

What happens  
to those who would  
become stateless?  
We can't just  
leave the matter  
undecided.

Prime Minister



Prime Minister  
The Home Secretary &  
the Foreign Secretary agree to  
meet two of the Hong  
Kong reports but not the  
third.

There is some risk that the  
Lords will try to embarrass the

HONG KONG: NATIONALITY ORDER IN COUNCIL

Consent on the basis of supporting the  
third report (British citizenship for  
non-ethnic Chinese after 1997).

Geoffrey Howe's minute of 22 January set out three requests from Hong Kong in connection with the Order in Council which we have to make under the Hong Kong Act 1985. I am writing now to seek your agreement and that of OD(K) colleagues to the way I propose we should respond to the three issues, and to seek agreement that the Nationality Order should be laid before the end of the month and debated in the Commons and subsequently in the Lords in May. I have discussed and agreed the proposals with Geoffrey Howe.

Agree  
the  
recommendation?

CDP  
16/4

A draft Nationality Order was annexed to the White Paper we published last October and which was itself debated in both Houses. For the most part the terms of the Order itself seem to have been accepted without criticism. The arguments now focus on the three points raised in Hong Kong which have the unanimous support of the Unofficial Members of the Executive and Legislative Councils and of the Hong Kong Government, as well as that of virtually every speaker in both Houses during the Parliamentary debates in January, including speakers on our side.

The requests, which have now hardened into something like demands, are that we should:

- (a) provide an endorsement in BN(O) passports indicating that the holder does not require an entry certificate or visa to visit the United Kingdom;
- (b) grant British citizenship to the former servicemen who fought in Hong Kong's interest during the Second World War; and

[Home Sec.  
&  
For. Sec.  
proposed  
to  
agree  
to (a)  
& (b),  
but not (c).]



- (c) permit British Dependent Territories citizens who are not ethnically Chinese and who could risk statelessness after 1997 to become British citizens rather than British Overseas citizens.

Hong Kong attaches the greatest importance to the passport endorsement and I have considered very carefully with the Foreign and Commonwealth Secretary and the Attorney General the political and legal consequences of doing what Hong Kong have asked. The issues are set out in detail in Annex A to this letter. The conclusion which the Foreign Secretary and I have reached, is that, despite the risks which the Attorney General has identified, we should provide an endorsement in the BN(O) passport on the lines requested by Hong Kong. The endorsement should not say in terms that it relates to the current Immigration Rules, but a leaflet should be produced and issued with each passport recording a statement which I would make in announcing the decision on the lines of paragraph 8 of Annex A, with the amendment suggested by Hong Kong in paragraph 9 of the Annex (but omitting the word "whatsoever"). The leaflet describing the statement and the endorsement in the terms I now propose are at Annex B.

The other two requests are dealt with in Annex C. As you will see from that annex I believe we can provide sufficient help to the ex-servicemen (of whom there are only about 270) to satisfy opinion in Hong Kong. But I am convinced that we cannot grant British citizenship with the right of abode here to the much larger number of British Dependent Territories citizens from the ethnic minorities in Hong Kong on whose behalf the third request is made (some 11,500 now but potentially many more before 1997). The Foreign and Commonwealth Secretary has accepted that we cannot meet this third request, though we both recognise it has a good deal of support particularly in the House of Lords.

This will all need very careful presentation. But while Hong Kong can be expected to welcome our proposals for the ex-servicemen and will, I hope, now accept that we have met their wishes on the endorsement, they will no doubt feel bound to continue to press the ethnic minority case, and we can expect



strong pressure to give way on this. We shall need to resist this pressure, and to persuade our supporters that Hong Kong has had a fair deal.

Hong Kong are becoming concerned about the time we have taken to reach our conclusion on the Order, and there would be advantage now in pressing ahead quite quickly. I understand it would be helpful to the Foreign Secretary if we could announce our response to Hong Kong's requests by way of an Answer to an arranged Parliamentary Question by 23 April in time for the Foreign Affairs debate. We shall then be able to deal with any immediate follow-up in Oral Questions on 24 April when Jack Ashley has a Question tabled. I understand it would greatly help presentation in Hong Kong if the Governor could inform the Executive Council in strictest confidence of the impending announcement on the afternoon of 22 April, and I think that would be wise.

We ought not to allow too long a period between announcing our decisions and laying the Order, and we must resist any pressure to defer laying while the issues are again discussed here and in Hong Kong. I would hope therefore that we might be able to lay the Order as early as possible in the week of 28 April. We should then allow a week or two for our response to be digested, before moving to debate the Order, perhaps in the weeks of 12 and 19 May. Any longer than this will only allow pressure to build up in Hong Kong and increase the handling difficulty in Parliament.

It is essential for the Order to be debated first in the Commons. Providing we can secure it there, I doubt if the Lords will seek to defeat it, but we might have to face a non-wrecking amendment for example regretting the Government's failure to act on all of Hong Kong's requests. Such an amendment if passed would be very embarrassing. I am sure we shall face strong criticism in the Lords in support of the ethnic minorities, and I know that their supporters in Hong Kong are placing great faith in persuading the Lords to vote against the Order. It will be important, therefore, to do all we can to muster enough support on our benches in both Houses.

In order to fit into this timetable, it will be very helpful to have the Committee's agreement to the proposals I have made by lunchtime on 21 April. We should then be able to make the announcement next week and to lay the Order - which will be the same as the text published with our White Paper last October - before the end of April.

I am copying this minute to the members of OD(K), to the Chief Whips in both Houses and to Sir Robert Armstrong.

Douglas Hurd.

16 April 1986



## PASSPORT ENDORSEMENT

1. Hong Kong argue that a statement in the new BN(O) passport confirming that the holder does not require an entry certificate or visa to visit the United Kingdom is of the greatest importance for confidence in Government's intentions. In practical terms it is likely, they argue, to make the passport more acceptable to other countries. Satisfaction on this issue seems to have become a symbol of the Government's willingness to take account of Hong Kong views.

2. The wording of a possible endorsement has been discussed at great length between Home Office and FCO officials and representatives of Hong Kong. The form of endorsement which, as a result of these discussions, would meet Hong Kong wishes would read as follows:

In accordance with the United Kingdom Immigration Rules the holder of this passport does not require an entry certificate or visa to visit the United Kingdom.

This endorsement would be placed in each BN(O) passport issued and would be accompanied by an explanatory leaflet.

3. An endorsement with this wording raises a problem concerning imposition in the future of a visa requirement by means of an amendment to the Immigration Rules. No such changes are planned, nor are they imminent. But the result of a general change in our immigration procedures, for example stemming from European Community developments, might require a future Government to impose a more general visa requirement on intending visitors. While there would be arguments, relating to considerations of confidence in Hong Kong and the Government's commitment to Hong Kong people, for an exemption for BDTCs and BN(O)s from Hong Kong from a general visa requirement, a specific crisis could occur in Hong Kong which necessitated the imposition of visas as the only way of seeking to stem an inflow of people from the territory to this country. A visa requirement might thus have to be imposed very quickly. The new passports will first be issued in 1987, and will be valid for 10

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years. Thus they will before long have a validity that extends to the end of the century and beyond. An endorsement which put a future Government in a position in which it would have to introduce primary legislation before the holders of these passports (but of no other passports) could be made subject to a visa requirement could therefore create a real problem for the future.

4. The advice of the Attorney General has been sought on the proposed endorsement. His view is that if a future Government were to introduce visas by an amendment to the Rules and if that amendment were challenged by the holder of a passport containing the endorsement with the wording set out in paragraph 2 above the risk that a court would hold on proceedings for judicial review that the rules amendment would amount to an abuse of power is not negligible.

5. The Attorney General considers that this danger could be reduced if the endorsement read:

In accordance with the current United Kingdom Immigration Rules ...

The Governor has consulted the Executive Council in confidence on this wording. Their reaction was hostile. They believe that an endorsement referring to "current" Immigration Rules would arouse suspicion of the intentions of a future Government. Some members went so far as to suggest that it would be worse than no endorsement at all.

6. The Governor has therefore asked Ministers to consider whether legal caution is worth the political price of failing to reach agreement on an issue on which expectations have been raised and which has become crucial to confidence. In the Governor's view unless conclusions are reached soon the affair will leave "a deep sense of depression and abandonment". To produce an endorsement with a preamble including "current" would cause widespread suspicion that the Government later intended to change the Immigration Rules to Hong Kong's disadvantage.

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7. In the view of the Foreign and Commonwealth Office this assessment must be a matter for considerable concern. Whether or not this is entirely rational, the question of the endorsement has become a crucial matter of confidence in Hong Kong. Retention of confidence is essential if Hong Kong is to be administered affectively until sovereignty is restored to China in 1997. Failure to meet Hong Kong's preference over the wording of the endorsement, in particular if this was coupled with a decision against the granting of British citizenship to ethnic minorities, would significantly increase the prospect of disaffection and instability.

8. The Government's decision on the endorsement must be announced before the Nationality Order is laid. If the Government accepts the form of endorsement which meets Hong Kong's wishes, despite the political difficulties this could cause in the event that it proved necessary to impose visas and despite the particular risks the Attorney General has identified, the terms of the announcement in Parliament could be designed to lessen the risks. The announcement might be on the following lines:

As we have made clear on many occasions visitors from Hong Kong are welcome to the United Kingdom. British Dependent Territories Citizens do not have to obtain a visa in advance to visit the United Kingdom. That is the position under the current Immigration Rules. Of course, in this matter as in any other, I cannot speak for the policies of future Governments; but I can repeat that this Government has no intention of introducing any visa requirement for such visitors. This is understandably a matter of great importance to people in Hong Kong. In response to their wishes therefore the Government has agreed to place an endorsement reflecting this position in the new BN(O) passports. The endorsement will read:

"In accordance with the United Kingdom Immigration Rules the holder of this passport does not require an entry certificate or visa to visit the United Kingdom."

A leaflet will be issued with each passport explaining the endorsement and the position under the Immigration Rules.

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9. The Governor has consulted the Executive Council in confidence on this procedure. They considered that omission of "current" from the endorsement would meet Hong Kong's requirements and be acceptable to the Legislative Council. Where the Parliamentary Statement was concerned, they queried whether with the inclusion of "current" in the third sentence it was necessary to continue with the first clause of the fourth sentence. Presumably such a statement was not normally made in respect of other executive acts, and to omit it would help to remove a likely source of considerable concern in Hong Kong regarding HMG's future intentions. They recommended strongly that the third and fourth sentences of the draft statement be combined as follows:

"This is the position under the current Immigration Rules and this Government has no intention [whatsoever] of introducing any visa requirement for such visitors."

10. As indicated in paragraph 3 above circumstances could arise in the future when the imposition of visas on Hong Kong had to be contemplated. This would in any circumstances be controversial and the endorsement would be cited in support of accusations of bad faith. Reference to the third and fourth sentences of the Parliamentary statement set out in paragraph 8 would help to counter such accusations.

11. The risk of challenge in the Courts by an individual passport holder would remain. The Parliamentary statement could be quoted in the explanatory leaflet.

In this way the fact that the possibility of future change would not only have been drawn individually to the attention of every holder of the passport with the endorsement. That could be advanced in Court in rebuttal of the challenge to the validity of the visa requirement.

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CONCLUSION

12. The risk of successful challenge would remain. The choice between the wording of the endorsement necessary to meet the wishes of Hong Kong and one containing the word "current" as preferred by the Attorney General is not between a formula bound to fail in the face of judicial challenge on the one hand and one proof from challenge on the other. It is a matter of degree of risk. If an endorsement worded to meeting Hong Kong's wishes is conceded the risk of successful challenge is not negligible; a Parliamentary statement on the lines set out in paragraph 8 above (as amended by paragraph 9) and incorporated in an explanatory leaflet issued with endorsed passports, would help, albeit not decisively.

13. An endorsement restricted to "current" Immigration Rules would in effect amount to rejection of Hong Kong's wishes, and in terms calculated, however unjustifiably, to arouse suspicions about Government intentions. It would carry an immediate political risk in terms of bitterness and disaffection in Hong Kong, with a detrimental effect on long-term confidence and on our ability to administer the territory effectively up to 1997. If this outcome is avoided by conceding the endorsement that Hong Kong have requested, combined with the proposed statement and leaflet, a future Government which had to introduce visas for Hong Kong would be confronted by the choice of having to introduce primary legislation or running a risk that the visa requirement imposed by Immigration Rules changes would be held by the Courts to be an abuse of power once an individual endorsement passport holder succeeded in getting a case before the Courts. The crucial question for decision is whether these possible practical and legal difficulties for a future Government outweigh the immediate and certain political risk implicit in a decision which runs counter to Hong Kong's wishes on this point.

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## NOTICE TO BRITISH NATIONALS (OVERSEAS) ON VISITING THE UNITED KINGDOM

The endorsement on page        of your passport reads:

"In accordance with the United Kingdom Immigration Rules the holder of this passport does not require an entry certificate or visa to visit the United Kingdom".

In explaining the purpose of the endorsement in Parliament on [date] the Secretary of State said:

"As we have made clear on many occasions visitors from Hong Kong are welcome to the United Kingdom. British Dependent Territories citizens do not have to obtain a visa in advance to visit the United Kingdom. This is the position under the current Immigration Rules and this Government has no intention of introducing any visa requirement for such visitors. This is understandably a matter of great importance to people in Hong Kong. In response to their wishes therefore the Government has agreed to place an endorsement reflecting this position in the new BN(O) passports. A leaflet will be issued with each passport explaining the endorsement and the position under the Immigration Rules."

This leaflet sets out the position on the lines indicated by the Secretary of State.

The 1983 Immigration Rules provide that a passenger seeking admission to the United Kingdom as a visitor must satisfy the immigration officer that the visit as stated is genuinely intended. (Paragraph 17 of the Rules, reproduced below, sets out the full requirements.) Most passengers seeking admission as visitors have little difficulty in satisfying the immigration officer that they meet the requirements of the rules for admission as a genuine visitor.

As the endorsement makes clear visitors do not require an entry certificate or visa under the 1983 rules. The entry certificate is however available as an optional facility if you wish to establish eligibility for admission as a visitor in advance. Passengers with entry certificates do not then need to satisfy the immigration officer as to their visit and may only be refused admission if the entry certificate was obtained on false representations or if circumstances have changed. You may apply for an entry certificate at the address below.

If you intend to stay in the United Kingdom other than as a visitor you should obtain information on the entry requirements well before your departure date from the address below.

[Address]

[Immigration Rules para 17]



Outstanding Issues for the Hong Kong Nationality Order: Note by the Home Secretary1. FORMER SERVICEMEN

1. Hong Kong say that there are 270 former servicemen in Hong Kong who fought for Hong Kong during the Second World War. There is a strong body of opinion both here and in Hong Kong that the Government has a moral obligation to give these people special consideration in view of their former service to this country.

2. About 60 of the servicemen are eligible for registration as British citizens under section 4(5) of the British Nationality Act 1981 since they are or may conceivably become BDTCs who served the Crown under the government of a dependent territory by service in the Hong Kong Volunteers. Section 4(5) is intended to be used very sparingly and few of the 450 or so Crown Servants who have applied from Hong Kong are likely to succeed. The key criterion is the applicant's quality of service. It would be possible to conclude that the wholly exceptional service given by the former servicemen during the war, many of whom were prisoners of war, provides sufficient grounds for granting them British citizenship under section 4(5) of the Act. But to avoid resentment from other Crown Servants in Hong Kong and applications from other servicemen in other parts of the world (very few of whom would be eligible) we should need to make clear that the Home Secretary was prepared favourably to consider applications from eligible servicemen in Hong Kong because of the unique position of Hong Kong in the War and now.

3. There is no present provision under the law which would enable British citizenship to be granted now to the other BDTC servicemen who served in regular units - and so not under the government of a dependent territory - or to those who are not BDTCs.

4. It would be possible however to give an undertaking to accept those who might wish to come to the United Kingdom for settlement, together with their dependants. The numbers involved are small: some will be ethnic Chinese who are unlikely to want to come here and the rest may have wives still alive but would be unlikely to have many dependants who would qualify under the Immigration Rules. The implications for settlement figures are not therefore significant. But there are of course many others around the world who have given similar service. There would be a risk that a concession would lead to pressure from them for similar treatment. A decision to grant such a concession would therefore require careful presentation on the basis of the unique circumstances in Hong Kong.

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5. At the risk of causing resentment among these and other Crown Servants in Hong Kong I think I should offer to give favourable consideration to applications for British citizenship under section 4(5) from the 60 or so former servicemen who are or will become British Dependent Territories citizens, and who are eligible to apply, on the grounds of their outstanding war service.
6. I am also prepared, though with some misgivings in terms of the precedent set for ex-servicemen in other parts of the world to say that I would be prepared from the date of the Parliamentary announcement, to accept for settlement any of the 270 who wish to come and live here. The numbers likely to take up this concession are small and the returns in terms of goodwill in Hong Kong and in Parliament should be helpful.

## NON-ETHNIC CHINESE

7. The Government's current proposal is that any Hong Kong British Dependent Territories citizen who does not acquire BN(O) status and who has no other form of nationality should automatically acquire British Overseas citizenship on 1 July 1997. Similar provision is made for the children and grandchildren of such persons if they would otherwise be stateless.

8. The non-ethnic Chinese community argue that that this is not adequate because British Overseas citizenship does not give them a right of abode anywhere. They therefore maintain that it amounts to a form of statelessness. They also argue that because, unlike the Chinese community in Hong Kong, they will not be entitled to Chinese citizenship they deserve special consideration from the Government; and they are concerned about the position of third and subsequent generations.

9. The Government's views on this request were explained fully by Ministers during the debates in Parliament in January. The communities concerned say that they wish to continue to live and work in Hong Kong. British citizenship could not give them the right to do this. The right of abode in Hong Kong is secured by the Joint Declaration. Nor would the grant of British citizenship prevent third and subsequent generations from becoming stateless, since the British Nationality Act 1981 only allows the transmission of British citizenship to two generations born overseas. British citizenship would not therefore help meet the main concern of the minorities in Hong Kong.

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10. The only justification for giving British citizenship to non-ethnic Chinese is that it would allow them to come to the United Kingdom after 1997 if things do not work out well for them in Hong Kong. We suspect that this is the real motivation of the people concerned. However, it is by no means clear that it would be right to grant such an insurance policy to this sector of the community alone in Hong Kong.

11. To grant these people British citizenship rather than British Overseas citizenship would also be contrary to the principles on which we based the British Nationality Act 1981. Our critics in the United Kingdom would seize on our change of mind as proof that we accepted their view of the worthlessness of British Overseas citizenship, and we would be urged to grant British citizenship or the right to settle here to other groups of British Overseas citizens.

12. The numbers potentially involved are considerable. There are currently estimated to be 11,500 ethnic minority BDTCs in Hong Kong who might benefit from the grant of British citizenship after 1997. But there is potential for a considerable increase in these numbers between now and 1997. There are some 80,000 non-BDTC residents in Hong Kong who are or could become eligible for naturalisation as BDTCs, and who might consequently benefit from any concession. 15,000 of these may not become settled; a further 11,000 are already British citizens, and many more are unlikely anyway to seek British nationality. But the potential remain, including 11,000 citizens of India and Pakistan. Unless restricted in some way, the commitment up to 1997 is uncertain and may well be much larger than the size of the present BDTC minority community.

13. There are two ways in which the future commitment might be limited. First Hong Kong could restrict by administrative means the numbers granted naturalisation from now on. But a conscious decision to introduce such restrictive criteria to ensure that few if any applicants would achieve naturalisation could give rise to unwelcome controversy and criticism about the way in which the naturalisation provisions were being applied.

14. Alternatively it might be possible to set up a two-tier system whereby the present community and their children (perhaps 12,000 in all) could acquire British citizenship after 1997 but that those who become BDTCs from now on and their children would acquire British Overseas citizenship. This course is favoured by Hong Kong, but in our view it would be cumbersome and divisive,

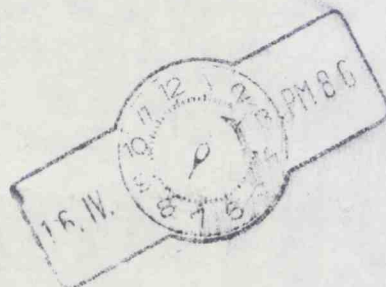
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as it could lead to split families, and would be bound to produce a number of hard cases.

15. The Home Secretary considers that the merits of the argument on both nationality and immigration grounds point clearly to giving British Overseas citizenship and not British citizenship to members of the ethnic minorities in Hong Kong who might otherwise risk statelessness. An announcement to this effect would be coupled with the reaffirmation of the right of abode in Hong Kong guaranteed by the Agreement with the Chinese. We should add to this an assurance that any British nationals who came under pressure to leave could expect the Government of the day to give their case for admission to the United Kingdom sympathetic consideration.

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10 DOWNING STREET

From the Private Secretary

17 April 1986

Dear Stephen,

**HONG KONG: NATIONALITY ORDER IN COUNCIL**

The Prime Minister has considered the Home Secretary's minute of 16 April dealing with the Government's proposed response to the three requests from Hong Kong in connection with the Nationality Order in Council which has to be made under the Hong Kong Act 1985.

The Prime Minister is content that the response should be on the lines proposed by the Home Secretary and agreed by the Foreign Secretary.

The Prime Minister further agrees that this should be announced by way of a Parliamentary Answer by 23 April and that the order should be laid at the end of the month.

I am copying this letter to the Private Secretaries to members of OD(K), to William Austen (Government Whips, Commons), Rhodri Walters (Government Whips, Lords) and to Michael Stark (Cabinet Office).

Yours sincerely,

(C.D. Powell)

Stephen Boys Smith, Esq.,  
Home Office.

SPW