

ILPA Briefing on New Clause 7 (legitimacy)

Borders, Citizenship and Immigration Bill

House of Commons Committee Stage, June 2009

ILPA is a professional association with some 1000 members (individuals and organisations), who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and non-government organisations working in this field are also members. ILPA aims to promote and improve the giving of advice on immigration and asylum, through teaching, provision of resources and information. ILPA is represented on numerous government, court and tribunal stakeholder and advisory groups.

ILPA is happy to assist Members of Parliament in considering and/or drafting other amendments of interest to them.

New Clause 7

Insert the following new Clause—

"Legitimacy

- (1) The British Nationality Act 1981 (c. 61) is amended as follows.
- (2) After section 4C insert—

"4D Acquisition by registration: legitimacy

- (1) A person is entitled to be registered as a British citizen if—
 - (a) he applies for registration under this section; and
 - (b) he satisfies each of the following conditions.
- (2) The first condition is that the person was born before 1st July 2006.
- (3) The second condition is that the person is not already a British citizen.

- (4) The third condition is that the father of the child satisfies any requirements as to proof of paternity prescribed under section 50(9B) of this Act.
- (5) The fourth condition is that the person would have been a British citizen had his father been married to his mother at the time of his birth."

Purpose

To make provision for those born before 1 July 2006 to British fathers not married to their mothers to register by entitlement as British citizens.

Briefing

ILPA prepared a briefing on the subject of this amendment (then amendment 99) at Committee Stage in the House of Lords, which is attached. In debate, Lord Brett stated that the point 'would seem to be a useful part of the comprehensive discussion that we will have on these issues' (HoL *Hansard*, col. 742). In his 20 March 2009 letter to the Lord Avebury he acknowledged that the proposal in part replicates the current exercise of discretion in relation to those born to a father not married to the child's mother. The letter goes on to state that it considers the amendment unnecessary 'in relation to children born illegitimately who are still minors' because discretion can be used. But a different government or a different Minister may exercise discretion differently. If this government believes it is right that such children should be registered, their rights should be safeguarded in law.

But not all those born to fathers not married to their mothers are still minors and in their case the injustice continues, with no means of redress. Lord Brett stated that this was because 'it was felt that this could create difficulties for those affected in relation to any other citizenship they held' (HoL *Hansard*, 1 April 2009, col. 1092). The amendment provides for people to *apply* to register; it does not *compel* them to do so and any applicant chooses to make the application. In the similar circumstances provided for in clause 46, descent through the female line, the government has taken welcome steps to mitigate the present day effects of historical discrimination against women being unable to pass on their British citizenship to children born overseas – regardless of whether their children who continue to suffer those effects are now children or adults. Why not the same for the effects of historical discrimination against men – denying them the ability to pass on their British nationality to their children outside marriage? This is an anomaly which should now be rectified.

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