



**Borders, Citizenship and Immigration Bill**  
**House of Lords Committee**  
**Part 2 Citizenship**  
**Amendment 100: Acquisition by birth or adoption:**  
**British nationals**

**ILPA supports amendment 100 in the names of the Lord Avebury and the Lord Roberts of Llandudno:**

**100** Insert the following new Clause—

**"Acquisition by birth or adoption: British nationals**

- (1) The British Nationality Act 1981 (c. 61) is amended as follows.
- (2) In section 1(1), omit the words "on or after the appointed day".
- (3) In section 1(1), after paragraph (b) insert—
  - "(c) a British Overseas Citizen,
  - (d) a British subject under this Act,
  - (e) a British Protected Person,
  - (f) a British National (Overseas)."

**Purpose**

The purpose of the amendment effected by the first paragraph is to ensure that those born in a qualifying territory to parents who are British citizens or settled are British citizens whether born before or after the appointed day (21 May 2002 see the British Overseas Territories Act 2002 Section 8 and see SI 2002/1252 (C.34)). The 'qualifying territories are the British overseas territories other than the Sovereign Base Areas of Akrotiri and Dhekelia.

The purpose of the amendment effected by the second paragraph is to amend the British Nationality Act 1981 s 1(1) so that not only the children of British Citizens and the settled, but also the children of British passport holders other than British Citizens born in the UK or a qualifying territory are British Citizens.

## **Briefing**

The first amendment will assist a small group – those born to parents who were British citizens by descent (i.e. who could not transmit their nationality to their children born overseas), where those children were born in a qualifying territory in which the parents were not settled. It does not affect the children born to British dependant territories citizens before 2002; they derive their British citizenship from the British Overseas Territories Act 2002. Nor does the amendment affect whether the child has the citizenship of the overseas territory. It is thus about the situation of British citizens who live overseas, rather than those who are also British overseas territories citizens in their particular territory.

The second amendment purpose of the amendment effected by the second paragraph is to amend the British Nationality Act 1981 s 1(1) so that not only the children of British Citizens and the settled, but also the children of British passport holders other than British Citizens born in the UK or a qualifying territory are British Citizens.

British nationals other than British citizens have no right of abode by virtue of their British nationality. They are in a weaker position than third country nationals settled in the UK or an overseas territory and so are their children. The child of a person who is settled in the UK or an overseas territory is born a British citizen. One of the most striking consequences of the ‘probationary citizenship’ clauses of this Bill is that because probationary citizens will have limited leave, not indefinite leave to remain, the children born to people on probationary citizenship will not be born British citizens, with all the rights and entitlements of citizenship. Thinking about that helps us to understand the position of British nationals other than British citizens, whose British passports give them no right of abode in any country.

The UK has signed but not ratified Protocol Four to the European Convention on Human Rights because of its position toward British nationals who are not British citizens, including BN(O)s. Articles 3 of Protocol Four states:

**“Article 3**

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
2. No one shall be deprived of the right to enter the territory of the State of which he is a national.”

The UN Convention on the Rights of the Child says

**“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 European Convention on nationality, which the UK was instrumental in negotiating but has neither signed nor ratified, says

### **Article 6 – Acquisition of nationality**

1. Each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by the following persons:
  - a. 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. 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;[...]
4. Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons:
  - a. [...]
  - b. children of one of its nationals, falling under the exception of Article 6, paragraph 1, sub-paragraph a;
  - c. children one of whose parents acquires or has acquired its nationality;
  - d. children adopted by one of its nationals;<sup>1</sup>

In 2008 the UK withdrew its reservation to the Convention, a reservation that covered not only immigration law, but also nationality law. It is timely to look afresh at the UK's nationality settlement.

The UN Convention says that the child shall have the right to acquire a nationality. But what is a nationality? If you ask a person what are the most basic entitlements of a national, they are not very likely to say 'a right of abode'. (Unless of course they have read the Lord Goldsmith's review *Citizenship: our common bond*<sup>2</sup> – he lists it the top of the summary of his report as the first of the legal rights and responsibilities of citizenship). In most countries of the world the notion that there could be a nationality without a right of abode would not make sense. The most intrinsic, the most fundamental right of nationals is to enter and to remain in their country of nationality.

Surely this is what is meant by 'a nationality' in the UN Convention on the Rights of the Child? These are children born to, or adopted by, British nationals, in the UK or in an overseas territory.

Are British nationals other than British citizens nationals or not? If they are, then our obligations in international law have relevance to them. If they are not, what are they and when and by whom is that determined?

The Lord Goldsmith said in his review of citizenship *Citizenship: our Common Bond*:

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<sup>1</sup> European Treaty series 166.

<sup>2</sup> February 2008, available from <http://www.justice.gov.uk/docs/citizenship-report-full.pdf>

the Lord Goldsmith to write:

*"If citizenship should be seen as the package of rights and responsibilities which demonstrate the tie between a person and a country, the present scheme falls short of that ideal.*

*Hence the report proposes the following measures to enhance the meaning and significance of citizenship.*

There then follows the very first of his recommendations on citizenship:

- *The residual categories of citizenship – with the exception of British Overseas Territories Citizenship and British Nationals (Overseas) status – should be abolished allowing people who would qualify for those categories with access to full British citizenship. Though this change will only affect relatively small numbers of people, it is important to address the history involved in the residual categories as part of renewing our common bond of citizenship; [...]"*

Thus this was the very first of his recommendations. This bill proposes activity conditions, probationary citizenship leave, etc. but in this Bill the Government commits the error of thinking that there is, in compulsory volunteering and denying access to services, some short cut to 'renewing our common bond of citizenship that does not involve facing what the then Home Secretary, David Blunkett MP, described in 2002 as '*...an historic wrong..<sup>3</sup>*', the cutting out of the right of abode and thus the key component part of a nationality from so many forms of British nationality... The withdrawal of the reservation to the UN Convention of the rights of the child must prompt a review of this position.

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<sup>3</sup> *Hansard* HC Report 05 November 2002, col 147