



ILPA Proposed Amendments Borders, Immigration and Citizenship

PART 2 (NATIONALITY)

House of Commons Committee Stage

ILPA is a professional association with some 1000 members (individuals and organisations), who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and non-government organisations working in this field are also members. ILPA aims to promote and improve the giving of advice on immigration and asylum, through teaching, provision of resources and information. ILPA is represented on numerous government, court and tribunal stakeholder and advisory groups.

ILPA is happy to assist Members of Parliament in considering and/or drafting other amendments of interest to them.

PROPOSED NEW CLAUSE

"Stateless children of British nationals

- (1) Schedule 2 to the British Nationality Act 1981 (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, British Nationals (Overseas) 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.

Briefing

ILPA prepared a separate briefing to a version of this amendment (amendment 93) at House of Lords Committee stage. This illustrated clearly that there are children affected by this amendment. The response in the letter of the Lord Brett to the Lord Avebury on 20 March 2009 is a week one. The Lord Brett says 'the UK cannot always make up the shortfalls created by the failure of other countries to provide for children born in their territories'. This is true. But when the parents hold a form of British nationality and no other, the only link those children have to a nationality at all is to the UK. The UK cannot hide behind the failures of other states to ignore its own obligations.

The government says that it distinguishes the 'perpetually stateless' from 'citizens in waiting'. But, as illustrated in the briefing for Committee stage, children affected will spend the whole of their childhood, and beyond, with no nationality or citizenship. The prolonged statelessness of a child or young adult cannot be ignored on the basis that it will come right one day. It may be one thing to be a 'citizen in waiting' for a matter of weeks; it is quite another to be a citizen in waiting for decades.

The government should be pressed, if it will not accept this amendment, to give assurances that it will amend its guidance to s3(1) of the British Nationality Act 1981 (registration of any child) so that stateless children in this position can be registered under this section.

PROPOSED NEW CLAUSE

Insert the following new Clause—

"Legitimacy

- (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 1st 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.
- (5) 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.

Briefing

ILPA prepared a briefing to this amendment (then amendment 99) at Committee Stage. Lord Brett in his 20 March 2009 letter to the Lord Avebury acknowledged that the proposal in part replicates the current exercise of discretion in relation to those born to a father not married to the child's mother. It goes on to state that it considers the amendment unnecessary 'in relation to children born illegitimately who are still minors'. This seems a poor reason for refusing to enact it in the case of minors. But, not all those born to fathers not married to their mothers are still minors. In the case of clause 46, descent through the female line, the government has taken steps to mitigate the present day effects of historical discrimination against women – regardless of whether those who continue to suffer those effects are now children or adults. Why not the same for the effects of historical discrimination against men – denying them the ability to pass on their British nationality to their children?

PROPOSED AMENDMENT

Clause 48

Page 39, line 6, leave out subsection (2)

Purpose

To remove from Hong Kong War Wives and Widows from the list of those who must satisfy a good character requirement to register as British. An opportunity to probe the use of the good character requirement more generally.

Briefing

To remove the requirement that those Hong Kong war wives and widows who may be entitled to register as British must satisfy a good character test. Government arguments against are *de minimus* and precedent. As to *de minimus* – the government are the ones legislating this again; as to precedent the only precedent it sets is that of applying the good character test where it is silly to do so.