



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

**Amendment 94 Acquisition by registration: stateless
children of British citizens**

ILPA supports amendment 94, laid in the names of the Lord Avebury and the Lord Roberts of Llandudno:

Insert the following new Clause—

"Acquisition by registration: stateless children of British citizens

- (1) Section 3 of the British Nationality Act 1981 (c. 61) (acquisition by registration: minors) is amended as follows.
- (2) In subsection (2), omit the words "made within the period of twelve months from the date of birth".
- (3) In subsection (2), for the words after "subsection (3)" substitute "save in the case of a person born stateless where the requirement is that the person's mother or father is a British citizen on the date of application."

Purpose

Where such a child would otherwise be stateless, to ensure that a child of any person who is a British citizen at the date of application, can be registered by entitlement as a British citizen at any time while still a child, without any requirement to be registered within 12 months of birth. In addition, to release such a child from the requirement as to the status of grandparents and to modify the requirement as to the status of a parent. While such a child could be presently registered by discretion under section 3(1) of the British Nationality Act 1981, this is not always done and he or she should have an entitlement to register as a British citizen in order to avoid statelessness.

Briefing

A British citizen born outside the UK and the British overseas territories (other than the British sovereign bases in Cyprus) will be a British citizen 'by descent': that is he or she will not be able to transmit his or her citizenship to his or her children. In addition, there

may be parents who acquire British citizenship after the birth of their children. 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 without the nationality of the state of residence. As they also lack British citizenship they are stateless and have no state in which they are entitled to live and work by virtue of possession of a nationality.

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

There are all over the world, small pockets of stateless children who have a link through their parents' British citizenship to the UK. In respect of their parents, the UK has accepted that they are citizens with the right to live and work in the UK. Most families with parents who are such British citizens, identify with the UK and are treated as identifying with the UK by the state in which they live.

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 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 of British citizens born outside the UK and the British overseas territories (other than the British sovereign bases in Cyprus) in order to ensure that they acquire a nationality, British citizenship, 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 citizens born outside the UK and the British overseas territories (other than the British sovereign bases in Cyprus), must be made fair and workable in order to ensure that the children of British citizens are not left stateless.

The current provisions for registration of a child by entitlement as a British citizen, found in section 3(2) and (3) of the British Nationality Act 1981, in respect of persons born stateless outside the UK and the British overseas territories (other than the British sovereign bases in Cyprus) are very restrictive:
They require:

- ('the temporal requirement') that the application to be made within twelve months from the person's date of birth;
- ('the parent requirement') that the parent in question was a British citizen by descent at the time of the birth; and
- ('the grandparent requirement') that the father or mother of the parent in question:
 - (a) was a British citizen otherwise than by descent at the time of the birth of the parent in question; or
 - (b) became a British citizen otherwise than by descent at commencement of the British Nationality Act 1981 on 1 January 1983, or would have become such a citizen otherwise than by descent on that date but for his or her death.

With the removal of the UK's reservation to the UN Convention on the Rights of Child, these restrictions can no longer be tolerated in their current form.

The removal of the temporal requirement removes the requirement that the child be registered within 12 months of the birth. People do not always learn of the requirement to register within this period. An amendment to provide that the child could be registered at any time during his or her minority avoids this difficulty. It would also, in appropriate cases, provide an opportunity to ascertain the wishes and feelings of the child. The amendments assists in reducing statelessness by providing a longer period of time for the acquisition of British citizenship.

The modification of the parent requirement ensures that the child of any British citizen, whether or not the parent was a British citizen by descent at the time of the child's birth, has an entitlement to register as a British citizen in order to avoid statelessness. This is a broad comprehensive amendment that caters for any situation in which the child of any British citizen may find him- or herself stateless.

In addition, the removal of the grandparent requirement ensures that a restraint on a provision designed to avoid statelessness is removed. It provides a broad comprehensive amendment that caters for any situation in which the child of any British citizen may find him- or herself stateless.

The amendment brings rights to the stateless children of British citizens born outside the UK and the British overseas territories (other than the British sovereign bases in Cyprus). 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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