



ILPA Briefing on Presumed Purposes of Amendments

House of Commons, Committee Stage

New Clauses, Borders, Citizenship and Immigration Bill, Bill 86

June 2009

The Ilois: citizenship

Tom Brake
Paul Rowen

NC1

To move the following Clause:—

‘In section 6 of the British Overseas Territories Act 2002 (c. 8) (The Ilois: citizenship) omit subsection (2).’.

Purpose

To amend the British Overseas Territories Act 2002 so that Chagossians from the Chagos Islands and Diego Garcia who benefit from its provisions are British citizens *simpliciter* rather than British citizens by descent. A British citizen by descent cannot pass on his/her citizenship to his/her children born outside the UK or a qualifying territory. That the children of Chagossians are born outside the UK or a qualifying territory is no fault of their own but the result of their enforced exile.

ILPA supports this Amendment. For further information please see ILPA's May 2009 Briefing on the Chagos Islanders for Second Reading, which remains available in the Briefings section at www.ilpa.org.uk

Establishment of UK Border Police Force

Damian Green
Mr Crispin Blunt

NC2

To move the following Clause:—

- ‘(1) There shall be a body corporate to be known as the UK Border Police Force.
- (2) The UK Border Police Force shall have the functions of—

- (a) detecting and removing illegal overstayers;
 - (b) protecting UK borders;
 - (c) investigating suspected employers of illegal immigrants;
 - (d) preventing and detecting human trafficking; and
 - (e) such other functions as the Secretary of State may by order determine.
- (3) Before making an order under subsection (2)(e), the Secretary of State shall—
- (a) publish proposals;
 - (b) consult members of the public and stakeholders; and
 - (c) lay a draft before each House of Parliament.
- (4) Bodies to be consulted under subsection (3)(b) shall include—
- (a) the Metropolitan Police Commissioner;
 - (b) representatives of the Association of Chief Police Officers;
 - (c) the Director General of the Immigration and Nationality Directorate;
 - (d) representatives of the Serious Organised Crime Agency;
 - (e) representatives of the Association of Police Authorities; and
 - (f) such other people as the Secretary of State may determine.’.

Presumed Purpose

This Amendment will allow Members to discuss further the merits or demerits of a UK border police force.

Common Travel Area

Mr Phil Woolas

NC3

To move the following Clause:—

In section 1(3) of the Immigration Act 1971 (c. 77) (general principles: the

common travel area), for the words from the beginning to “a person” substitute “A person who arrives in the United Kingdom on a local journey from any of the Islands or the Republic of Ireland shall not”.

- (2) In section 11(2) of that Act (meaning of disembark and embark), in paragraphs (a) and (b), omit “or elsewhere in the common travel area”.

Presumed Purpose

This Amendment is to bring back the clause rejected by the House of Lords for the introduction of immigration controls on sea and air journeys within the Common Travel Area.

Briefing

Further information is available from the March 2009 ILPA Briefing for Committee Stage in the House of Lords on the Common Travel Area, which remains available in the Briefing section at www.ilpa.org.uk

Transfer of immigration or nationality judicial review applications

Mr Phil Woolas

NC4

To move the following Clause:—

- (1) In section 31A of the Supreme Court Act 1981 (c. 54) (England and Wales: transfer from the High Court to the Upper Tribunal)—
- (a) in subsection (2), for “, 3 and 4” substitute “and 3”,
 - (b) in subsection (3), for “, 2 and 4” substitute “and 2”, and
 - (c) omit subsection (7).
- (2) In section 25A of the Judicature (Northern Ireland) Act 1978 (c. 23) (Northern Ireland: transfer from the High Court to the Upper Tribunal)—
- (a) in subsection (2), for “, 3 and 4” substitute “and 2”

- (b) in subsection (3), for “, 2 and 4” substitute “and 2”, and
- (c) omit subsection (7).

(3) In section 20 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) (Scotland: transfer from the Court of Session to the Upper Tribunal)—

- (a) in subsection (1)(a), for “, 2 and 4” substitute “and 2”,
- (b) in subsection (1)(b), for “, 3 and 4” substitute “and 3”, and
- (c) omit subsection (5).’.

Presumed Purpose

This Amendment is to bring back the clause rejected by the House of Lords in relation to transfer of judicial reviews.

Briefing

Further information is provided by the June 2009 ILPA Briefing on clause 55 and this and related Amendments, which has been circulated to Committee members.

Amendment of the immigration rules relating to Gurkhas

Tom Brake
Paul Rowen

NC5

To move the following Clause:—

‘(1) The Immigration Rules, as laid before Parliament under section (3)(2) of the Immigration Act 1971 (c.77), are amended as follows—

“(2) In Rule 276F (requirements for indefinite leave to enter the United Kingdom as a Gurkha discharged from the British Army) omit paragraphs (ii) and (iii).

(3) In Rule 276I (requirements for

discharged from the British Army)
omit paragraphs (ii) and (iii).

Presumed Purpose

The Amendment will allow Members to probe the Government as to commitments now made towards the Gurkhas in relation to settlement.

Briefing

Further explanation of the Government's position is available at:
<http://www.bia.homeoffice.gov.uk/sitecontent/newsarticles/gurkhas-right-to-settle>

Stateless children of British nationals

Tom Brake
Paul Rowen

NC6

To move the following Clause:—

- Schedule 2 to the British Nationality Act 1981
- (1) (c. 61) (amendments to Immigration Act 1971) is amended as follows.
 - (2) In paragraph 4, omit sub-paragraph (1)(c).
 - (3) In paragraph 4, for sub-paragraphs (2)(a) and (2)(b) substitute “shall be registered under it as a—
 - (a) British citizen, or
 - (b) in the case of a child whose mother or father is, or would have been but for their death, a British overseas territories citizen, as a British overseas territories citizen.”.
 - (4) In sub-paragraph (4) of paragraph 4, for “sub-paragraphs (1) to (3)” substitute “sub-paragraph (1)”.
 - (5) In sub-paragraph (4) of paragraph 4, after “British Overseas Citizen”, insert “British National Overseas”.’.

Purpose

To ensure that the stateless children born after 1 January 1983 to British nationals (British citizens, British overseas territories citizens, British Overseas citizens, and British subjects) wherever in the world, are entitled to be

registered as British Citizens, and that the children of British overseas territories citizens can be registered as both British citizens and British overseas territories citizens.

ILPA supports this Amendment. Further information is available from the ILPA Briefing in support of this Amendment which has been circulated to Committee members.

Legitimacy

Tom Brake
Paul Rowen

NC7

To move the following Clause:—

- ‘(1) The British Nationality Act 1981 (c. 61) is amended as follows.
- (2) After section 4C insert—

**“4D Acquisition by registration:
legitimacy**

- (1) A person is entitled to be registered as a British citizen if—
 - (a) he applies for registration under this section; and
 - (b) he satisfies each of the following conditions.

- (2) The first condition is that the person was born before 1 July 2006.

- (3) The second condition is that the person is not already a British citizen.

- (4) The third condition is that the father of the child satisfies any requirements as to proof of paternity prescribed under section 50(9B) of this Act.

The fourth condition is that the person would have been a British

citizen had his father been married to his mother at the time of his birth.”’.

Purpose

To make provision for those born before 1 July 2006 to British fathers not married to their mothers to register by entitlement as British Citizens.

ILPA supports this Amendment. Further information is available from the ILPA Briefing in support of this Amendment which has been circulated to Committee members.

Probationary citizenship leave: homelessness assistance

Tom Brake
Paul Rowen

NC8

To move the following Clause:—

‘(1) The Immigration and Asylum Act 1999 (c. 33) is amended as follows.

(2) After subsection (6) of section 118 (housing authority accommodation) insert—

For the purposes of this section a person subject to immigration control does not include a person who has probationary citizenship leave.”’.

(3) After subsection (4) of section 119 (homelessness: Scotland and Northern Ireland) insert—

For the purposes of this section a person subject to immigration control does not include a person who has probationary citizenship leave.”’.

Presumed Purpose

The Amendment will allow Members to probe the Government as to access to local authority’s support for those who may become homeless during their probationary citizenship.

Tom Brake
Paul Rowen

To move the following Clause:—

(1) A person under the qualifying period shall be treated as a person settled in the United Kingdom for the purposes of all regulations made under—

- (a) the Health Services and Public Health Act 1968 (c. 46);
- (b) the Education (Fees and Awards) Act 1983 (c. 40);
- (c) the Education and Libraries (Northern Ireland) Order 1986 (S.I., 1986/594 (N.I. 3));
- (d) the National Health Service (Charges to Overseas Visitors) Regulations 1989 (S.I., 1989/306);
- (e) the Teaching and Higher Education Act 1998 (c. 30);
- (f) the Education (Student Support) Regulations (Northern Ireland) 1998;
- (g) the Learning and Skills Act 2000 (c. 21);
- (h) the Higher Education Act 2004 (c. 8); and
- (i) the Higher Education (Northern Ireland) Order 2005 (S.I., 2005/1116(N.I. 5)).

In section 115 of the Immigration and Asylum Act 1999 (c. 33)
(2) (exclusion from benefits), in subsection (9) after “EEA state”, insert “or a person with probationary citizenship leave”.’.

Presumed Purpose

This is a version of an Amendment tabled in the Lords that aimed to ensure that if there is to be ‘probationary citizenship leave’ (a measure ILPA opposes as introducing unnecessary complications), those on this leave are treated as citizens on probation and have the rights and entitlements of citizens to

education at home student rates, healthcare as for a settled person and to benefits. This Amendment relates to the whole of the qualifying period.

Briefing Note

The effect of introducing a probationary citizenship stage, coupled with the new requirements that may require people to commence the qualifying period all over again, means that the removal of indefinite leave to remain – when most migrants in the current regime gain full access to services and benefits – has very serious potential consequences. Further information is provided in our May 2009 Briefing for Second Reading on the Naturalisation provisions (see www.ilpa.org.uk - Briefings section).

Restriction on studies: further definition

Mr Damian Green
Mr Crispin Blunt

NC10

★ To move the following Clause:—

(1) The Company and Business Names Regulations 1981 (S.I. 1981/1685) are amended by inserting “College” in column (1) of the Schedule.

(2) Section 2(1)(b) of the Business Names Act 1985 (c.7) does not apply to the carrying on of the business under a name which includes the word “college” by a person—

(a) to whom the business is transferred on or after the date on which section 248 came into force; and

(b) who carries on the business under the name which was its lawful business name and immediately before that transfer,

during the twelve months beginning with the date of the transfer.

(3) Section 2(1)(b) of the Business Names Act 1985 (c.7) shall not apply to the carrying on of the business under a name which includes a word “college” by a person

who—

- (a) carried on that business immediately before the date on which section 248 came into force; and
- (b) continues to carry it on under the name which immediately before that date was its lawful name.’.

Presumed Purpose

This will allow Members to probe the Government about the registration of colleges and other educational institutions to hold sponsorship licences for the purpose of sponsoring students to the UK under Tier 4 of the points-based system.

For further information please get in touch with:

Steve Symonds, Legal Officer, steve.symonds@ilpa.org.uk, 020-7490 1553
Alison Harvey, General Secretary, Alison.Harvey@ilpa.org.uk, 020-7251 8383