



**Borders, Citizenship and Immigration Bill
House of Lords Report
Part 2 Citizenship**

Amendment 48 Stateless Children of British Nationals

ILPA supports the amendment 48, laid in the names of the Lord Avebury and the Lord Roberts of Llandudno:

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 prepared a separate briefing to a version of this amendment (amendment 93) at Committee stage. The difference between this amendment and that one is that this one now includes British Nationals (Overseas) in the list of the status of parents of children who can benefit from the amendment.

This amendment is about children who would otherwise be stateless. The UN Convention on the Rights of the Child states

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

The UK has now removed its reservation to the Convention on the Rights of the Child in respect of nationality.

As per the briefing for Committee stage (reproduced below) 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 weak 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. One signatory state to the UN Convention on the Rights of the Child cannot point to the default of another and say 'why should we do anything to help the child when another signatory does not?'

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 and indeed such a waiting game is prohibited by the UN Convention on the Rights of the Child which requires that the child have a right to acquire a nationality from birth. 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.

From ILPA's briefing for Committee stage:

A British citizen born outside the UK and the British overseas territories will be a British citizen 'by descent': that is he or she will not be able to automatically transmit his citizenship to his or her children. In addition, a British overseas territories citizen born outside the overseas territories will be a British overseas territories citizen 'by descent': that is he or she will not be able to automatically transmit citizenship to his or her children. For the children of British citizens and British overseas territories citizens, it is not always possible to satisfy existing provisions for registration to obtain those citizenships for want of compliance with residence requirements in the UK or a British overseas territory. Moreover, in certain circumstances, where the state of residence prohibits the acquisition of its nationality – often on racially discriminatory grounds - this leaves the children of such persons stateless.

In addition, British Overseas citizens and British subjects are not able to transmit that citizenship or status, as the case may be, by descent to their children. This also has the effect of rendering such children stateless, where the state of residence prohibits the acquisition of its nationality.

Thus the statelessness of children may arise in circumstances where the state in which they live does not provide for the acquisition of its nationality and there is no mechanism for the children to acquire the British nationality of their parents.

There are all over the world, small pockets of stateless children whose have a link through their parents' nationality or citizenship to the UK. In respect of their parents, the

UK has accepted that they are entitled to a form of British nationality and therefore to some protection and assistance from the UK. Most families with parents who are such British nationals, identify with the UK and are treated as identifying with the UK by the state in which they live.

ILPA members have examples of children of British citizens of Asian descent resident in Zambia and surrounding former British colonies in Eastern and Southern Africa, who have been rendered stateless by way of strict domestic citizenship laws and restrictive policies preventing them from registering as British citizens (under section 3(1) of the British Nationality Act 1981) or as British Overseas Citizens (under section 27(1) of the British Nationality Act 1981).

While there are no official statistics as to how many children in Zambia are affected, it is conservatively estimated that about 20 children of Asian descent resident in Zambia are affected by statelessness. In June 2004 Lord Patel of Blackburn surmised that about forty to fifty British families of Asian descent whose children were born after the country's independence were affected.

One case that stands out in particular is that of a British citizen of Indian origin resident in Zambia (hereinafter called 'A'). He is a professional member of the community. He was a Citizen of the UK and Colonies by descent without a right of abode. On commencement of the British Nationality Act 1981, A became a British Overseas Citizenship. His father, who moved to Zambia (former Northern Rhodesia) from India in 1953 as a result of the British Government's incentives, was registered as a Citizen of the UK and Colonies in 1955. He was automatically reclassified as a British Overseas Citizen on commencement of the British Nationality Act 1981. A's mother, also of Indian origin, joined her husband in Northern Rhodesia in 1957. She was registered as a Citizen of the UK and Colonies on the basis of her marriage in 1967. On 1 January 1983 she was automatically reclassified as a British citizen.

A married, first in a religious ceremony in Zambia and then by way of a civil ceremony in the UK in 1985. His wife, born in India, registered as a British Overseas Citizen in 1990 when the couple were living in the UK. Mr Patel acquired indefinite leave to remain in the UK with a right to re-admission. The couple's first two daughters were born in the UK in 1985 and 1991 and were thus British citizens by birth.

In 1992 the family had to return to Zambia due to A's increasingly ill health. A's younger two daughters were born in Zambia in 1993 and 1996. Both have been stateless since birth. Despite numerous attempts made by A to register his younger daughters as Zambian citizens, he has been persistently informed that they are not eligible for Zambian citizenship nor do they have a realistic prospect of acquiring it in the future under the country's citizenship laws. Zambian authorities have also been reluctant to issue travel documents to the children. On two exceptional occasions, the authorities agreed to issue temporary travel documents allowing the children to leave and return to Zambia on the understanding that no further applications would be entertained in the same way other than to issue 'one way only' travel documents.

Meanwhile, A has made several unsuccessful applications to register his daughters under section 3(1) of the British Nationality Act 1981 (under which the Secretary of State has a discretion to register any child as a British citizen) and section 27(1) of that Act (the equivalent provision for British Overseas Citizens). He has made representations through MPs since 1999. In all his efforts A has been unequivocally rebuffed, with neither Zambia nor the UK taking responsibility for the children.

As a result the two daughters remain stateless. They are unable to visit extended family members in India and in the UK. Should the children ever contract a serious illness or suffer an accident the effects of which cannot be treated locally, it would be necessary for them to be air lifted to South Africa where treatment could be administered – this has now become common practice in such cases but as stateless children these would not be able to travel

On one occasion the Home Office suggested that A and his family should move to the UK in order to resolve the two daughters' statelessness. They would have had to travel on a one-way travel document as they are not entitled to passports from any country in the world. They have no guarantee that the move would achieve the desired result as the discretion to register them as British under s 3(1) has never been exercised in their favour. It would also involve leaving the home and country in which they have grown up to lead a precarious and complicated existence as stateless children in the UK.

In respect of the stateless children, the UK could register them as British citizens under section 3(1) of the British Nationality Act 1981. Under section 3(1) the Secretary of State has a discretion to register any child, regardless of nationality and regardless of whether or not the parents are British citizens by descent. It is a broad power on the face of the legislation and confers a very wide discretion on the Secretary of State as to how it is to be exercised. The Secretary of State publishes non-statutory guidance as to how the power is to be exercised in the form of Nationality Instructions. The latter do not provide any meaningful or adequate protection from a refusal to exercise the power and may be changed at will. In addition, there are far too many examples where the Secretary of State has declined to register children under this power.

There is a need to provide proper statutory rights to acquire British citizenship to the stateless children born outside the UK and British overseas territories to British nationals in order to ensure that they acquire a nationality and that that nationality gives them the right to live and work in the UK without restriction; the UK being the state with which they identify.

The provisions to avoid statelessness for the children of British nationals born outside the UK and British overseas territories, must be made fair and workable in order to ensure that the children of British nationals are not left stateless.

The current provisions found in paragraph 4 of schedule 2 to the British Nationality Act 1981 in respect of persons born outside the UK and the British overseas territories are very restrictive:

- they demand three years residence in the UK with up to 270 days absences (para 4(1)(c)) in circumstances where the stateless child has no passport with which to be lawfully admitted to the UK and thereafter to reside,
- They also provide for the registration of the child in a category of British nationality (i.e. British Overseas citizenship or British subject status) little better than statelessness: that is in one of the categories of British nationality that carries with it no right of abode in the UK or any other county in the world.

With the removal of the UK's reservation to the UN Convention on the Rights of Child, this situation can no longer be tolerated.

As drafted the amendment:

- Removes the requirement for the person born outside the UK and the British overseas territories to be in the UK or an overseas territory for three years ending on the date of application; and
- Ensures that the person is entitled to be registered in a category of British nationality that carries with it the right of abode so as to be entitled to live and work in a states (i.e. to be registered as a British citizen and, as the case may be, as a British overseas territories citizen);

The amendment brings rights to the stateless children of British nationals born outside the UK and British overseas territories. It confers on such children the practical advantage of the right to live and work in the UK and provides an effective nationality to them so that they are not stateless and have a country they can call home.

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