



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

**Clause 43 Good character**

**Amendment 105 Hong Kong War Wives and Widows**

**ILPA supports amendment 105, laid in the names of the Lord Avebury and the Lord Roberts of Llandudno:**

**Clause 43**

LORD AVEBURY

LORD THOMAS OF GRESFORD

**105** Page 35, line 29, 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**

Clause 43 is a consolidating measure. The Immigration, Asylum and Nationality Act 2006 section 58 made provision for certain categories of applicant for British citizenship by registration to have to satisfy a good character test.

There are three ways that a person can become a British citizen: by birth, by registration and by naturalisation. The question of who registers was succinctly summarised by the then Minister of State for Immigration, Tony McNulty MP

*“ The registration route is reserved for those people—minors, certain persons already holding a form of British nationality, and certain persons with ancestral connections to the UK—whose particular circumstances are deemed to merit varying degrees of exemption from the full rigours of the naturalisation process.”* (Standing Committee E, 7th sitting, 27 October 2005 am, col. 256)

There are two forms of registration in the British Nationality Act 1981: registration by entitlement, whereby if you satisfy the requirements you will be registered, and

registration by discretion. The introduction of the good character test has effectively turned many registrations that were previously by entitlement into registrations by discretion.

The introduction of the good character requirement was a matter of controversy at the time of the passage of the 2006 Act not least because the original version of the clause that became 58 meant that every applicant for registration, save those whose entitlement to registration derived from a provision of the 1961 UN Convention on the Reduction of Statelessness would be subject to a good character test. It was not accepted those with a form of British nationality other than British citizenship and no right of abode in any country were stateless.

Through debates in the House of Lords the government was persuaded that the requirement should not apply to the *de facto* stateless, British nationals other than British citizens who hold no other nationality or citizenship and are thus entitled to register under section 4B of the British Nationality Act 1981. Given that, when registration was introduced for this group, the then Home Secretary, the Rt Hon David Blunkett MP, declared

*“We are talking here about righting an historic wrong..”*<sup>1</sup>

parliament intervened in 2006 to persuade the government that they should continue to register by entitlement.

Through debates in the House of Lords the government was also persuaded that it was silly to try to introduce a good character requirement in categories in which only babies under twelve months old can register. The compromise was that children under 10 would not be required to satisfy a good character test, children over 10 would.

This amendment highlights another silliness introduced in 2006. Attempts were made to stop it then; it is time to put a stop to it now. The Hong Kong War Wives and Widows Act 1996 started life as a private members bill presented in the House of Lords by the Lord Willoughby de Brooke. Unlike this Bill, it is easy to understand. It says

#### **1 Acquisition of British citizenship**

- (1) The Secretary of State may, on an application made for the purpose, register as a British citizen any woman who, before the passing of this Act, was the recipient or intended recipient of a UK settlement letter if—
  - (a) she has her residence, or principal residence, in Hong Kong; and
  - (b) where she is no longer married to the man in recognition of whose service the assurance was given, she has not remarried.
- (2) In this section “UK settlement letter” means a letter written by the Secretary of State which—
  - (a) confirmed the assurance given to the intended recipient that, in recognition of her husband’s service, or her late or former husband’s service, in defence of Hong Kong during the Second World War, she could come to the United Kingdom for settlement at any time; and
  - (b) was sent by the Secretary of State to the Hong Kong Immigration Department for onward transmission to the intended recipient (whether or not she in fact received it).

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<sup>1</sup> *Hansard* HC Report 05 November 2002, col 147

The Act thus provides a discretion to register as British citizens by descent women who were married to men who fought in the Second World War. It is now 64 years since the end of the Second World War. The UK Border Agency's own instructions say that it affects a maximum of 53 women.<sup>2</sup> It is already a discretion, there is no entitlement to registration.

In 2006 it was argued that this group should not be subject to the good character requirement. The Baroness Ashton of Upholland, responding for the government said;

*"[...] when we consider groups such as the wives and widows of those who fought in the defence of Hong Kong, we believe that we have brought them all into the system in one way or another. We do not believe that anyone remains outside. However, I am sure that the noble Lord and others listening to or reading our debate will let me know if that is not the case."* (The Baroness Ashton of Upholland, HL Report, Report Stage of Immigration, Asylum and Nationality Bill, 7 February 2006, col 621)

ILPA's briefing for Third Reading of that bill set out that it was not the understanding of our members that all the groups we contended should be exempt from the good character test had all been *'brought into the system one way or another'*. We cited examples of British Nationals (Overseas), now covered by subclause 43(3) in this Bill. These people have not only to show not only that they have no nationality other than that of British National Overseas but also ordinary residence in Hong Kong at the date of handover to China.

What the Baroness Ashton did not explain was why this group of women should be brought into the system at all and made subject to a good character test if they were all taken care of. Nor indeed why there was a need for separate good character requirement in a discretionary category. Nationality law is complicated enough without unnecessary amendments to legislation and the indiscriminate use of the good character test, which to date has been limited only through the strenuous efforts of parliament, is an example of this.

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