

ILPA briefing for the All Party Parliamentary Group on the Chagos Islands re proposed amendments to address the nationality of the Chagos Islanders born in exile.

The background situation is set out in ILPA's 15 February 2012 briefing for the All Party Parliamentary Group on the Chagos Islands, which was used in the meeting with Ministers in a previous government. It is appended hereto.

Current nationality of the Chagos Islanders and their descendants.

A person born on the Chagos Islands, or British Indian Ocean Territory, is a British citizen. and since 1 January 1983 can pass on their British nationality to a child born outside the UK, British Indian Ocean Territory and other British overseas territories (technically the "qualifying" British overseas territories because the sovereign base areas on Cyprus are not treated in the same way as the other overseas territories for nationality law purposes).

Prior to 1983 a woman could not pass on her nationality to her child born outside the UK at all. The British Overseas Territories Act 2002 made provision for the children of Chagossian mothers born outside the UK and the qualifying territories between 26 April 1969 and 1 January 1983 to become British citizens.

A further consideration, which affects many of the islanders, is that prior to 1 July 2006 a man could not pass on his British citizenship to his child if he were not married to the child's mother.

A person born to a person born on the Chagos islands will be a British citizen but if they are born outside the UK since 1 January 1983 and the UK and qualifying territories since 21 May 2002 they will be a British citizen "by descent" – they cannot pass on their British citizenship to their child born outside the UK and qualifying territories. Those registered under section 6(1) of the British Overseas Territories Act 2002 will also be British citizens by descent. Thus for an islander who does not make it to the UK the link with Britain peters out by the time you get to the second generation.

A child born on 1 January 1983 would have been 30 on 1 January 2013 thus a number of them will have children by now. These children, if born in the UK or a qualifying territory will be British, if not their nationality will depend on their place of birth and the laws of that place, and the nationality of their parents. In practice many children of Chagossians will now be Mauritian.

Persons of concern

Persons of concern are thus:

- Persons born outside the UK and the islands to Chagossian mothers before 1 January 1969.

- The children of those who registered under the British Overseas Territories Act 2002
- The children of those born outside the Chagos Islands (and the UK) to Chagossian parents.

The question of children born to parents not married to each other before 1 July 2006 goes broader than the Chagos islands but is of concern to many Chagossians.

Proposed amendment

Insert the following new Clause:

The Ilois: citizenship

(1) Section 6 of the British Overseas Territories Act 2002 (c. 8) (the Ilois: citizenship) is amended as follows.

(2) After subsection (2) insert:

"(2A) A person shall be entitled to register as a British citizen if
 (a) his father, mother, grandfather or grandmother was or is a citizen of the United Kingdom and Colonies or a British citizen by virtue of birth in the British Indian Ocean Territory or by operation of section 6(1), and
 (b) he is not a British citizen.

(2B) A person shall be entitled to register as a British overseas territories citizen if
 (a) his father, mother, grandfather or grandmother was or is a British overseas territories citizen by virtue of birth in the British Indian Ocean Territory or in the territories that now comprise the British Indian Ocean Territory or by operation of section 6(1), and
 (b) he is not a British overseas territories citizen.

(2C) In this section "father" has the meaning given in section 50(9A) of the British Nationality Act 1981.

(2D) No charge or fee shall be imposed for registration under section 6(2A) or (2B)."

Purpose

To ensure that descendants of the Chagos Islanders born in exile can be registered as British citizens and/or as British overseas territories citizens. The amendment would protect those still living who were born to parents or grandparents (whether living or dead) born on the Chagos Islands – thus all of the first and second generation born in exile.

The entitlement to register does not depend upon whether the parent was a man or woman or whether the parents were married. In the case of a father the general rules for proof of paternity would apply.

In addition the amendment gives an entitlement to register to the children of those who registered under section 6(1) of the British Overseas Territories Act 2002. Such people (those born on or after 26 April 1969 and before 1 January 1983) became British Citizens by descent upon registration. Therefore they cannot pass on their nationality or citizenship to their children and need this provision if their children are to be protected.

As drafted it provides registration by entitlement, there is no discretion not to register. There is no good character test.

As drafted those who register are British citizens or British overseas territories citizens otherwise than by descent.

Note

The amendment is broadly drafted and would thus give an entitlement to register to those persons still living whose parents or grandparents had left the Chagos islands voluntarily, before 1969 and would ensure that their children were in their turn British too. Options for limiting it are:

- 1) To require a start date, basing this on the drafting of the British overseas Territories Act 2002 section 6. It is suggested, given the evidence that has emerged in the litigation and been accepted by the courts, that a date earlier than that used in section 6 of the British overseas territories Act 2002 should be used because the evidence suggests, and this is backed up by what the islanders themselves have said, that there were persons prevented from returning to the islands before that date.
- 2) To require that fathers be married to mothers and thus cut out all children of unmarried parents. This is likely to be an option that creates real hardship for the many descendants of islanders whose parents are unmarried.
- 3) To include a good character test.
- 4) To make those who register British other than by descent.

Of all these the least attractive limit is probably that of a good character test, because it turns registration by entitlement into registration by discretion, although the reason for being able to register is to right an historical wrong.

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