



**ILPA Briefing Paper on Presumed Purpose of Tabled Amendments
to
Part 2, Citizenship
Borders, Citizenship and Immigration Bill – HL Bill 15
Based on the list marshalled on 24 February 2008
(with insertions to cover amendments tabled 25 February 2009)**

House of Lords Committee

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.

Introduction:

This briefing paper provides a short explanation of what ILPA understands to be the purpose of those amendments that have been tabled to Part 1. It highlights opportunities for probing the Government that may be provided by these amendments. It identifies the amendments that ILPA supports, and draws attention to separate ILPA briefings on individual clauses where these are available.

Before Clause 37

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

45 Insert the following new Clause—

"Probationary citizenship leave

- (1) A person with probationary citizenship leave shall be treated as a person settled in the United Kingdom for the purposes of all regulations made under—
 - (a) the Health Services and Public Health Act 1968 (c. 46);
 - (b) the Education (Fees and Awards) Act 1983 (c. 40);
 - (c) the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3));

- (d) the National Health Service (Charges to Overseas Visitors), Regulations 1989 (S.I. 1989/306);
 - (e) the Teaching and Higher Education Act 1998 (c. 30);
 - (f) the Education (Student Support) Regulations (Northern Ireland) 1998;
 - (g) the Learning Skills Act 2000 (c. 21);
 - (h) the Higher Education Act 2004 (c. 8); and
 - (i) the Higher Education (Northern Ireland) Order 2005 (S.I. 2005/1116 (N.I. 5));
- (2) In section 115 of the Immigration and Asylum Act 1999 (c. 33) (exclusion from benefits), in subsection (9) after "EEA state" insert "or a person with probationary citizenship leave"."

Purpose

To ensure that if there is to be 'probationary citizenship leave' (a measure ILPA opposes as introducing unnecessary complications), those on this leave are treated as citizens on probation and have the rights and entitlements of citizens to education at home student rates, healthcare as for a settled person and to benefits.

Briefing

ILPA has prepared a separate briefing to this amendment.

Clause 37

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

- 46** Page 27, line 6, after first "the" insert "average"
- 47** Page 27, line 10, at end insert ", save that periods during which A was in the United Kingdom with leave other than that conferring qualifying immigration status shall be disregarded for the purpose of considering whether A had qualifying immigration status for the whole period"

Purpose:

The first amendment would maintain the current position whereby maximum permitted absences during the qualifying periods for naturalisation are calculated in terms of an average over the qualifying period.

The second amendment would ensure that where a person spends two periods of time in the UK with a qualifying immigration status but in between is lawfully in the UK with an immigration status that is not a qualifying immigration status, the two qualifying periods can be aggregated.

Briefing

ILPA has prepared a separate briefing to these amendments.

LORD AVEBURY

LORD WALLACE OF SALTAIRE

48 Page 27, leave out lines 11 to 14

49 Page 27, line 11, leave out "probationary citizenship leave" and insert "limited leave to enter or remain"

Purpose

These amendments are alternatives. The first would omit the requirement that an applicant for naturalisation have a particular kind of leave at the time of making that application. The second would provide that rather than have 'probationary citizenship leave' at the time of making that application, the person simply had limited leave to enter or remain. The amendments allow peers to probe what 'probationary citizenship leave' adds to the path to citizenship. Whereas consequential amendments would be needed to remove the concept, these are sufficient to raise the matter in debate.

Briefing

ILPA has prepared a separate briefing to these amendments.

LORD HYLTON

52A* Page 28, line 11, at end insert—

""(4A) If in the special circumstances of a particular case of a refugee, a person with humanitarian protection or a member of their family the Secretary of State thinks fit, the Secretary of State may for the purpose of Schedule 1 to the British Nationality Act 1981 waive the need to fulfil the requirement specified in paragraph 1(1)(c) if the Secretary of State considers that because of A's circumstances it would be unreasonable to expect A to fulfil that requirement.""

Presumed purpose

The amendment would provide the Secretary of State with a discretion to waive the requirement to have sufficient knowledge of the English, Welsh or Scots Gaelic language to naturalise as a British citizen in cases of refugees and those who have humanitarian protection and thus to probe to the difficulties the requirement may create for the group.

Briefing note

There is in paragraph 1(2)(e) of Schedule 1 to the British Nationality Act 1981 a discretion to waive the need to fulfil the language requirement for naturalisation if the Secretary of State considers that because of the applicant's age or physical condition it would be unreasonable to expect him to fulfil that requirement.

The requirement to pass a language test to obtain Indefinite Leave to Remain (under this Bill probationary citizenship) is contained in the immigration rules and not in primary legislation.

Refugees and those with humanitarian protection are people who are unable to turn to their country of origin for protection. They thus frequently stand in very great need of acquiring British citizenship. The 1951 UN Convention Relating to the Status of Refugees, at Article 34, states that "*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.*"

LORD WEST OF SPITHEAD

- 50 Page 27, line 12, after second "leave," insert "a qualifying CTA entitlement,"

Presumed purpose

CTA leave refers to Common Travel Area leave, a new concept introduced in government amendments. This amendment would mean that Common Travel Area leave ranked with probationary citizenship leave, a Commonwealth right of abode or a permanent EEA entitlement, all terms of art in the Bill, as one of the forms of leave that allows the holder to make an application for naturalisation.

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

- 51 Page 27, leave out lines 15 to 19
- 52 Page 27, line 17, leave out "been in continuous employment" and insert "not been in breach of conditions of that leave"

Purpose

These two amendments are alternatives. They will allow peers to probe what is meant by 'continuous' employment and why this condition is thought necessary.

The first would delete altogether the requirement that a person who has entered the probationary citizenship stage as a worker must remain in employment throughout this stage. It would require consequential amendments, but is sufficient to raise the matter in debate.

The second would replace the requirement with a requirement to abide by the terms and conditions of the person's probationary citizenship leave, and will allow peers to compare the current conditions relating to remaining in work with whatever may be said to be the meaning of 'continuous'.

Briefing

ILPA has prepared a separate briefing to these amendments.

LORD WEST OF SPITHEAD

- 53 Page 28, line 19, at end insert—
"() a qualifying CTA entitlement;"

Presumed Purpose

CTA leave refers to Common Travel Area leave, a new concept introduced in government amendments. This amendment would mean that Common Travel Area leave ranked with the other forms of leave listed in Clause 11 (new paragraph 2A(1)) as a form of leave that counts toward the qualifying period for citizenship.

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

- 54 Page 28, line 21, at end insert "; or
- (f) detention, temporary admission or release within the meaning of section 11 of, and Schedules 2 and 3 to, the Immigration Act 1971 if immediately following that detention, temporary admission or release the person had a status listed in paragraphs (a) to (e) above.""
- 55 Page 28, line 21, at end insert "; or
- (f) a pending application for leave to remain pursuant to an asylum claim, a human rights claim or in reliance on Council Directive 2004/83/EC;
- (g) exceptional leave to remain outside the immigration rules.
- (1A) An asylum claim and a human rights claim have the meaning given in section 113 of the Nationality, Immigration and Asylum Act 2002. A pending application is one that has not yet been determined or that is the subject of a pending appeal within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002.""

Purpose

The first amendment would ensure that periods of temporary admission, temporary release or detention can count towards the qualifying period if these are immediately followed by a grant of a qualifying immigration status.

The second amendment is an alternative to the first. It would ensure that those who have made a claim for asylum or on human rights grounds and those claiming entitlement to exercise rights of free movement under European Community law can count time in the UK prior to the determination of their application as part of the qualifying period, and that exceptional leave to remain outside the immigration rules counts toward the qualifying period.

Briefing

ILPA has prepared a separate briefing to these amendments.

BARONESS HANHAM
VISCOUNT BRIDGEMAN

- 56* Page 28, line 25, at end insert—
- "() Nothing in this section shall affect the application for British citizenship made by an applicant prior to the commencement of this Part."

Presumed purpose

This amendment would ensure that the new provisions could not be applied to applications pending at the time when Part 2 is commenced. The amendment also provides an opportunity to probe what will happen to those with limited leave to remain (i.e. who have yet to qualify for ILR) at the time when the new provisions come into force and what they can expect.

Clause 38

LORD WEST OF SPITHEAD

- 57 Page 29, leave out lines 16 to 18 and insert—
- "(c) that, subject to sub-paragraph (5)—

- (i) A had a relevant family association for the whole of the qualifying period, and
- (ii) A had a qualifying immigration status for the whole of that period;"

Presumed purpose

See note to amendments 64 to 76 below.

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

58 Page 29, line 13, after first "the" insert "average"

59 Page 29, leave out lines 16 to 18

Purpose

Amendment 58: This would maintain the current position whereby maximum permitted absences during the qualifying period for naturalisation are calculated in terms of an average over the qualifying period. The amendment mirrors that tabled in the name of Lord Avebury and Baroness Falkner of Margravine on clause 37 – see ILPA briefing on Clause 37 (90 days absence and qualifying immigration status).

Amendment 59: This would remove the requirement that a person must have had a relevant family association throughout the qualifying period.

Briefing

ILPA has prepared a briefing to Clause 38 which addresses these amendments

LORD WEST OF SPITHEAD

60 Page 29, line 19, leave out from "application" to "and" in line 22 and insert "—

- (i) A has probationary citizenship leave, or permanent residence leave, based on A's having the relevant family association referred to in section 6(2), or
- (ii) A has a qualifying CTA entitlement or a Commonwealth right of abode;"

Presumed purpose

See note to amendments 64 to 76 below and to amendment 101.

Briefing

We urge peers to probe this amendment. At first sight it appears to produce a most anomalous result in the case of a Common Travel Area entitlement, so anomalous that we are inclined to think that we have misread it.

A local journey is defined in section 11 of the Immigration Act 1971 as a journey that begins and ends in the Common Travel Area and is not made by a ship or aircraft which began its voyage to the United Kingdom from, or called at, a place not in the Common

Travel Area, or if travelling from the United Kingdom, is due to end its voyage in or calls in the course of its voyage at, a place not in the Common Travel Area.

Thus at first sight it looks as though a Common Travel Area entitlement will only count toward the qualifying period for naturalisation if a person never leaves the Common Travel from the UK and only travels on ships or aircraft that are making journeys as described in Clause 11. Under Clause 37 a person must have qualifying leave for the whole of the qualifying period. Thus it would appear that if a citizen of the Republic of Ireland travels from London to Paris for the weekend on the Eurostar, they will have to start the qualifying period for naturalisation (insofar as this is based upon their Common Travel Area entitlement) all over again.

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

- 61** Page 29, line 22, after "6(2)" insert "or has a Commonwealth right of abode or a permanent EEA entitlement and the relevant family association referred to in section 6(2)"
- 62** Page 29, line 50, after "partner" insert "or dependent relative"
- 63** Page 30, line 1, after "leave" insert "or has a right of abode in the United Kingdom within the meaning of section 2 of the Immigration Act 1971, or a permanent EEA entitlement"

Purpose

Amendment 61: This would allow those with the Commonwealth right of abode and a permanent EEA entitlement to progress to citizenship along the family path if they have a relevant family association.

Amendment 62: This will allow peers to probe the Government as to who will be prescribed as having a 'relevant family association' enabling them to progress to citizenship along the shorter family path.

Amendment 63: This would ensure that those whose UK-based partners have a right of abode in the UK or have acquired permanent entitlements to reside in the UK under European law can progress to citizenship on the basis of those relationships in the same way as they could if the UK-based partner is a British citizen or has permanent residence. It will also allow peers to probe the Government as to its intentions for those with the right of abode.

Briefing

ILPA has prepared a briefing to Clause 38 which addresses these amendments.

LORD HYLTON

- 61A*** Page 29, line 23, leave out paragraph (e)

Purpose

The amendment would remove the requirement that at no time during the qualifying period has a person been in breach of the immigration laws.

Briefing

The Secretary of State has at the moment, and will have under the Bill (see new paragraph 4 of Schedule 1 , 4(4)(e) to treat a person as having fulfilled the requirement not to be in breach of the immigration laws at any time during the qualifying period. The amendment, which would obviate the need for that discretion, provides an opportunity to probe the circumstances in which the discretion is and might be used. To get to the stage where s/he can naturalise, a person will have to have been in the UK for the whole of the qualifying period, and achieved probationary citizenship or one of the other forms of leave, as well as fulfilling all the other requirements, existing and new.

LORD WEST OF SPITHEAD

- 64** Page 30, line 1, leave out from "leave" to end of line 3 and insert "—
- (a) the requirement specified in sub-paragraph (2)(c)(i) is fulfilled only if A was that person's partner for the whole of the qualifying period, and
 - (a) for the purposes of sub-paragraph (2)(c)(ii), A can rely upon having a qualifying immigration status falling within paragraph 4A(1)(a), (b) or (c) only if that partnership is the relevant family association upon which the leave to which the status relates is based."
- 65** Page 30, line 9, at end insert—
- "(7) For the purposes of sub-paragraph (5), the relationship by reference to which A and the other person are partners need not be of the same description for the whole of the qualifying period.""
- 66** Page 30, leave out lines 21 to 25 and insert—
- "() treat A as fulfilling the requirement specified in paragraph 3(2)(c)(i) (including where it can be fulfilled only as set out in paragraph 3(5)) where a relevant family association of A's has ceased to exist;"
- 67** Page 30, line 27, leave out first "3(2)(c)" insert "3(2)(c)(ii)"
- 68** Page 30, line 27, leave out second "3(2)(c)" insert "3(2)(c)(ii)"
- 69** Page 31, line 2, leave out "A" and insert "Subject to paragraph 3(5), a"
- 70** Page 31, line 4, at end insert "based on a relevant family association"
- 71** Page 31, line 5, leave out "; or" and insert "based on a relevant family association;"
- 72** Page 31, line 6, at end insert "based on a relevant family association;
- () a qualifying CTA entitlement; or
 - () a Commonwealth right of abode."
- 73** Page 31, leave out lines 7 to 9 and insert—
- "() For the purposes of paragraph 3 and this paragraph, the leave mentioned in sub-paragraph (1)(a), (b) or (c) is based on a relevant family association if it was granted on the basis of the person having a relevant family association."
- 74** Page 31, line 12, leave out "based on" and insert "and"

75 Page 31, line 15, leave out "rely on" and insert "have"

76 Page 31, leave out lines 17 to 21 and insert—

- "() Where, by virtue of sub-paragraph (3)(a), a person relies upon having more than one qualifying immigration status falling within sub-paragraph (1)(a), (b) or (c)—
- (a) subject to paragraph 3(5), it is not necessary that the leave to which each status relates is based on the same relevant family association, and
 - (b) in a case where paragraph 3(5) applies, the relationship by reference to which the persons referred to in paragraph 3(5) are partners need not be of the same description in respect of each grant of leave."

Presumed purpose

These amendments should be read with **amendments 64 to 76** laid in the name of the Lord West of Spithead. The Government amendments broaden the range of people who can benefit from the shorter route to naturalisation on the basis of a family relationship. They subdivide those who can naturalise on the basis of a family association. They accept the proposition put forward by the Lord Avebury and the Lord Wallace in **amendment 61** that those with a Commonwealth right of abode (defined in Clause 45) and a relevant family association should be able to naturalise without the Commonwealth right of abode having to be based on a family relationship. They accept the same principle for those with their new CTA entitlement (defined in the proposed government amendment). They do not accept that this should be the case for EEA nationals as **amendment 61** had proposed.

We appear rapidly to be getting to the situation where there are as many types of probationary citizenship leave as there are categories of leave under the immigration rules, again raising the question of why the government has introduced probationary citizenship leave at all and not merely required people to spend the whole of the qualifying period in an existing own temporary leave category.

Briefing

ILPA has prepared a separate briefing to clause 38 which is relevant to these amendments.

Clause 39

BARONESS HANHAM

VISCOUNT BRIDGEMAN

77* Page 31, line 28, leave out from "period" to end of line 29 and insert "is—

- (a) 6 years in a case within paragraph 1;
- (b) 3 years in a case within paragraph 3."

Purpose

This amendment, read with amendment 79* and 84 removes the activity condition from the Bill. They restore the qualification periods for citizenship to their current levels, six years, and a shorter three year route for those relying on a family association.

Briefing

ILPA has prepared a separate briefing covering the amendments to the activity condition.

LORD AVEBURY
LORD WALLACE OF SALTAIRE

78 Page 31, leave out lines 30 to 33

Purpose

This amendment, read with amendments 80 and 81, removes the activity condition from the Bill. It thus serves the same purpose as amendment 79*.

Briefing

ILPA has prepared a separate briefing covering the amendments to the activity condition.

BARONESS HANHAM
VISCOUNT BRIDGEMAN

79* Page 31, leave out lines 30 to 42

Purpose

This amendment, read with amendment 77* and 84 removes the activity condition from the Bill. They restore the qualification periods for citizenship to their current levels, six years, and a shorter three- year route for those relying on a family association.

Briefing

ILPA has prepared a separate briefing covering the amendments to the activity condition.

LORD AVEBURY
LORD WALLACE OF SALTAIRE

80 Page 31, line 34, leave out from beginning to third "the"

81 Page 31, leave out lines 38 to 42

Purpose

These amendments, read with amendments 80, 81 and 84, removes the activity condition from the Bill.

Briefing

ILPA has prepared a separate briefing covering the amendments to the activity condition

82 Page 31, line 40, leave out "otherwise than for payment"

Purpose

This amendment removes the requirement that prescribed activities counting toward the activity condition be unpaid. . It would mean that paid work could count toward fulfilling the 'activity condition. The amendment *probes* the government's intentions as to the activity condition. It highlights that it is inimical to the character and culture of volunteering and that it disadvantages those who work long hours in their jobs (for example migrant domestic workers) and thus have difficulty in complying with the condition. The

amendments thus complement the amendments that would remove the activity condition entirely.

Briefing

ILPA has prepared a separate briefing covering the amendments to the activity condition

LORD LEA OF CRONDALL

83* Page 31, line 41, after "activities" insert "or trade union activities"

Purpose

The amendment would allow trade union activities to count toward fulfillment of the activity condition. It thus highlights the risk that certain activities may count toward the activity condition while others will not, thus disadvantaging those who, for example, do important work for their trade unions. It raises the question of whether some activities will be considered 'worthy' and others not, and of whether some activities may be considered 'political' and others not. It also raises the question of the position of those who have paid time off work for trade union activities. The question of those who undertake paid activities for trade unions could also be raised under amendment , or The amendments complement the first amendment 82.

Briefing

ILPA has prepared a separate briefing covering the amendments to the activity condition.

LORD AVEBURY

LORD WALLACE OF SALTAIRE

BARONESS HANHAM

VISCOUNT BRIDGEMAN

84 Page 31, line 43, leave out subsections (2) to (5)

Purpose

This amendment forms part of the groups of amendments removing the activity condition from the bill. It also provides an opportunity to debate the specific regulation-making powers taken in Clause 39(2).

Briefing

ILPA has prepared a briefing on the activity condition in Clause 39 and also a specific briefing on Clause 39(2).

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

85 Page 32, line 3, leave out "different" and insert "lower"

Purpose

This amendment would ensure that the government could only reduce the qualifying period and not lengthen it.

Briefing

ILPA has prepared a separate briefing on clause 39(2).

Clause 40

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

- 86** Page 33, line 3, leave out "on or after the relevant day"
87 Page 33, line 5, leave out ", while he is a minor"
88 Page 33, line 6, at beginning insert "while he is a minor,"
89 Page 33, line 6, after "mother" insert "is or"

Purpose

Amendment 86 would ensure that all those born to serving members of the armed forces in the UK or in a qualifying territory, whether before or after the commencement of this Act, are entitled to be registered as British citizens.

Amendment 87 would ensure that the application for registration need not be made while the person is still a child.

Amendment 88 would ensure that the parents must have been in the army while the UK born child was under 18 if a person is to register under this clause.

Amendment 89 is consequential on those above.

Briefing

ILPA has prepared a separate briefing on clauses 40 and 42 which addresses these amendments.

Before Clause 41

LORD AVEBURY

LORD WALLACE OF SALTAIRE

- 90** Insert the following new Clause—

"Certain persons without other citizenship

In section 4B(1) of the British Nationality Act 1981 (c. 61) (acquisition by registration: certain persons without other citizenship) at the end of subsection (1) insert—

"(d) British National (Overseas)".

Purpose

To ensure that a British National (Overseas) who has no other nationality or citizenship can register by entitlement as a British Citizen.

Briefing

ILPA has prepared a separate briefing to this amendment.

Clause 41

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

90A* Page 34, leave out lines 11 to 15

Purpose

To ensure that the scope of section 4C of the British Nationality Act 1981, as inserted by the Nationality, Immigration and Asylum Act 2002 is retained and that registration of those born to British mothers overseas is not restricted so as to exclude those who would have needed to make an application for registration. To ensure that applicants are not put in the impossible position of having to prove whether or not they would have succeeded in an application made many decades ago.

Briefing

ILPA has prepared a briefing to Clause 41 which addresses this amendment.

After Clause 41

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

91 Insert the following new Clause—

"Descent through the female line from a mother now deceased

After section 4C of the British Nationality Act 1981 (c. 61) insert—

"4D Acquisition by registration: certain persons born after 1983

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—
 - (i) the applicant is not a British citizen on the date on which this section comes into force;
 - (ii) the applicant's mother or father would have been entitled to register as a British citizen under section 4C of this Act but for their death; and
 - (iii) the applicant was born in the United Kingdom or a qualifying territory."

Purpose

To complement the amendments being made to s 4C of the British Nationality Act 1981 by Clause 41 (Descent through the female line) and ameliorate the current day effects of historical discrimination on the grounds of sex. Clause 41 provides for the registration of those born at any to a British mother in circumstances where a father could pass on his nationality to a child born abroad but a mother could not. However, there will be cases where the person who would have been entitled to register is now dead. What of their children? They may have missed out because since 1 January 1983 it has been the case that a person born in the UK or a qualifying territory is only born British if their mother or father is British or settled in the UK. The amendment gives them an entitlement to register as British.

Briefing

ILPA has prepared a briefing to Clause 4 which addresses this amendment.

LORD AVEBURY

LORD ROBERTS OF LLANDUDNO

92 Insert the following new Clause—

"The Ilios: citizenship

In section 6 of the British Overseas Territories Act 2002 (c. 8) (The Ilios: citizenship) subsection (2) is omitted."

Purpose

To amend the British Overseas Territories Act 2002 so that Chagossians from the Chagos Islands and Diego Garcia who benefit from its provisions are British citizens *simpliciter* rather than British citizens by descent. A British citizen by descent cannot pass on his/her citizenship to his/her children born outside the UK or a qualifying territory. That the children of Chagossians are born outside the UK or a qualifying territory is no fault of their own but the result of their enforced exile.

Briefing

ILPA has prepared a briefing on the Chagossians that addresses this amendment.

After Clause 41

LORD AVEBURY

LORD ROBERTS OF LLANDUDNO

101A* Insert the following new Clause—

"The Ilois: further provision as to citizenship

- (1) Section 6 of the British Overseas Territories Act 2002 (c. 8) (the Ilois citizenship) is amended as follows.
- (2) In subsection (1)(a) omit "on or after 26 April 1969".

Purpose

To ensure that the Chagos Islanders of Diego Garcia and the surrounding islands of the British Indian Ocean Territory born in exile before 26 April 1969 are British Citizens.

Briefing

ILPA has prepared a briefing on the Chagossians that addresses this amendment.

93 Insert the following new Clause—

"Stateless children of British nationals

- (1) Schedule 4 to the British Nationality Act 1981 (c. 61) (amendments to Immigration Act 1971) is amended as follows.
- (2) In paragraph 4, omit sub-paragraph (1)(c).
- (3) In paragraph 4, for sub-paragraphs (2)(a) and (2)(b) substitute "shall be registered under it as a—
 - (a) British citizen, or

- (b) in the case of a child whose mother or father is, or would have been but for their death, a British overseas territories citizen, as a British overseas territories citizen."
- (4) In sub-paragraph (4) of paragraph 4, for "sub-paragraphs (1) to (3)" substitute "sub-paragraph (1)".

Purpose

To ensure that the stateless children born after 1 January 1983 to British nationals (British citizens, British overseas territories citizens, British Overseas citizens, and British subjects) wherever in the world, are entitled to be registered as British Citizens, and that the children of British overseas territories citizens can be registered as both British citizens and British overseas territories citizens.

Briefing

ILPA has prepared a separate briefing to this amendment.

(substituted)

94* Insert the following new Clause—

"Acquisition by registration: stateless children of British citizens

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

Purpose

A more limited version of Amendment 93. This amendment would ensure that a child born to a British Citizen by descent (i.e. a person who cannot pass on their British Citizenship to their children) who would otherwise be stateless can be registered at any time while they are still a child, rather than having to be registered within 12 months of birth and does not have to fulfil the requirements as to the status of their grandparents set out in paragraph (b) nor the requirements as to their parents' residence in the UK and absences of no more than 270 days set out in paragraph (c). While such children could be registered by discretion under s 3(1) of the British Nationality Act 1981 this is not always done and they should have an entitlement to register.

Briefing

ILPA has prepared a separate briefing to this amendment.

95 Insert the following new Clause—

"Acquisition by registration: minors

- (1) Section 3 of the British Nationality Act 1981 (c. 61) (acquisition by registration: minors) is amended as follows.
- (2) In subsection (2), omit the words "made within the period of twelve months

from the date of birth".

- (3) In subsection (3), omit paragraphs (b) and (c)."

Purpose

An amendment to *probe* the different requirements for registration of children of British citizens. Thus the amendment would remove the requirements to have to be registered within 12 months of birth; as to the status of their grandparents set out in paragraph (b) and the requirements as to their parents' residence in the UK and absences of no more than 270 days set out in paragraph (c). An opportunity to probe why these requirements, individually as well as collectively are held to be necessary.

Briefing

ILPA has prepared a briefing to this amendment.

- 96 Insert the following new Clause—

"Provisions for reducing statelessness

- (1) A person born stateless on or after 1st July 1997 shall be entitled to be registered as a British Overseas citizen if—
- (a) while a minor an application is made for his registration as a British Overseas citizen, and
 - (b) his father or mother was, immediately before 1st July 1997, a British Dependent Territories citizen by virtue of having a connection with Hong Kong specified in Article 2 of the Hong Kong (British Nationality) Order 1986 (S.I. 1986/948) or would have been so but for his or her death.
- (2) Any person registered under subsection (1) of this section shall, in respect of the requirements of Article 6(3) of the Hong Kong (British Nationality) Order 1986, be deemed to have acquired British Overseas citizenship at birth under Article 6(2) of the Hong Kong (British Nationality) Order 1986."

Presumed Purpose

To provide for the registration of stateless children born to parents with a connection with Hong Kong as British Overseas citizens.

As ILPA understands it this would be an intermediate step to their being able to register under section 4B of the British Nationality Act 1981 as British Overseas citizens with no other nationality or citizenship.

Briefing note

A person who would have been a British Dependant Territories Citizen because of a connection with Hong Kong immediately before 1 July 1997 would essentially have been a person who was a Citizen of the UK and Colonies but who was not a 'paternal' – parent or grandparent having a connection with the UK and therefore did not become a British citizen when the categories were split but instead a British dependant territories citizen – thus someone with an entitlement to be in Hong Kong, but not to come to the UK.

For those who want more detail:

A connection with Hong Kong is defined in SI 1986/948 as including those (we

paraphrase – there is lots of circularity, lots of the connections depend on a relationship with a person who has a connection)

(a) whose father or his mother was born, naturalised or registered in Hong Kong or found abandoned there as a new-born infant; or

(b) who were adopted or one of whose parents was adopted by a person who was at the time of the adoption a British Dependent Territories citizen by virtue of his having a connection with Hong Kong or whose parent was registered outside Hong Kong on the basis of such an adoption or

(c) who were, or whose parent was, registered outside Hong Kong where the application was based (wholly or partly) on one of :

residence in Hong Kong; descent from a person born in Hong Kong; descent from a person naturalised, registered or settled in Hong Kong; or marriage to a person who was a British Dependent Territories citizen by virtue a connection with Hong Kong or would have been so but for death or renunciation of citizenship or Crown; Crown service under the government of Hong Kong; birth, naturalisation or registration in Hong Kong where citizenship has been renounced and subsequently resumed; or

(d) at the time of his birth his father or mother was settled in Hong Kong; or

(e) his father or mother was born to a parent who at the time of the birth was a citizen of the United Kingdom and Colonies by virtue of a connection with Hong Kong as specified in this Article; or

(f) a woman married before 1st January 1983 to a British Dependent Territories citizen by virtue of having a connection with Hong Kong or a man who would have been such a citizen but for death.

It would appear that the use of the phrase ‘but for his or her death’ in this amendment extends the range of people who can benefit from the provision beyond those specified in the statutory instrument, under which only people in certain categories could benefit from a relationship or ‘a connection’ with a person who had died.

97 Insert the following new Clause—

"British citizenship: registration of certain persons without other citizenship

In section 4B of the British Nationality Act 1981 (c. 61) (acquisition by registration: certain persons without other citizenship) omit subsection (2)(b) and (c)."

Purpose

Purpose

To *probe* the way in which the Secretary of State is using the requirements to prove a negative in section 4B of the British Nationality Act 1981 to deny the *de facto* stateless British Citizenship.

Briefing

ILPA has prepared a separate briefing to this amendment.

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

98 Insert the following new Clause—

"Acquisition by registration: British nationals

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

"4BA Acquisition by registration: British nationals

- (1) This section applies to a person who has the status of—
 - (a) a British Overseas Citizen,
 - (b) a British subject under this Act,
 - (c) a British Protected Person,
 - (d) a British National (Overseas).
- (2) A person to whom this section applies shall be entitled to register as a British citizen if he applies for registration under this section."

Purpose

To provide for all British nationals to register by entitlement as British citizens. The amendment provides an opportunity for parliament to debate the Lord Goldsmith's review and to review the provisions of this Bill in that context.

Briefing

ILPA has prepared a separate briefing to this amendment.

LORD AVEBURY
LORD ROBERTS OF LLANDUDNO

99 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 is preparing a separate briefing to this amendment

100 Insert the following new Clause—

"Acquisition by birth or adoption: British nationals

- (1) The British Nationality Act 1981 (c. 61) is amended as follows.
- (2) In section 1(1), omit the words "on or after the appointed day".
- (3) In section 1(1), after paragraph (b) insert—
 - "(c) a British Overseas Citizen,
 - (d) a British subject under this Act,
 - (e) a British Protected Person,
 - (f) a British National (Overseas)."

Purpose

The purpose of the amendment effected by the first paragraph is to ensure that those born in a qualifying territory are British citizens whether born before or after the appointed day (21 May 2002 see the British Overseas Territories act 2002 Section 8 and see SI 2002/1252 (C.34)).

The purpose of the amendment effected by the second paragraph is to 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 other than British citizens born in the UK or a qualifying territory are British Citizens.

Briefing

ILPA is preparing a separate briefing to this amendment.

101 Insert the following new Clause—

"Acquisition by registration: minors (No. 2)

- (1) Section 3 of the British Nationality Act 1981 (c. 61) (acquisition by registration: minors) is amended as follows.
- (2) In subsection (5)(b), omit the words "and his father and mother".
- (3) In subsection (5)(b), omit the words ", in the case of each of them,".

Purpose

To ensure that children born outside the UK to British Citizens by descent who live in the United Kingdom or a qualifying territory while still children are permitted to register as British if they have lived in the United Kingdom or a qualifying territory for three years and their absences do not exceed 270 days, regardless of whether the parents have lived in the United Kingdom for three years and regardless of the absences of the parents.

Briefing

ILPA has prepared a briefing to this amendment.

Clause 42

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

- 102** Page 34, line 28, leave out from beginning to end of line 8 on page 35 and insert—
"(1) Section 2 of the British Nationality Act 1981 (c. 61) (acquisition by descent) is amended as follows.
(2) In subsection (1)(c) after "Communities" insert "; or
(d) is a member of the armed forces."
103 Page 34, line 31, leave out "on or after the relevant day"
104 Page 35, leave out lines 6 to 8

Purpose

To *probe* why children born to serving members of the armed forces shall not be British Citizens by birth rather than, as Clause 40 currently proposes, should have to register to become British.

Briefing

ILPA has prepared a briefing to Clauses 40 and 42 which addresses this amendment

Clause 43

LORD AVEBURY

LORD THOMAS OF GRESFORD

- 105** Page 35, line 29, leave out subsection (2)

Purpose

To remove from Hong Kong War Wives and Widows from the list of those who must satisfy a good character requirement to register as British. An opportunity to probe the use of the good character requirement more generally.

Briefing

ILPA has prepared a briefing to this amendment

Clause 44

LORD WEST OF SPITHEAD

- 106** Page 37, line 10, at end insert—
"(ca) does not have a qualifying CTA entitlement;"
107 Page 37, line 21, at end insert—
"() For the purposes of subsection (4)(ca), a person has a qualifying CTA

entitlement if the person—

- (a) is a citizen of the Republic of Ireland,
- (b) last arrived in the United Kingdom on a local journey (within the meaning of the Immigration Act 1971) from the Republic of Ireland, and
- (c) on that arrival, was a citizen of the Republic of Ireland and was entitled to enter without leave by virtue of section 1(3) of the Immigration Act 1971 (entry from the common travel area)."

Presumed Purpose

Amends the definition of being in breach of the Immigration Rules to provide that a person with a Common Travel Area entitlement shall not be treated as being in breach for the purposes of naturalisation.

Briefing

This amendment appears to provide that those with a Common Travel Area entitlement shall not be treated as being in breach of the immigration rules in the circumstances as defined.

A local journey is defined in section 11 of the Immigration Act 1971 as a journey that begins and ends in the Common Travel Area and is not made by a ship or aircraft which began its voyage to the United Kingdom from, or called at, a place not in the Common Travel Area, or if travelling from the United Kingdom, is due to end its voyage in or calls in the course of its voyage at, a place not in the Common Travel Area.

Peers might want to probe the circumstances in which a citizen of the Republic of Ireland, being a citizen of the European Union, would be in the UK in breach of the Immigration rules. The circumstance that springs to mind would be if the person were present in the UK in breach of a deportation order. But are there any circumstances in which a person in breach of a deportation order would have a Common Travel Area entitlement?. We are struggling to understand the target of this amendment.

Clause 45

LORD WEST OF SPITHEAD

108 Page 39, line 2, at end insert—

"() A person has a qualifying CTA entitlement if the person—

- (a) is a citizen of the Republic of Ireland,
- (b) last arrived in the United Kingdom on a local journey (within the meaning of the Immigration Act 1971) from the Republic of Ireland, and
- (c) on that arrival, was a citizen of the Republic of Ireland and was entitled to enter without leave by virtue of section 1(3) of the Immigration Act 1971 (entry from the common travel area)."

Presumed Purpose

Defines a qualifying Common Travel Area entitlement, that is to say a Common Travel Area entitlement that will count toward the qualifying period for naturalisation.
(read with amendment 60)

Briefing

We urge peers to probe this amendment. At first sight it appears to produce a most anomalous result, so anomalous that we are inclined to think that we have misread it.

A local journey is defined in section 11 of the Immigration Act 1971 as a journey that begins and ends in the Common Travel Area and is not made by a ship or aircraft which began its voyage to the United Kingdom from, or called at, a place not in the Common Travel Area, or if travelling from the United Kingdom, is due to end its voyage in or calls in the course of its voyage at, a place not in the Common Travel Area.

Thus at first sight it looks as though a Common Travel Area entitlement will only count toward the qualifying period for naturalisation if a person never leaves the Common Travel from the UK and only travels on ships or aircraft that are making journeys as described in Clause 11. Under Clause 37 a person must have qualifying leave for the whole of the qualifying period. Thus it would appear that if a citizen of the Republic of Ireland travels from London to Paris for the weekend on the Eurostar, they will have to start the qualifying period for naturalisation (insofar as this is based upon their Common Travel Area entitlement) all over again.

For further information, please get in touch with Steve Symonds, Steve.Symonds@ilpa.org.uk or Alison Harvey, Alison.Harvey@ilpa.org.uk, 0207 251 8383.