Diplomats
1. Pre-1949

1.1 Before 1 January 1949 persons born in the United Kingdom were not regarded as British subjects if their father was entitled to full diplomatic immunity at the time of the birth. Although diplomatic immunity was not specifically mentioned in the British Nationality and Status of Aliens Act 1914, under s.1(1)(a) persons were deemed to be British subjects if they were born within HM dominions and allegiance; as foreign diplomats do not owe allegiance to the Sovereign, their children were not regarded as having been born within HM allegiance and did not acquire British nationality.

2. Under the British Nationality Act 1948

2.1 Section 4(a) of the British Nationality Act 1948, as amended by s.5(2) of the Diplomatic Privileges Act 1964, provided that a person who was born in the United Kingdom and Colonies was not a citizen of the United Kingdom and Colonies "if at the time of his birth his father is a person on whom any immunity from jurisdiction is conferred by or under the Diplomatic Privileges Act 1964 or on whom such immunity from jurisdiction as is conferred by that Act on a diplomatic agent is conferred by or under any other Act, and is not a citizen of the United Kingdom and Colonies".

3. Under the British Nationality Act 1981

3.1 Under s.1(1) of the British Nationality Act 1981, a person born in the United Kingdom after 1 January 1983 is a British citizen at birth if, at the time of the birth, the father or mother is a British citizen or settled in the United Kingdom.
3.2 Section 50(2) of the 1981 Act provides that a person is to be treated as 'settled in the United Kingdom' for the purposes of the Act at any time when he or she was 'ordinarily resident in the United Kingdom without being subject under the immigration laws to any restriction on the period for which he may remain'.
3.3 The definition of 'settled' in s.50(2) is subject to certain exceptions contained in s.50(3) of the Act. These exceptions are, in turn, subject to further exceptions in s.50(4). The details are set out below.

4. Persons excluded from being regarded as settled in the United Kingdom for the purposes of United Kingdom nationality law from 1 January 1983

4.1 Section 50(3) of the British Nationality Act 1981 excludes the following persons (all of whom enjoy some form of exemption from immigration control) from the definition of settled persons contained in s.50(2):

a. The head of a diplomatic mission

b. All members of the diplomatic staff of foreign and Commonwealth missions

c. Administrative, technical and service staff of foreign and Commonwealth missions, provided they arrived in the United Kingdom as members of that mission or to take up a post offered before arrival (this includes diplomatic couriers, and members of missions accredited to countries outside the UK who are either passing through, or are in, the UK while proceeding to take up their post, or return to their post, or returning to their own country. Servants of the head of a mission, employed and paid directly by the country concerned, are potentially within the scope of s.50(3), but private servants employed by a member of a mission in his personal capacity are not. The proviso about entry as a member of the mission or in pursuance of an appointment as such applies only on and after 1 August 1988)

d. Members of the family of a person within a-c above, who form part of the person's household (see paragraph 8 below)

e. A person entitled to immunity from jurisdiction equivalent to that conferred by the 1964 Act on a diplomatic agent (e.g. a visiting head of State)

f. A member of a Commonwealth force, or a force of an Associated State, Colony, Protectorate or Protected State, who is either undergoing, or about to undergo, training in the United Kingdom with UK forces

g. A member of a visiting force, or a member of an international headquarters or defence organisation, designated under s.1 of the International Headquarters and Defence Organisations Act 1964

h. A person who enjoys an exemption from immigration control under an Order made under s.8(2) of the Immigration Act 1971, unless the Order in question provides otherwise. The Orders apply, generally speaking, to consular officers and employees, and to persons entitled to immunity by reason of employment with international organisations

4.2 Section 50(4) of the 1981 Act provides that certain persons, although within the scope of s.50(3), are nevertheless to be regarded as settled in the United Kingdom for the purposes of s.1(1) of the 1981 Act. In practice it covers the junior staff of diplomatic missions who were settled in the United Kingdom before they took up employment with the mission. Persons will fall within this category, and will thus be regarded as settled, if:

- they would have been regarded as settled at the time of the birth of the child but for being, at that time, entitled to an exemption from immigration control under s.8(3) of the Immigration Act 1971 (ie those falling within paragraph 4.1.a-e); and
- they were settled in the United Kingdom immediately before becoming entitled to that exemption (ie before taking up employment with the mission); and
- they were ordinarily resident in the United Kingdom from the time they became entitled to that exemption to the time of the birth; and
- neither they nor their spouse was entitled to any immunity from jurisdiction under the Diplomatic Privileges Act 1964

4.3 Persons entitled to immunities under the 1964 Act are listed in paragraph 4.1.a-d above. Members of the administrative and technical staff, and members of the service staff, do not receive any immunities if they are permanently resident in the United Kingdom, and it is therefore only these staff who can come within this category of settled persons.

5. Persons not settled in a dependent territory

5.1 Section 50(3) of the 1981 Act excludes from the definition of 'settled in a dependent territory' any person who, at the relevant time, was entitled under the immigration laws of the territory to any exemption corresponding to those listed in paragraph 4.1.a-h.

6. Evidence of diplomatic immunity

6.1 Unless correspondents give the information themselves, it is easy to miss the fact that they are affected by diplomatic immunity. For this reason a full United Kingdom birth certificate, which shows the parents' occupations, should always be requested.

7. Exemption from immigration control

7.1 Sections 8(2), 8(3) (as amended) and 8(4) of the Immigration Act 1971, together with the Immigration (Exemption from Control) Order 1972 (as amended), provide for the total or partial exemption from immigration control of certain persons not having right of abode in the United Kingdom.

Total exemption

7.2 The following categories of persons are totally exempt from immigration control:

- Members of diplomatic missions (s.8(3) of the 1971 Act)
- Consular officers (i.e. persons entrusted in that capacity with the exercise of consular functions) and employees (i.e. persons employed in full time service in the administrative or technical service of a consular post, and not engaged in any private occupation for gain in the UK), and their families forming part of their households (see paragraph 8 below), of certain specified states with which the United Kingdom has concluded a Consular Convention (Art.3 of the 1972 Order, made under s.8(2) of the 1971 Act)
- Heads of State, members of their families forming part of their household (see paragraph 8 below), and their private servants, unless otherwise directed by the Secretary of State (s.20(3) of the State Immunity Act 1978)

Partial exemption

7.3 Article 4 of the 1972 Order exempts the following categories of persons from the provisions of the 1971 Act, except those relating to deportation:

- Members of the Government of a country or territory outside the UK visiting the UK on Government business, unless otherwise directed by the Secretary of State (Art.4(a))
- Persons performing consular functions for the Governments of Commonwealth countries and the Republic of Ireland, including "Agents general" and their official secretaries (Art.4(f))
- Persons attending a Commonwealth conference - i.e. persons not covered by s.8(3) who are the representatives or members of the official staff of the Government of a country attending a conference and entitled to diplomatic immunity under the Diplomatic Immunities (Conferences with Commonwealth Countries and Republic of Ireland) Act 1961. Such persons are included in a published list compiled in connection with the conference concerned (Art.4(e))
- Consular officers and employees (other than honorary consular officers) in the service of a state with which the United Kingdom does not have a Consular Convention (Art.4(h))
- Officials, members and employees of certain International Organisations (Arts.4(g), (k) and (l))
- Members of the Armed Forces, including NATO forces (but NOT members of their families) (s.8(4) of the 1971 Act)

Proof of exemption from control
7.4 Before exemption from immigration control is acknowledged, satisfactory proof of entitlement must be produced, e.g.:

- a letter of accreditation or authorisation from the Government or international organisation concerned
- a certificate issued by the FCO under s.4 of the Diplomatic Privileges Act 1964
- a letter of confirmation from the FCO

8. Definition of "members of households"

8.1 The following may be considered to be members of households:

- Spouses (except common law spouses or same sex partners, who are neither exempt under s.8(3) of the 1971 Act, nor benefit from privileges and immunities under the Vienna Convention - for the purposes of an immigration concession, however, such persons may be given leave to enter or remain where:
    i. the relationship is recognised as durable by the sending state, and
    ii. the relationship is akin to marriage, and
    iii. the parties intend to live together in the UK for the duration of the posting)
- Dependent offspring under 18
- Dependent offspring over 18, who are still in full time education
- Dependent relatives who formed part of the household abroad (e.g. elderly widowed parent)
- Other close relatives who have no-one else to look after them (e.g. young orphaned brothers and sisters).

9. Locally-engaged staff (non diplomats) of diplomatic missions
Staff recruited after 1 August 1988

9.1 Section 8(3) was amended by the Immigration Act 1988 to ensure that, from 1 August 1988, missions would only be able to engage staff locally in the non-diplomatic categories of administrative, technical and service staff unless their status allows them to take employment, or their appointments were formally notified to the Protocol Department of the FCO under Article 10 of the Vienna Convention on Diplomatic Relations.

9.2 This was done to prevent the abuse of obtaining employment at a mission to prolong a person's stay in the United Kingdom when they would not otherwise qualify under the Rules. Such persons, and their families, would no longer be exempt from control.

Staff recruited before 1 August 1988

9.3 Section 8(3) of the 1971 Act (as originally in force) provided that such persons, and their families, were entitled to exemption from control. The position of persons recruited in the above categories prior to 1 August 1988 is not affected by the subsequent provisions of the 1988 Act, and their exemption will continue.

10 Enquiries about diplomatic status

10.1 Section 2 of INPD, Apollo House, may be able to advise if queries regarding an

individual's diplomatic status arise.

11. Diplomats' children born in the UK before 1.1.83

11.1 The guidance above should normally be sufficient to deal with enquiries about the status of children of diplomats born in the United Kingdom. However, the following special cases may also need to be taken into account.

Diplomats' children who may be stateless

11.2 Occasionally it happened that a foreign diplomat was stateless and his wife was a citizen of the United Kingdom and Colonies. Children born to them in this country after 16 September 1964, the date on which the British Nationality (No 2) Act 1964 came into effect, may have been citizens of the United Kingdom and Colonies under s.2(1) of that Act if they would otherwise have been stateless.

Diplomatic mothers

11.3 Under s.7(1) of the Consular Relations Act 1968, children born within the United Kingdom and Colonies after 10 April 1968 could not, by virtue of s.4 of the British Nationality Act 1948, be citizens of the United Kingdom and Colonies by birth if either of their parents was, at the time of the birth, serving within the United Kingdom and Colonies as a member of a consular post of any state and was a national of that State, unless their father was, at that time, a citizen of the United Kingdom and Colonies. This section widened s.4(a) of the 1948 Act (as amended by s.5(2) of the Diplomatic Privileges Act 1964) by including cases where the member of the consular post was the mother.

12. Diplomats who cease to be exempt from immigration control

12.1 Persons who are entitled to exemption from control under s.8(2)-8(4) of the 1971 Act (as amended by the 1988 Act), and who subsequently lose that claim to exemption (e.g. diplomat leaving employment), do not commit any offence under the 1971 Act if they fail to apply for leave to remain in the United Kingdom. Except in serious cases of overstaying, the objective will be to regularise their status by granting 28 days' leave (or some other period if they apply and are found eligible).

13. Naturalisation applications from former diplomats

13.1 See Volume 1, Chapter 18 Annex C.