



**Borders, Citizenship and Immigration Bill
House of Lords Report
Part 2 Citizenship
Amendment 47: Legitimacy**

ILPA supports Amendment 47 in the names of the Lord Avebury and the Lord Roberts of Llandudno,

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 note

Before 1 July 2006, British fathers could not pass on their British nationality to children born outside marriage. This affects children born to British fathers who were British Citizens. It affects those born in the UK after 1983 to such fathers and to a mother not British nor settled in the UK. Before 1983, a child born in the UK was a

British citizen. It also affects children born in a qualifying territory and children born outside the UK where the mother was not a British citizen otherwise than by descent.

Section 9 of the Nationality, Immigration and Asylum Act 2002 changed the law, amending the British Nationality Act 1981 so that children born to British fathers not married to their (non-British, not settled) mothers were born British if their fathers could prove paternity. However, it only did so for those born after 1 July 2006 the appointed day on which the provisions were finally given full effect¹. It did nothing to correct the present day effects on children and young adults of the historic injustice and discrimination against men

The new clause would allow those born to British fathers not married to their mothers and for that reason alone, not British citizens, to register as British citizens. For those born in the UK, the new clause thus assists those born after 1983. For those born outside the UK to fathers who are British citizens otherwise than by descent (i.e. able to pass on their nationality to their children born outside the UK) it would assist those still living.

The new clause does not require that the person still be a child at the date of registration. This assists young adults born after 1 January 1983 and those who learned, after turning 18, that their father was British.

In this Bill clause 43, descent through the female line, addresses the present-day effects of historical discrimination against women. This clause is a direct parallel: it addresses the present-day effects of historical discrimination against men.

At Committee stage the Lord Brett said simply

‘My brief indicates that the Government believe that this proposal is unnecessary in practice.’ (4 Mar 2009 : Column 742)

This brief statement is amplified in his letter of 20 March 2009 to the Lord Avebury where he points to the discretion that is already exercised ‘in relation to those born to an illegitimate father’ (the wording appears to be a mistake, what is in question is not the status of the father, but the situation of a child whose father is not married to his or her mother). He refers to the exercise of discretion under section 3(1) of the British Nationality Act 1981. This is the discretion to register any child. The Lord Brett therefore contends in his letter that

‘...the proposal is therefore unnecessary in practice in relation to children born illegitimately who are still minors’

The letter is silent on the situation of those born to unmarried parents who are now adults. Because registration under s 3(1) cannot benefit them. Section 3(1) can benefit only children. There is no general discretion to register an adult, there are only discretions to register adults in specific categories such as the one that this amendment, if accepted, would create.

This is a provision on which the 20 March 2009 letter of the Lord Brett says very little, save

¹ See SI 1496 and 1498

“I am sure we will return to this debate on the floor of the House.’

This no doubt is because there is very little, if anything, to say against the amendment. It would be a simple provision and it would provide people with a route to registration and thus a means to correct the present day effects of historical discrimination.

From ILPA’s briefing for Committee stage:

We can derive guidance on what is or is not internationally acceptable from the 1979 Convention on the Elimination of All forms of Discrimination against Women². This Convention was ratified by the UK on 7 April 1986. Article 9(2) states

“9(2). States Parties shall grant women equal rights with men with respect to the nationality of their children.”

The UK, given that it did not give men equal rights, was compelled to enter a reservation to Article 9:

‘British Nationality Act 1981, which was brought into force with effect from January 1983, is based on principles which do not allow of any discrimination against women within the meaning of Article 1 as regards acquisition, change or retention of their nationality or as regards the nationality of their children. The United Kingdom’s acceptance of Article 9 shall not, how ever, be taken to invalidate the continuation of certain temporary or transitional provisions which will continue in force beyond that date.’

It is surely now too much to claim that the offending provisions amount only to ‘temporary or transitional’ discrimination against women as far as passing on their nationality to their children is concerned. The discrimination has only been corrected for children born after 1 July 2006.

Article 6(1)(a) of the European Convention on Nationality, which the UK has neither signed nor ratified, states:

“6(1) Each State Party shall provide in its internal law for its nationality to be acquired ex lege by the following persons:

children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, subject to any exceptions which may be provided for by its internal law as regards children born abroad.

(a) With respect to children whose parenthood is established by recognition, court order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law;’

It is the case that a person can, while still a child, be registered by discretion under s 3(1) of the British Nationality Act 1981 which provides a discretion to register any child, whether the child of a British father or not. Those who are over 18 cannot benefit from this. In any event, it was always the case that a child could be registered by discretion and this was for a long time used as justification for retaining the old law on paternity. The Home Office does not exercise discretion in all cases³.

² Signed 18 December 1979. United Nations 1249 UNTS 13. In force 3 September 1981.

³ See the UK Border Agency Nationality Instructions Vol 1, Chapter 9

As to proof of paternity, the means by which this can be done are set out in The British Nationality (Proof of Paternity) Regulations 2006⁴ SI 2006/1496:

2. The following requirements are prescribed as to proof of paternity for the purposes of section 50(9A)(c) of the British Nationality Act 1981—

- (a) the person must be named as the father of the child in a birth certificate issued within one year of the date of the child's birth;
- or
- (b) the person must satisfy the Secretary of State that he is the father of the child.

3. The Secretary of State may determine whether a person is the father of a child for the purpose of regulation 2(b), and for this purpose the Secretary of State may have regard to any evidence which he considers to be relevant, including, but not limited to—

- (a) DNA test reports; and
- (b) court orders.

The Lord Bassam of Brighton said in 2002

'[...] our expectation in most cases will be ... paternity will be proved by DNA evidence. Our intention is to adapt, for this purpose, the non-statutory scheme which has for many years operated successfully in the entry clearance context. However, where a requirement to produce DNA evidence would be inappropriate, for example, where the alleged father had died before the citizenship claim could be established, other evidence such as judicial declarations of paternity would need to be considered [...] there will need to be some flexibility in the application of the prescribed requirements, given the range of situations with which officials are likely to be confronted.' (HL Report 8 July 2002 col. 546)

Why is the date 1 July 2006 in any event? Because of the persistence of the House of Lords, and a stroke of luck. The Bill that became the Immigration, Asylum and Nationality Act 2006 provided an opportunity to raise the question of legitimacy and the Baroness Ashton of Upholland, who has a particular interest in matters pertaining to children, was taking that Bill through the House of Lords to assist Home Office Ministers. Pressed as to when section 9 of the 2002 Act would come into force she said

'I completely accept—as a Minister who has done a lot of work around children's issues, as the noble Lord was kind enough to point out—the importance of doing this. ...If I can give specific times and dates, I will ensure that in some way or another I can put that into Hansard so that it has the clarity of having been said before Parliament. At this stage, the question is, I think, merely to do with pressure of time. However, I accept that, as the noble Lord rightly said, this is an important area which we need to resolve.' (Hansard House of Lords Report 19 Jan 2006 (Grand Committee: Column GC254-5))

The House of Lords is asked to continue to persist, to ensure that the effects of this discrimination against men can be removed from British nationality law.

⁴ SI 2006/1496

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