

ILPA's Briefing for the House of Lords Committee Stage for the Nationality and Borders Bill – Part 1: Nationality, BN(O) Household Members

Summary

The below clause has been tabled at Committee Stage in the House of Lords. This is not an amendment that has been drafted by the Immigration Law Practitioners' Association ('ILPA'). However, this briefing covers the manner in which the Clause can be implemented by changes to the Immigration Rules, to ensure that in their first application, the adult child of a British National (Overseas) ('BN(O)') can apply on the BN(O) Household Member route separately from their BN(O) parent and is not subject to a requirement to be normally living with their BN(O) parent.

These proposed changes to the Immigration Rules align with those which came into effect on 6 October 2021 for the minor children and dependent partners of BN(O) Status Holders and ensure consistency within the Immigration Rules. These changes are also extremely important to ensure a safe route to the UK for young adults within Hong Kong, born after handover, with a BN(O) parent, who would not otherwise be eligible under Appendix Hong Kong British National (Overseas). They are the children of BN(O)s, to whom the UK Government has repeatedly made a 'historic and moral commitment'.

Background

The Immigration Law Practitioners' Association ('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.

Tabled Clause at Committee Stage in House of Lords

LORD ALTON OF LIVERPOOL, LORD PATTEN OF BARNES, THE LORD BISHOP OF ST ALBANS, AND LORD FALCONER OF THOROTON

Insert the following new Clause—

‘British National (Overseas) visas: eligibility

(1) Within two months of this Act being passed, the Secretary of State must amend the immigration rules to ensure that all persons meeting all the conditions set out in subsection (2) are eligible to apply for the British National (Overseas) visa.

(2) The conditions in this subsection are that—

- (a) the person has at least one parent who is a British national (overseas);
- (b) the person was born in or after 1997; and
- (c) the person is currently resident in Hong Kong or the United Kingdom.’

ILPA’s Proposed Changes to Immigration Rules to Implement Clause

Current Rules

Paragraphs HK 26.2 and HK 26.3 of the Immigration Rules currently state as follows:

HK 26.2. If the applicant is applying for entry clearance or permission to stay and they do not have permission on the Hong Kong British National (Overseas) route on the date of application, the applicant:

- (a) must be the child of a person who is being granted permission on the BN(O) Status Holder route at the same time that the applicant is being granted permission; and*
- (b) must form part of the same household as the BN(O) Status Holder.*

HK 26.3. In HK 26.2. a person will form part of the same household as the BN(O) Status Holder if they normally live with the BN(O) Status Holder.

Paragraphs HK 31.1 and 31.2 of the Immigration Rules currently state as follows:

HK 31.1. If the applicant does not have permission on the Hong Kong British National (Overseas) route on the date of application, the applicant will be granted permission which ends on the same date as the permission of the BN(O) Status Holder who is part of the same household as the applicant.

HK 31.2. If the applicant has permission on the Hong Kong British National (Overseas) route on the date of application, they will be granted permission for either:

- (a) 30 months, if the applicant applied for 30 months; or*
- (b) 5 years, if the applicant applied for 5 years.*

Proposed Rules

ILPA proposes a change to the BN(O) Household Member route in Appendix Hong Kong British National (Overseas) of the Immigration Rules, to permit the adult child of a BN(O) to apply separately from their parent and to remove the requirement that they form part of the same household. This simplifies and ensures consistency within the Rules, and provides a safe route to the UK for young adults within Hong Kong, born after handover, with a BN(O) parent, who would not otherwise be eligible under the Appendix.

Replace paragraph HK 26.2 of the Immigration Rules, and delete paragraph HK 26.3:

HK 26.2. If the applicant is applying for entry clearance or permission to stay and they do not have permission on the Hong Kong British National (Overseas) route on the date of application, the applicant must be the child of a person who is a British National (Overseas) under the Hong Kong (British Nationality) Order 1986.

HK 26.3. DELETED.

Replace paragraph HK 31.1 of the Immigration Rules (to bring it in line with HK 9.1), and delete paragraph HK 31.2:

*HK 31.1. The applicant will be granted permission for either:
(a) a period of 5 years, where the applicant has applied for a period of 5 years; or
(b) a period of 30 months, where the applicant has applied for a period of 30 months.*

HK 31.2. DELETED

There is no need to create a new route to implement the proposed clause for adult children of BN(O)s.

The BN(O) Household Member Rules already incorporate the requirement that the applicant must have been born on or after 1 July 1997 (HK 23.3) and be 18 or over on the date of application (HK 23.4). There is also already a requirement within the Rules that an applicant applying from overseas as a BN(O) Household Member must be ordinarily resident in Hong Kong on the date of application (HK 28.1), and an applicant applying within the UK must be ordinarily resident in the UK, the Bailiwick of Guernsey, Bailiwick of Jersey, the Isle of Man or Hong Kong (HK 28.2).

There has never been a requirement that BN(O) Household members must apply with both parents, reside in the UK with their BN(O) parent, or that their BN(O) parent must settle for them to be entitled to settle, as is the case for BN(O) Household Children (HK 15.4, HK 16.1 and HK 57.3-53.4).

The Secretary of State's Rules have always respected a degree of independence and separation between BN(O) Household Members and their parents. BN(O) Household Members are acknowledged to have their own families who apply as dependent partners and children (HK 32.1 - HK 44.5). Therefore, the Rules only require the very small change recommended above.

Previous Changes to the Immigration Rules

On 6 October 2021, the Secretary of State for the Home Department amended Appendix Hong Kong British National (Overseas) of the Immigration Rules (following the Statement of Changes [HC 617](#)) to make changes similar to those proposed above. However, this was only done for dependent partners, and children under the age of 18 of BN(O) Status Holders.

For dependent partners of BN(O) Status Holders, the Secretary of State changed the requirements in HK 13.3 to no longer require dependent partners to apply at the same time as their BN(O) partners. Additionally, the Secretary of State amended HK 13.7 and deleted HK 13.8 to ensure there is no longer a requirement that the dependent partner and the BN(O) Status Holder form part of the same household on the date of application.

There is also no longer a requirement that a BN(O) Household Child apply at the same time as their BN(O) Status Holder parent, or that they form part of the same household on the date of application (HK 15.2).

The requirement has been redrafted so that only if an applicant is applying as the grandchild of a grandparent who has, or is at the same time being granted, entry clearance or permission to stay as either a BN(O) Status Holder or the partner of a BN(O) Status Holder, must the grandparent and grandchild apply at the same time, and form part of the same household.

There is still a requirement, however, that a BN(O) Household Child's parents must either be applying at the same time as the child, or have permission to be in the UK (other than as a Visitor), unless an exception applies (HK 15.4). This requirement applies across the Immigration Rules for children entering an immigration route, who are under the age of 18. As BN(O) Household Members are 18 or over at the point of entering their route. Therefore, such a requirement has never applied to them.

It is inconsistent to have a requirement that BN(O) Household Members must apply together with BN(O) Status Holders, and normally live with them at the point of their first application, when such requirements have been removed for the other children (under the age of 18) and for dependent partners of BN(O)s.

There is no justification within the [Home Office's Hong Kong British National \(Overseas\) route Policy Guidance](#) (version 4.0, published 14 December 2021, at pages 29 to 30) for a concession to be in place for certain children of BN(O)s, whilst excluding other children of BN(O)s. It makes the Rules more complex, rather than simplifying them, to impose hurdles on older children whilst removing them for younger children.

Furthermore, the [GOV.UK website](#) for the 'British National (Overseas) visa' alludes to possible exceptions to this requirement: '*Your family members can apply for a BNO visa if they're eligible. They must usually apply at the same time as you, unless they are your partner or your child under the age of 18.*' (emphasis added)

If it is not the case that BN(O) Household Members must always apply at the same time as their BN(O) parent, then it is recommended that this vestigial requirement is removed from the Immigration Rules to bring them in line with those for BN(O) Household Children and dependent partners of BN(O) Status Holders.

ILPA can see no foundation in the law, justification within the Home Office's policy, or consistency within the Immigration Rules, for the discrepancy in treatment towards BN(O) Household Members.

Should you require further information regarding this briefing, please contact the Immigration Law Practitioners' Association at info@ilpa.org.uk.