

ILPA's Briefing for the House of Commons Report Stage for the Nationality and Borders Bill – Part 1: Nationality, Clause 7 Proposed Amendment – Acquisition of British Citizenship by Adoption

Background

ILPA is a professional association founded in 1984, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession and to help ensure a fair and human rights-based immigration and asylum system. ILPA is represented on numerous government, official and non-governmental advisory groups and regularly provides evidence to parliamentary and official inquiries.

[Proposed Amendment to Clause 7 – Acquisition of British Citizenship by Adoption](#)

Clause 7, page 10, line 3, at end insert–

“(1A) In section 1 (acquisition by birth or adoption) subsection (5)–

- (a) in paragraph (a), for “minor” substitute “person”; and
- (b) after paragraph (b), for “that minor shall” substitute “that person or minor (as the case may be) shall”.”

Briefing

British nationality law is out of kilter with adoption law in England and Wales. In those countries an adoption order made by a court may be made where a child *has reached the age of 18* but is not yet 19. Yet such an adoption order only confers British citizenship automatically where the person adopted *is under 18* on the day the order is made.

Obviously, this is a slip. This adoption law was enacted some 20 years after the relevant nationality law and apparently the inconsistency it created was overlooked. It has never been suggested that adoption law and British nationality law should be out-of-step where a court in England or Wales authorises a person to be adopted by a British citizen parent.

The stated problem is not merely theoretical. It does generate victims in real life, including a university graduate who was 18 but not yet 19 when adopted by her aunt (after her mother died of cancer) and who will have no basis on which to enjoy family life in the UK with her new adoptive mother once her student status has ended.

The position needs correcting. The Nationality and Borders Bill is the perfect vehicle to make this correction. The correction is not controversial or on an issue that divides legislators on party lines. Rightly, it should command support across the House of Commons.

At Committee Stage the Government rejected the amendment. But its reasons are misconceived. Its stance is that an adult 'will normally be capable of making their own life choices' and should abide by the general requirements applicable as regards immigration routes (where family reunion routes are not generally available to children who are no longer minors) and as regards acquisition of British nationality (where naturalisation on application following a period of UK residence is the default position).¹

However, this misunderstands the nature of the problem. The whole point of adoption is that a person is becoming a family member; in this case the family member of a British citizen. It is axiomatic that they wish to be a family unit and may wish to share a common nationality. It is axiomatic that they may wish to be able to come and go freely from the same national territory: the United Kingdom. The law provides for this. Where a child turns 18 before the actual order is made, those imperatives remain the same. It is wrong to treat them as an ordinary adult family member. No public policy objective is served, in fact the benefits of adoption are frustrated by failing to make the same provision for adoptees who turn 18 as for those who are 17 when the process is completed.

If adoption could take place at any age, say when a person is in their 30s or above, perhaps the Government objection would have force. As things stand, it looks like a failure to appreciate that

¹ [https://hansard.parliament.uk/Commons/2021-10-19/debates/69c8f9cb-4500-4595-bae4-3b06d5823063/NationalityAndBordersBill\(SixthSitting\)](https://hansard.parliament.uk/Commons/2021-10-19/debates/69c8f9cb-4500-4595-bae4-3b06d5823063/NationalityAndBordersBill(SixthSitting))

adoption is to be furthered and given effect in nationality law as well as adoption law and no person should be left behind accidentally.

The amendment would bring British nationality law into line with adoption law, so that where our courts make an adoption order in respect of a person who is 18 but not yet 19 and the adoptive parent is a British citizen, British citizenship is conferred automatically on the person adopted. No adoption order may be made in respect of a person who has reached the age of 19, so the proposed amendment affects only those who are 18 when the adoption order is made, and not yet 19.

It is no answer to the problem to say that an 18-year-old adopted by a British citizen will be able to apply for registration as a British citizen as an adult at the Secretary of State's discretion under proposed section 4L of the British Nationality Act 1981 (found in clause 7 of this Bill).

The problem relates to those persons who should be treated as British citizens *automatically* from the date of their adoption by a British citizen. That is what Parliament intends. Where the only solution is a subsequent application for British citizenship at the Secretary of State's discretion, there is a risk that such an application may be overlooked, or may be refused on another basis, such that the intention of Parliament to confer British citizenship on a person adopted by a British citizen will be frustrated.

The sole solution is to make the simple amendment proposed and to align British nationality law with adoption law.

The position under section 47(9) of the Adoption and Children Act 2002

(9) An adoption order may not be made in relation to a person who has attained the age of 19 years.

The existing position under s 1(5) of the British Nationality Act 1981

(5) Where—

(a) any court in the United Kingdom or, on or after the appointed day, any court in a qualifying territory makes *an order authorising the adoption of a minor* who is not a British citizen; or

(b) a minor who is not a British citizen is adopted under a Convention adoption, *that minor shall*, if the requirements of subsection (5A) are met, be a British citizen as from the date on which the order is made or the Convention adoption is effected, as the case may be effected under the law of a country or territory outside the United Kingdom.

(italic emphasis supplied)

Result of Amendment

(5) Where—

(a) any court in the United Kingdom or, on or after the appointed day, any court in a qualifying territory makes an order authorising the adoption of a *person* who is not a British citizen; or

(b) a minor who is not a British citizen is adopted under a Convention adoption, *that person or minor (as the case may be) shall*, if the requirements of subsection (5A) are met, be a British citizen as from the date on which the order is made or the Convention adoption is effected, as the case may be effected under the law of a country or territory outside the United Kingdom.

(italic emphasis supplied)