

Dominions

1. The dominions

1.1 The term "within the Crown's dominions" referred to all the territories over which the British Crown had sovereignty or "dominion". All foreign territories therefore fell outside the Crown's dominions. For British nationality law purposes, all the states and territories of the Empire came "within the Crown's dominions" excluding:

- Foreign states (whether protected or not)
- Protectorates
- Mandated/trust territories

1.2 As a result, a person born within the Crown's dominions was almost invariably born within the Crown's allegiance. Accordingly, birth within the Crown's dominions prior to 1 January 1949 automatically conferred British subject status (British Nationality and Status of Aliens Act 1914, s.1(1)(a)).

1.3 Since 1 January 1949, the expression "within the Crown's dominions" has still been in use, but its significance in British nationality law is far less than it had been prior to that date. The UK's colonies and the independent Commonwealth countries which recognise the Queen as Head of State (rather than just Head of the Commonwealth) remain "within the Crown's dominions". Although birth within the Crown's dominions prior to 1 January 1949 had conferred British subject status, since that date such birth has conferred nothing (under the BNA 1948, a territory had to be within "the UK and Colonies" for birth there to be of significance, while under the BNA 1981 only birth in the UK or a "British Dependent Territory" can confer British nationality).

1.4 So, as of 1 January 1949, the status possessed by a state or territory by virtue of its inclusion within the Crown's dominions has been of little importance (e.g. although the Republic of Ireland remained within the Crown's dominions for a few months after the commencement of the 1948 Act, persons born there during this period did not acquire any form of British nationality). The only importance of the status now is that where a person's citizenship is of a state or territory which remains within the Crown's dominions (e.g. Jamaican citizenship or British Dependent Territories citizenship), that person will not be required to take an oath of allegiance to the Crown prior to registration or naturalisation as a British citizen.

2. The rise of the "Dominion"

2.1 Whether or not a particular place within the Crown's dominions had separate government in no way altered the fact that for British nationality law purposes it was "within the Crown's dominions". For example, in 1912, South Africa (a Union with responsible government) was as much "within the Crown's dominions" as Hong Kong (a Crown colony). The Colonial Laws Validity Act 1865, which applied to all the Crown's possessions in which there existed any form of legislature (s.1), invalidated any law considered to be "repugnant" to an Act of the British Parliament (s.2). In this way sovereignty over the Crown's dominions was assured.

2.2 However, certain colonies with wide powers of self-government were later to become exempt from the provisions of the Colonial Laws Validity Act. These colonies, or "Dominions" as they came to be known, remained "within the Crown's

dominions" for the purposes of the pre-1949 law despite the high degree of independence which by then had been acquired.

2.3 Schedule 1 to the British Nationality and Status of Aliens Act 1914 identified the Dominions as Canada, Australia, New Zealand, South Africa and Newfoundland.

NB. "Dominion" and "within the Crown's dominions" were not interchangeable expressions - the latter incorporated the former.

3. Development of the Dominions

3.1 In 1922, the Irish Free State (i.e. Southern Ireland) became the sixth Dominion. In 1926, the Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926 referred to Britain and the Dominions as being "autonomous communities ... equal in status, in no way subordinate to one another in any aspect of their domestic or internal affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations" (Cmnd 2768). Similar sentiments were expressed at the Imperial Conference of 1930 (Cmnd 3717).

3.2 The Imperial Conference agreed that the remaining restrictions on the legislative competence of the Dominions should be removed. This led to the passing of the Statute of Westminster 1931 which provided:

- "The Colonial Laws Validity Act 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion." (s.2(1))
- "No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion." (s.2(2))
- "It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation." (s.3).
- "Notwithstanding anything in the Interpretation Act, 1889, the expression "Colony" shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion." (s.11)

3.3 The Statute of Westminster did not apply within all the Dominions from the moment of its commencement. In Australia, it only applied after 3 September 1939; in New Zealand, it applied from 25 November 1947.

3.4 India and Pakistan became Dominions in August 1947, and Ceylon (i.e. Sri Lanka) in February 1948. Both before and after attaining Dominion status, India, Pakistan and Ceylon were "within the Crown's dominions" for the purposes of British nationality law.

3.5 The position was different in the case of Burma. Burma became independent as of 4 January 1948 (Burma Independence Act 1947), but as it attained independence outside the Crown's dominions it did not then have Dominion status.

4. The rise of the independent Commonwealth countries

4.1 Although the Dominions were no longer "colonies" after the Statute of Westminster came into force, they nevertheless remained "within the Crown's dominions". Accordingly, whether or not a territory within the Crown's dominions attained Dominion status prior to 1949 was in a sense immaterial in British nationality law. In either case, birth within the territory prior to 1949 conferred British subject status. The greater relevance of the Dominions is that they were the forerunners of the "independent Commonwealth countries".