EXPLANATORY MEMORANDUM TO

THE BRITISH OVERSEAS TERRITORIES CITIZENSHIP (DESIGNATED SERVICE) (AMENDMENT) ORDER 2008
2008 No. 1240

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This order amends the British Dependent Territories Citizenship (Designated Service) Order 1982, which designated certain "descriptions of service" under section 16(3) of the British Nationality Act 1981. The British dependent territories are now called British overseas territories.

2.2. The effect of designation is that a British overseas territories citizen who is engaged in designated service outside the overseas territories (if recruited in an overseas territory), is able to pass on British overseas territories citizenship to any children born to him or her. A further effect of this section is that the spouse or civil partner of a person in designated service can be naturalised as a British overseas territories citizen without having to meet the normal residence requirements.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Section 16(3) of the British Nationality Act 1981 (the 1981 Act) enables the Secretary of State to designate "any description of service which he considers to be closely associated with the activities outside the British overseas territories of the government of any British overseas territory". The effect of designation is that it enables the children and spouses or civil partners of those in such service to acquire British overseas territories citizenship outside the normal provisions.

4.2 The British Dependent Territories Citizenship (Designated Service) Order 1982 designated service for the Hong Kong Tourist Association and the Hong Kong Trade Development Council for the purposes of section 16 of the 1981 Act.

4.3 On 1 July 1997 Hong Kong ceased to be a dependent territory and was removed from the list of such territories in Schedule 6 to the 1981 Act. The dependent territories were renamed the British overseas territories from 26 February 2002.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 It additionally applies to the Islands and all of the British overseas territories (the legislatures of which have not been consulted since they have no competence in matters relating to nationality and citizenship).

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The purpose of section 16(3) of the British Nationality Act 1981 is to ensure that British overseas territories citizens employed in certain organisations that are closely linked to the activities of the government of a British overseas territory are not disadvantaged by their overseas service in the acquisition of citizenship by their children and spouses or civil partners.

7.2 On 1 July 1997 Hong Kong ceased to be a dependent territory. On 26 February 2002 the remaining dependent territories were re-named as British overseas territories, and the British Nationality Act 1981, including section 16(3), was amended to take account of this new title.

7.3 As such, a person employed by the Hong Kong Tourist Association (now called the Hong Kong Tourism Board) or the Hong Kong Trade Development Council can no longer be regarded as being in service closely associated with the government of an overseas territory.

7.4 In practical terms, the fact that service for these two organisations has so far remained designated service has had little impact, as very few people working for these organisations are now British overseas territories citizens. The purpose of this order is therefore to remove service for the two organisations from the 1982 designation order.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is nil.

9. Contact

Jane Whitehead at the Home Office, Tel: 0151 237 5315 or e-mail: Jane.Whitehead@ind.homeoffice.gsi.gov.uk, can answer any queries regarding the instrument.