



## BRIEFING PAPER

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# Hong Kong British National (Overseas) visa

By Melanie Gower

### Contents:

1. Background to British National (Overseas) status
2. Calls to extend BN(O) immigration and citizenship rights
3. The new Hong Kong British National (Overseas) visa
4. The BN(O) visa offer: topical issues



# Contents

<b>Summary</b>	<b>3</b>
<b>1. Background to British National (Overseas) status</b>	<b>5</b>
1.1 Acquiring BN(O) status: legislation	5
1.2 Immigration and citizenship rights historically conferred by BN(O) status	6
<b>2. Calls to extend BN(O) immigration and citizenship rights</b>	<b>10</b>
2.1 Until May 2020	10
2.2 May 2020: Announcement of a new visa route for BN(O)s	11
2.3 Ten Minute Rule Bill: <i>Hong Kong Bill 2019-21</i>	13
<b>3. The new Hong Kong British National (Overseas) visa</b>	<b>14</b>
3.1 Policy, legislation and guidance	14
3.2 Practical details	14
3.3 More generous terms than other visa categories?	18
<b>4. The BN(O) visa: topical issues</b>	<b>19</b>
4.1 How many people might come to the UK?	19
4.2 Integration support and managing the impact on local areas	19
4.3 The gaps in the UK's offer	20
4.4 What are other countries doing?	21

## Summary

The Hong Kong British National (Overseas) visa launches on 31 January. It is a new visa route available to people from Hong Kong who have British National (Overseas) – ‘BN(O)’ – status and their close family members. It has been created in response to the passing of a new national security law for Hong Kong, which the UK considers violates agreements made between the UK and China at the time of the Hong Kong handover.

### Practical details

The visa will enable BN(O)s and their dependent family members to come to live in the UK for up to five years. They will then be able to apply for permanent settlement and, in turn, British citizenship (subject to associated eligibility criteria).

There are two broad application categories (‘routes’) within the visa. They cater for different groups of people but have the same general conditions.

- **BN(O) Status Holder route** – for BN(O)s and their dependent partners or minor children. Other adult family members with a high degree of dependency may also apply under this route.
- **BN(O) Household Member route** – for BN(O) citizens’ adult children (born on or after 1 July 1997) and the adult child’s dependent partner and minor children. All applicants must form part of the same household as the BN(O) citizen (i.e. normally live together) and be applying alongside the BN(O) family member.

As indicated above, adults born after the 1997 cut-off date for acquiring BN(O) status are not independently eligible for the visa. They can only apply if they have a BN(O) parent in their household who also wishes to move to the UK at the same time.

Applicants do not need to have a BN(O) passport or a specified level of English. They will need to show an ability to accommodate and maintain themselves for their first six months in the UK. Successful applicants will be able to work and study but will not be eligible for taxpayer funded benefits defined as public funds. Nor will they be classed as home students for tuition fee purposes immediately upon arrival in the UK.

### How many people might benefit?

The number of Hong Kong residents who might take up the visa offer is unknown.

An estimated 5.4 million Hong Kong residents (2.9m BN(O)s and their dependant family members) are potentially eligible, according to Home Office figures. Hong Kong’s population is around 7.5 million.

But decisions to move to the UK are likely to be influenced by a range of push and pull factors, and people might also have options to move to other countries.

## 4 Hong Kong British National (Overseas) visa

The Home Office's central range analysis estimates that between 123,000 and 153,700 people might come to the UK in the first year, and between 258,000 and 322,400 people over the first five years. These figures are subject to a very high degree of uncertainty.

### **Stakeholder reactions and topical issues**

The visa plans attracted broad cross-party support in Parliament when they were first announced. The UK-based charity Hong Kong Watch has also welcomed the plans. It wants everyone in Hong Kong to have an "insurance policy" against a deterioration of their rights.

Some Parliamentarians, amongst others, are concerned that young pro-democracy activists will not be eligible for the visa if their parents don't have BN(O) status or aren't willing to move to the UK.

Some people have suggested that the Government should go further, such as by re-opening a BN(O) application scheme, giving all BN(O)s the right to enter, live and work in the UK free from immigration controls (the 'right of abode'), or making alternative provision for households that don't have BN(O) status.

The Government disagrees, saying that there is a limit to the number of people that the UK can absorb. It says that it is liaising with international partners to coordinate immigration schemes for Hong Kong residents. Some of the measures announced by Canada and Australia fill some gaps in the UK's offer.

The Government also points to the fact that people who are ineligible for the Hong Kong BN(O) visa might still be able to apply for a different category of temporary visa, such as a youth mobility visa, or in a work or study route. These have different conditions and entitlements to the BN(O) visa.

Migration Watch has strongly criticised the decision to create a bespoke visa route for BN(O)s. It argues that it is "utterly irresponsible" and potentially breaks the Government's general election pledge to reduce overall immigration to the UK. It also questions the Government's assertion that the UK has a historical responsibility to the people of Hong Kong.

### **Who has BN(O) status and what rights has it historically given?**

BN(O) status is held by a fixed cohort of people which is gradually decreasing in size. It cannot be passed on to future generations.

BN(O) status was offered to people who, before the 1997 Hong Kong handover, had British Dependent Territories Citizenship (BDTC) through a connection with Hong Kong. They lost their BDTC status on 1 July 1997 but could apply for BN(O) status in the ten years before the handover.

BN(O)s can use a type of British passport and seek consular assistance and protection from UK diplomatic posts (apart from in China, Hong Kong or Macao). But they do not have the 'right of abode' in the UK. Like almost all other nationalities, they are subject to UK visa requirements.

# 1. Background to British National (Overseas) status

Over the years, various different citizenship and residence rights have been given to and taken away from people from former British colonies. These changes are, in part, reflected by the [six different types of British nationality status](#) provided for in British nationality law:

- British citizen
- British Overseas Territories Citizen (previously known as British dependent territories citizenship)
- British Overseas Citizen
- British Subject
- British National (Overseas)
- British Protected Person

Each of these statuses allow holders to possess a type of British passport. But only British citizen status automatically gives the right to enter, live and work in the UK free from immigration control (known as the [right of abode](#)).

The British National (Overseas) status (hereafter, 'BN(O)') was created as part of the arrangements for the handover of sovereignty of Hong Kong on 1 July 1997. Before 1 July 1997, Hong Kong residents had British Dependent Territories Citizenship ('BDTC'). Most BDTCs in Hong Kong were also already considered to be Chinese nationals, under Chinese nationality law.

## 1.1 Acquiring BN(O) status: legislation

BN(O) status, and the grounds for its acquisition, were created by the *Hong Kong Act 1985* and the *Hong Kong (British Nationality) Order 1986*, SI 1986/948.

These provided that people who had BDTC status through a connection to Hong Kong would not be able to retain or acquire that status on or after 1 July 1997 but would be able to acquire the new BN(O) status in the ten years leading up to the Hong Kong handover.

Due to concerns about a last-minute rush of applications, cut-off dates for applying to be registered as a BN(O) were set by the *Hong Kong (British Nationality) (Amendment) Order 1993*, SI 1993/1795. Records suggest that most eligible people did apply in time, with 3.3 million people having registered by 1 March 1997.<sup>1</sup>

### Applying for BN(O) status

It is no longer possible to apply for BN(O) status.

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<sup>1</sup> L Fransman, *Fransman's British Nationality Law*, Part III, Section B, B.91

BN(O) status was not conferred automatically. Those eligible (whether adults or minors) had to make an application to be registered as BN(O)s. Successful applicants were issued with a British passport describing them as BN(O)s. They were not issued with a stand-alone certificate of registration.

General eligibility is summarised on the GOV.UK page [British national \(overseas\)](#) and in Home Office caseworker guidance.<sup>2</sup>

In short, BN(O) status could only be acquired by people who, prior to the Hong Kong handover, had BDTC status through a connection with Hong Kong.

BN(O)s cannot pass on their status to future generations. Consequently, BN(O) status has been available to a fixed cohort of people which is gradually decreasing in size.

People who did not register as BN(O)s before the deadline and had no other nationality or citizenship status on 30 June 1997 automatically became British overseas citizens (BOCs) on 1 July 1997.

### How many people have BN(O) status?

The Government [estimates](#) that there are around 2.9m BN(O)s currently living in Hong Kong.

[Hong Kong's population](#) is estimated to be around 7.5m.

Most BN(O)s are also considered to be Chinese (under Chinese nationality laws).

## 1.2 Immigration and citizenship rights historically conferred by BN(O) status

The following section outlines the position prior to the announcement of the Hong Kong British National (Overseas) visa (which is discussed in section 3 of this briefing).

### British passport

BN(O) status enables the holder to use a type of British passport and allows them to seek consular assistance and protection from UK diplomatic posts. But BN(O) passport holders cannot access consular support from UK diplomatic posts in China, Hong Kong or Macao. The Government has explained:

Under a Memorandum to the Joint Declaration, British Nationals (Overseas) (BN(O)s) are eligible to consular protection in third countries, but not Hong Kong, Macao or mainland China. The Chinese authorities do not recognise dual nationality and would not grant consular access. Where the UK Government is unable to offer consular assistance and where we have legitimate

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<sup>2</sup> Home Office, [British nationals \(overseas\)v1.0](#), 14 July 2017

humanitarian or human rights concerns we will engage the relevant authorities and lobby on that basis.<sup>3</sup>

Not all BN(O)s have a passport confirming their status, and possession of a BN(O) passport isn't necessary to be eligible under the UK's new Hong Kong British National (Overseas) visa scheme. Nevertheless, there has been a dramatic increase in the number of people applying for a BN(O) passport over the past 18 months or so. Since July 2019 the number of passport holders increased from around 167,000 people to over 400,000 (as at August 2020).<sup>4</sup>

## Immigration rights

Unlike British citizen status, BN(O) status does not give the '[right of abode](#)', i.e. the right to travel to, and live and work in the UK, free from immigration controls. Consequently, people with a BN(O) passport are subject to the same UK visa requirements as other non-British citizens. These are set out in the UK's Immigration Rules.<sup>5</sup>

The main work and study immigration categories fall within the points-based system for immigration. Only certain visa categories directly lead on to eligibility for permission to stay in the UK permanently.

BN(O) passport holders (and Hong Kong SAR passport holders) can come to the UK as a visitor without applying for a visa in advance. BN(O) and Hong Kong SAR passport holders are also eligible under the Tier 5 Youth Mobility Scheme. This is a temporary work visa available to certain nationalities.

BN(O)s were not considered to be 'UK nationals' by the European Union and consequently did not have EU citizenship rights when the UK was an EU Member State.

## Grounds for acquiring British citizenship

British nationality law provides some specific registration routes through which BN(O)s may be able to acquire British citizen status.

### Based on residence in the UK

BN(O)s living in the UK have an entitlement to be registered as British citizens through [section 4\(2\) of the \*British Nationality Act 1981\*](#) (as amended; 'BNA 1981').

The main eligibility criteria are to have been lawfully resident in the UK for the five year period before applying (subject to permitted lengths of absence); to have been free from immigration time restrictions for the last year (e.g. had Indefinite Leave to Remain); and to be of good character.

In some ways, the eligibility criteria are more generous than the similar requirements for naturalising as a British citizen based on residence (under section 6(1) of the BNA 1981). Chiefly, whereas naturalisation is

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<sup>3</sup> [PQ UIN127626](#) [Hong Kong: British National (Overseas)], answered on 17 December 2020

<sup>4</sup> Comprising of over 400,000 live passport holders and pending applications. Source: Home Office, [Hong Kong British National \(Overseas\) Impact Assessment](#), IA HO0381, 22 October 2020, para 22

<sup>5</sup> [HC 395 of 1993-4 as amended](#)

at the Home Secretary's discretion, eligible BN(O)s have an entitlement to be registered.

But some of the differences make little difference in practice. For example, section 4 theoretically gives a slightly faster route to citizenship than naturalisation. But most immigration categories now apply a minimum five-year route to eligibility for Indefinite Leave to Remain anyway.

Similarly, although BN(O)s registering under section 4(2) are not required to satisfy a knowledge of English language and life in the UK requirement, in practice most people would have already had to do so as part of the process of applying for Indefinite Leave to Remain.<sup>6</sup>

### **Based on residence in Hong Kong and being otherwise stateless**

The *British Nationality (Hong Kong) Act 1997* gives BN(O)s (and certain other categories of British national) who are ordinarily resident in Hong Kong and do not have any other nationality, an entitlement to be registered as British citizens.<sup>7</sup> The general eligibility criteria are summarised on the GOV.UK page: [Apply for citizenship if you have British nationality/You've lived in Hong Kong](#):

You may be eligible to apply if you're 'ordinarily resident' in Hong Kong at the date of your application and:

- you were ordinarily resident there on 3 February 1997
- your parents were ordinarily resident there at the time of your birth if you're a child born after 3 February 1997

You must either have:

- been a [British national](#) on 3 February 1997
- become a British national after 3 February 1997

You must not have held citizenship or nationality of another country at the time or since.

As alluded to in the guidance, most BN(O)s are unlikely to be eligible for British citizenship through this route, because of Chinese nationality law:

You can be a national of a country even if you've never had a passport from there.

For example, you might be a Chinese national if you're ethnically Chinese (even if you became a British national through a connection with Hong Kong - for example because you, your parents or your grandparents were born, registered or naturalised there).<sup>8</sup>

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<sup>6</sup> People with permanent rights of residence under EU law or the EU Settlement Scheme would not.

<sup>7</sup> Separately, BN(O)s (and certain other categories of British national) without another nationality status are entitled to be registered as British citizens under section 4B of the BNA 1981.

<sup>8</sup> In this context, the definition of 'British national' also encompasses the following statuses: BDTC through connection with Hong Kong; BOC; British subject; or British protected person

### Box 1: Other pre-handover citizenship schemes for Hong Kong residents

The UK Government was unwilling to extend British citizenship or the right of abode to all BDTCs living in Hong Kong prior to the handover. But targeted provisions gave opportunities for certain categories of Hong Kong BDTCs to acquire British citizenship.<sup>9</sup>

#### Hong Kong Citizenship Selection Scheme

The Hong Kong Citizenship Selection Scheme (sometimes referred to as the British Nationality Selection Scheme) was provided for by the *British Nationality (Hong Kong) Act 1990*. It enabled 50,000 heads of household (and their dependents) to acquire British citizenship. It was intended to prevent brain drain from Hong Kong in the run-up to the handover of sovereignty, by giving successful applicants the security of British citizen status. *Fransman's*, the leading text on British nationality law, provides an overview of the background to the Scheme and how it worked:

On 20 December 1989 the Foreign Secretary, Douglas Hurd, announced in parliament that the government rejected the idea of extending the right of abode in the UK to all Hong Kong's BDTCs as to do otherwise would create 'unacceptable strains' if they then came to the UK. Instead, a scheme would be launched to give the right of abode to 50,000 heads of household, based on the 'value of the individuals' service to Hong Kong and the extent to which people in that category are emigrating'. (...)

(...)

The Scheme was based on a points system and provided for four classes of principal applicant: the general occupational class, the disciplined services class, the sensitive services class and the entrepreneurs class. In the latter two classes applications were at the invitation of the Governor. In the former two classes (accounting for the great majority of all registrations) points, to a maximum of 800, were allocated for age, experience, education, public service, etc, and essentially the highest scorers were registered as British citizens (subject to the good character requirement).<sup>10</sup>

Hong Kong-Chinese servicemen were eligible to apply under the Scheme, in the disciplined services class. But campaigners argue that only 500 Hong Kong-Chinese soldiers obtained British citizenship. There has been a long campaign for the right of abode or British citizenship for Hong Kong veterans. It has been supported by some Parliamentarians.

A [Westminster Hall debate on 11 March 2015](#) aired many of the arguments. James Brokenshire, then Minister for Immigration, indicated that the government was not persuaded of the case.<sup>11</sup> Since 2016, however, successive governments have said that the Home Office is considering representations made on behalf of former Hong Kong Military Service Corps personnel who couldn't obtain citizenship through the Scheme.<sup>12</sup>

#### Hong Kong war widows

The *Hong Kong (War Wives and Widows) Act 1996* gave an entitlement to register as British citizens to a small group of surviving widows and wives of local Hong Kong men who had fought against the Japanese occupation during World War II.

#### Non-Chinese ethnic minorities

The *British Nationality (Hong Kong) Act 1997* enabled Hong Kong's non-Chinese ethnic minorities, who would have otherwise effectively been left stateless after the handover, to be registered as British citizens.

<sup>9</sup> This is not an exhaustive summary of the various remedies available in British nationality law available to people associated with Hong Kong. For a more complete overview, see Fransman's *British Nationality Law*, Part III Section B, B.91

<sup>10</sup> L Fransman, *Fransman's British Nationality Law*, Part III Section B, B.91

<sup>11</sup> [HC Deb 11 March 2015 c87-94WH](#)

<sup>12</sup> See, for example, [HL2050](#) [on Right of Abode: Hong Kong], answered on 16 March 2020, and [HC Deb 3 June 2020 c691](#)

## 2. Calls to extend BN(O) immigration and citizenship rights

### 2.1 Until May 2020

For as long as BN(O) status has existed, there have been calls for BN(O)s to be given British citizenship or the right of abode in the UK. Successive governments have resisted these.

The issue has become more prominent again in recent years, prompted by concern about recent events and protests in Hong Kong.<sup>13</sup>

A [petition on Parliament's website](#) to give British citizenship to BN(O)s attracted over 100,000 signatures before it closed in September 2019. In November 2019, the Foreign Affairs Committee called on the Government to give BN(O)s the right of abode, citing concerns that they might become more vulnerable to arrests in Hong Kong.<sup>14</sup>

Successive governments have argued that it would be inappropriate to change the legal status of BN(O)s, citing commitments made under the Joint Declaration with China. FCO Minister Heather Wheeler referred to this in January 2020, during a [Westminster Hall debate](#) on British Overseas Passport Holders in Hong Kong:

BNO status was part of the delicate balance and negotiations that were conducted, which were concluded at the time of the joint declaration. The delicate balance reflected in that package needs to be respected. That is why we believe it would not be right to change the legal status of those with BNO status at this time, but they will have our full support in exercising the rights they have as part of their status.<sup>15</sup>

In late May 2020 the Government signalled a change to its approach towards extending immigration options for BN(O)s, without going so far as to offer a right of abode or automatic British citizen status (discussed in section 2.2 and section 3 of this briefing).

#### **Box 2: The Joint Declaration: a legal obstacle to giving BN(O)s the right of abode?**

In the past, UK Governments have argued that offering a right of abode to BN(O)s would breach the commitments made in memorandums attached to the 1984 Sino-British joint declaration on the future of Hong Kong.<sup>16</sup> They [have referenced](#) comments made by the former Attorney-General, Lord Goldsmith, in his 2008 review *Citizenship: Our Common Bond* in support of this view.

Lord Goldsmith, and some nationality law experts, have disputed this interpretation.

<sup>13</sup> See, for example, Petition P002491, presented by Steve Double MP, 10 July 2019, and government response, [HC Deb 24 October 2019 c13-14P](#)

<sup>14</sup> Foreign Affairs Committee, [A cautious embrace: defending democracy in an age of autocracies](#), HC 109, 5 November 2019, paras 40-41.

<sup>15</sup> [HC Deb 29 January 2020 c311-12WH](#)

<sup>16</sup> See Commons Library briefing [Hong Kong: the Joint Declaration](#), July 2019, for background to the Joint Declaration.

Lord Goldsmith [reportedly wrote](#) to the Foreign Secretary and Home Secretary in February 2020 to clarify that his 2008 report referred to advice from the FCO, rather than his own view. He also set out his own view that there is no legal obstacle to providing BN(O)s with a right of abode in the UK. BN(O) status is referred to in Memoranda of Understanding exchanged by the UK and Chinese governments, but not in the legally binding Joint Declaration or supplementary Annexes.

This view has subsequently been endorsed by some other leading QCs. The nationality law expert Laurie Fransman QC has made a further observation, that “since the UK Memorandum, domestic British nationality law has indeed evolved and that ... evolution has already included greater extension of the right of abode to ‘British nationals’, including BN(O)s...Manifestly, the UK government did not consider itself barred by the Memoranda, or anything else, from taking such action.”

Bob Seely and Imran Ahmad Khan wrote to the Home Secretary earlier this year to draw her attention to this advice ([as reproduced](#) on the Hong Kong watch website).

## 2.2 May 2020: Announcement of a new visa route for BN(O)s

The Government [said on 28 May](#) that, if China followed through with imposing a new national security law on Hong Kong, the UK Government would “explore options to allow BN(O)s to apply for leave to stay in the UK”. Very soon after the national security law was adopted in late June, the Foreign Secretary, Dominic Raab, confirmed that it was proceeding with those plans.<sup>17</sup>

Dominic Raab set out the Government’s broad intentions in an [oral statement to the House on 2 June](#). He outlined plans for a renewable temporary visa which would enable BN(O)s to come to live, work and study in the UK and offer them a route to eligibility for British citizenship based on residence in the UK.<sup>18</sup>

Mr Raab emphasised the UK Government’s desire to play a leading role in an international response to the situation in Hong Kong. He expressed the Government’s view that “we have a duty—as a matter of international law, moral responsibility and historical responsibility—to come out and lead.”<sup>19</sup>

An [article by the Prime Minister](#) published in *The Times* on 3 June described the proposal as “one of the biggest changes in our visa system in history”, underlining that “If it proves necessary, the British government will take this step and take it willingly.”<sup>20</sup>

The UK-based charity Hong Kong Watch welcomed the announcement as “an important and courageous step”. It also called on the Government to:

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<sup>17</sup> [HC Deb 1 July 2020 c330](#)

<sup>18</sup> [HC Deb 2 June 2020 c682-3](#)

<sup>19</sup> [HC Deb 2 June 2020 c694](#)

<sup>20</sup> Reproduced on GOV.UK, [‘PM Boris Johnson article on Hong Kong: 3 June 2020’](#)

## 12 Hong Kong British National (Overseas) visa

- Work with other governments to formulate an ‘international lifeboat policy’, ensuring all Hong Kongers have somewhere to go if they need it.
- Ensure that young Hong Kongers are not forgotten, either through proper protections for dependents or other means.
- Consider amending legislation to provide right of abode to all BNOs.<sup>21</sup>

### Stakeholders’ reactions

#### In Parliament

There was cross-party support for Mr Raab’s announcement from Members listening in the Chamber.

Several Members called for a broader offer which would also apply to people without BN(O) status. There was some concern that young adult pro-democracy activists born after the handover were unlikely to be eligible for the visa (unless as a dependent of an older family member with BN(O) status).<sup>22</sup>

Dominic Raab defended the UK’s plans as a “very principled and generous approach”. He signalled an enthusiasm to work with other countries to ensure that there is a “broader international response.”<sup>23</sup>

Mr Raab was not receptive to a call to reopen the BN(O) registration scheme. He said: “We need to be realistic about the volume of people that we in this country could credibly and responsibly absorb. I do not think we can have this debate without acknowledging that.”<sup>24</sup>

#### Other stakeholders

The Chinese Government strongly objected to the new visa offer, arguing that it violates the Memoranda of Understanding attached to the UK-China Joint Declaration. The Chinese Ambassador to the UK said that China would cease to recognise BN(O) passports as valid travel documents.<sup>25</sup> It is unclear how much of an obstacle this will present to travelling to and from Hong Kong, considering the other ID documents that Hong Kong residents can use for travel purposes.

Hong Kong Watch welcomed the “generous” visa offer, which it described as a “bold and proportionate response” to the actions of the Chinese Government.<sup>26</sup>

Migration Watch strongly criticised the decision to create a bespoke visa route for BN(O)s, arguing that it is “utterly irresponsible ...to grant access to settlement in the UK for up to three million people from Hong

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<sup>21</sup> Hong Kong Watch, *British National (Overseas) Status: The Next Steps*, 14 June 2020

<sup>22</sup> E.g. [HC Deb 2 June 2020 c686-7](#); [c688](#); [c696](#)

<sup>23</sup> [HC Deb 2 June 2020 c696](#)

<sup>24</sup> [HC Deb 2 June 2020 c702](#)

<sup>25</sup> The Guardian, “[Hong Kong: China says it will not recognise UK overseas passports](#)”, 30 July 2020

<sup>26</sup> Hong Kong Watch, *News*, “[Hong Kong Watch welcomes the UK Government releasing further details of its new visa scheme for British National Overseas passport holders](#)”, 22 July 2020

Kong". It said that the visa risked breaking the Government's general election pledge to reduce overall immigration to the UK.<sup>27</sup>

It also questioned the Government's rationale that the UK has a "historical responsibility" to the people of Hong Kong, contending that:

Interpreting 'historical responsibilities' in such a way implies that the UK would now need to extend a path to citizenship to residents of all former colonies contingent on the behaviour of successor regimes. This is clearly untenable and would be an unwise precedent to set.<sup>28</sup>

## 2.3 Ten Minute Rule Bill: *Hong Kong Bill 2019-21*

Alastair Carmichael introduced a [Hong Kong Bill 2019-21](#) to the House on [25 February 2020](#) under the Ten Minute Rule procedure. It is yet to have Second reading.

Part 2 of the Bill would give Hong Kong residents new immigration rights in the UK. Specifically, Part 2 of the Bill would:

- give any permanent resident of Hong Kong an entitlement (upon application) to be registered as a BN(O) (section 4).
- amend existing immigration laws to give people with BN(O) status the right of abode in the UK (section 5).

The Bill's proposed immigration changes go considerably further than the measures taken by the Government.

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<sup>27</sup> Migration Watch, [Extension of residence rights for British Nationals \(Overseas\) in Hong Kong](#), 1 July 2020 and [MW376 Route to UK citizenship for up to 3 million people from Hong Kong](#), 5 June 2020

<sup>28</sup> Migration Watch, [MW376 Route to UK citizenship for up to 3 million people from Hong Kong](#), 5 June 2020

## 3. The new Hong Kong British National (Overseas) visa

### 3.1 Policy, legislation and guidance

On 22 July 2020 the Home Office published a Written Ministerial Statement and a [policy statement](#) with some initial details about the new Hong Kong British National (Overseas) visa.<sup>29</sup>

The precise terms of the visa, grounds for acquisition, extension and the criteria for permanent settlement, and so on, are set out in the Immigration Rules. A statement of changes to the Immigration Rules laid before the House on 22 October 2020 provided for the Hong Kong BN(O) visa route by inserting Appendix Hong Kong British National (Overseas) into the rules. The change is due to take effect from 31 January 2021.<sup>30</sup>

Some of the detail of how the visa will be implemented (notably, initial length of visa granted) has changed slightly since the initial announcement in June. But the overall offer (a five-year route to permanent settlement and a path to British citizenship) remains the same.

### 3.2 Practical details

There is a guidance page on GOV.UK, '[Hong Kong British National \(Overseas\) \(BN\(O\)\) visa](#)', which details the main requirements for the visa.

In short, there are two broad application categories ('routes') within the overarching Hong Kong British National (Overseas) visa. They cater for different groups of people but have the same general conditions:

- **BN(O) Status Holder route** – this is for BN(O)s ordinarily resident in Hong Kong or the UK, and their dependent partners or minor children. Other adult family members with a high degree of dependency may also apply under this route.
- **BN(O) Household Member route** – this is for BN(O) citizens' adult children (born on or after 1 July 1997) and the adult child's dependent partner and children (under 18). All applicants under this route must form part of the same household as the BN(O) citizen (i.e. normally live together) and be applying alongside the BN(O) family member.

As indicated above, adults born after the July 1997 cut-off date for applying for BN(O) status cannot apply under the BN(O) Household Member route independently from a BN(O) family member. They can only apply if they have a BN(O) parent in their household who is also applying at the same time. The route reflects previous Government

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<sup>29</sup> [HCWS421](#), 22 July 2020

<sup>30</sup> HC 395 of 1993-4 as amended by [HC 813](#) of 2019-21

statements that it did not want to split up families that included children born after the 1997 cut-off date for BN(O) status.

The requirement for family units to apply together is explained on GOV.UK:

If you're applying as a family unit, you must apply together. The main applicant who is a BN(O) should apply first and get their unique reference number. Any family members applying will need to quote this unique reference number in their applications.

If your family members do not apply with you, they will not be able to apply for the Hong Kong BN(O) visa to join you later.

(...)

If you or your family members travel at different times to the UK, you may not all qualify to [settle in the UK](#) at the same time and may have to make further applications for permission to stay in the UK to meet the 5 years required.

## Who is eligible?

### **BN(O) Status Holder route**

The main applicant must be a BN(O) citizen under the *Hong Kong (British Nationality) Order 1986*.

Dependent family members of BN(O) Status Holders can be:

- A dependent partner – a main applicant's spouse/partner
- A BN(O) Household Child – a (under 18) child or grandchild of a BN(O) Status Holder/dependent partner who forms part of the same household and is applying at the same time as the main applicant.
- A BN(O) Adult Dependent Relative – a parent, grandparent, adult sibling or child of a person who is applying at the same time as a BN(O) Status Holder/dependent partner. Only adult relatives who, as a result of age, illness or disability, require long-term personal care to perform everyday tasks and are dependent on the BN(O) Status Holder/dependent partner for the required level of help are eligible as an adult dependent relative.

### **BN(O) Household Member route**

The main applicant must be an adult child of a BN(O) Status Holder, who was born on or after 1 July 1997 and forms part of the BN(O)'s household.

Their spouse/partner and child (under 18) can apply as their dependent family members.

## Other qualifying eligibility criteria

The other qualifying eligibility criteria that BN(O)s (and their dependents) have to satisfy are that:

- they are ordinarily resident in Hong Kong (if applying from overseas), or are ordinarily resident in the UK, Channel Islands or Hong Kong (if already in the UK);

- they can accommodate and support themselves in the UK for at least six months;
- they have a current tuberculosis test certificate from a Home Office approved clinic (depending on recent residence history);
- they pay the visa fee and the Immigration Health Surcharge in full at the point of the visa application; and
- they do not have any serious criminal convictions, have not engaged in behaviour which is not conducive to the public good, and are not subject to other general grounds for refusal set out in the Immigration Rules.

There is no English language requirement for the visa, but applicants will be subject to the usual knowledge of English and Life in the UK test requirements if they later choose to apply for permanent settlement.

### Associated visa conditions and entitlements

Successful applicants are entitled to:

- **Up to five years' stay in the UK:** The visa gives up to five years' temporary permission to stay in the UK in total. Applicants can choose whether to apply for this in 2.5-year instalments (subject to a further application and fees at renewal stage), or to apply for five years' leave from the outset. That will incur a higher application fee and Immigration Health Surcharge but might be more cost effective overall.
- **A route to permanent settlement and British citizenship:** After completing five years in the UK visa holders will be eligible to apply for permanent permission to stay in the UK, subject to the associated eligibility criteria and application fee. Permission to stay permanently is a pre-requisite for applying for British citizenship. Time spent in other visa categories that directly lead to permanent settlement status can count towards the five years (e.g. work or family visas, but not student or youth mobility visas).
- **the right to work in the UK** (with minimal restrictions) as an employed or self-employed person;
- **access to education** including:
  - schooling for child dependents under 18;
  - education and training for young people aged 16-19;
  - the ability to apply for higher education courses;
- **access to healthcare** free at the point of use on the same terms as British residents.

In line with other temporary visa categories, the visa is subject to the following condition:

- **no recourse to public funds:** visa holders will not be eligible to claim [certain non-contributory](#) benefits, tax credits or state housing assistance.

Similarly, the Government has said that BN(O)s and their dependents will not immediately be eligible for "home student" status for tuition

fee purposes upon arrival in the UK. Rather, the usual eligibility criteria will apply (i.e. a requirement to have permanent residence in the UK).<sup>31</sup>

## Application fee

The application fees are considerably lower than many other temporary visa categories (£180 for a 30-month visa or £250 for a 5-year visa).

The [Immigration Health Surcharge](#), which must be paid for in full as part of the visa application process, is charged at the same rate as other visa categories. This adds a further £1560 (£1175 for under 18s) per person to the costs for a 30-month visa (or £3120/£2350 for a 5-year visa).

An online and app-based application process is expected to be launched for this visa category, like the application process for the EU Settlement Scheme.

## Scope to refuse visas on suitability grounds

The Immigration Rules include powers to refuse visas to people who do not satisfy the suitability criteria or are within the scope of the other general grounds for refusal in the Immigration Rules.<sup>32</sup> The suitability criteria include considerations of a person's criminal convictions, character, and conduct.

The Government anticipates that these powers will prevent known human rights abusers from benefitting from the new visa route. It says that that discretion will be applied towards applicants who have convictions related to free speech or peaceful protest.<sup>33</sup>

## Visa options pre-31 January 2021

### Options for BN(O)s already living in the UK

BN(O)s already living in the UK cannot apply to switch into the Hong Kong BN(O) visa category before 31 January 2021.

The [British Nationals \(Overseas\) in Hong Kong guidance page on GOV.UK](#) identifies some possible options for BN(O)s in the UK whose visas expire before then:

If your existing immigration leave expires before January 2021 and you want to stay in the UK before applying for the Hong Kong BN(O) visa, there are a number of options open to you:

- extend your existing immigration leave
- switch into another immigration route - you can [submit an application form from within the UK where you would usually need to apply for a visa from your home country](#)
- re-enter the UK after leaving - at the border you may be eligible to be granted 'Leave Outside the Rules' as a BN(O) as set out above
- apply for 'Leave Outside the Rules' from within the UK for up to 6 months

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<sup>31</sup> [Written Question 68342](#) [British National (Overseas): Students], answered on 7 July 2020

<sup>32</sup> [PO UIN 103579](#) [Visas: British National (Overseas)], answered on 21 October 2020

<sup>33</sup> [PO UIN 103578](#) [Visas: British National (Overseas)], answered on 19 October 2020

### **Options for BN(O)s arriving in the UK before January 2021**

The July 2020 policy statement advised interested BN(O)s not to travel to the UK until the new visa was launched. But Border Force officers were given discretion to grant six months' immigration leave 'outside the Immigration Rules' to BN(O)s and their accompanying dependents who travel to the UK before 31 January and aren't eligible for entry to the UK in any existing visa category.

2116 BN(O) citizens and dependants were granted immigration permission outside the rules at the border between 15 July – 14 October 2020.<sup>34</sup>

The guidance page on GOV.UK for BN(O)s gave more detailed information about what evidence they would need to provide, including examples of how arrivals could demonstrate their identity and BN(O) status, ordinary residence in Hong Kong, and ability to accommodate and financially support themselves in the UK. Suggestions for the latter included evidence of savings, a regular income that would continue in the UK, and offers of employment/education.

BN(O) households granted leave outside the rules are allowed to work and study, but are not be eligible for benefits classed as public funds, and do not have full access to free NHS services (instead, they must have full health insurance for the duration of their stay).

## **3.3 More generous terms than other visa categories?**

Some constituents have highlighted that aspects of the Hong Kong BN(O) visa are more generous than comparable requirements in certain other temporary visa categories.

It can be difficult to make meaningful direct comparisons between different visa categories' requirements since they cater for distinct groups and have different underlying intentions.

For example, the visa application fee, the absence of a requirement for English language proficiency, and the way in which the ability to accommodate and support oneself in the UK is assessed, are significantly less onerous than the comparable fees and requirements for people applying as the partner of a British citizen/permanent UK resident. On the other hand, the differences are not so pronounced when compared against the criteria for the UK Ancestry visa route.

The Government has been keen to emphasise that the Hong Kong BN(O) visa, and its associated conditions, reflects the "unique and unprecedented circumstances in Hong Kong and the UK's historic and moral commitment to BN(O) citizens".<sup>35</sup>

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<sup>34</sup> Home Office, [Hong Kong British National \(Overseas\) visa, Impact Assessment, IA HQ0381](#), 22 October 2020, para 29

<sup>35</sup> Home Office, [Impact Assessment, Hong Kong British National \(Overseas\) visa, IA HQ0381](#), 22 October 2020, para 4

## 4. The BN(O) visa: topical issues

### 4.1 How many people might come to the UK?

There is a high degree of uncertainty about how many Hong Kong residents might take up the UK's visa offer.

An estimated 5.4 million Hong Kong residents will potentially be eligible for the visa, according to an October 2020 Home Office Impact Assessment. Hong Kong's population is around 7.5 million.

The 5.4 million figure is based on estimates of:

- 2.9 million BN(O)s
- 2.3 million BN(O) dependants
- 187,000 18-23-year olds who are not BN(O)s but have at least one BN(O) parent

But as the Impact Assessment notes, decisions to move to the UK are likely to be influenced by a range of complex push and pull factors, and people eligible for the UK visa might also have options to move to other countries.

The Impact Assessment draws on analysis conducted by the Foreign, Commonwealth and Development Office (FCDO) of the proportion of BN(O)s who may want to leave Hong Kong, and what proportion of those people might be likely to come to the UK. The FCDO made estimates reflecting a couple of different scenarios.

Based on the central estimates for two core scenarios considered, the Impact Assessment suggests that between 123,000 and 153,700 people might come to the UK in the visa's first year, and between 258,000 and 322,400 people over the first five years.<sup>36</sup>

The estimates are subject to a very high degree of uncertainty, due to a lack of data and a reliance on several assumptions. They do not include consideration of any potential impact of Covid-19.

### 4.2 Integration support and managing the impact on local areas

The Government has described the visa offer as generous but not unconditional. It points to the fact that visa holders will need to be able to support themselves for at least six months, make an upfront contribution to NHS costs, and will not be allowed to claim most taxpayer-funded benefits, tax credits or housing assistance.<sup>37</sup>

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<sup>36</sup> Home Office, [Impact Assessment, Hong Kong British National \(Overseas\) visa, IA HQ0381](#), 22 October 2020, para 41-42

<sup>37</sup> [PO UIN 82086](#) [Visas: Hong Kong], answered on 17 September 2020

The Home Office has said that it is working with other government departments and the Devolved Administrations to plan for the arrival of Hong Kong BN(O)s. It is also engaging with civil society organisations and local authorities through regional strategic migration partnerships.<sup>38</sup>

The Government has said that where the new burdens on local government doctrine applies, it will include an assessment of the financial and societal impact.<sup>39</sup>

The Department for Education has said, with regards to the potential impact on demand for school places, that:

The department is fully involved in planning and communications with local authorities, including Regional Schools Commissioners. We are using data from the 2020 Spring School Census and the 2011 National Census to inform planning and are working with Home Office to monitor BN(O) and BN(O) dependant arrivals.<sup>40</sup>

### 4.3 The gaps in the UK's offer

The UK has not made any specific offer for Hong Kong residents who do not have BN(O) status or a close BN(O) family member who also wants to move to the UK.

So young adults born after the cut-off date for BN(O) status are ineligible for the BN(O) visa in their own right.

The Government is resistant to calls to widen the immigration options for non-BN(O) Hong Kong residents in the UK. But it is liaising with international partners to coordinate responses (see section 4.4 below).<sup>41</sup>

The Government also points to the fact that the other types of UK visa are potentially available to people who are ineligible for the BN(O) visa. Broadly, these provide routes of entry and temporary stay as a visitor, worker, student or family member of a person settled here. Some visa categories can lead to permanent permission to stay in the UK.

The Government has emphasised that recent reforms have widened the eligibility pool for skilled work visas (e.g. by lowering the applicable salary and skills thresholds).<sup>42</sup>

It also highlights that 1,000 visas are available to young people (18-30) with a Hong Kong Special Administrative Region passport through the Tier 5 Youth Mobility Scheme. This temporary work visa allows up to two years' stay in the UK, with unrestricted work rights. It cannot be extended and does not offer a direct route to permanent residence, but holders may be able to 'switch' into a different visa category without leaving the UK.

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<sup>38</sup> [PQ UIN 123508](#) [Immigrants: Hong Kong], answered on 7 December 2020

<sup>39</sup> [HL6446](#) [British Nationals Abroad: Hong Kong], answered on 15 July 2020

<sup>40</sup> [PQ UIN HL11194](#) [Education: British National (Overseas)], answered on 21 December 2020

<sup>41</sup> [PQ UIN 74546](#) [Hong Kong: British Citizenship], answered on 21 July 2020

<sup>42</sup> [PQ UIN 92769](#) [Immigrants: Hong Kong], answered on 28 September 2020

People with a Hong Kong Special Administrative Region passport can seek entry to the UK as a visitor for up to six months, without applying for a visa in advance of travel. People who come to the UK as a visitor usually cannot switch into a different immigration category without leaving the UK.

People who need international protection can apply for asylum in the UK upon arrival or after entry to the UK.

## 4.4 What are other countries doing?

Hong Kong Watch is running an '[international lifeboat campaign](#)' to persuade the international community to reform their asylum and immigration routes of entry, in order to provide a "insurance policy" for pro-democracy activists in Hong Kong.

Specifically, it is calling on governments and concerned parliamentarians to:

- Reform work and study visa programmes to make it easier for Hong Kongers to work and study abroad as a pathway to citizenship.

- Reform asylum policy to make it easier for Hong Kongers in need of a lifeline to claim asylum.

- Coordinate with international partners preferably through an International Contact Group to ensure that no group of Hong Kongers is unfairly left behind by filling gaps in pre-existing immigration policies.<sup>43</sup>

Its website provides an overview of actions being considered by other countries, including schemes confirmed by Australia and Canada.

Canada confirmed its response in November 2020. One of the strands, the 'Young Talents' work visa scheme, is targeted at Hong Kong students and their dependants. It has reportedly been designed to fill the gaps for young adults left by the UK's visa scheme. Canada is also making changes to its asylum processes and permanent residence system.

Australia has also introduced some new work and study-based immigration routes available to Hong Kong students. The Canadian and Australian offers both include pathways to citizenship.

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<sup>43</sup> Hong Kong Watch, [International Lifeboat Campaign](#) (accessed on 29 July 2020)

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