ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

IMMIGRATION, ASYLUM AND NATIONALITY BILL – HL BILL 43
HOUSE OF LORDS REPORT FEBRUARY 2006
BRIEFING ON *CLAUSES 7, 42 and 51 TO 55 – "TERRORISM" PROVISIONS*

ILPA is a professional association with some 1200 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through teaching, provision of high quality resources and information. ILPA is represented on numerous government and appellate authority stakeholder and advisory groups. For further information contact Alison Harvey, Legal Officer, alison.harvey@ilpa.org.uk, 0207 490 1553

INTRODUCTION

Proposals for a variety of measures relating to terrorism were published over the summer. Many are now part of the Terrorism Bill. On 15 September 2005 the Home Secretary set out in draft clauses that would be introduced into this Bill.

It should be emphasised that all the provisions, with the exception of Clause 52, go wider than any current definition of terrorism, and cover broad questions of national security and "the public good". They therefore fall to be tested not only on the question of whether they are reasonable ways to deal with cases where people pose a threat to national security, but also with those convicted, or merely suspected, of other crimes; there is even concern that they might be used against people subject to ASBOs, etc.

ILPA's view is that the case for new legislation in this area has not been made and that the new provisions fail to respect rights and civil liberties. Existing Immigration law contains ample powers to deal with those who pose a threat to national security. The debate in Grand Committee was characterised by the Minister's sketching extreme cases, for which more than adequate provision is already made under existing legislation, and then seeking to use these to contend for an extension of existing powers. All arguments about breadth of provision in the Terrorism Bill are relevant, but the clauses introduce a few new problems of their own.

CLAUSE 7 DEPORTATION

Amendments
ILPA supports the proposal that **Clause 7 should not stand part of the Bill.**

Clause 7 provides that where a case raises national security concerns, the part of the appeal dealing with whether the appellant's human rights will be breached on return will be dealt with before removal, and the part that deals with national security will be dealt with after removal, as an out of country appeal. This creates a two-stop out of a one-stop appeal and is wholly at variance with the government's approach in other parts of the appeals system. The Minister of State said in Committee *"The new clause is designed to streamline the process of appeals against deportation orders in national security cases."* (Standing Committee E, 8th session 27 October 2005). It streamlines nothing; it creates a two-stop appeals process as the Minister of State acknowledged in Grand Committee: "*Our view is that SIAC is well and best placed to deal with what is, as the noble Lord said, the potential for a two-part appeal."* (11 January 2006, Col. GC 99)

The Minister of State in Commons Committee reaffirmed statements made during the passage of the Nationality, Immigration and Asylum Act 2002 by, *inter alia,* the Lord Filkin, that the government would not export risk: *"we shall not use the powers to export risk"* (Standing Committee E, 7th Session 27 10 05, col 271). Yet this is exactly what this clause purports to do. The person is sent back, and only then the question of whether they are a risk to the safety of the UK is examined. There are powers to prosecute people here, and powers to extradite them. The approach proposed by Clause 7 is irresponsible.

It may also put the applicant at risk. In some cases the risk on return is born from the national security case against the appellant: the British government's suspecting a person of being a threat to national security, whether or not the suspicion is well-founded, may be what turns their own government against them. If the British government only provided details of the national security case once the appellant was back at home, this could put him/her at risk of torture. The case of Ahmed (not his real name) cited in Grand Committee is an example of a case where, had the procedure set out in the Bill been in force, return to torture was the likely result. This is all the more chilling given that in the end the national security case against Mr Ahmed was found not to stand up.

These points were all put to the Minister in Grand Committee and she had no response. Her sole argument was:

> *"Underlying one of the concerns, as applied in the case that the noble Lord cited, was that somebody having had this raised would then be in danger. SIAC can take that into account in its considerations." (11 January 2005 col GC 100).*

SIAC cannot take into account what it does not know. If it does not know what is the national security case against the appellant, it cannot look at the relevance of this to the risk of torture or other flagrant breaches of human rights on return at the in-country stage of the appeal.

One result of clause 7 is likely to be that people are returned and then tortured; another will be attempts to raise risk through judicial review challenges etc. pre removal.

In other cases, where the national security case is known, it is likely to be rehearsed in detail as part of the human rights case pre removal; and yet these points cannot be decided, but instead the evidence must all be considered again at an out-of country appeal post removal: involving repetition and wasting resources.

Nor did the Minister of State address the difficulties in bringing an appeal before SIAC from abroad, given the complexity of its procedures. She simply noted that *"It is a court of superior record, with a distinguished judge, Mr Justice Ouseley, as its president. Its membership includes legally qualified members or former members of the AIT".* (11 January 2005, Col GC 101). This is not disputed, but SIAC involves procedures, described by the House of Commons Constitutional Affairs Committee in their 7th Report of session 2004-5, published 22 March 2005 (at para 57*)* thus:

> *"The Special Advocate then takes delivery of the closed material. Once he has examined it, the Advocate is prohibited from communicating with the appellant without the Commission's consent, although it remains open for him to continue to receive (unsolicited) information from the appellant. Thereafter, at any closed session, neither the appellant nor his lawyers are permitted to be present and the Special Advocate takes over entirely as his representative."*

The Committee also cite the comments of the Lord Bingham in *R v H &C* at paragraph 63. Lord Bingham had stated in that case:

> *"Such an appointment [of a Special Advocate] does however raise ethical problems, since a lawyer who cannot take full instructions from his client, nor report to his client,*

who is not responsible to his client and whose relationship with the client lacks the quality of confidence inherent in any ordinary lawyer-client relationship, is acting in a way hitherto unknown to the legal profession."

Clause 7 is beyond repair: the two parts of the case cannot be separated as the government suggests without a real risk of putting the UK and/or the appellant at risk. The chances of a fair trial before the Special Immigration Appeals Commission if the appellant is abroad, given the complexity of its procedures, are nugatory.

CLAUSE 42 INFORMATION: EMBARKING PASSENGERS

Amendments
- An **amendment** to provide a person detained under this clause with the right to contact a legal representative and/or their Embassy or High Commission

This clause, although it now sits in the "information" part of the Bill was introduced with other amendments on terrorism (now clauses 7, and 51 to 55). It provides new powers to detain embarking passengers who are not British citizens for up to 12 hours and to establish the person's identity, compliance with conditions of leave and whether return to the UK is prohibited or restricted. It applies to all non- British citizens who are embarking passengers, not just those considered to pose a national security risk.

The proposed amendment is prompted by the following exchange in Commons Committee:

"Mrs. Gillan: Before the Minister sits down, will he comment on the individual's ability to contact a legal adviser, or his embassy or high commission?
Mr. McNulty:… Before the 12 hours are up, there will be no right to legal representation and none of the other rights afforded by PACE. It is not an arrest for a criminal offence. It is detention under the administrative powers of immigration legislation. If it goes beyond 12 hours, the legal rights and powers under PACE will kick in, but not before" (27 10 05 Col 310)

The Minister of State had sought to justify the clause on the basis that it was better to have a power to detain an embarking passenger than to have to arrest them:

"*Currently, we are able to take all that information from someone only if they are arrested. Clearly, we do not want to arrest everybody… …In that regard, having the facility, which is all that the two new clauses propose, to establish beyond doubt a person's identity as they are leaving and to take a record of that by biometrics is a more than appropriate halfway house."* (Col 308).

Arrest is unpleasant, but it also carries safeguards. The clause envisages incommunicado detention. It is unlikely that anyone will realise that the embarking passenger is being detained. They will not be allowed to tell anyone unless the clause is amended.

CLAUSE 52 (Refugee Convention Construction) and government amendments

Amendment
- To leave out the definition of "contrary to the principles and purposes of the United Nations" and thus to ensure that the Refugee Convention is not (mis-) construed in statute but remains a matter for the jurisprudence of the courts in the UK and internationally, and with guidance from UNHCR.

Other

- It will be necessary to probe the new government amendments and to challenge the extension of procedures used in cases considered to raise questions of national security to all cases.

Assurances to seek

- The Minister said in Grand Committee *"The noble Baroness, Lady Anelay, asked a pertinent question about child soldiers. We would of course consider every case on its individual merits and absolutely take into account issues of coercion—that is the critical issue in these particular tragic circumstances. Clause 52 does not remove that element of discretion, so there is no question that child soldiers would be automatically excluded under the clause."* (19 Jan 2006 : Column GC264) The Minister should be asked to confirm that this holds true for the new clause.

The government have brought forward substantial amendments to this clause. They are not amendments designed to meet the concerns expressed by peers during the debate in Grand Committee and nor do they have that effect.

Instead the Minister stated in her letter that this the amendments were being laid because the because the government had identified an overlap between s.33 of the Anti-Terrorism Crime and Security Act 2001 (ATCSA 2001) and Clause 52 of this Bill. The amendments not only replace clause 52, but repeal s.33 of ACTSA in its entirety and serve to replace it.

The following analysis of the government amendments may be of assistance:

Government Amendments to clause 52

The amendments to clause 52 turn the clause into a definitions section only. The very broad definition of terrorism taken from ACTSA 2001, about which peers expressed concerns in Grand Committee, and which has been the subject of considerable debate in the context of the latest Terrorism Bill, remains.

New clause after clause 52

This replaces the other provisions of Clause 52 and also repeals and replaces section 33 of the Anti-Terrorism Crime and Security Act 2001. Section 33 applied only in national security cases considered serious enough that they should be heard before the Special Immigration Appeals Commission (SIAC). Now the new clause will apply similar provisions to asylum appeals not meeting this level of severity

It would be no good the government seeking to justify this clause by reference to cases raising serious national security concerns – those cases would go to SIAC.

Under s.97 of the Nationality, Immigration and Asylum Act 2002, cases are sent to SIAC if the Secretary of State acting in person certifies that the decision appealed was taken wholly or partly on the basis that the person's exclusion or removal from the UK would be in the interests of national security, in the interests of the relationship between the United Kingdom and another country, or where the decision was taken on the basis of information that, in the opinion of the Secretary of State should not be made public, in the interests of national security, the relationship between the UK and another country, or otherwise in the public may be in the interests of national security.

What examples can the Minister give of the people at whom the clause is aimed – since it is not aimed at those who raise national security concerns? How can the Minister justify using a procedure previously reserved for national security cases in such cases?

UNHCR has provided detailed criticism of the way the government has interpreted Article 1F in the clause, which makes clear that the use of the definition of terrorism in the 2001 Act is a misinterpretation of Article 1F. They note *inter alia:*

- "*the assertion in Security Council resolutions that an act is "terrorist" in nature would not by itself suffice to warrant the application of Article 1F (c), especially, as there remains no universally accepted legal definition of terrorism at the international level.*"
- In UNHCR's view only *"persons who are in positions of power in their countries or in State-like entities",* and *"in exceptional circumstances, the leaders of organisations carrying out particularly heinous acts of international terrorism which involve serious threats to international peace and security"* are persons who could act contrary to the principles and purpose of the United Nations and fall within 1F(c)
- 1F(c) envisages acts of such Nature as to impinge on the international plane in terms of gravity, international impact and implications for international peace and security.

Government attempts to justify their new clause by reference to Security Council resolutions, as the Minister did in Grand Committee (see 19 Jan 2006 : Column GC264)a nd in her letter of January 2006 to the House of Lords Committee on the Constitution, thus do not stand up.

The Minister of State in Commons Committee noted that here had been 32 exclusions (i.e. under Article 1F as a whole) in 2004 (Standing Committee E, 27 10 05 Col 297). He accepted that he could not point to any cases where the absence of the clause had led to a person being recognised as a refugee who should not have been so recognised[1]. Such a case is not going to be found among the cases that do not present a sufficient threat to warrant their going to SIAC and thus the justification for the new clause appears very weak.

The Joint Committee on Human Rights in their Third Report (*op. cit.)* said at paragraph 179 that *"To give effect to the Government's stated purpose of merely making explicit what Article 1(F)(c) implicitly requires, the clause would need to be amended to decouple it from both the broad definition of terrorism in s.1 of the Terrorism Act 200 and the published list of unacceptable behaviours in its present form".* They indicated that it should be confined to inchoate offences (para. 179) and questioned the necessity for the clause (paragraph 174).

The House of Lords Committee on the Constitution said in their letter to the Parliamentary Under-Secretary of State of 13 December 2005:

> *"We share the views of others that it is not appropriate for Parliament acting unilaterally as a national legislature to reinterpret in this way an international treaty to which the UK has become a party."*

The government in response cited two examples of their doing so, s.72 of the Nationality, Immigration and Asylum Act 2002, which purports to interpret the meaning of "particularly serious crime" under Article 33(2) of the Refugee Convention and s.31 of the Immigration and Asylum Act 1999 to interpret Article 31 of the Convention. In both cases we recall, there was a similar outcry. The Office of the United Nations High Commissioner for Refugees described it as suggesting an approach "*which is at odds with the Convention's objectives and purposes...runs counter to long-standing understandings developed through State practice over many years regarding the interpretation and application of Article 33..*"[2] There are no good reasons for including Clause 52 in this Bill and very good reasons for not doing so.

CLAUSE 53 DEPRIVATION OF CITIZENSHIP

[1] Standing Committee E, col 296
[2] UNHCR briefing on the then Clause 64 of the Nationality, Immigration and Asylum Bill

Amendments
ILPA supports an **amendment** to remove subsection (1) of the clause and thus retain the existing test for deprivation of citizenship. This has the effect of the clause not standing part of the Bill, save that the power to hear proceedings on forged documents in private is preserved.

The Clause gives the Secretary of State will have powers to deprive a person of British Citizenship if satisfied that this deprivation is conducive to the public good. The powers can only be used where to deprive a person of their British Citizenship will not leave them stateless, i.e. against people with dual nationality. As has been the case since 2002, any dual national can be deprived of their British Citizenship, even if they have held it since birth. The Nationality, Immigration and Asylum Act 2002 amended the law to provide that a person can only be deprived of British citizenship under Section 40 (2) of the British Nationality Act 1981 if the Secretary of State is satisfied that he or she has done something that is seriously prejudicial to the vital interests of the United Kingdom or a British Overseas territory. The 2002 wording was taken from the European Convention on Nationality (Strasbourg 6 September 1997).

- The new 2002 powers to deprive people of their British citizenship have never been used and have not been shown wanting. The case for their extension is not made out.
- The provisions equate deprivation of citizenship with migration control because the test used for the deportation or exclusion of foreign nationals is being imported to be the test for deprivation of citizenship. People can be deprived of citizenship on grounds incompatible with civil liberties due to the breadth of the provisions.

The Minister of State said in Grand Committee

> *"it is fundamentally wrong for those who engage in such activities* [unacceptable behaviours] *and who have rights of residence elsewhere to be allowed to acquire and shelter behind their British citizenship"* (19 Jan 2006 : Column GC274)

But no one obliges the UK government to allow a person, whehter a dual national or a British citizen, to shelter behind that citizenship. The UK can prosecute British citizens, and others. It can extradite British citizens and others. If people are allowed to shelter behind their British nationalty, then this is not because of the test for deprivation of citizenship. A governent with no powers whatsoever to deprive people of their citizenship would be in no way obliged to refrain from prosecution or extradition.

The Minister asserted that there were actual cases where the existing test might result in an attempt to deprive a person of their British citizenship going either way, but the new test would allow such a deprivation. She said

> *"Examples might include war criminals and human traffickers, although I do not know whether the examples fit the cases, so I would not want noble Lords to interpret them as doing so". (*19 Jan 2006 : Column GC274)

When the existing test was debated in 2002, Angela Eagle MP said in the Commons that it would cover threats to "*infrastructure, vital economic interests or the general safety of the population. (*HC Committee, 30.04.02 cols. 60-62) and the Lord Filkin said in the Lords

> *"The government are on record as stating that the term "vital interests" will be interpreted as covering threats to national and economic security and to public safety […] but not to actions of a more general criminal nature… The term occurs in the 1961 and 1997 conventions….As a term of international law, the concept is an evolving one."* (HL Committee 08.07.02 col 535)

This suggests that the Minister is on very shaky grounds using examples such as war criminals to justify the broader test.

Were the contention that, in the fight against terrorism, anything goes, the government might be considering trying to palm off the people it likes least onto other states who could be persuaded to take them. It might consider withdrawing from the UN Conventionon the Reduction of Statelessness, and saying that it thought it more important to fight terrorism, than to avoid statelessness. The Minister is not saying these things: indeed she reasserted repeated in Grand Committee that the government would not make people stateless.

The Minister said in Grand Committee

> *"For me the principal concept of citizenship is that people have a right to be a citizen and not to be stateless. That is fundamental, in my personal view, but it does not mean that you have a right to be a citizen of more than one nation. Citizenship may be given by another nation for various reasons, which is perfectly acceptable.* 19 Jan 2006 : Column GC276

We suggest that this personal view is not shared by most people. If peers received letters tomorrow saying that by arrangement with another nation: be it Iceland, the Dominican Republic, take your pick, their British citizenship was being removed but they were being made citizens of that nation, so that they would not be left stateless, we suggest that far from being reassured, they would be more than a little perturbed. The value is placed not merely on not being stateless, on having *a* citizenship, but on the particular citizenship one has.

The Minister said in Grand Committee

> *"Speaking personally, I am affronted that Abu Hamza has British citizenship—I wish that he did not. I think that all noble Lords would agree with me"*. (19 Jan 2006 : Column GC274).

They might. But they well feel the same way about a number of British citizens who are not dual natioanls: terrorists, rapists, murders, paedophiles, or merely people who do not share their political ideology. British citizens also commit crimes, including heinous crimes, and conduct themselves in numerous ways that their governments and other may deplore

The Minister stated in Grand Committee

> *"The difficulty with the higher test that we had is that we already know of situations in which people may not be caught. We believe that they should not continue to be dual citizens..One might argue that they were not necessarily a great danger in this country but that their behaviours were, in our view, completely unacceptable."* (19 Jan 2006 : Column GC274)

In summary, the case being made is that a person may pose no great threat, but if we do not find their behaviour acceptable we should be able to take away their citizenship. We assert the contrary view: that it remains the right of the citizenry to change their government, not of the government to change the composition of the citizenry by banishment of its awkward elements.

The Joint Committee of Human Rights in their Third Report (*op.cit*) said of this provision

> *"…the new test for deprivation of citizenship …contains insufficient guarantees against arbitrariness in its exercise in the light of (i) the significant reduction in the threshold (ii) the lack of requirement of objectively reasonable grounds for the Secretary of State's belief (iii) the arbitrariness of the definition of the class affected and…therefore gives rise to a risk of incompatibility with Article 12(4) ICCPR, Articles 3, 5, and 8 ECHR and Article 14 in conjunction with those articles and Article 26 ICCPR"* (paragraph 164).

The Minister said at Second Reading:

> *"the Committee [Joint Committee on Human Rights] is clearly saying to us that the public good test is too vague. I look forward very much to discussing the whole issue… I take very seriously what the committee is telling us*" (6 December 2005, cols 586).

CLAUSE 54: DEPRIVATION OF RIGHT OF ABODE

Amendments

- To replace the word "thinks" with "is satisfied that" in section 2(2a) of the Immigration Act 1971 which sets out that the Secretary of State may deprive a person of his/her right of abode if the Secretary of State *thinks* that this would be conducive to the public good.
- To make the test for deprivation of the right of abode the same as the existing test for deprivation of nationality, for the reasons set out in the briefing to clause 54 above.

"Thinks"

The Minister contends that "thinks" is plain English and means the same as "is satisfied that". The House of Lords Select Committee on the Constitution questioned the use of the word in their letter of 13 December 2005, as they had questioned its use in Clause 40, and noted *that "it would be unfortunate if a change in the language were inadvertently to alter the existing judicial approach to such statutory discretions."* Plain English arguments are a bit rich coming from a government that has laid amendments for this stage of the Bill making reference to an "effluxion" of time (government amendments to clauses 15 and 21). The House will have to take a view on whether it shares the concerns of the Select Committee or is prepared to rely on the Minister's assertion that the "thinks" and "is satisfied that" mean the same thing.

The test for deprivation

Britain's colonial history has resulted in there being many, rather than one, forms of British nationality and in nationality status being severed from what one might have expected to be the rights of any national: to enter, reside in and leave the country of nationality, i.e. the rights to be free from immigration control. These rights are treated as a separate package**:** the right of abode set out in s.2 of the Immigration Act 1971, which provides that British Citizens, as well as certain Commonwealth citizens, have the right of abode. Clause 54 provides a new power to deprive people of the right of abode where the Secretary of State thinks that this would conducive to the public good for the person to be excluded or removed from the UK. Those affected by Clause 54 will be Commonwealth citizens who, immediately before the commencement of the British Nationality Act 1981 were Commonwealth citizens with the right of abode in the UK. The loss of the right of abode is the loss of one of the fundamental rights associated with a nationality and the comments made on Clause 53 above are also applicable here.

The Joint Committee on Human Rights concluded that *"there are not sufficient guarantees against arbitrariness in the exercise of the power"*. They noted the *"sheer breadth of the concept of conducive to the public good"* and identified *"the same problems with the*

significant reduction in the threshold" as they identified on what is now clause 53, noting the *"very serious consequences for the individual concerned"*.

CLAUSE 55 ACQUISITION OF NATIONALITY and government amendments

Amendments

- ILPA welcomes the government amendment to remove "4B" which will have the effect of allowing British Overseas Citizens with no other nationality to retain their right to register by entitlement and not to have to pass a good character test. ILPA supports amendments to retain for other groups, [babies under 12 month, Gibraltarians, children and others, as described below], their rights to register by entitlement and not to be subject to a good character test.

Assurances to seek

- That the government will exercise its discretion to register all children born to recognised refugees in the UK.

Clause 55 extends the statutory requirement that an applicant must be of "good character" in granting British Citizenship to all cases, save those where British Citizenship is granted because of the UK's ratification of the UN Convention on the Reduction of Statelessness. "Good character" takes in matters far beyond terrorism. Thus the clause falls to be justified not in the context of what is acceptable to counter a terrorist threat, but more broadly.

Registration and naturalisation are the only two ways in which a person can become British. At the moment the "good character" requirement applies only to those seeking naturalisation as a British Citizen and not to those seeking to register as British.

Registration may be discretionary or by entitlement. This Clause applies the "good character" requirement to all registration, as well as naturalisation, applications thus ending the concept of registration by entitlement. Registration by entitlement, and that is the language used in statute, recognises special obligations to allow certain categories of person to become British.

In Commons Committee the Minister faced the accusation that she intended to subject babies under 12 months to a good character test. Her response was:

> *"Concern has been expressed that we would extend the rule to very young children or even babies—that was raised with me yesterday. Of course, the rules would state that that would be a silly thing to do, and it would not happen. (*19 Jan 2006 : Column GC279)

As the government amendment to leave out "4B" illustrates, the specific groups losing their rights to register by entitlement are very tightly defined in the clause. If it is *"silly"* to include a particular group, this is not a matter that has to, nor, in our view, should, be left to guidance for officials. Parliament should not pass *"silly"* laws when it is so straightforward to pass sensible ones. We illustrate below mechanisms by which sense could prevail.

Do not subject babies under 12 months to a good character test: it is *"silly"* – and worse

How to avoid being *"silly"*:

Page 30, line 27, leave out ",(2)" (Reference to section 3(2))

Page 30, line 30, leave out ",(2)" (reference to s. 17(2)))

Page 30, line 36, leave out subsection (e).

Section 3(2) of the British Nationality 1981 entitles babies born outside the UK to a British parent who is British by descent (i.e. does not automatically pass on their British citizenship to their children), to be registered within 12 months of birth. Section17(2) makes similar provision in respect of British Overseas Territories. Article 6 of the Hong Kong (British Nationality) Order 1986 is entitled "Provisions for reducing statelessness". Article 6(3) says:

> " (3) A person born stateless on or after 1 st July 1997 outside the dependent territories shall be entitled, on an application for his registration as a British Overseas citizen made within the period of twelve months from the date of the birth, to be registered as such a citizen if the requirements specified in paragraph (4) below are fulfilled in the case of either that person's father of his mother"

Thus the provision concerns not only babies, but stateless babies. It is not merely silly, it risks doing what the Minister says she would not do, make people stateless. It is easy to cure the mischief of these clauses.

Do not subject children to a good character test because it is *"silly"* – and worse

Page 30, line 27, leave out "(3)" (in 1(3))

Page 30, line 27 leave out "(2) and (5)" and replace with "and (2)"

Page 30, line 30 leave out (3)

Page 30, line 30 leave out "(2) and (5) and replace with "and (2)"

Section 1(3) of the BNA 1981 allows children, and only children, to register if their parents become British citizens or are granted settlement (indefinite leave to remain) in the UK. S.15(3) makes similar provision for British Overseas Territories citizens.

Section 3(5) makes provision for children, and only children, born outside the UK to a British parent who is British by descent and thus cannot automatically pass on their nationality to their child to be registered, if the family has returned to the UK and has lived here for at least three years. The equivalent provision for British Overseas Territories is s.17(5).

Is the Minister prepared to suggest that a child should be at risk of losing an entitlement to register as British because they might fail a good character test? These simple amendments would solve the problem and retain their right to register by entitlement.

Refugee Children

A growing group of children who will fall under section 1((3) are the children of refugees. When refugees got indefinite leave to remain as a result of recognition, their children were British because they were born to parents settled (i.e. with indefinite leave to remain) in the UK. One consequence of the decision to give refugees 5 years limited leave in the first instance, is that their children will not be born British and will not be entitled to register until their parents get indefinite leave to remain at the end of five years. This places refugee children in a situation of particular difficulty – as refugees are not expected, for good reason, to approach the embassies or government of their own country. We recall how, in the more distant past, when refugees used to get four years limited leave before getting ILR, children born to them in those years would be in limbo. If parents had Refugee Convention travel documents it was sometimes possible to get the child put on it, but often families did not travel during that period. **We seek an assurance from the government that it will exercise its discretion to register the children of recognized refugees who are not yet able to register by entitlement.**

British overseas citizens who fall to be treated as UK nationals for the purposes of the Community Treaties (essentially Gibraltarians)

Page 30, line 27, leave out "5,"

Section 5 of the BNA 1981 provides an entitlement to register for British Overseas Citizens who fall to be treated as UK nationals for the purposes of the Community Treaties – usually Gibraltarians. Will the government tell the Committee whether or not this provision falls foul of community law?

British nationals other than British citizens, Hong Kong residents, prevention of statelessness

Page 30, line 34, leave out subsection (d)

Section 1 of the British Nationality (Hong Kong) Act concerns Hong Kong residents whose entitlement to register derives from their having a "second class" British citizenship and being, on 4 February 1997, stateless but for that citizenship and who have not since renounced any other citizenship. To amend the Bill to allow these people to register by entitlement would be in line with the government's amendment to leave out "4B".

Wives and widows of those who fought in the defence of Hong Kong during the WWII

Page 30, line 32, leave out subsection (c)

There are few of these left alive, they probably do not want to come to Britain anyway, and they are not very young any more, but is not their exclusion from registration by entitlement disrespectful?

Similar arguments can be made for other groups, and we are happy to supply full details to those who wish to study this further. But these examples illustrate just some of the problems with the clause, which moreover uses the very low test of "good character" as the standard for taking away important rights.