



Borders, Immigration and Citizenship Bill

PART 1 House of Lords Report Stage

ILPA Notes on amendments forming part of the Marshalled List as of 24 March 2009

Before Clause 1

BARONESS HANHAM

VISCOUNT BRIDGEMAN

- 1** Insert the following new Clause—
- "Establishment of UK Border Police Force**
- (1) There shall be a body corporate to be known as the UK Border Police Force.
- 4** (2) The UK Border Police Force shall have the functions of—
- (a) detecting and removing illegal overstayers;
 - (b) protecting UK borders;
 - (c) investigating 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) Persons 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 shall determine."

Presumed purpose

To create a body called the UK Border Police force. It is not specified in the amendment that the body will be a police force like other police forces in UK.

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

[As an amendment to Amendment 1]

- 2** Line 4, leave out subsections (2) to (4) and insert—
- "(2) The UK border police force shall have the functions of—
- (a) protecting UK borders;
 - (b) strengthening frontier protection against threats to the security, social and economic integrity and environment of the United Kingdom;
 - (c) preventing and detecting human trafficking; and
 - (d) maintaining and improving a safe, ordered and secure environment in ports."

Presumed purpose

Amends amendment 1 so that the UK Border Police force will have functions only in relation to activities at ports.

Clause 1

LORD WEST OF SPITHEAD

- 3** Page 1, line 9, after "Commissioners" insert ", or officers of Revenue and Customs,"
- 4** Page 2, line 19, after "section" insert "—(a)"
- 5** Page 2, line 20, after "applies" insert ";
- (b) to functions of officers of Revenue and Customs are to functions conferred by an enactment to which section 3 (designation of general customs officials) applies."

Purpose

As set out in the Lord West's letter to the Ladv Hanham of 19 March 2009

the purpose of the amendment is to 'clarify' that for the purposes of the Bill a general customs matter is any matter in relation to which the Commissioners or officers of HM Revenue and customs have functions, other than those matters set out in subsections (1) to (e) of clause 1(2).

Briefing note

The main change effected by the amendment is that the functions in question must be conferred by an enactment.

BARONESS HANHAM
VISCOUNT BRIDGEMAN

- 6 Page 2, line 35, at end insert "and which is listed in Schedule (*List of "customs revenue" functions and "general customs" functions*)"

Presumed purpose

To specify the general customs functions covered by clause 1.

Briefing note

ILPA supports this amendment.

Clause 3

BARONESS GIBSON OF MARKET RASEN
BARONESS TURNER OF CAMDEN

- 7* Page 3, line 17, leave out paragraphs (a) and (b) and insert—
 "(a) any officer transferred to the UK Border Agency from HM Revenue and Customs,
 (b) any UK Border Agency employee recruited for that specific purpose,"

- 8* Page 3, line 25, leave out subsection (3)

Presumed purpose

To specify who may be a general customs official and to prevent those who are not such officials from exercising the Secretary of State's functions relating to customs.

Briefing note

ILPA supports these amendments.

Clause 4

BARONESS GIBSON OF MARKET RASEN

BARONESS TURNER OF CAMDEN

- 9* Page 4, line 25, leave out "or for a specified period"
10* Page 4, line 26, leave out "(in either case)"
11* Page 4, line 26, leave out from "withdrawn" to end of line 27
12* Page 4, line 28, leave out "or vary"

Presumed purpose

To mean that a designation as a general customs official must be permanent, people could no longer be designated for a specified period. Nor could a designation be varied.

Briefing note

ILPA supports these amendments. A customs official has powers that an immigration officer or other official in the UK Border Agency does not have, including more intrusive powers of search. The function is a specialised one, and will require specific training. It should not be possible to 'upgrade' a person for a temporary period to exercise powers they are not competent to exercise.

Clause 6

BARONESS HANHAM

VISCOUNT BRIDGEMAN

- 13 Page 5, line 6, leave out subsection (2) and insert—
"() A designation made under this section must be approved by both Houses of Parliament."

Purpose

To require the approval of parliament of the designation of the Director of Border Revenue.

Clause 7

LORD WEST OF SPITHEAD

- 14 Page 6, line 10, leave out "(2)" and insert "(2)(b)"

Purpose

Consequential on the government amendment to Clause 1.

BARONESS HANHAM

VISCOUNT BRIDGEMAN

- 15 Page 6, line 22, at end insert "and which is listed in Schedule (*List of "customs revenue" functions and "general customs" functions*)"

Presumed purpose

To specify the customs revenue functions that can be exercised by the Director of Border Revenue..

Briefing note

ILPA supports this amendment.

Clause 11

BARONESS GIBSON OF MARKET RASEN

BARONESS TURNER OF CAMDEN

- 16* Page 7, line 25, leave out paragraph (a) and insert—
 "(a) any officer transferred to the UK Border Agency from HM Revenue and Customs."

Presumed purpose

To ensure that immigration officers cannot be customs revenue officials and that only officials transferred from HM Revenue and Customs, together with others by whom general customs functions are exercisable could exercise such functions. Should be read with amendments 9 to 12 and 17 to 18 which require a designation as a person by whom general customs functions are exercisable to be permanent.

Briefing note

ILPA supports this amendment.

Clause 12

BARONESS GIBSON OF MARKET RASEN

BARONESS TURNER OF CAMDEN

- 17* Page 8, line 32, leave out "or for a specified period"
18* Page 8, line 33, leave out from "withdrawn" to end of line 34

Purpose

To require that designation as a customs revenue official under clause 11 be permanent and to remove the Director of Border Revenue's power to vary a designation.

Briefing note

ILPA supports these amendments. A customs official has powers that an immigration officer or other official in the UK Border Agency does not have.

The function is a specialised one, and will require specific training. It should not be possible to 'upgrade' a person for a temporary period to exercise powers they are not competent to exercise.

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

19 Page 8, line 43, at end insert—

"(6) "Adequate training" means training that provides a designated customs official with all the instruction and skills appropriate and necessary to exercise the customs revenue functions conferred on him fully and properly."

Presumed purpose

To provide a definition of adequate training.

After Clause 22

BARONESS HANHAM

VISCOUNT BRIDGEMAN

20 Insert the following new Clause—

"UK Border Agency detention

In the application of PACE orders by virtue of section 22—

- (a) no person may be detained in an office of the UK Border Agency for a period exceeding 3 hours, and
- (b) no person may be detained in a police cell under powers granted to the UK Border Agency for more than 5 days."

Presumed purpose

Endeavours to set maximum time limits on detention, in UK Border Agency offices or police cells, to which clause 22 applies (i.e. criminal investigations conducted by designated customs officials). A person would thus have to be transferred to be held for longer (for example to prison on remand or to an immigration removal centre in cases where powers of detention under the immigration acts applied)

After Clause 23

BARONESS HANHAM

VISCOUNT BRIDGEMAN

21 Insert the following new Clause—

"Detention

- (1) A designated immigration officer or a designated customs official at a port in England, Wales or Northern Ireland may detain an individual if the immigration officer thinks that the individual—
 - (a) may be liable to arrest by a constable under section 24(1), (2) or (3) of the Police and Criminal Evidence Act 1984 (c. 60) or Article 26(1), (2) or (3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), or
 - (b) is subject to a warrant for arrest.
- (2) A designated immigration officer who detains an individual—
 - (a) must arrange for a constable to attend as soon as is reasonably practicable,
 - (b) may search the individual for, and retain, anything that might be used to assist escape or to cause physical injury to the individual or another person,
 - (c) must retain anything found on a search which the immigration officer thinks may be evidence of the commission of an offence, and
 - (d) must, when the constable arrives, deliver to the constable the individual and anything retained on a search.
- (3) An individual may not be detained under this section for longer than three hours.
- (4) A designated immigration officer may use reasonable force for the purpose of exercising a power under this section.
- (5) Where an individual whom a designated immigration officer has detained or attempted to detain under this section leaves the port, a designated immigration officer may—
 - (a) pursue the individual, and
 - (b) return the individual to the port.
- (6) Detention under this section shall be treated as detention under the Immigration Act 1971 (c. 77) for the purposes of Part 8 of the Immigration and Asylum Act 1999 (c. 33)."

Presumed purpose

Would allow a designated immigration officer to hold a person for up to three hours pending arrival of the police and exercise powers as outlined in this section. The detention for three hours would be treated as detention under immigration act powers.

Briefing note

ILPA questions whether there may be individuals who may be held in relation to customs functions who are not liable to detention under immigration act powers and what would then be the effect of treating their detention as detention under immigration act powers.

Clause 30

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

22 Page 23, line 26, at end insert—

"(2B) Regulations made under subsection (1) or (2A) may make provision conferring functions on the Independent Police Complaints Commission in respect of the exercise of immigration functions, customs functions and the provision of services pursuant to arrangements relating to the discharge of those functions whether in the UK or overseas."

Purpose

To ensure that complaints can be made to the IPCC about the conduct not only of customs officials but also of immigration officials both within and outside the UK. While the amendment does not propose a duty on the Secretary of State to make regulations conferring functions on the IPCC it provides an opportunity to debate the point and also to seek to understand the division between the IPCC and the Prisons and Probations Ombuds.

Briefing note

ILPA has prepared a separate briefing to Part 1 which addresses this amendment.

Before Clause 39

BARONESS HANHAM

VISCOUNT BRIDGEMAN

23 Insert the following new Clause—

"Exceptions to application of this Part

Nothing in this Part shall affect an application, made prior to the commencement of this Part by any person, for the following—

- (a) indefinite leave to remain in the United Kingdom; or
- (b) British citizenship."

Purpose:

This would provide transitional protection limited to those who have outstanding applications for indefinite leave to remain or for British citizenship at the time of commencement of the provisions in Part 2.

The amendment will provide an opportunity to further press the Government concerning transitional provisions for those who are currently on a route to citizenship. This includes individuals who currently have limited leave to remain, which will entitle them to make an application for indefinite leave to remain after they have completed five (or in the case of family cases, two) years of this. Some of them will have only just begun the five (or two) years period. Others will be nearing its end.

Note:

At Committee stage, the Minister stated that: "...officials are examining what transitional arrangements will be put in place for those who are currently in the immigration system but who have yet to submit an application for indefinite leave to remain or for naturalisation" (*Hansard*, HL 2 Mar 2009 : Column 540). The group identified by the Minister are not addressed by the amendment.

Clause 39

LORD HYLTON

24 Page 29, line 19, after "has" insert "refugee status, humanitarian protection status,"

Purpose:

This amendment would allow those recognised as refugees or granted humanitarian protection status to make an application for naturalisation without needing to first obtain one of the other statuses currently listed in clause 39(2)(e). In particular, refugees and those granted humanitarian protection status would not need to obtain probationary citizenship in order to apply for naturalisation. The amendment should be read with amendment no. 37.

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

25* Page 29, line 19, leave out "probationary citizenship leave" and insert "limited leave to enter or remain"

Purpose :

This would provide that rather than have 'probationary citizenship leave' at the time of making that application, the person simply had limited leave to enter or remain. The amendments will allow peers to probe the Government further as to what 'probationary citizenship leave' adds to the path to citizenship. Whereas consequential amendments would be needed to remove the concept, this is sufficient to pursue the matter.

Note:

At Committee Stage, the Minister simply failed to explain what of substance the introduction of ‘probationary citizenship leave’ added. The Minister stated that: “*The amendment[] would allow a migrant to apply for naturalisation without having passed through the probationary citizenship scheme, which we see as a key part of the path and the journey.*” (Hansard, HL 2 Mar 2009 : Column 517) This response assumes there is something of substance in probationary citizenship without explaining what that substance is: the reason being that there is no substance.

The Government has stated that its aim is “*creating a new **path to citizenship**, one in which the expectation will be on newcomers to ‘earn’ the right to stay by learning English, paying taxes, obeying the law and contributing to the community*” and that in doing so it wants “*to make the journey to citizenship clearer, simpler and easier for the public and migrants to understand*” (Jacqui Smith MP, Home Secretary, Foreword to the Government response to The Path to Citizenship consultation, July 2008).

Each of the aims set out by Jacqui Smith MP are integral to the current route to citizenship, with the exception of “*contributing to the community*”. All of the aims can, and with the exception of that which is not part of the current route, are being achieved without the need to introduce a new name (probationary citizenship leave) for part of the route despite that part of the route being in substance no different to the earlier part of the route (limited or temporary leave). The fact of the Minister’s inability to explain any substance in ‘probationary citizen’ reveals that the introduction of this new and unnecessary form of leave would be to achieve the opposite of the Government stated (indeed three times repeated: “*clearer, simpler and easier*”) aim that the route to citizenship be simple to understand.

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

26 Page 29, line 25, leave out "been in continuous employment" and insert "not been in breach of conditions of that leave"

Purpose:

This amendment would replace the requirement of continuous employment with a requirement to abide by the terms and conditions of a person’s probationary citizenship leave, and will allow peers to compare the current conditions relating to remaining in work with whatever may be said to be the meaning of ‘continuous’.

Note:

At Committee stage, the Minister failed to explain what ‘continuous employment’ meant. The Minister stated, however, that “*it might be wiser to put this in writing*” (Hansard, HL 2 Mar 2009 : Column 527). The implication is that further conditions are to be imported, by the way ‘continuous employment’ is interpreted in guidance, over and above what peers can see on the face of the Bill; and moreover, that this is to be done without explanation to peers at this time just what those conditions are to be and why they are needed. There are already conditions on those with limited leave on the basis of work, which relate to the need for person’s presence in the UK to

continue to be for his or her employment. No explanation has been given as to why something more is needed, or even what that something more is to be.

LORD MARLESFORD

27 Page 29, line 29, at end insert—

"(g) that A must declare whether he or she holds a passport of another nationality and, if so, what nationality this is; and

(h) that, following the acquisition of British citizenship, A must declare if he or she subsequently obtains a passport of another nationality.

(2A) Failure to comply with sub-paragraph (2)(h) will result in the cancellation and withdrawal of the United Kingdom passport."

Purpose:

This amendment would require a person who naturalises as a British citizen to declare any other passports (and the nationality to which they relate) he or she holds at the time of application or subsequent to having been naturalised. A failure to comply with these requirements could result in cancellation and withdrawal of a UK passport.

LORD WEST OF SPITHEAD

28 Page 29, line 38, at end insert—

""(ba) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(c) where the applicant has had a qualifying immigration status for only part of the qualifying period;"

29 Page 29, line 39, leave out "requirements" and insert "requirement"

30 Page 29, line 40, leave out "1(2)(c) and (d)" and insert "1(2)(d)"

Purpose:

These amendments would allow discretion to waive the requirement that a person applying to naturalise must have a 'qualifying immigration status' throughout the 'qualifying period'.

By his letter of 19 March 2009 to the Baroness Hanham, the Lord West of Spithead explains that the purpose of these amendments is to allow for discretion to waive the requirement in circumstances where a person's temporary leave had expired shortly before his or her application for probationary citizenship or where a person's probationary citizenship had expired shortly before his or her application for citizenship.

He further explains that the purpose is to allow, in exceptional cases, for discretion to include the period or part of the period during which a person's asylum claim was pending prior to a grant of status within the 'qualifying period', e.g. where there "*there has been an undue delay in determining a claim and this delay is not attributable to the claimant*".

Note:

The Government had promised at Committee stage to bring forward amendments to address the situation of refugees and those granted humanitarian protection in relation to their time in the UK pending resolution of their asylum claim. The reason given in the Lord West's letter for going no further than the 'exceptional' case is said to be that "*most asylum claims are now determined quickly and we do not think the time it takes for a person to be granted status will normally represent a significant disadvantage, and at the same time the circumstances may change significantly between the time a person makes an asylum claim and that claim being determined*".

The Government has a current target to conclude new asylum claims within 6 months of the claim being made. This target only applies to a proportion of claims. Thus by end 2009, the target is to be met in 75% of cases; and by end 2011, in 90% of cases. Even assuming these targets are met, these leave significant proportions (and hence numbers) of cases where the target does not apply. Moreover, periods of up to 6 months are or could be significant additional periods for a person to be delayed on his or her route to citizenship.

As regards the limited cases where there may be a change in circumstances between the time of an asylum claim and the grant of status, it remains unexplained why this is considered to be of relevance. The general aim of the naturalisation provisions, as stated at Committee stage, is to promote "*greater integration*" (*Hansard*, HL 2 Mar 2009 : Column 510). It would promote greater integration to allow those who cannot make their claims before entering the UK to include the time they spend in the UK with those claims pending towards the 'qualifying period'.

LORD HYLTON

31 Page 30, line 34, at end insert "; or

"(g) a pending application for leave to remain pursuant to an asylum claim, a human rights claim, or, in reliance on Council Directive 2004/83/EC.

(1A) For the purposes of this paragraph, an asylum claim and a human rights claim have the meaning given in section 113 of the Nationality, Immigration and Asylum Act 2002, and a pending application is one that had not yet been determined or that is the subject of a pending appeal within the meaning of section 104 of that Act ."

Purpose:

This amendment would ensure that those who have made a claim for asylum or on human rights grounds and those claiming entitlement to exercise rights of free movement under European Community law can count time in the UK prior to the grant of their application, and during which it is was pending, as part of the qualifying period. The amendment is very similar to amendment no. **32**.

Note:

The amendment may be contrasted with Government amendment nos. **28-30**. Those amendments include an intention to allow for discretion to include these periods of time (i.e. time in the UK with an application pending), particularly in respect of

asylum-seekers, as part of the qualifying period. This amendment would ensure, without the need for the exercise of discretion, that these periods of time could be included.

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

32* Page 30, line 34, at end insert—

"(g) a pending application for leave to remain pursuant to an asylum claim or a human rights claim; or

(h) leave to remain outside the immigration rules.

(1A) An asylum claim and a human rights claim have the meaning given in section 113 of the Nationality, Immigration and Asylum Act 2002 and a pending application is one that has not yet been determined or that is the subject of a pending appeal within the meaning of section 104 of that Act."

Purpose:

See amendment no. **31** (above).

The key differences between this amendment and amendment no. **31** are that this amendment does not provide for those in the UK without outstanding applications under European Community law; but does provide for those granted leave to remain outside the rules (i.e. where the Secretary of State decides for exceptional reasons to grant leave to remain for reasons that do not fall within the Immigration Rules).

Clause 40

LORD WEST OF SPITHEAD

33 Page 33, line 7, at end insert—

"() treat A as fulfilling the requirement specified in paragraph 3(2)(c)(ii) (including where it can be fulfilled only as set out in paragraph 3(5)) where A has had a qualifying immigration status for only part of the qualifying period;"

34 Page 33, line 8, leave out from "the" to "where" in line 10 and insert "requirement specified in paragraph 3(2)(d)"

Purpose:

These amendments would allow discretion to waive the requirement that a person applying to naturalise (on the family route) must have a 'qualifying immigration status' throughout the 'qualifying period'.

By his letter of 19 March 2009 to the Baroness Hanham, the Lord West of Spithead explains that the purpose of these amendments is to allow for discretion to waive the requirement in circumstances where a person's temporary leave had expired shortly before his or her application for probatory citizenship or where a person's

probationary citizenship had expired shortly before his or her application for citizenship.

As such these amendments mirror amendments nos. **28-30** (though unlike those amendments, these amendments have no implications for asylum-seekers).

Clause 41

BARONESS HANHAM

VISCOUNT BRIDGEMAN

- 35** Page 34, line 19, leave out from "period" to end of line 33 and insert "is—
- (a) 6 years in a case within paragraph 1;
 - (b) 3 years in a case within paragraph 3."

Purpose:

This amendment would effectively remove the ‘activity condition’ from the route to citizenship. It will provide peers a further opportunity to probe the Government in relation to the ‘activity condition’ to learn more of the work of the Design Group looking at how opportunities for volunteering in order to meet this condition may be provided for, and how these will be resourced.

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

- 36*** Page 34, line 29, leave out from "if" to end of line 33 and insert "he provides reasonable evidence to the Secretary of State of having participated in community or voluntary activities otherwise than for payment"

Purpose :

This amendment would change the focus of the test of whether the ‘activity condition’ is met; and change the focus of what activities can satisfy the condition. Currently, clause 41(5) provides a test of whether the Secretary of State is satisfied that the applicant has undertaken ‘prescribed activities’. The amendment would change the test to whether the applicant has provided reasonable evidence of having participated in community or voluntary activities, without the need for any such activities to be prescribed.

The amendment should be read with amendments nos. **38-40**.

LORD HYLTON

- 37** Page 34, line 33, at end insert—
- "(6) In the case of an applicant with refugee status or humanitarian protection status, the number of years in the period is 5."

Purpose:

This amendment would allow a person recognised as a refugee or granted humanitarian protection to apply to naturalise as a British citizen after a qualifying period of 5 years. This amendment should be read with amendment no. **24**.

Note:

The period of 5 years equates to the period of 5 years for which refugee leave or humanitarian protection leave is granted under current policy. This period also matches the UNHCR recommendation that the period of residence required before a refugee may naturalise should not exceed 5 years ; though note amendments nos. **31** and **32** (above).

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

38* Page 34, leave out lines 39 to 42

39* Page 35, line 9, leave out "(1)(bd) or" and insert "(1)"

40* Page 35, leave out lines 10 to 12

Purpose:

These amendments should be read with amendment no. **36**. These amendments remove the power for the Secretary of State to prescribe the activities which will count for the purposes of meeting the ‘activity condition’. Amendment no. **36** removes the need for such activities to be prescribed (see above).

Amendment no. **40** removes the discretion to allow the Secretary of State to, by regulations, provide for circumstances in which activities which predate the commencement of clause 41 (the qualifying period) may be relied upon as satisfying the activity condition. However, amendment no. **36** does not on its face restrict the condition to relate to activities at any particular time, so such a discretion would be unnecessary.

LORD HYLTON

41 Page 35, line 19, at end insert—

"() For the avoidance of doubt, the qualifying period for persons with full refugee status, who have complied with Article 31(1) of the UN Convention on Refugees (T951), shall commence with the date of their entry into the United Kingdom."

Purpose:

This amendment will allow peers to probe the Government in relation to how the ‘qualifying period’ will work in relation to refugees. See also amendments nos. **24** and **37**. The amendment may be contrasted with amendments nos. **31** and **32**, which focus upon the period during which a claim is pending rather than the point of entry.

It will also allow peers to probe the Government on how refugees, whose prosecution for illegal entry or use of false documents on entry in for having entered the UK illegally or on false documents contravenes Article 31 of the 1951 UN Convention relating to the Status of Refugees, will be protected against the further prejudice of delay or prohibition of their route to naturalisation.

Before Clause 43

LORD WEST OF SPITHEAD

LORD AVEBURY

42 Insert the following new Clause—

"Minors

- (1) Section 3 of the British Nationality Act 1981 (c. 61) (acquisition by registration: minors) is amended as follows.
- (2) In subsection (2), for "within the period of twelve months from the date of the birth" substitute "while he is a minor".
- (3) Omit subsection (4)."

Purpose

To replace the provision that a child born in the UK to a British citizen parent but not born British can be registered by entitlement within 12 months of birth, or by discretion up to the age of 6 years, with a provision allowing the child to be registered at any time while still a minor.

Briefing note

ILPA welcomes this amendment, but see note on amendment 49 below. Amendment 49 would apply a good character test to the registration (in the case of children over 10 years old) which is inappropriate given that the stateless are among those registering under section 3(2). See also the ILPA briefing for Committee stage where we argued for this amendment

43 Insert the following new Clause—

"British Nationals (Overseas) without other citizenship

- (1) Section 4B of the British Nationality Act 1981 (c. 61) (acquisition by registration: certain persons without other citizenship) is amended as follows.
- (2) In subsection (1)—
 - (a) omit "or" immediately before paragraph (c), and
 - (b) after that paragraph insert ", or
 - (d) British National (Overseas)".
- (3) In subsection (2)(c), for "4th July 2002" substitute "the relevant day".

- (4) After subsection (2), insert—
- "(3) For the purposes of subsection (2)(c), the "relevant day" means—
- (a) in the case of a person to whom this section applies by virtue of subsection (1)(d) only, 19th March 2009, and
 - (b) in any other case, 4th July 2002."

Purpose

To allow British Nationals (Overseas) with no other nationality or citizenship to register under section 4B of the British Nationality Act 1981 which makes provision for the registration of British subjects under the Act, British Protected Persons, and British Overseas Citizens with no other nationality or citizenship to register. Those who renounce another nationality or citizenship after 19 March 2009 (the day the change was announced) will not be able to register under this section.

Briefing note

ILPA welcomes this amendment. See our briefings prepared for Committee stage on amendments 94 and 95 in which we argued for this amendment.

Clause 43

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

44* Page 37, leave out lines 1 to 5

Purpose

To ensure that the scope of section 4C of the British Nationality Act 1981, as inserted by the Nationality, Immigration and Asylum Act 2002 is retained and that registration of those born to British mothers overseas is not restricted so as to exclude those who would have needed to make an application for registration. To ensure that applicants are not put in the impossible position of having to prove whether or not they would have succeeded in an application made many decades ago.

Briefing

ILPA has prepared a briefing to clause 43 that addresses this amendment. It updates the briefing prepared to amendment 90A at Committee stage.

After Clause 43

LORD AVEBURY
BARONESS MILLER OF CHILTHORNE DOMER

45 Insert the following new Clause—

"The Ilois: citizenship

- (1) Section 6 of the British Overseas Territories Act 2002 (c. 8) (the Ilois: citizenship) is amended as follows.
- (2) After subsection (2) insert—
 - "(2A) A person shall be entitled to register as a British citizen if—
 - (a) his father or mother was or is a citizen of the United Kingdom and Colonies or a British citizen by virtue of birth in the British Indian Ocean Territory or by operation of section 6(1), and
 - (b) he is not a British citizen.
 - (2B) A person shall be entitled to register as a British overseas territories citizen if—
 - (a) subsections (2A)(1)(a) and (b) apply to him, and
 - (b) immediately prior to registration under subsection (2A)(1) he was not a British overseas territories citizen.
 - (2C) In subsection (2A)(1)(a) "father" has the meaning given in section 50(9A) of the British Nationality Act 1981.
 - (2D) No charge or fee shall be imposed for registration under section 6(2A) or (2B)."

Purpose

To ensure that Chagos Islanders born in exile can be registered as British citizens. The amendment would protect those still living who were born to parents born on the Chagos Islands – thus all of the first generation born in exile. The entitlement to register does not depend upon whether the parent was a man or woman or whether the parents were married. In addition the amendment gives an entitlement to register to the children of those who registered under section 6(1) of the British Overseas Territories Act 2002. Such people (those born on or after 26 April 1969 and before 1 January 1983) became British Citizens by descent upon registration. Therefore they cannot pass on their nationality or citizenship to their children and need this provision if their children are to be protected.

Briefing

See the ILPA briefing to amendments 92 and 101A at Committee stage. ILPA has also prepared a separate update to these briefings dealing with the new amendment.

LORD AVEBURY
BARONESS FALKNER OF MARGRAVINE

46 Insert the following new Clause—

"Descent through female line from mother now deceased

After section 4C of the British Nationality Act 1981 (c. 61) (acquisition by registration: certain persons born between 1961 and 1983), insert—

"4D Acquisition by registration: certain persons born after 1983

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—
 - (i) the applicant is not a British citizen on the date on which this section comes into force;
 - (ii) the applicant's mother or father would have been entitled to register as a British citizen under section 4C of this Act but for their death; and
 - (iii) the applicant was born in the United Kingdom or a qualifying territory."

Purpose

To complement the amendments being made to s 4C of the British Nationality Act 1981 by Clause 43 (Descent through the female line) and ameliorate the current day effects of historical discrimination on the grounds of sex. Clause 41 provides for the registration of those born at any to a British mother in circumstances where a father could pass on his nationality to a child born abroad but a mother could not. However, there will be cases where the person who would have been entitled to register is now dead. What of their children? They may have missed out because since 1 January 1983 it has been the case that a person born in the UK or a qualifying territory is only born British if their mother or father is British or settled in the UK. The amendment gives them an entitlement to register as British.

Briefing

ILPA has updated its committee stage briefing to Clause 43 which addressed this amendment. The updated briefing is available as a separate briefing.

LORD AVEBURY

LORD ROBERTS OF LLANDUDNO

47* 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 to fathers not married to their mothers to register as British Citizens.

Briefing

ILPA has updated its briefing to amendment 99 laid at Committee stage. The updated briefing is available as a separate briefing.

After Clause 44

LORD AVEBURY

LORD ROBERTS OF LLANDUDNO

48* Insert the following 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 has updated its Committee stage briefing to this amendment. The updated briefing is available as a separate briefing.

Clause 45

LORD WEST OF SPITHEAD

49 Page 38, line 5, after "3(1)" insert ", (2)"

Purpose To impose a good character test on minors (over 10) registering under section 3(2) of the British nationality Act 1981.

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

[As an amendment to amendment 49]

50* Line 1, at end insert "(save in the case of a person born stateless)"

Purpose To limit the good character test imposed by amendment 49 so that it would not apply to stateless children registering under section 3(2).

Briefing

ILPA has prepared a separate briefing to this amendment.

LORD AVEBURY

LORD THOMAS OF GRESFORD

51 Page 38, line 21, leave out subsection (2)

Purpose To remove the good character test requirement that would be inserted by subsection (2) into the Hong Kong (War Wives and Widows) Act 1996.

Briefing

LPA has prepared a separate briefing to this amendment.