ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

SUBMISSION TO LORD GOLDSMITH FOR THE CITIZENSHIP REVIEW: THE DIFFERENT CATEGORIES OF BRITISH NATIONALITY

EXECUTIVE SUMMARY

ILPA considers that the most significant legal question in the terms of reference for this review is: "to consider the difference between the different categories of British nationality." Our submission concentrates on this fundamental point.

Nationality law exists in its own right, not as an adjunct to immigration law. The decision on who is a citizen, the rights flowing from that citizenship, and how people may become citizens, or be deprived of that citizenship, go to the basis of the State and its identity. ILPA considers that nationality law should not discriminate on the basis of race or gender or marital status and that continuing discrimination based on past laws should be addressed and eliminated.

A full review of citizenship should therefore recommend revision of the law on the basis of two main PRINCIPLES:

i) a reduction in categories – a single form of British nationality, British Citizenship, all of whose holders have equal rights;

ii) defining a law on nationality on which immigration law can be based rather than treating nationality law as a branch of immigration law, and promoting justice for individuals now caught up in the complication of a nationality/immigration system.

The principles on which a nationality law is based must include:

No one should be without the right of abode in the country of their nationality. Every British national should have a right of abode in the UK.

The reduction of statelessness. No-one should be stateless. The UK's obligations to alleviate statelessness should extend to all within its jurisdiction and to all children of all types of British nationals throughout the world.

The historical discrimination against British nationals who are not British Citizens, and against British citizen women in passing on their citizenship to their children born abroad, must be addressed and ended. Measures introduced 2002 should be extended to all British nationals who are not British Citizens, giving all the right to register as British Citizens, without the need to pass any tests.

The criteria for acquiring citizenship in the future, and how these are assessed, must not discriminate, directly or indirectly, on grounds of race or gender. The fees payable must be reasonable.

The criteria for deprivation of citizenship should not apply to those who are citizens by birth, and there must be a higher threshold for stripping citizenship from anyone.

These ideas are all discussed in more detail below, together with ways of addressing the present problems and injustice.

ILPA • Lindsey House • 40/42 Charterhouse Street • London EC1M 6JN • Tel: 020 7251 8383 • Fax: 020 7251 8384
EMail: info@ilpa.org.uk Website: www.ilpa.org.uk

SUMMARY OF PROPOSALS: British nationals other than British citizens

1. Upgrade all living British passport holders to British Citizens with right of abode in the UK, by registration by entitlement (see discussion under 'Modalities of Implementation' below).

2. Upgrade all those living persons who would have held British passports but for historical discrimination on the grounds of sex (they were born abroad to British women not men) or on the grounds that they were born out of wedlock to British Citizens with a right of abode in the UK (by registration by entitlement).

3. 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 born in the UK or a qualifying territory are British Citizens.

4. Amend the British Nationality Act 1981 s 1 to get rid of the 'after the appointed day' provision for birth in a qualifying territory.

5. Include BN(O)s within the scope of s 4B of the British Nationality Act 1981 (rather than the Hong Kong Acts).

6. Repeal section 3(2) of the British Overseas Territories Act 2002 so that those on the sovereign base areas on Cyprus have the right to register as British Citizens.

7. Unnecessary hurdles to proving entitlement – in particular the requirement to prove a negative (that one has no other nationality or citizenship, c.f. South Asians in Hong Kong, people originally from East Africa resident in India, that one has not done something – c.f. section 4B of the British Nationality Act 1981 – not renounced citizenship) should be removed.

8. The review should also re-examine the question of those who benefit from free movement rights under European law on the basis of their British nationality.

SUMMARY OF PROPOSALS: acquisition of citizenship

9. Remove s 4C(2) of the British Nationality Act 1981 so that it covers all those born since 1948, not just those born after 7 February 1961

10. Amend s 4C of the British Nationality Act 1981 so that it is not limited to those born after 1948.

11. All living persons born to British fathers not married to their mothers before 1 July 2006 should be entitled to register as British.

12. No good character test in cases of registration by entitlement.

13. Amend s 3(2) of the BNA 1981 so that the requirements set out in 3(3)(b) do not apply in cases where the child would be stateless.

14. Get rid of the requirement to register a child within 12 months of the child's birth in BNA 1981 s 3(2) so that any child can register. Certainly get rid of them in cases of statelessness.

15. Get rid of the requirement as to the parent(s)' absences from the UK in cases of registration set out in section 3(6) of the British Nationality Act 1981.

16. Change the test for deprivation of nationality back to that of 'seriously prejudicial to the vital interests' of the country.

17. Revoke provisions allowing those born British to be deprived of their nationality for 'character reasons'.

18. Give consideration to restoration of the *jus soli* principle.

19. Examine the utility of continuing to divide British Citizens into British Citizens by descent and otherwise than by descent.

20. Remove the requirement for British nationals other than British Citizens who are becoming British Citizens to pay for and go through a Citizenship ceremony.

21. Consider the extent to which the life and language tests for naturalisation have resulted in indirect discrimination and consider whether, in the light of this, the tests should continue in their present form.

22. Review provision of accredited ESOL-with-citizenship courses and the funding for attendance at these.

23. Abolish the life and language tests for settlement.

24. Review the question of permitted absences for settlement and for indefinite leave to remain.

25. Review the fees charged for naturalisation and for settlement.

26. Review the situation of the Brigade of Gurkhas.

27. Review the categories of service recognised as designated service.

1. INTRODUCTION

ILPA is a professional association with around 1,000 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 training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups. This paper has benefited from contributions from a wide range of ILPA members including leading counsel, academics and other practitioners, including published authors and those who have been involved in research on these topics. ILPA consents to the review team publishing this paper if it desires to do so.

ILPA was represented at Lord Goldsmith's seminar on 9 November 2007. The focus there was on naturalisation, citizenship tests and ceremonies, etc. While ILPA has many concerns about these matters, the primary reason for writing this paper was to ensure that the second of the terms of reference of the review was not neglected and that the review addresses questions that are arguably far more central to any review of citizenship than questions of the criteria for naturalisation. The terms of reference in full are

- To clarify the legal rights and responsibilities associated with British citizenship, in addition to those enjoyed under the Human Rights Act, as a basis for defining what it means to be a citizen in Britain's open democratic society
- To consider the difference between the different categories of British nationality
- To examine the relationship between residence, citizenship and British national status and the incentives for long-term residents to become British citizens
- To explore the role of citizens and residents in civic society, including voting, jury service and other forms of civic participation.

ILPA and its members have done detailed work on nationality law, including in the context of recent legislation. We refer you in particular to Fransman's *British Nationality Law* (1998 edition), to Macdonald's *Immigration Law and Practice* (6th edition) and the discussion of nationality therein and to Dummett and Nicol's *Subjects, Citizens, Aliens and Others* (1990). We should be happy to make available to you ILPA briefings on nationality prepared during the passage of recent legislation and Ministerial statements collated by ILPA from debates on the Nationality, Immigration and Asylum Act 2002 and subsequent legislation.

Relevant international law is set out in the appendix.

We could have written a book (you probably feel as though we have); time constraints and the desire to be read have led us to limit this submission. If the matters we raise prompt the review team to ask for more information we shall do our very best to supply it. If we succeed in providing you with a vision of nationality law as distinct and separate from immigration law, then we shall have achieved a primary goal.

2. NATIONALITY LAW AS DISTINCT FROM IMMIGRATION LAW

2.1 The British Nationality Act 1981

In 1981, it was clear that the law needed clarification. But what the new Act did was to rename many of the confusions then existing and to create new confusions. Some of these have been dealt with in subsequent legislation, not always benign. The British Nationality Act 1981 bases nationality law on immigration law instead of defining a law on nationality on which immigration law could be based. Immigration law was excessively complicated and unjust in that, without any overt reference to race, it was designed to facilitate racial discrimination. The situation has changed greatly since 1981. The criteria for immigration policy are now more to do with the perceived needs of the economy while European law has greatly increased the rights of EU nationals to enter and remain. But the old, racially restrictive provisions still have their effects, which have widened.

2.2 Rights of nationals

A full review of citizenship should require revision of the law with two main objects in view:

i) **a reduction in categories – a single form of British nationality;**
ii) **justice for individuals now caught up in the complication of a nationality/immigration system.**

The idea that citizenship is a privilege that must be deserved contradicts all the provisions on acquisition based on birth and parentage. Nobody, while still in the womb, is capable of deserving anything. The acquisition of citizenship, whether by birth, registration or naturalisation, can be conceived of as recognition of a relationship already held to exist and we suggest that this is a sounder basis for a nationality law than a notion of just deserts.

The terms of reference draw attention to voting, jury service and civic participation but make no express reference to the fundamental right of a national, to enter and remain in the country of nationality, as enshrined in Article 13(2) of the 1948 Universal Declaration of Human Rights[1]. It surprises most British Citizens when their attention is drawn to section 2(1) of the Immigration Act 1971 (c.77)

> '2(1) A person under this Act is to have the right of abode in the United Kingdom if he is
>
> (a) A British citizen…'

That the most fundamental element of nationality is described in British nationality law as an immigration right, a statutory creation, is a matter that the review must address. For many British nationals, all those who are not British Citizens, this is no mere legal nicety; they do not enjoy a right of abode in the United Kingdom or any other country as a result of their British nationality. The UK has accepted rights of free movement for all the citizens of the European Union, but continues to deny such a right to many of its own nationals without the government's

[1] See Fransman's *British Nationality Law* (1998) at 3.2.3 for a full discussion of the international treaties and caselaw on this right.

ever making a principled case as to why the rights of EU citizens should be greater than the rights of British nationals.

To hold only a form of British nationality other than British Citizenship and no other nationality or citizenship is, for all practical purposes, to be stateless, a matter tacitly, but not expressly, admitted in 2002 in the discussions on what became section 4B of the British Nationality Act 1981. **Before looking at the (extremely problematic) notion of 'earned citizenship' for those who naturalise, it is necessary to wrestle with the position of those who were deprived of their full citizenship rights without their consent.** Not only is this of central importance in itself, but also because the UK is arguably in breach of its obligations toward its own nationals under international law.

The UK signed Protocol Four to the European Convention on Human Rights in 1963. Article 3(2) of Protocol 4 provides:

> *"No one shall be deprived of the right to enter the territory of the State of which he is a national".*

Having signed the Protocol, the UK is under an obligation not to pass legislation that is not in line with its provisions, and instead to work toward ratification.

In *Human Rights Brought Home,* Cm 3782 (1997), paragraphs 4.10-4.11, the UK government noted the important rights conferred in the Protocol and stated that is should be ratified "if the potential conflicts with our domestic laws can be resolved". The government has subsequently stated that there are

> "…continuing concerns over Arts 2 and 3 of Protocol 4 which could be taken, respectively, to confer rights in relation to passports and a right of abode on categories of British 'nationals' who do not currently have that right",[2]

an acknowledgement in stark terms that the UK is falling short of international standards.

We recall that in 2002 the UK parliament demanded that the government make special provision in the British Overseas Territories Act 2002 for the Ilois people of the British Indian Ocean Territory. The Ilois were still in exile at the time of the passage of the British Overseas Territories Act 2002, but s 6 of the Act made provision for those born while the Ilois were in exile to acquire British citizenship. The *Bancoult* legislation is worthy of special examination in the context of this review[3] as it provides an opportunity to examine how far the UK has fallen short of upholding its obligations toward British nationals other than British Citizens.

The reason given for tightening acquisition and loss rules in the Immigration, Asylum and Nationality Act 2006 was national security. These arguments sit ill with the government's position of a global base to threats to national security. A powerful

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[2] *See International Human Rights Instruments: The UK's Position: Report on the outcome of an Inter-Departmental Review conducted by the Department of Constitutional Affairs*, DCA, Human Rights Division, July 2004; discussed in *Review of International Human Rights Instruments* HC 99/HL 264 (Joint Committee on Human Rights, 31 March 2005)

[3] See in particular *R (Bancoult) v Secretary of State for the Foreign and Commonwealth Office,* [2001] QB 1067 the High Court held the order governing the forcible removal of the Ilois (Immigration Ordinance 1971, No. 1 of 1971) to have been illegal, being in breach of an Order in Council requiring good governance (British Indian Ocean Territories Order 1985, s 11(1)) and the 24 May 2007 decision of the Court of Appeal finding an abuse of power.

armoury of laws exists to protect national security from nationals and non-nationals alike. **National security can be compromised by citizens as well as by non-citizens; the criterion of citizenship is not the relevant one and this should be identified in the review.**

All the Citizenship ceremonies, oaths, pledges and community action that one could instigate to place a value on citizenship pale into insignificance before the realisation that the central plank of citizenship, a right to enter and remain in one's country, is a matter of UK statutory immigration law and it will avail the government little to try to shore up the notion of 'Citizenship' by rewriting citizenship tests and beefing up ceremonies if the ugly history of British nationality law and the present day injustice that is the result are not addressed. The UK is falling short of the standards set out in international law, and also of certain of its own international obligations, as discussed below. One of the ugliest passages in some very unfortunate debates on the Immigration, Asylum and Nationality Act 2006 came in the context of a discussion of the powers to deprive people of British citizenship, when s 56 of that Act lowered the test from that set out in the 1997 European Convention on Nationality to the very same test as is used for the deportation of foreign nationals from the country:

> *'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—or, in the case of those seeking citizenship, should not be granted it—because of their activities. One might argue that they were not necessarily a great danger in this country but that their behaviours were, in our view, completely unacceptable.*' The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC277

ILPA's response to this was that it was the right of the citizenry to elect their government, not of the government of the day to change the rules on acquisition and loss of citizenship according to their notions of what was acceptable to them, thus treating citizenship as a form of immigration status. This remains our view, and the Citizenship Review will fall into disrepute indeed if it focuses only the tests for naturalisation and fails to examine the extent to which the UK government is fulfilling its obligations to respect people's entitlements to British nationality, by birth or otherwise.

2.3 Developments in recent years

The most significant developments in recent years took place in 2002. The British Overseas Territories Act 2002 extended British Citizenship to those who, on enactment, were British Dependent Territories Citizens, save those who were such citizens because of a connection with the sovereign base areas of Akrotiri and Dhekelia on Cyprus[4]. This meant that the same approach was taken for all Overseas Territories as had been taken for the Falkland Islands under the British Nationality (Falkland Islands) Act 1983. In the same year, the Nationality, Immigration and Asylum Act 2002 inserted a new section 4B into the British Nationality Act 1981, giving many of those who held a form of British nationality other than British

[4] On 16 March 1999 the Foreign Secretary Robin Cook introduced a White Paper entitled *Partnership for Progress and Prosperity – Britain and the Overseas Territories* (Cm 4264) to which reference should be made.

Citizenship (British Overseas Citizenship, British Protected person or British subject status) and no other citizenship or nationality, an entitlement to register as British Citizens. The then Home Secretary, David Blunkett, described this step, precipitated by the abolition of the Special Quota Voucher scheme, as 'righting an historical wrong.'[5] It is understood that some 5000 people have registered under this section but government are better placed than ILPA to produce exact figures, for this and for the numbers of British Citizens who derive their citizenship from a connection with a British Overseas Territory. Problems persist in practice for those attempting to gain recognition under the 2002 section 4B provisions, and practitioners have suggested that in a number of cases people are shunted back and forth and required to produce more documents in the hope that they may go away.

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Registration was the preferred means of the limited attempts made in the Nationality, Immigration and Asylum Act 2002 to counter historical discrimination against women, by giving those born abroad to British mothers after 7 February 1961 the right to register as British Citizens, and making provision for children born out of wedlock to British fathers to take their nationality from the father (section 4C of the British Nationality Act 1981, as inserted by the Nationality, Immigration and Asylum Act 2002).

The laws enacted in 2002, while a welcome beginning, were piecemeal and partial and complex. The deprivation of British nationals of right of abode in the UK is one of the most shameful episodes in the country's history and no examination of British Citizenship can fail to engage with it and endeavour to make amends. With the prospect of a draft Citizenship Bill, and with the Home Office engaged upon a simplification project in immigration and (according to the original terms of reference of the project) nationality law, it is necessary to evaluate the arguments for a more comprehensive review of this area of the law.

It was argued in 2006 that there was a

> *'…guiding principle that British citizenship should normally be restricted to those having close connections with present day British territory'* The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 525-526

No reason or source was given for this principle, and it falls to be examined in the current review. It fails to reflect current British nationality law, under which parents have the chance to pass on their British Citizenship to children born abroad for two generations and British citizens do not lose their citizenship, howsoever acquired, because they do not reside in the UK or a British territory.

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[5] . *Hansard* HC vol 392, col 147 (05 November 2002).We commend to you *A wrong righted: full status for Britain's 'other' citizens* Shah, R., [2003] Journal of Immigration, Asylum and Nationality Law 17 (1). The Journal of Immigration, Asylum and Nationality Law is the official journal of ILPA. This article emphasises that a wrong was mitigated, not righted, and discusses the situation of Britain's other citizens from East Africa who, having been deprived of their unfettered right of entry into the UK in 1968, endured enormous suffering, anxiety and loss, in material, social and psychological terms, over a period of 34 years, affecting more than one generation of their diminishing number.

3. RECOMMENDATIONS FOR BRITISH NATIONALS OTHER THAN BRITISH CITIZENS

3.1 Overview

Principles

- **No-one should be stateless. The UK's obligations to alleviate statelessness should extend to all within its jurisdiction and to all children of all types of British nationals throughout the world.**
- **No one should be without the right of abode in the country of their nationality. For people with only one nationality and no such right of abode in the country of their nationality, this is statelessness in all but name; for those with more than one nationality, it denies the British nationality any effect.**
- **No child of a British national, nor any person born within the UK, should ever be stateless.**
- **Every British national should have a right of abode in the UK.**
- **Historical discrimination should not be perpetuated and, where possible, the present day effects of historical discrimination should be addressed.**

Proposals:

1. Upgrade all living British passport holders to British Citizens, with a right of abode in the UK (by registration by entitlement – see discussion below).

2. Upgrade all those living persons who would have held British passports but for historical discrimination on the grounds of sex (they were born abroad to British women not men) or on the grounds that they were born out of wedlock to British citizens to British Citizens with a right of abode in the UK (by registration by entitlement).

3. 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 born in the UK or a qualifying territory are British Citizens.

4. Amend the British Nationality Act 1981 s 1(1) to get rid of the 'after the appointed day' provision for birth in a qualifying territory.

5. Include BN(O)s within the scope of s 4B of the British Nationality Act 1981. `

6. **Repeal section 3(2) of the British Overseas Territories Act 2002 so that those on the sovereign base areas on Cyprus have the right to register as British Citizens.**

7. Unnecessary hurdles to proving entitlement – in particular the requirement to prove a negative (that one has no other nationality or citizenship, c.f. South Asians in Hong Kong, people originally from East

Africa resident in India, that one has not done something – c.f. section 4B of the British Nationality Act 1981 – not renounced citizenship) should be removed.

8. The review should also re-examine the question of those who benefit from free movement rights under European law on the basis of their British nationality.

The 2002 changes should be extended. They applied only to British overseas territories citizens and to people who held no other nationality. While effectively stateless people have a particular claim to a nationality, those who had been deprived of an effective nationality without their consent should also be able to regain it. Those who hold forms of British nationality other than British Citizenship should be entitled to register as British Citizens. The alternative to giving these people the right to register as British Citizens is to wait for them to die, which is to fail to grapple with the question of British nationality and what it means, or should mean, at all and runs counter to any attempt to re-evaluate British citizenship in the review.

The suggestion was made in the 9 November seminar that the holders of forms of British nationality other than British Citizenship might be renamed 'British Citizens' without any change to their woeful lack of rights and entitlements attendant upon their nationality. This would return the position to that before 1983, when 'citizens of the UK and Colonies' all had the same name but different rights. It might possibly make travel easier for such people, but there is a risk that it would serve only to perpetuate still further their bewilderment, on discovering that outside the limited field of consular protection their nationality is worthless. It appears to us that while such a step might increase the opportunities for advocacy for these people to be given the rights that, under international law, should be attendant on a nationality, it would be feeble as an attempt to grapple with the problems they face. Citizens of the UK and Colonies, after the coming into force of the Commonwealth Immigrants Act 1968, had an endorsement inside their passports to the effect that they have no entitlement to enter the UK/are subject to immigration control. Comments from members on such a proposal included the following:

> *'…if such a suggestion was made to be taken seriously, it was clearly a most reckless one…It would be…a deception perpetrated not only on hapless British nationals themselves but also on unsuspecting foreign and even our own immigration authorities…And would employers, government departments, financial institutions, school and hospital authorities be expected to tell the difference between those who are 'true' British Citizens and those who are mere 'paper citizens'?*'

3. 2. Treason, trafficking and terrorism

Equality of different types of British nationals is not dead. We contend that rights should be restored to British nationals other than British Citizens. One area of the law has done its best: the criminal law. We trust that this brief survey of offences where British nationals other than British Citizens are singled out as being subject to the criminal jurisdiction of English and other British criminal courts, when these courts exercise an extra-territorial jurisdiction, will be instructive.

*"High treason, being an offence committed against the duty of allegiance, it may be proper ... to consider from whom and to whom allegiance is due. With regard to natural born subjects, there can be no doubt. They owe allegiance to the Crown at all times and in all places. This is what we call natural allegiance, in contradistinction to that which is local. ... Natural allegiance is founded on the relation every man standeth in to the Crown considered as the head of that society whereof he is born a member: and on the peculiar privileges he deriveth from that relation which are with great propriety called his birthright; this birthright nothing but his own demerit can deprive him of; it is indefeasible and perpetual; and consequently the duty of allegiance which ariseth out of it and is inseparably connected with it, is in consideration of law likewise unalienable and perpetual" Fost.*C.L. 183, quoted with approval in *R. v. Casement* [1917] 1 K.B. 98 at 130.

"The subjects of the King owe him allegiance and the allegiance follows the person of the subject. He is the King's liege wherever he may be and he may violate his allegiance in a foreign country just as well as he may violate it in this country" R. v. Casement, *ante*.

The liability of British subjects who are not also citizens of the United Kingdom and colonies for offences against the law of the United Kingdom committed elsewhere is limited by the British Nationality Act 1948, s.3. When Citizens of the UK and Colonies were divided up into different sub-divisions no further limitations were placed on their criminal liability. The British Nationality Act 1948 section 3 (3) made it quite clear that for criminal liability purposes British Protected Persons were not to be treated as aliens (see the discussion of British Protected Persons below).

More recent legislation has similarly reached out to embrace British nationals other than British citizens. See for example section 25 of the Immigration Act 1971. Until section 30 of the UK Borders Act 2007 widened the jurisdiction of English criminal courts in Immigration Act 1971 s 25 offences to acts, whether committed in the UK or elsewhere, criminal liability for acts done outside the UK had been limited to:

(a) British citizens
(b) British overseas territories citizens,
(c) British Nationals (Overseas),
(d) British Overseas citizens,
(e) British subjects under the British Nationality Act 1981 (c 61)
(f) British protected persons within the meaning of that Act (subs 5).

The same applied to offences of trafficking in human beings under s 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and section 60 of the Sexual Offences Act 2003 (see the UK Borders Act section 31).

For the purpose of certain terrorist offences the Terrorism Act 2000 gives the UK courts extra-territorial jurisdiction only if the alleged offenders are British nationals who are defined as a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a person who is a British subject under the British Nationality Act 1981 and a British protected person within the

meaning of that Act. (See the Terrorism Act 2000 s 65A(2), inserted by the Crime (International Co-operation) Act 2003).

In the Aviation Security Act 1982 (a 2 (4)(b) (destroying damaging or endangering the security of an aircraft), offences committed outside the UK can be prosecuted in the UK if committed by a UK national. A similar provision is contained in section 9(2) and 11(5) of the Aviation and Maritime Security Act 1990. In s 17 of the 1990 Act "United Kingdom national" is defined as an individual who is - (a)a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,(b)a person who under the British Nationality Act 1981 is a British subject, or(c)a British protected person (within the meaning of that Act).

Under the International Criminal Court Act 2001 genocide, crimes against humanity and war crimes may be tried in English courts if the acts are committed abroad by amongst others UK nationals (s 52(4)(b)), who are defined in S 67 (1) in the same terms as above.

We cannot guarantee that this survey is complete, but it demonstrates that British nationals other than British Citizens are liable to be extradited to Britain as belonging to some group who owe the same allegiance as British Citizens, but get no privileges from their status, other than being exempt from compulsory entry clearance, if they wish to come to the UK for more than 6 months – a privilege which only escalates the fees they have to pay, when they are then forced to apply for an extension before the expiry of the period of 6 months' leave to enter, which under this wonderful recent privilege is the maximum leave they can be given on arrival.

3.3 A note on British Protected Persons

Before going on to discuss the different types of British nationality it is necessary to draw attention to the status of British Protected Persons and to the question of whether it is a form of British nationality or not. In this paper, we treat it as a form of British nationality. Our reasons are set out in the following paragraph.

Prior to 1949, British Protected Persons were characterised as aliens, albeit with significant differences (they could, for example, be guilty of treason). Under the British Nationality Act 1948, British Protected Persons were distinguished from aliens[6]. As holders of British passports they were, in practice, put on a par with Citizens of the UK and Colonies, British subjects and Commonwealth citizens, as far as entry into the UK was concerned. That was the position until the Commonwealth Immigrants Act of 1962. Successive 'Independence Acts' took account of that in the complex nationality arrangements put in place as part of their independence settlements. After 1984, when Brunei, the last remaining Protected State ceased to be such, only certain stateless persons could acquire BPP status[7]. The status will eventually die out.

Recent legislation recognises British Protected Persons as holding a form of British nationality. For example they were included in the special registration provisions of

[6] British Nationality Act 1948, s 3(3), see Fransman at 8.11
[7] British Nationality Act 1981, s 3(1).

section 4 of the British Nationality Act 1981 and in s 4B of the British Nationality Act 1981 as inserted by the Nationality, Immigration and Asylum Act 2002.

3.4 A note on Commonwealth Citizenship

The British Nationality Act (BNA) 1981 provides for people with British nationality (though this term is not defined in law) or the citizenship of any Commonwealth country to have the additional status "Commonwealth citizen" (ss 37(1), 50(1), 51). The notion of a single nationality status for all members of the Commonwealth had its origin in the *jus soli* principle. Other than the retention of the right of abode in the UK by certain pre-1983 Commonwealth citizens, Commonwealth citizenship now confers only the advantages set out in UK immigration law from time to time, some UK voting rights and eligibility for British consular assistance (see the Statement of Changes in Immigration Rules HC395 (23 May 1994) as amended, Representation of the People Acts and *Hansard* HC col 1286W (25 July 2006, WA)). We insert this note to ensure that it is not overlooked by the review.

4. WHO, HOW MANY AND WHY

4.1 British Protected Persons

In 1998, Fransman[8] recorded that there were thought to be c.10,000 British Protected Persons across the world. As described above, since 1984 only certain stateless persons can now become British Protected Persons. Those with no other nationality or citizenship would now be entitled under section 4B of the British Nationality Act 1981 to register as British Citizens in any event and would thus only 'pass through' the status of British Protected Person. With this narrow exception, the class is finite and the vast majority were born before 1949. It will eventually die out. The figures are tiny, in comparison to the UK population, or to the number of citizens of Member States of the European Union who can enter and remain in the UK. **'Simplification' arguments alone provide adequate reason to allow this tiny and finite class to register as British Citizens, before embarking upon rights-based arguments.**

4.2 British subjects under the Act (British Nationality Act 1981)

Since 1949, the status cannot be acquired by birth or descent except in the case of certain persons who would otherwise be born stateless, either in the UK or an overseas territory, who would then have the right to register under BNA 1981 Sch 2, and section 4B.

British subjects, under the Act, include Irish British subjects (see British Nationality Act 1981 s31), who had reclaimed that status under the British Nationality Act 2002, who already enjoy rights of free movement as nationals of the European Union and for whom registration as British Citizens would make little practical difference. See also Fransman where it is estimated that of the original 140,000 many had died (only those born prior to 1949 can benefit).

[8] British Nationality Law, Appendix 4, *BPPs*

Similarly for the finite class of some 200 women who derived their British subject status from registration under the British Nationality Act 1965, s.1[9]

Fransman records disputes as to the overall numbers of British subjects, with official figures in the 1980 White Paper (cmnd 7987) estimating some 50,000 people at that date. Those British subjects with no other nationality or citizenship would now be entitled under section 4B of the British Nationality Act 1981 to register as British Citizens in any event. Thus we are talking of a finite class. Again, and as for British Protected Persons, **simplification arguments alone would justify allowing these people to register as British Citizens, before one comes to the rights-based arguments.**

4.3 British Overseas Citizens

This form of British nationality cannot be acquired by birth or descent, except in the case of those born stateless, as for British Protected Persons (see above), but only in very limited circumstances, by registration. Those with no other form of nationality or citizenship are entitled to register as British Citizens under section 4B of the British Nationality Act 1981. Registration as a BOC (section 27(1) of the British Nationality Act 1981) has been used sparingly and, again, where a stateless person is registered as a BOC s/he will be entitled to register as a British Citizen. The numbers here are larger (as of 1 January 1983 it was estimated that some 1.5 million people might become BOCs, although a number of those will subsequently have died and those without another citizenship gained the right to register as British Citizens under section 4B). Few have done so – the numbers are probably under 5000.

There are some British Overseas Citizens in Malaysia who retained this status through operation of law at Malayan independence. The British High Commission in Malaysia estimated in August 2000 that there were 'up to 12,000' British Overseas Citizens in Malaysia, mainly elderly people of Indian descent who would not want to uproot themselves and go to the UK; there will be even fewer now, many of them will not know that they are BOCs and will have used their Malaysian nationality. Under Malaysian law this means that they have automatically lost any other nationality they might have had.

The modalities of registration are important. Huge hurdles are placed in the way of registration by, for example, British Overseas Citizens of Indian or Nepalese origin in Hong Kong because of the requirement that they produce documentary evidence that they do not hold Indian or Nepali citizenship, or in the way of British Overseas Citizens living in India who gained their British status through residence or birth in an East African country who need to show they are not citizens of that East African country.. The requirement to provide documentation to prove a negative vitiates the right in practice.

4.4 British Nationals (Overseas)

Probably the most controversial class, because the largest, and because of the Hong Kong connection. There are two, very separate, points here.

[9] British Nationality Law, Appendix 4.

4.4.1. British Nationals (Overseas) with no other nationality or citizenship

This group was not included in section 4B of the British Nationality Act 1981 and attempts subsequently to include them, for example in 2006, have failed. Those who are not of Chinese ethnic origin are not regarded as Chinese citizens by the Chinese authorities. Many had come to Hong Kong when it was ruled by the British and the British colonial authorities had encouraged them to come. Britain should accept responsibility for them. Thus there is a group of people holding a form of British nationality who are, to all practical intents and purposes, stateless. The arguments for failing to include them were spurious in the extreme:

> *'…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.* The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 617

> *In 1997, those with only British nationality were told that they would be admitted to the UK if conditions deteriorated in Hong Kong, not that they would be given British citizenship. I do not believe that we have reneged on the agreement that we reached. British overseas territorities citizens normally have the right of abode in the British overseas territory from which their citizenship derives.* The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1200

> By contrast *[with British Nationals (Overseas) and British Overseas Territories Citizens]*, the right of many of those eligible for registration under Section 4B of the 1981 Act to remain in their countries of current residence is *at best precarious. It was this lack of a secure residence in any country that prompted the Government to announce on 4 July 2002 their intention to introduce a provision now having effect as Section 4B, and which at Report stage prompted us to move for their exemption from the good character test, which was welcomed.* The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, cols. 1200-1201

> *We do not accept the position of those qualifying for registration under the 1997 Act, or of British nationals in general is sufficiently close to that of persons presently entitled to registration under Section 4B of the 1981 Act to justify the support that the noble Lord's amendments* [Lord Avebury – to exempt them from the good character test] *clearly seek. Nor do we accept obligations towards stateless persons going beyond those we have accepted by ratifying the 1961 convention* The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1201

Either all members of the group have been brought into the system, in which case there is no bar to including them in section 4B, or they have not. It is far from clear why any one person living with no right of entry or abode to any country should be thought to be in a more precarious position than another. The UK is in breach of

international law, including the standards enshrined in Protocol Four to the European Convention on Human Rights, given its position toward these citizens. Given that the UK has signed the Protocol, although not ratified it, it should be taking steps to bring its legislation into conformity with the Protocol, and should not be legislating contrary to the obligations enshrined therein. **BN(O)s should be brought within section 4B.**

There are small numbers of BN(O)s who were not ordinarily resident in Hong Kong when it reverted to China – for example young people of Indian origin who were studying in India at the time – and who now have no rights in any country and no citizenship. They should have the right to register as British citizens, without the need for settlement or residence in the UK. **The requirement to have been ordinarily resident in Hong Kong on 4 February 1997 and on the date of application under the Hong Kong Act 1997, s 1, should, on any review of British nationality law, and regardless of other changes, be removed.** The rule has caused hardship and led to significant anomalies in practice.

4.4.2 British Nationals (Overseas) with another form of nationality or citizenship.
The arguments put above for other types of British national also apply to British Nationals (Overseas). Those who are of Chinese ethnic origin may be regarded as Chinese nationals by the Chinese authorities, and the UK should accept responsibility for them. As mentioned above, many British Nationals (Overseas) and their families had come to Hong Kong when it was ruled by the British and when the British colonial authorities had encouraged them to come. All British Nationals (Overseas) should be allowed to register as British Citizens.

4.4.3 British Overseas Territories Citizens connected with the Sovereign Base Areas on Cyprus
During the passage of the British Overseas Territories Act 2002 it was suggested that the exclusion of British overseas territories citizens from the sovereign bases was necessary to avoid jeopardising relations with the government of Cyprus[10]. No negotiations with the government of Cyprus were referenced in the debates. Given the rules on free movement of European Union citizens, **it would seem appropriate at least to canvas the views of the government of Cyprus before determining that this group of British overseas territories citizens should continue to be excluded from the changes made to the law by the British Overseas Territories Act 2002.**

In 2002, all other British Overseas territories citizens were automatically accorded British citizenship, in addition to their British Overseas Territories citizenship. The White Paper on the Overseas Territories had estimated a population of 189,531 for all the Overseas Territories, and the Explanatory Notes to the British Overseas Territories Bill, a total of 200,000.

4.4.4 The definition of a United Kingdom national for the purposes of European Community Law
The original definition of a United Kingdom national for European Community (EC) purposes was contained in a declaration made by the United Kingdom at the time of the its accession to the European Union. This was replaced with effect from 1 January 1983, with the following definition:

[10] *Hansard*, HC (Comm.) 6 December 2001 per Mr Ben Bradshaw MP.

"As to the United Kingdom of Great Britain and Northern Ireland, the terms "nationals", "nationals of Member States" or "nationals of Member States and overseas countries and territories" wherever used in the Treaty establishing the European Economic Community, the Treaty establishing the European Atomic Energy Community or the Treaty establishing the European Coal and Steel Community or in any of the Community acts deriving from those Treaties, are to be understood to refer to:

a. British citizens;

b. Persons who are British subjects by virtue of Part IV of the British Nationality Act 1981 and who have the right of abode in the United Kingdom and are therefore exempt from United Kingdom immigration control;

c. British Dependent Territories citizens who acquire their citizenship from a connection with Gibraltar."

The European Court of Justice in the case of *Manjit Kaur* (Case C-192/99) held that the UK's declaration was effective for the purposes of European Union law. The declaration is bewildering and it is suggested that it be reexamined for the purposes of the review. The submission of the intervening party, JUSTICE, in *Manjit Kaur* provides a particularly helpful examination of the issues[11].

4.5 Modalities of implementation

Registration has to date been the preferred method by which people holding other forms of British nationality become British Citizens, because automatic acquisition could have adverse effects on any other nationality they might hold, or on their residence rights in another country. There are differing views within ILPA as to whether automatic acquisition with a right to renounce, or registration by entitlement, is the way forward. One thing is clear to us: registration involving a good character test[12] and/or fees, and/or bureaucratic hurdles (such as, for South Asians in Hong Kong or East African Asians, the requirement to approach a country and obtain from it a letter saying you are not a national of that country) is not registration by entitlement.

Registration by entitlement was recognised in 2006 as continuing to have a place in UK law, albeit that under s 58 of the Immigration, Asylum and Nationality Act 2006, amending the British Nationality Act 1981, this was restricted to children under ten and those British nationals with no other form of nationality or citizenship. **Registration by entitlement, giving rise to a choate right to nationality, not an inchoate right that depends upon negotiating a good character test, paying fees, and satisfying complex bureaucratic procedures, is the appropriate route those deprived of their rights as nationals without their consent and fundamental to recognising nationality as a matter separate from immigration status.**

Consideration could usefully be given to creating a single status for British nationals who do not wish to register as British citizens, so that they can continue

[11] See the speech for the intervening party, JUSTICE, in the case of *Manjit Kaur* ECJ, available at http://www.justice.org.uk/images/pdfs/kaurjuly.pdf

[12] Immigration, Asylum and Nationality Act 2006, s 58, amending the British Nationality Act 1981).

to enjoy the limited rights (of consular protection) to which their historic connection with the UK has entitled them.

Preferred method: All those who have another form of British nationality be given the right to register as British citizens, free of charge, in whatever country they are now resident.

Alternative method: all those who have another form of British nationality be given the right to register as British citizens, on payment of a fee which shall not be more than the fee for the registration of children as British citizens, in whatever country they are now resident.

British posts abroad should have a duty to publicise this change and to facilitate the acquisition of British citizenship by those who qualify.

British nationals so registered should have the right to register their minor children as British Citizens, without any need for a period of residence in the UK. Children of parents registered in this way who are already over 18 should be able to apply to register by discretion.

The spouses of people so registered should be eligible to apply for entry clearance to join or accompany them to the UK under the immigration rules in force at the time of application.

5. OTHER MATTERS THAT SHOULD BE ADDRESSED BY THE REVIEW

Time constraints preclude a comprehensive survey, but the following cry out for attention.

5.1 PROPOSALS – other matters

Numbering continues from that for British nationals other than British Citizens, above.

9. Remove s 4C(2) of the British Nationality Act 1981 so that it covers all those born abroad to British Citizen mothers since 1949, not just those born after 7 February 1961

10. Amend s 4C of the British Nationality Act 1981 so that it is not limited to those born after 1948.

11. All living persons born to British fathers not married to their mothers before 1 July 2006 should be entitled to register as British Citizens.

12. No good character test in cases of registration by entitlement.

13. Amend s 3(2) of the British Nationality Act 1981 so that the requirements set out in 3(3)(b) do not apply in cases where the child would be stateless.

14. Get rid of the requirement to register a child within 12 months of the child's birth in the British Nationality Act 1981 s 3(2) so that any child can register. Certainly get rid of it in cases of statelessness.

15. Get rid of the requirement as to the parent(s)' absences from the UK in cases of registration set out in section 3(6) of the British Nationality Act 1981.

16. Change the test for deprivation of nationality back to that of 'seriously prejudicial to the vital interests' of the country.

17. Revoke provisions allowing those born British to be deprived of their nationality for 'character reasons'.

18. Give consideration to restoration of the *jus soli* principle

19. Examine the utility of continuing to divide British citizens by descent from other British citizens.

20. Remove the requirement for British nationals other than British Citizens who are becoming British Citizens to pay for and go through a Citizenship ceremony.

21. Consider the extent to which the life and language tests for naturalisation have resulted in indirect discrimination and consider whether, in the light of this, the tests should continue.

22. Review provision of accredited ESOL-with-citizenship courses and the funding for attendance at these.

23. Abolish the life and language tests for settlement.

24. Review the question of permitted absences for settlement and for indefinite leave to remain.

25. Review the fees charged for naturalisation and for settlement.

26. Review the situation of the Brigade of Gurkhas

27. Review the categories of service recognised as designated service.

(Many of the provisions discussed above have their equivalents for other forms of British nationality, our recommendations apply to all the cases in which they are found).

5.2 Children of British nationals: a failure to address statelessness.

The White Paper Cmnd 7987 said at paragraph 103:

'Some children of British Overseas Citizens may be born stateless because the country in which they are born does not grant its citizenship to persons born within their territory even if the parents are settled there. While account will be taken of the United Kingdom's obligations under the international Convention on the Reduction of Statelessness, it is generally understood that the country of birth should be responsible for remedying the situation.'

This is of no comfort to the children when the country of birth declines to do so. For a full discussion of the UK's attitude see Fransman[13] and there are actual examples of children left stateless while both States politely decline to exercise their powers to recognise the child as a national and equally politely encourage the other State to do so. The result is that the child is left stateless and that the UK has failed to fulfil its international obligations. Kenya is a notable example

The provisions of Schedule 2 to the British Nationality Act 1981 on statelessness should be re-examined. For example, the residency requirements set out in paragraph 3 of that Schedule exclude stateless people from its protection in a way that cannot be justified under the relevant international instruments.

See also 5.3.4 below.

5.3 The effects of discrimination

British nationality law has historically discriminated on the grounds of the sex of the parent and the marital status of the parents in ways that affect the acquisition rules for British nationality.

5.3.1 British Nationality Act 1981 section 4C discrimination against children born abroad to British mothers

Children born abroad to British mothers did not automatically acquire their mother's British nationality until 1983. The government only recognised this injustice in February 1979, promising to legislate to abolish it but in the meantime giving British-born women the right to register their minor children born abroad as British Citizens. In the Nationality, Immigration and Asylum Act 2002 limited steps were taken to address this, but these provide a means to remedy the situation by registration under what is now s.4C of the British Nationality Act 1981 only for those born on or after 7 February 1961. As a result, sibling groups may be divided. **The entitlement to register under section 4C of the British Nationality Act 1981 as amended should be extended to all those still living.** There is also room for exploring the present-day effects of historical discrimination and how these might be addressed.

5.3.2 Discrimination against those born out of wedlock

It was only on 1 July 2006 that children born out of wedlock to British fathers were finally put in the same position as those born within marriage (amendments effected by s9 of the Nationality Immigration and Asylum Act 2002, brought into force and completed by SI 2006/1496 and SI 2006/1498). The new law affects only children born on or after that date, although discretionary registration under section 3(1) has been used to register children born before that date as British. **The entitlement of a**

[13] *British Nationality Law* at 18.2

child born out of wedlock to a British father to register, on proof of paternity, should be extended to all such children now living. There is also room for exploring the present-day effects of historical discrimination and how these might be addressed.

5.3.4 ***Registration of children and a note on the good character test.***
In 2006, a good character test was introduced for many categories of registration, including for children over 10 (see section 58 of the Immigration, Asylum and Nationality Act 2006, amending the British Nationality Act 1981). The original proposal was that all children, including babies under 12 months old, should be subject to the good character test. The Baroness Ashton of Upholland, who took the Bill through the House of Lords, took heed of the representations of ILPA and others. It was her own proposal that found its way into the law – that children only be subject to the good character test above the age at which they have criminal responsibility in UK law, 10 years old. You will be aware that there has been much criticism of the UK's age of criminal responsibility for children as too low. Further concerns are caused by its having been imported into nationality law, where it breaks down the distinction between registration by discretion and registration by entitlement. It thus imposes a very harsh sanction, that of inability to become British where otherwise one would have had the right to do so, on those to whom the UK has special obligations and to children. T**he good character test should not apply in cases where, prior to 2006, people registered by entitlement.**

The 12-month limitation on the registration of children under section 3(2) of the British Nationality Act 1981 imposes unnecessary hardship. Many people fail or have failed to register their children through lack of knowledge of the provisions.

Preferred solution: the reference to 12 months be removed and that registration under 3(2) is available while the person is still a child.

Alternative (i): Remove the reference in cases where the child would otherwise be stateless.

Alternative (ii – to be read with (i) above): In cases other than those involving statelessness, replace the reference to 12 months with a reference to 10 years, thus protecting children of an age where currently they can register by entitlement.

Alternative (iii- to be read with (i) above) In cases other than those involving statelessness, replace the reference to 12 months with a reference to 6 years. While registration is by entitlement up to 12 months, the child can also be registered by discretion up to 6 years (section 3(4)). Given that in its Simplification consultation the government has expressed a desire to reduce the scope of discretion, this would seem to be an area where there is scope for doing this – because there is no reason to make a distinction between those under 12 months and those under 6 years old.

The British Nationality Act 1981 section 3(3) imposes residence requirements (to have been in the UK three years before the birth and not to have been absent from the UK for more than 270 days of the intervening three years) on registration under section 3(2). Thus British parents 'by descent' are only able to pass on their nationality to their children if they have been resident within the UK in accordance

with the subsection. If the British parent is prepared to be proactive about registering their child, they are affirming their desire to maintain a link with the UK and a residence bar should not be put in the way of their doing this. **We recommend that the residence requirements under section 3(3) be removed.** See also 'Citizenship by Descent' below.

4.3. Deprivation of nationality and the European Convention on Nationality 1997

Various changes to the law made in 2002 were designed to put the UK in a position to ratify the European Convention on Nationality (ECN) 1997 (ETS 166). In 2002, Parliamentary Under-Secretary of State for the Home Department, Angela Eagle MP, stated

> *'The current grounds for deprivation will be replaced by two new grounds, which are in new section 40. These reflect the provision made in this respect by the 1997 European convention on nationality, which the UK was instrumental in negotiating and we wish to ratify and sign. If the Bill is enacted, we will be able to sign it, so we are working to modernise and restructure our system to bring it in line with that convention*[14].'

By 2006, the Minister of State, Tony McNulty MP, took a different view

> *'We have not yet ratified and we shall have to reflect, in the light of all the nationality legislation in this Bill, on whether it will be possible to do so. There may be a reservation in respect of our powers of deprivation. There may well be scope to ratify, but we shall have to look.*' Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 272

The current test for deprivation of British nationality is that the Secretary of State is satisfied that such deprivation would be conducive to the public good (British Nationality Act 1981, section 40(2) as amended by section 56 of the Immigration, Asylum and Nationality Act 2006). This is the same test as for deciding if a person who is not a citizen should be deported. **We recommend that the UK revert to the test that was inserted into that section by the Nationality, Immigration and Asylum Act 2002, that the person has done something 'seriously prejudicial to the vital interests of the UK.** This test uses the language of the Convention, indeed that was the reason given for inserting it into the law in 2002, provides all the protection that the UK could need, and would facilitate ratification of the Convention.

In 2002 powers to deprive a person of British Citizenship were extended to those born British; they had previously affected only those who had become British by their own overt choice. **The review should examine the effect of this extension of the powers of deprivation. We recommend that it be removed.**

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[14] *Hansard* HC Standing Committee E, cols 60-61 (30 April 2002); see also *Hansard, HL* vol 637 cols WA172-WA173 (8 July 2002 WA)

It is anticipated that any review of citizenship would take a view on whether or not the UK is to ratify the Convention and if not, how the protections it enshrines are to be extended to British citizens.

4.4 *Jus soli*

Only in 1983 was *jus soli* abolished in the UK, with acquisition of British nationality restricted to those whose parents were British or settled here**. If the review is to examine the whole concept of British citizenship then it is necessary that it examine the effect that the abolition of *jus soli* has had on this.**

The effect of the abolition of *jus soli* on the much bandied-around, although rarely defined or critically examined term 'community cohesion', also merits careful examination. Acquisition on the basis of parental settlement is open to all sorts of administrative obstacles and the goalposts keep being shifted (for example the decision now to grant limited leave to people recognised as refugees means that their children born within the first five years post recognition are no longer born British). The shifting of the goalposts is a prime example of the confusion between nationality and immigration law that we highlighted at the beginning of this paper. If there is meaning in the term community cohesion, and if the desire to achieve it is taken seriously, it must be recognised that the reinstatement of *jus soli* is a serious option, not some crazy notion.

Children and young people born in the UK who have lived here all their life may be shocked to discover when they first plan to travel, as teenagers or young adults, that they are not citizens of the country where they have always lived. If they have never needed to travel until they are adults, they are then faced with the indignity of having to take a test of knowledge of language and life in the UK and paying £655 to apply for citizenship and to go through a ceremony before acquiring something they had always assumed they had.

4.5 Citizenship by descent

Section 14 of the British Nationality Act is pretty bewildering to read and its effects can also be bizarre, with the same person having different routes to the acquisition of British nationality, one of which can be passed on to a child born abroad (leading to citizenship by descent for that child) while the other cannot. **In an era of increasing mobility there is scope to examine the utility of continuing with the descent provisions.**

4.6 Why did the UK renounce the 1957 New York Convention on the Nationality of Married Women 24 December 1981 with effect from 24 December 1982?

Members have asked the Foreign and Commonwealth Treaty Office but have obtained no information. We should like to know. It is a pretty serious matter to denounce an international treaty and we are surprised that we can find no reference to this, nor any explanation about it.

4.7. Naturalisation

4.7.1 'Earned Citizenship' and citizenship at a price

The concept of 'earned citizenship' is a troubling one, moving from seeing the opportunity to apply for citizenship as a decision being made by an individual on the basis of his or her personal priorities to create a formal recognition of the links between an individual and the State to an approach whereby people are made to jump through rapidly-changing hoops according to the whim of the government of the day. A 'points-based' approach to citizenship, with an application depending partly on how a person spends his or her spare time or what capital he or she possesses, trivialises the idea of citizenship as a constitutional relationship. The injustice involved in importing immigration law concepts into nationality law in the past has been described above; ILPA urges that it should not be tried again.

It is paradoxical that at a time when much of government is stressing the importance of ideas of community cohesion and shared citizenship that the Border and Immigration Agency should have raised the fees to become a British citizen so exorbitantly. In March 2007 the fee to apply for naturalisation was £200, with £68 for a citizenship ceremony; from 1 April, it rose to £655 and the ceremony fee to £80. The fee for children rose from £200 to £400. The Advisory Board on Integration and Naturalisation expressed its disappointment at these increases, which it believed would discourage people, and families in particular, from applying. ILPA urges that the fees should be reduced to a manageable level for the majority of applicants.

4.7.2. British nationals other than British Citizens

Citizenship ceremonies are inappropriate for people who have always held a form of British nationality but who lost the rights associated with their British nationality in 1968. Other types of British nationals should not have to pay for or go through a compulsory citizenship ceremony when they regain rights they should never have lost. **The payment for this registration – fees jumped from £120 to £400, plus £80 for the ceremony, in April 2007 – should be abolished.**

4.7.3 Knowledge of language and life in the UK – indirect discrimination

A number of members have drawn attention to what one described as the *'entrenched insularity and cultural superiority that the life in the UK tests represent'.*

The increased emphasis given to language privileges some nationalities over others and risks having a discriminatory effect, as is illustrated by the *Annual Report* from the Advisory Board on Nationality and Immigration (ABNI) covering April 2006 to October 2007. This sets out that 345,904 people have taken the Life in the UK test since its introduction in November 2005 up to July 2007. Of these 237,092 passed, an overall pass rate of 68.5%. For those 22197 people who took the test using the new handbook, after April 2007, the pass rate is 78.6%.

The complications of geography and of nationality law are shown in some of the ways the report defines the nationalities of the candidates – "Antigua & Barbuda" being separate from "Antigua and Barbuda" and "Trinidad & Tobago" separate from "Trinidad and Tobago", "Cyprus", "Cyprus (excluding Turkish Republic of North Cyprus)", "Turkish controlled area of Cyprus" and "Turkish Republic of Northern Cyprus (TNRC)" are all listed separately with separate figures, as are "Congo",

"Congo Democratic Republic" and "Democratic Republic of the Congo". Similarly, the "Federal Republic of Yugoslavia" (39 tests), "Kosovo" (7193 tests), "Kosovo Resident" (UN issued travel document) (775 tests) and "Yugoslavia" (3269 tests) are listed separately, together producing an average of 50.2% pass rate.

Different categories of British nationals are recorded separately including British Dependent Territories Citizens and British overseas territories Citizens separately, and a status described as 'British Protected Citizen' is created for four lucky people (three of whom passed). Of the 61 British citizens who are recorded as taking the test, only 55.7% passed, as did only 43% of the 16 people recorded as "United Kingdom of Great Britain and Northern Ireland" citizens. British citizens who have made public their failure in the test include Mike Gapes MP and Keith Best, director of IAS. Three people whose nationality is recorded as Rhodesian passed; 86.6% of the 9294 recorded as Zimbabwean did.

The figures show clearly how people who come from countries where English is the national language, or one of the national languages, are favoured. Thus 97.4% of 2718 New Zealanders, 97.3% of 4303 United States citizens, 96.9% of 4255 Australians, 95.9% of 1514 Canadians and 92.5% of 15,218 South Africans passed. People from long-settled communities fared very differently; 47.7% of 8188 Bangladeshis passed, as did 62.3% of 21,789 Pakistanis, 61.2% of 7180 Jamaicans, 76.8% of 259 Barbadians and 80% of 34,199 Indians. These figures reflect much other research about the levels of disadvantage and deprivation in these differing communities.

Only 45% of the 11,001 Turks who took the test passed, 47.2% of the 19,696 Afghans, 47.3% of the 14,077 Sri Lankans, 48.1% of the 2486 Angolans and 59.7% of the 13,115 Somalis. Further research to establish the reasons for this – which could include the need to gain a nationality and therefore trying to apply earlier, lack of familiarity with computers or multiple-choice questions, lack of adequate language teaching and learning, could all play their part – is urgently required. The raw statistics make a strong case that it is harder for some nationalities and groups than others to pass the test showing indirect racial discrimination in access to British nationality. **The indirect discrimination that is arising from the test should be examined by the review and, in the light of the evidence, consideration should be given as to whether the requirement to pass the test should be continued.**

There is an alternative to the test for those with a lower initial level of English: the taking of an accredited ESOL with Citizenship course and passing an accredited test at the end. However, there are grave difficulties because demand for these courses outstrips supply and because of the fees levied for attendance. It has been suggested that employers should provide or pay for ESOL teaching for their employees and possibly others in the community. If employers are to be relied upon to do this, then consideration should be given as to whether they are to be free to choose to do it, or whether any sort of duty is to be imposed on them, and how adequate access to ESOL-with-citizenship classes and teaching will be provided for those who are not working. The funding of much adult education requires people to be settled and to have lived in the UK for three years. Fee remission structures are welcome but more is needed. The growth of private colleges which claim to provide guaranteed ESOL passes is another one to watch.

4.7.4 Conditions precedent for naturalisation

In considering naturalisation it is necessary to consider the conditions for a grant of indefinite leave to remain, since to be in the UK free from time restrictions is a condition precedent to a successful application for nationality (save in Crown Service cases). The imposition of a life and language test at the settlement stage is ill thought out, the potential punishment for failure (removal from the UK) does not fit the crime (inability to speak English or to pass the life in the UK test) and indeed is likely to be successfully challenged under Article 8 ECHR. The tests at this stage should be abolished. People are failing to settle because of the tests, and because of the fees – settlement fees went up from £335 per person to £750 in April 2007.

The question of permitted absences bedevils both ILR and naturalisation applications: highly skilled people with international careers, or people with family abroad, come to the UK but then have to limit travel for work, to see family or for pleasure, to fit with a concept of residence that would no longer be applicable in the cases of many British Citizens by birth. The Home Office conceded a judicial review on the point brought on behalf of an investor in 2005 and indicated that instead of six months, investors will be allowed to spend up to a year out of the country in the four years (as it was then) prior to the application for settlement, provided that no one trip was more than three months in length. On 1 August 2005, The Financial Times newspaper[15] reported that the Home Office had told them that, as a result, "All categories are being considered as part of the revised guidelines, which will be published as soon as possible." Yet no guidance has been published**. The question of permitted absences for settlement and for naturalisation needs urgently to be examined.**

4.8 Crown Service and other designated service

4.8.1 The Brigade of Gurkhas

Following a change in rules, announced by the Home Office on 22 November 2006, Commonwealth Service personnel are now able to count time spent serving abroad, including operational tours[16], towards the residency requirement for an application for British citizenship while in service. This change does not apply to serving members of the Brigade of Gurkhas, who cannot count their military service towards the residential requirement until they leave the Brigade (although it will all be counted retrospectively once they have left). This dates from agreement reached in 1948 with the government of Nepal. It is arguable that this provision has outlived its historical usefulness, and could properly be revisited and new agreement reached with the government of Nepal ending the differential treatment of the Gurkhas.

4.8.2 Designated service

There are a number of difficulties and anomalies in the provisions on designated service – in particular service in the European institutions, where the question of service in which institutions constitutes designated service appears to have reached arbitrariness. This should be examined.

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[15] *Review threat leads Home Office to ease immigration rules for foreign investors*, Financial Times, 1 August 2005.

[16] See *Hansard* HC Report 27 February 2007 Cols 787W and 1144-1145W

4.9 A 'sense of belonging'

We write as lawyers, not as psychologists or social scientists and we hesitate to say anything about this topic, which loomed large in the discussions at the seminar. As a result of our discussions, both in preparing this paper and in working on these topics over many years, we venture to suggest that there is much to be learned about a 'sense of belonging' by examining what British nationals other than British citizens lost as a result of the Commonwealth Immigrants Act 1968[17]. We also venture to suggest that it would be appropriate for the review to consider the characteristics of the type of society to which individuals, whether citizens or aliens, feel that they belong, rather than focusing only on the characteristics of the 'belonger' whether national or not.

ILPA 21 December 2007

[17] See *A wrong righted: full status for Britain's 'other' citizens* Shah, R., [2003] Journal of Immigration, Asylum and Nationality Law 17 (1)

Appendix 1 International Standards: nationality law

This is simply an introduction to the main standards of which the review should take account.

INTERNATIONAL

The Hague Convention On Certain Questions Relating To The Conflict Of Nationality Laws 1930
12 April 1930. League Of Nations. 179 Lnts 89. Ts 33/1937, Cmd 5553. Ratified by the UK 6 April 1934. See *Protocol Relating To A Certain Case Of Statelessness* 12 April 1930. into force1 July 1937. 179 Lnts 116. Ts 31/1937. Cmd 5552. UK Ratification 14 January 1932. Ts 112/1973, Cmd 5447 and *Special Protocol Concerning Statelessness* 12 April 1930. UK Treaty Series No 112; Cmnd 5447. (not yet in force) . Ratified by the UK 14 January 1932.

1948 Universal Declaration on Human Rights

Article 15
(1) Everyone has the right to a nationality.
(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

1951 UN Convention Relating to the Status of Refugees

Article 34 The Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.

1954 UN Convention Relating to the Status of Stateless Persons (*extract***)**
(UK is a party, with declarations and reservations entered)

Article 3 Non-discrimination The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.
And see passim.
…
The 1957 New York Convention On The Nationality Of Married Women
Ratified by the UK on 28 August 1957, denounced 24 December 1981 with effect from 24 December 1982.(*extracts from Pream*ble)

Recognizing that, in article 15 of the Universal Declaration of Human Rights, the General Assembly of the United Nations has proclaimed that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality",

Desiring to co-operate with the United Nations in promoting universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to sex,

UK Denunciation
The notification specifies that the denunciation is effected on behalf of the United Kingdom of Great Britain and of the following territories for the international relations of which the United Kingdom is responsible and to which the Convention was extended in accordance with the provisions of article 7: Bailiwick of Jersey, Bailiwick of Guernsey, Isle of Man, Saint

Christopher-Nevis, Anguilla, Bermuda, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Montserrat, Pitcairn, Saint Helena and Dependencies, Turks and Caicos Islands, State of Brunei, United Kingdom Sovereign Bases Areas of Akrotiri and Dhekelia in the Island of Cyprus.

In accordance with the provisions of article 9 (2) of the Convention, the denunciation will take effect one year after the date of receipt of the said notification, that is to say, on 24 December 1982.

The 1961 Optional Protocol Concerning the Acquisition of Nationality
Signed in Vienna on 18 April 1961. United Nations. Into force 19 April 1964. UNTS Vol 500, page 223. Cmnd. 1368. An optional protocol to the 1961 Vienna Convention on Diplomatic Relations. The UK is not a party.

The 1961 New York Convention on the Reduction of Statelessness
Signed in New York on 30 August 1961. United Nations. UK Treaty Series 158 (1975); Cmnd 1895. In force 13 December 1975. Ratified by the UK on 29 March 1966 with declaration and reservations. See all.

UK Reservation upon ratification

"…in accordance with paragraph 3 (a) of Article 8 of the Convention, notwithstanding the provisions of paragraph 1 of Article 8, the United Kingdom retains the right to deprive a naturalised person of his nationality on the following grounds, being grounds existing in United Kingdom law at the present time: that, inconsistently with his duty of loyalty to Her Britannic Majesty, the person

"(i) Has, in disregard of an express prohibition of Her Britannic Majesty, rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

"(ii) Has conducted himself in a manner seriously prejudicial to the vital interests of Her Britannic Majesty."

The 1966 International Convention On The Elimination Of All Forms Of Racial Discrimination (extract)
Signed 7 March 1966. United Nations. 660 UNTS 195. TS 77/1969. Cmd 4108. In force 4 January 1969. Ratified by the UK on 7 March 1969.

Article 5 In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
…
(d) Other civil rights, in particular:
…
(ii) The right to leave any country, including one's own, and to return to one's country;
(iii) The right to nationality;

***UK reservation upon ratification** (extract)*

…

"Secondly, the United Kingdom does not regard the Commonwealth Immigrants Acts, 1962 and 1968, or their application, as involving any racial discrimination within the meaning of paragraph 1 of article 1, or any other provision of the Convention, and fully reserves its right to continue to apply those Acts.'

[This reservation must, of course, be considered in the light of the finding of the (regional) European Court of human rights in The East African Asians Case (1981) 3 EHRR 76.]

1966 International Covenant On Civil And Political Rights (extract)
Signed 16 December 1966. United Nations. 6 ILM (1967) 368. UK Treaty series 6/1977. Cmd 6702. In force 23 March 1976. Ratified by the UK on 20 May 1976.

Article 12
…
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 24
…
3. Every child has the right to acquire a nationality.

***UK declarations and reservations upon ratificat*ion** (extract)

"The Government of the United Kingdom reserve the right to continue to apply such immigration legislation governing entry into, stay in and departure from the United Kingdom as they may deem necessary from time to time and, accordingly, their acceptance of article 12 (4) and of the other provisions of the Covenant is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the United Kingdom to enter and remain in the United Kingdom. The United Kingdom also reserves a similar right in regard to each of its dependent territories.

…" "The Government of the United Kingdom reserve the right to enact such nationality legislation as they may deem necessary from time to time to reserve the acquisition and possession of citizenship under such legislation to those having sufficient connection with the United Kingdom or any of its dependent territories and accordingly their acceptance of article 24 (3) and of the other provisions of the Covenant is subject to the provisions of any such legislation.

1979 Convention on the Elimination of All Forms of Discrimination Against Women (extract)
Signed 18 December 1979. United Nations 1249 UNTS 13. In force 3 September 1981.Ratified by the UK on 7 April 1986. The FCO website (accessed 13 April 2007) says

> 'The UK is encouraging Gibraltar to accept the extension of the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) at the earliest opportunity. The Government of Gibraltar has already expressed its willingness to extend the latter, as well as its Optional Protocol, subject to the necessary legislation being passed'.

Article 9
1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

UK Declarations and Reservations upon ratification (extract)

The reservations listed below are those for the UK but the UK entered reservations in similar terms on behalf of the Isle of Man, the British Virgin Islands, the Falkland Islands, South Georgia and the South Sandwich Islands, and the Turks and Caicos Islands. In 1996 the UK withdrew a number of its reservations and declarations to CEDAW, but not the following:

"(d) The United Kingdom reserves the right to continue to apply such immigration legislation governing entry into, stay in, and departure from, the United Kingdom as it may deem necessary from time to time and, accordingly, its acceptance of Article 15 (4) and of the other provisions of the Convention is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the United Kingdom to enter and remain in the United Kingdom.

...

Article 9

The British Nationality Act 1981, which was brought into force with effect from January 1983, is based on principles which do not allow of any discrimination against women within the meaning of Article 1 as regards acquisition, change or retention of their nationality or as regards the nationality of their children. The United Kingdom 's acceptance of Article 9 shall not, how ever, be taken to invalidate the continuation of certain temporary or transitional provisions which will continue in force beyond that date.

...

Declaration with reference to Hong Kong 14 November 1996

On 14 October 1996, the UK communicated to the UN Secretary-General that it would apply CEDAW to Hong Kong. The declarations and reservations relevant to Article 9 are reproduced below. On 10 July 1997, the UK returned Hong Kong to China and China. already a State Party to CEDAW, took on obligations under the Convention as they apply to Hong Kong. China made a number of reservations, including reservations closely mirroring the terms of the UK's reservations set out below.

"General

…

(b) The right to continue to apply such immigration legislation governing entry into, stay in and departure from Hong Kong as may be deemed necessary from time to time is reserved by the United Kingdom on behalf of Hong Kong. Accordingly, acceptance of article 15 (4), and of the other provisions of the Convention, is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of Hong Kong to enter and remain in Hong Kong.

The 1989 UN Convention on the Rights of the Child (extract)
Signed on 20 November 1989. United Nations. Dec. A/RES/44/25. UK Treaty Series 44/1992, Cmd 1976. In force 2 September 1990. Ratified by the UK on 16 December 1991. Extended to Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands,

South Georgia and South Sandwich Islands, Monserrat, St Helena and Dependencies, Pitcairn, Ducie and Oeno Islands, Turks and Caicos Islands on 7 September 1994. The FCO website (accessed 13 April 2007) says 'The UK is encouraging Gibraltar to accept the extension of the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) at the earliest opportunity. The Government of Gibraltar has already expressed its willingness to extend the latter, as well as its Optional Protocol, subject to the necessary legislation being passed'.

…

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.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

UK Declaration and reservations upon ratification **(***extract***)**

"(b) The United Kingdom interprets the references in the Convention to `parents' to mean only those persons who, as a matter of national law, are treated as parents. This includes cases where the law regards a child as having only one parent, for example where a child has been adopted by one person only and in certain cases where a child is conceived other than as a result of sexual intercourse by the woman who gives birth to it and she is treated as the only parent.

Reservations:

"(c) The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time

"The United Kingdom reserves the right to extend the Convention at a later date to any territory for whose international relations the Government of the United Kingdom is responsible."

[The UN Committee on the Rights of the Child and the UK JCHR have noted that (c) is an illegal reservation.]

Draft Articles on Nationality of Natural Persons in Relation to the Succession of States

Report of the International Law Commission on the work of its fifty-first session, 3 May – 23 July 1999. See UN GA Resolutions 55/153 of 12 December 2000 and 59/34 of 2 December 2004

(not reproduced)

International Commission on Civil Status (ICCS – the Commission Internationale de l'État Civil (CIEC))

The 1964 Convention No 8 on the Exchange of Information Concerning Acquisition of Nationality
Signed in Paris on 10 September 1964. International Commission on Civil Status (CIEC). 932 UNTS 81. In force on 30 September 1965. The UK, which joined the CIEC in September 1996, has not ratified. Not reproduced.
Texts are given in the ICCS's unofficial English translations – the authoritative text of all instruments is the French text.

The 1973 Convention No 13 to Reduce the Number of Cases of Statelessness
Signed in Berne on 13 September 1973. International Commission on Civil Status (CIEC). In force 31 July 1977. The UK, which joined the CEIC in September 1996, has not ratified.

Article 1 A child whose mother holds the nationality of a Contracting State shall acquire her nationality at birth if he would otherwise have been stateless.
However, where maternal descent only becomes effective as regards nationality on the date when such descent is established, a child who is still a minor shall acquire his mother's nationality on that date.

Article 2 For the purpose of the preceding article, the child of a father with refugee status shall
be deemed not to hold his father's nationality.

Article 3 The provision of the preceding Articles shall apply in any Contracting State to children born after the Convention's entry into force in that State, or still minors on that date.

Article 4 At the time of signature, of the notification provided for in Art. 6, or of accession, any
Contracting State may declare that it reserves the right:
a) to restrict the application of the preceding Articles to children born in the territory of a Contracting State;
b) not to apply Art. 2;
c) to apply Art. 2 only when the father is recognized as a refugee in its territory.

The reservations provided for in the preceding paragraph may be wholly or partly withdrawn at any time by simple notification to the Swiss Federal Council.

…
Article 5 The Convention shall not prevent the application of international conventions or rules
of domestic law which are more favourable to the assumption by the child of its
mother's nationality.

…(remainder not reproduced).

REGIONAL

Council of Europe

The 1963 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality
Signed at Strasbourg on 6 May 1963. Council of Europe. ETS 43; Cmnd 4802; 634 UNTS 221. In force 28 March 1968. Ratified by the UK on 7 July 1971. (not reproduced) see also

Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality 1977
Signed at Strasbourg on 24 November 1977. ETS 95. In force 8 September 1978. Ratified by the UK on 7 August 1978 and Additional Protocol to the Convention 1977 Signed at Strasbourg on 24 November 1977. ETS 96. In force 17 October 1983. Neither ratified nor signed by the UK and Second Protocol amending the Convention 1993. Signed at Strasbourg on 2 February 1993. ETS 149. In force 24 March 1995. Neither ratified or signed by the UK. Not reproduced.

European Convention on Human Rights, Protocol Four (extract)
Signed at Strasbourg on 16 September 1963. Council of Europe. ETS 46. In force 2 May 1968. Signed on 16 September 1963, but never ratified, by the UK.
…
Signed but not ratified by the UK

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 1967 European Convention on the Adoption of Children
Signed in Strasbourg on 24 April 1967. Into force 26 April 1968. Ratified by the UK 21 December 1967. Extended to the Isle of Man and the Bailiwicks of Guernsey and Jersey (excluding Sark) by a declaration dated 5 September 1977 and registered on 9 September 1977. Denounced in respect of the metropolitan territory of the UK and the Isle of Man, but not in respect of the other territories to which it had been extended, by a Declaration dated 20 June 1977 registered by the Secretariat General on 21 June 2005 and completed by a letter dated 29 July 1977 and registered on 18 August 1977, with the denunciation treated as effective from 21 June 2005. Although the Hague Convention on Intercountry Adoption in many respects replaced this convention by June 2005, the Hague Convention does not contain any express provisions on nationality.

Article 11
1. Where the adopted child does not have, in the case of an adoption by one person, the same nationality as the adopter, or in the case of an adoption by a married couple, their common nationality, the Contracting Party of which the adopter or adopters are nationals shall facilitate acquisition of its nationality by the child.
2. A loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality.

1997 European Convention on Nationality
Signed at Strasbourg on 6 November 1997. Into force 1 March 2000. Council of Europe. ETS 166. Neither signed nor ratified by the UK. See all. Not reproduced.

Council of Europe Convention on the avoidance of statelessness in relation to State succession
Signed at Strasbourg on 19 May 2006. Council of Europe. ETS 200. Not yet in force. The UK has neither signed nor ratified. Not reproduced.

European Union

Act of Act Concerning The Conditions of Accession and The Adjustments to the Treaties (Extract)
Signed 22 January 1972. The UK Declaration reproduced here replaced the original declaration with effect from 1 January 1983

Third Protocol

Article 2 The rights enjoyed by Channel Islanders or Manxmen in the United Kingdom shall not be affected by the Act of Accession. However, such persons shall not benefit from Community provisions relating to the free movement of persons and services.'

…

Article 4 The authorities of these territories shall apply the same treatment to all natural and legal persons of the Community.'

…

Article 6 In this Protocol, Channel Islander or Manxman shall mean any citizen of the United Kingdom and Colonies who holds that citizenship by virtue of the fact that he, a parent or grandparent was born, adopted, naturalised or registered in the island in question; but such a person shall not for this purpose be regarded as a Channel Islander or Manxman if he, a parent or a grandparent was born, adopted, naturalised or registered in the United Kingdom. Nor shall he be so regarded if he has at any time been ordinarily resident in the United Kingdom for five years.

The administrative arrangements necessary to identify these persons will be notified to the Commission.'

[Remainder not reproduced]

Declaration annexed to the Third Protocol (taking effect 1 January 1983)

'In view of the entry into force of the British Nationality Act 1981, the Government of the United Kingdom of Great Britain and Northern Ireland makes the following Declaration which will replace, as from 1 January 1983, that made at the time of signature of the Treaty of Accession by the United Kingdom to the European Communities:

> "As to the United Kingdom of Great Britain and Northern Ireland, the terms 'nationals', 'nationals of Member States' or 'nationals of Member States and overseas countries and territories' wherever used in the Treaty establishing the European Economic Community, the Treaty establishing the European Atomic Energy Community or the Treaty establishing the European Coal and Steel Community or in any of the Community acts deriving from those Treaties, are to be understood to refer to:
> (a) British citizens;
> (b) persons who are British subjects by virtue of Part IV of the British Nationality Act 1981 and who have the right of abode in the United Kingdom and are therefore exempt from United Kingdom immigration control;
> (c) British Dependent Territories citizens who acquire their citizenship from a connection with Gibraltar".

The reference in Article 6 of the third Protocol to the Act of Accession of 22 January 1972, on the Channel Islands and the Isle of Man, to "any citizen of the United Kingdom and Colonies" is to be understood as referring to "any British citizen"'.

The Treaty Establishing the European Community (Extract)
Extracts are reproduced from the Consolidated Treaty Establishing the European Community, as in force from 1 February 2003, OJ 24/12/2002 C 325/1.

Article 17
1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.
2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

Draft Treaty Establishing A Constitution for Europe (Extract)
Signed 29 April 2004

Article I-10 Citizenship of the Union
1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Constitution. They shall have:
(a) the right to move and reside freely within the territory of the Member States;
….

Regional Materials- other

The 1969 American Convention on Human Rights (Extract)
22 November 1969. Organisation of American States. 9 ILM (1970) 673. In force 18 July 1978.

Article 20 Right to nationality
1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

Article 22 Freedom of Movement and Residence
…
5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.
…

Council of Europe Recommendations on nationality

Committee of Ministers' Resolutions

Resolution (70) 2 on acquisition by refugees of the nationality of their country of residence. Adopted 26 January 1970.

Resolution (72) 1 on the standardisation of the legal concepts of "domicile" and of "residence" . Adopted 18 January 1972.

Resolution (77) 12 on the nationality of spouses of different nationalities . Adopted 27 May 1977.

Resolution (77) 13 on the nationality of children born in wedlock. Adopted 27 May 1977.

Committee of Ministers' Resolutions

Recommendation no. R (83) 1 on stateless nomads and nomads of undetermined nationality. Adopted 22 February 1983.

Recommendation no. R (84) 9 on second-generation migrants. Adopted 20 March 1984.

Recommendation no. R (84) 21 on the acquisition by refugees of the nationality of the host country. Adopted 14 November 1984.

Recommendation no. R(99) 18 on the avoidance and the reduction of statelessness. Adopted 15 September 1999.

Parliamentary Assembly Resolutions

Recommendation 87 (1955) on statelessness. Adopted 22 October 1955.

Recommendation 164 (1958) on the reduction of the number of cases of multiple nationality . Adopted 3 May 1958.

Recommendation 194 (1959) on the nationality of children of stateless persons. Adopted 23 April 1959

Recommendation 269 (1960) on The Hague Convention to regulate conflicts between the law of nationality and the law of the domicile. Adopted 29 September 1960.

Recommendation 519 (1968) on the nationality of married women. Adopted 2 February 1968.

Recommendation 564 (1969) on the acquisition by refugees of the nationality of their country of residence. Adopted 30 September 1969.

Recommendation 696 (1973) on certain aspects of the acquisition of nationality. Adopted 24 January 1973.

Recommendation 841 (1978) on second generation migrants. Adopted 30 September 1978.

Recommendation 915 (1981) on the situation of migrant workers in the host countries. Adopted 30 January 1981.

Recommendation 956 (1982) on migrant women. Adopted 9 November 1982.

Recommendation 984 (1984) on the acquisition by refugees of the nationality of the receiving country . Adopted 11 May 1984

Recommendation 1081 (1988) on problems of nationality in mixed marriages. Adopted 30 June 1988.

Recommendation 1134 (1990) on the rights of minorities

Recommendation 1177 (1992) on the rights of minorities

Recommendation 1203 (1993) on gypsies in Europe

Recommendation 1236 (1994) on the right of asylum

Recommendation 1255 (1995) on the protection of the rights of national minorities

Recommendation 1278 (1995) on refugees and asylum-seekers in central and eastern Europe

Recommendation 1285 (1996) on the rights of national minorities

Recommendation 1287 (1996) on refugees, displaced persons and reconstruction in certain countries of the former Yugoslavia

Recommendation 1300 (1996) on the protection of the rights of minorities

Recommendation 1443 (2000) International adoption: respecting children's rights

Recommendation 1500 (2001) Participation of immigrants and foreign residents in political life in the Council of Europe member states