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Home Office  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

Immigration



26 May 1982

*De Raay*

BRITISH NATIONALITY ACT 1981:  
DESIGNATION OF SERVICE UNDER SECTION 2(3)

Our two Departments have been considering at official level which descriptions of service should be designated under section 2(3) of the British Nationality Act 1981. The effect of designation of a particular form of service is that a child born abroad after the commencement of the 1981 Act to a British citizen in that service will be a British citizen otherwise than by descent, and will therefore pass on citizenship to his or her own children born abroad. In addition, a British citizen born abroad before commencement will be a citizen otherwise than by descent if at the time of the birth the father was in designated service. In both cases, recruitment to the designated service must have taken place in the United Kingdom. People serving in a designated service will be on a par with Crown servants serving abroad.

The purpose of this letter is to let you, and other recipients, know that the Home Secretary has now decided in principle to designate the following descriptions of service:

- (a) Employment with the British Council;
- (b) Crown servants seconded to international organisations in the course of their careers;
- (c) Her Majesty's Overseas Civil Service;
- (d) Her Majesty's Overseas Judiciary;
- (e) Governors of dependencies;
- (f) Service with NATO;
- (g) Civilian employment overseas where the employee is subject to the Forces Discipline Acts; and
- (h) Employment with the Commonwealth War Graves Commission.

The decision to designate service with NATO depends upon our resolving certain problems that have arisen about the place of recruitment of NATO staff.

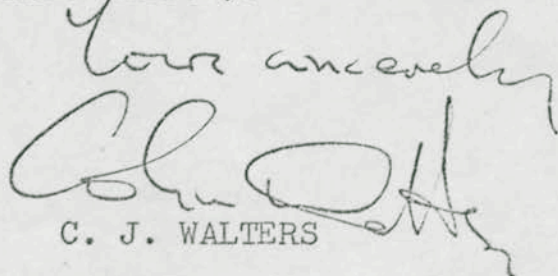
An order made under section 2(3) is subject to annulment in pursuance of a negative resolution of either House. There was considerable feeling in Parliament over the "privileges" accorded to Crown servants by the Nationality Act and any extension of them is liable to be the subject of debate.

The wording of the statute requires the descriptions of service designated to be closely associated with the overseas activities of the United Kingdom Government. It has not been possible to accept that some of the candidates put forward by Departments at official level met the requirement of close association with the overseas activities of the United Kingdom Government. Even where Departmental candidates have come within the statute, it has been necessary to take account of two further considerations: firstly, that the provision would become extremely complex to administer if the list of designated services were long; and secondly, that it would be difficult to draw any kind of reasonable line if too many organisations with competing claims should seek to be included. The Home Secretary has carefully considered whether any descriptions of service in addition to those listed in the second paragraph of this letter should be included in the order, but in view of the considerations mentioned above, he has come to the conclusion that they should not.

This does not, of course, mean that the British staff of organisations which are not designated under section 2(3) of the British Nationality Act 1981 will be unable to pass citizenship on to their children born abroad. In practice it seems very unlikely indeed that such children will be unable to acquire nationality. A father or mother who is a British citizen otherwise than by descent (for example, a British citizen born in the United Kingdom) will pass on citizenship automatically to his or her children born abroad and they in turn will be able to pass on citizenship to their children if born in the United Kingdom.

It is not really likely that, in the sort of situation we are envisaging, neither parent will be a citizen otherwise than by descent but if such a case were to arise the children might well be able to be registered as British citizens later. Apart from the Home Secretary's discretionary powers, a child born to a citizen by descent is entitled to registration if the parent in question was born to a British citizen otherwise than by descent, and has at any time before the child's birth spent three years in the United Kingdom (this requirement is waived if the child is stateless). There is also an entitlement to registration where the whole family returns to the United Kingdom and lives here for three years.

I am sending copies of this letter to Mike Pattison (No. 10), to the Private Secretaries to the Lord Chancellor, the Lord Privy Seal and to the Secretaries of State for Defence, Trade and Social Services, and to David Wright (Cabinet Office).

Yours sincerely  
  
 C. J. WALTERS

*Immigration* *NBPM* *JF*  
*18/6*



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HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

16 June 1982

*De Rouss*

BRITISH NATIONALITY ACT 1981: DESIGNATION OF  
SERVICE UNDER SECTION 2(3)

Thank you for your letter of 9 June about the designation of service with NATO.

The Home Secretary agrees that NATO can properly be distinguished from other major international organisations. For the reasons given in your letter he agrees that we could normally regard British employees of NATO as having been recruited in the United Kingdom. He is, therefore, content to include service with NATO in the designation order.

I am sending copies of this letter to the recipients of yours.

*Love ever*  
*C. J. Walters*

C. J. WALTERS

F. N. Richards, Esq.

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Foreign and Commonwealth Office

London SW1A 2AH

9 June 1982

*Dear Colin,*

British Nationality Act 1981: Designation of Service Under  
Section 2(3)

Mr Pym has seen your letter of 26 May and approves the list of types of service which Mr Whitelaw has provisionally decided to designate under section 2(3) of the Act.

It might help you to have an outline of our views on the inclusion of service with NATO.

You may recall that originally we preferred that no employment with international organisations should qualify for designation. To have included the British employees of all, or even of many, international organisations would have brought down on us the difficulties you mention, and we thought that if service with any international organisation were designated it would have become difficult to find good reasons for excluding the rest.

But the nature of section 2 of the Act was altered by the introduction of the amendment which as sub-section (1)(c) now makes very special provision for British employees of European Community institutions. This concession has naturally created a demand for equivalent treatment for British members of the international staffs of NATO.

This has our support. NATO and the EC are neighbours in Brussels. It cannot be argued that NATO, concerned as it is with our vital security interests, is less central to our major policies and interests than the EC. The Secretary General of NATO does not wish members of his staffs to be seen to have less favoured treatment in this important respect than their equivalents down the road at the Berlaymont. Nor can the British members of the NATO staffs see that their function is sufficiently different from that of EC employees to warrant a different status in terms of nationality.

/The discrepancy



The discrepancy gives rise to two questions. First: is NATO sufficiently different from other major international organisations for us reasonably to designate service there while continuing to exclude the others? The answer here is yes, because the North Atlantic Alliance does not derogate from the sovereignty of its members. NATO's collective legal capacity is limited to what is necessary to conclude contracts, deal with property and begin legal proceedings. It does not act as independently as, for example, the European Commission, where staffs can find themselves having to work against the immediate interests of their governments. Nor does NATO make provision for the independence of its employees on the lines of Article 100 of the United Nations Charter. British members of the NATO staffs therefore remain "closely associated with the activities . . . of Her Majesty's Government in the United Kingdom" as required by the Act.

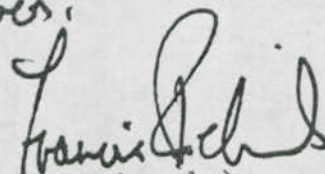
The second question is whether British members of the NATO international staffs can be considered as sufficiently recruited in the United Kingdom to qualify under section 2(1) (b) of the Act. If this point cannot be resolved designation of service with NATO could prove nugatory, a situation we would all wish to avoid.

The answer, as we see it, is that recruitment to NATO is a diffuse process. In the case of British staff it can include advertisement in the British press or a trawl through Whitehall departments, and the offer of a post to the successful candidate conditional on national security clearance which necessitates vetting - required in every case - by our security people. This process, which spans London and Brussels, may equally be described as recruitment in Brussels from the United Kingdom or as recruitment in the United Kingdom from Brussels.

We prefer this last interpretation, and subject to the Home Secretary's views, Mr Pym considers that any questions in Parliament over the designation of service with NATO could be dealt with on the lines I have indicated.

I am sending copies of this letter to the recipients of yours.

Yours Oves,

  
(F N Richards)  
Private Secretary

C J Walters Esq  
Home Office  
Queen Anne's Gate  
LONDON S1

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