mother was either a CUKC by birth, or became patrial by marrying such a person, and in either case the person completed a five years' residence qualification.⁶ All other Commonwealth citizens and citizens of Eire, had, in addition to completing a period of five years' ordinary residence, to comply with a test of good character, sufficient knowledge of the English or Welsh language, and have an intention in the event of being registered to reside in the United Kingdom or a colony or a protectorate.⁷ Registration was discretionary and where the relevant employment relied on by an applicant was with an international organisation or a UK company, the Secretary of State had, in addition, to be satisfied that registration was fitting by reason of close connection with the United Kingdom.⁸ [20]

¹British Nationality Act 1948, s. 6 (1), now repealed.

²Commonwealth Immigrants Act 1962, s. 12 (1), now repealed.

³31st January 1973.

⁴Immigration Act 1971, Sch. 1, para. 2.

⁵For meaning of "patrial" see Chapter 3, post.

⁶British Nationality Act 1948, s. 5A (1), as inserted by Immigration Act 1971.

⁷Ibid., s. 5A (2) as inserted by Immigration Act 1971.

⁸Ibid., s. 5A (5) as inserted by Immigration Act 1971.

2 Registration of Wives

A woman who had been married to a CUKC was entitled under s. 6 (2) of the 1948 Act to be registered as a CUKC whether or not the woman was of full age or capacity. This entitlement was reduced to a discretion if the woman had previously been deprived of or had renounced citizenship of the United Kingdom and Colonies.¹ Although such a registration might have taken place in the United Kingdom, a wife did not have the right of abode under the Immigration Act 1971, by virtue of that registration, unless the marriage which she relied on had taken place before the 31st January 1973, or the wife was herself a Commonwealth citizen.² The case of *Puttick*³ indicated that the Secretary of State nevertheless had the discretion to refuse an entitlement to register, where an applicant obtained the opportunity by taking advantage of a criminal offence. [21]

¹British Nationality Act 1948, s. 6 (3).

²Immigration Act 1971, s. 2 (2).

³*R v Secretary of State ex parte Puttick* [1981] 2 WLR 440; [1981] 1 All ER 776.

The Existing Citizenship Laws

3 Miscellaneous Registrations

The Secretary of State had a discretion to register the minor child of a CUKC (i.e. one who did not become a citizen by descent) and in special circumstances any minor child could be so registered.¹ [22]

¹British Nationality Act 1948, s. 7.

Provision was made in the British Nationality Act 1964, to register as a CUKC, persons who had renounced their citizenship because they had reasonably believed they would have been deprived of citizenship of a Commonwealth country if they had not so renounced. This entitlement to registration on resumption was limited to those with an ancestral connection with the United Kingdom.¹ [23]

¹British Nationality Act 1964, s. 1.

The British Nationality (No. 2) Act 1964, made provision for an entitlement to register as a CUKC, by a person who satisfied the Secretary of State that he or she was and always had been stateless and that the person's mother was a CUKC.¹ This provision was designed to deal with illegitimate children who did not acquire citizenship of the United Kingdom through their mother. The Act also provided for those persons who were and always had been stateless, who were born in a place which at the time of the application for registration was within the United Kingdom and colonies.² A person, either of whose parents was a British subject who became a United Kingdom citizen on commencement of the 1948 Act, or would have done but for death, was entitled to register if otherwise that person would have continued to have been stateless.³ [24]

¹British Nationality (No 2) Act 1964, s. 1 (1) (a).

²Ibid., s. 1 (1) (b).

³Ibid., s. 1 (1) (c).

Naturalisation

Naturalisation was the mechanism under the 1948 Act¹ by which aliens became CUKCs. It had formerly been a matter of royal prerogative, and s. 26 of the 1948 Act now made it clear that it was a matter of unappealable and unimpeachable discretion by stipulating that any decision of the Secretary of State (or outside the UK a Governor or a High Commissioner as the case may be) did not require reasons to be assigned and was not reviewable in any court. An alien only qualified for the exercise of the discretion if:

- (i) the person had resided in the United Kingdom in the twelve months immediately before the application and had resided in the United Kingdom and Colonies for four years out of the seven years preceding those twelve months, or had been in Crown service, and
- (ii) the person was of good character, and
- (iii) the person had sufficient knowledge of the English language, and
- (iv) the person intended in the event of a certificate being granted to reside in the United Kingdom or in any colony or in any protectorate of the United Kingdom and trust territory or the Anglo-Egyptian Sudan, or intended to enter Crown Service.² [25]

¹British Nationality Act 1948, s. 10.

²Ibid., Sch. 2, para. 1. See also para. 4 for application to Colonies etc.

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Naturalisation was also the mechanism by which a British Protected Person became a CUKC. The residence conditions were somewhat different from those to be met by an alien. Until 1962 such a person had to satisfy the Secretary of State that he or she had been ordinarily resident in the United Kingdom or in Crown Service under Her Majesty's Government in the United Kingdom throughout the period of five years ending with the date of application.¹ The Secretary of State might in special circumstances allow a shorter period of residence.² [26]

¹British Nationality Act 1948, Sch. 2, para. 3, as amended by Commonwealth Immigrants Act 1962, s. 20 (2).

²Ibid., Sch. 2, para. 2.

Citizenship by incorporation of territory

Although the 1948 Act was passed at a time when the United Kingdom was getting rid of its Empire, s. 11 enabled the Sovereign by Order in Council to specify persons who would become CUKCs if any territory became part of the United Kingdom and Colonies. [27]

Persons who became CUKCs on commencement of the 1948 Act

People born before January 1949 would only become CUKCs if they were British subjects immediately before that date, and qualified under one of the provisions of British Nationality Act 1948, s. 12; namely, that the person:

- (i) was born or naturalised in the UK and Colonies, or the person's father was, or
- (ii) became a British subject by annexation or the person's father had so become, or
- (iii) was born in a territory that in January 1949 was a protectorate, protected state, or United Kingdom trust territory, or
- (iv) did not become a citizen of an independent Commonwealth country or of Eire, and was not a potential citizen of an independent Commonwealth country, or
- (v) being a woman was married to a person who became a CUKC or would have become so but for his death. [28]

In addition to those who became CUKCs automatically upon commencement, there was provision for registration as CUKCs by those who would have become so, but for their acquisition or potential acquisition of a citizenship of Eire or an independent Commonwealth country. This registration was discretionary and limited to those who had an ancestral connection with the UK and Colonies and intended to reside there.¹ [29]

¹British Nationality Act 1948, s. 12 (6).

Persons who became CUKCs by reason of a parental connection, by mere default of other citizenship, or by registration under s. 12 (6), were only CUKCs by descent, whose children would therefore not automatically acquire citizenship through their father.¹ [30]

¹British Nationality Act 1948, s. 12 (8).

Loss of Citizenship

There were three ways by which a CUKC might lose his or her citizenship:

- (1) by statute (usually when the colony through which citizenship had been acquired became independent);
- (2) by renunciation of citizenship;
- (3) by deprivation of citizenship if citizenship was acquired by registration or naturalisation.

[31]

Loss by statute

CUKCs who acquired their citizenship through connection with a colony, may have lost that citizenship when that colony achieved independence. It is necessary to examine the particular statute that gives the former colony independence in order to ascertain whether this is the case. The usual provisions upon de-colonisation were that any persons who acquired citizenship of the new Commonwealth country, would lose their former citizenship of the United Kingdom and Colonies unless they had a parent or grandparent who was born in the United Kingdom or in a country that remained a colony. In order to discover whether a person acquired citizenship of the new country, it is always necessary to examine the constitution or citizenship laws of the new Commonwealth countries. In East Africa some CUKCs were specifically permitted to retain their UK citizenship.¹ At the time of de-colonisation, these CUKCs were free from immigration control. In 1968, however, they became subject to control by the Commonwealth Immigrants Act 1968. This is the source of what has been referred to as the "problem" of the East African Asians.

[32]

People who were residing in the former colony at the time of de-colonisation will generally be aware of their change in citizenship. Problems do occur, however, in respect of former CUKCs who are residing in the United Kingdom or elsewhere abroad at the time that their country achieves independence. Over-night they may lose their entitlement to a UK passport, without being aware of it.

[33]

¹ For the position in Kenya, see e.g. *Mohamed (A.A.) and Another* [1979-80] Imm. A.R. 103.

Renunciation

A person who is a citizen of a Commonwealth country, of Eire or any other foreign country could renounce citizenship by making a declaration in the prescribed manner. The citizenship was lost when the Secretary of State caused the declaration to be registered.¹ A person has to be of full age and capacity before making such a declaration, although any woman who has been married was deemed to be of full age. There was provision under the section for the Secretary of State to withhold registration by a foreign national during any war in which the Sovereign may be engaged.

[34]

¹ British Nationality Act 1948, s. 19.

Deprivation

A citizen by birth or descent could only lose citizenship by one of the two means described above. Citizens by naturalisation or registration, however,