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The Nationality, Immigration and Asylum Bill: Nationality and Citizenship

Bill 119 of 2001/02

The *Nationality, Immigration and Asylum Bill* was introduced in the House of Commons on 12 April 2002. It is to be debated on second reading on 24 April 2002. The Bill will implement the proposals for nationality, immigration and asylum reform contained in the Government's White Paper *Secure Borders, Safe Haven*.

This Research Paper considers Part 1 of the Bill, which is concerned with nationality and citizenship. The remaining parts of the Bill that deal with immigration and asylum are discussed in Library Research Paper RP 02/26

The provisions of Part 1 are summarised and compared with the current law. Where relevant, the policy context set out in the White Paper is discussed. Some of the reactions to the more controversial aspects of the White Paper are also considered.

Madeleine Shaw

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Summary of main points

The *Nationality, Immigration and Asylum Bill* will implement the Government's proposals for reform contained in the White Paper, *Secure Borders, Safe Haven*. This Research Paper examines the provisions in Part 1 of the Bill that relate to nationality and citizenship. The provisions are compared with the current law. Where appropriate, the policy behind the Bill, as contained in the White Paper, is examined. Some reactions to the proposals are also considered.

The *Nationality, Immigration and Asylum Bill* will update the requirements for those who wish to acquire British citizenship through naturalisation. Applicants will have to demonstrate that they have sufficient knowledge about life in the UK. This is in addition to the existing requirement for applicants to show that they have sufficient knowledge of English, Welsh or Scottish Gaelic. Under the Bill, the language requirement will be extended to include spouses of British citizens who wish to naturalise. The Bill will give the Secretary of State the power to make regulations to determine whether the requirements have been met. This might be, for example, through attendance on a specified course.

The introduction of the new citizenship requirements is a controversial issue. Some of the recent debate on the matter is set out in this Research Paper. The citizenship requirements of some other countries are briefly compared.

The *Nationality, Immigration and Asylum Bill* will introduce citizenship ceremonies. At these ceremonies, those who wish to become British citizens will have to swear a new citizenship oath and pledge.

The Bill will update the current procedures for depriving a person of his citizenship. Many of the amendments contained in the Bill are designed to bring UK law into line with the European Convention on Nationality, which the UK is expected to ratify in due course.¹ The Bill will also remove the measures in the current legislation that exempt the Secretary of State from giving reasons for nationality decisions, and prevent such decisions from being reviewed by the courts.

Miscellaneous other amendments to the nationality legislation contained in the *Nationality Immigration and Asylum Bill* are explained by this Research Paper. These amendments are also required to enable the UK to ratify the European Convention on Nationality. The views of some interested parties as to what should be included in the nationality provisions of the Bill (but currently are not) are discussed. Finally the financial implications of the changes to the nationality laws are set out.

¹ ETS 166 available online from:
<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=166&CM=3&DF=26/03/02>
For further discussion please see below

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I Overview of the *Nationality, Immigration and Asylum Bill*

On 29 October 2001 the Home Secretary made a statement in the House of Commons announcing a package of measures to reform nationality, immigration and asylum law.² This was followed by the publication of the Government's policy in the White Paper, *Secure Borders Safe Haven: Integration with Diversity in Modern Britain*, on 7th February 2002.³

The *Nationality, Immigration and Asylum Bill* was introduced in the House of Commons on 12 April 2002 to implement the proposals in the White Paper.⁴

Explanatory Notes to the Bill are published separately by the Home Office.⁵

Almost all of the Bill will apply to the whole of the UK. **Clauses 113** and **114** (regarding the offence of trafficking in prostitution) will not apply to Scotland. Provisions of the Bill that amend or repeal a previous Act will apply to the extent of the amended or repealed provision.

The Home Secretary has stated that, in his view, the provisions of the *Nationality, Immigration and Asylum Bill* are compatible with the rights contained in the European Convention on Human Rights.⁶

The Bill is in eight parts.

Part 1 is concerned with nationality. It will amend the current British nationality legislation. The provisions include controversial changes to the requirements for those who wish to naturalise as a British citizen.

Part 2 will implement the Government's plans to house and support asylum seekers in purpose built accommodation centres.

Part 3 will make further changes to the current system of support for asylum seekers. The changes are mostly incidental to the introduction of purpose built accommodation centres

² HC Deb 29th October 2002 Col 627

³ Cm 5387. Available on-line at:
www.official-documents.co.uk/document/cm53/5387/cm5387.htm

⁴ The Bill is available online at:
www.publications.parliament.uk/pa/cm200102/cmbills/119/2002119.htm

⁵ Bill 119-EN These are available at:
www.publications.parliament.uk/pa/cm200102/cmbills/119/en/02119x--.htm

⁶ In compliance with section 19(1)(a) of the *Human Rights Act 1998*

Part 4 contains provisions for the detention, temporary release and removal of asylum seekers.

Part 5 is concerned with reforming the current system for immigration and asylum appeals.

Part 6 will introduce changes to current immigration procedure. Notably, charges for work permits will be introduced. Provision is made for the disclosure of information, connected with immigration offences, from public and private bodies.

Part 7 will introduce new immigration offences. It will provide a constable or immigration officer with the power to enter and search any business premises for the purpose of arresting a person who has committed a specified immigration offence.

Part 8 contains general provisions that deal with the commencement, extent and interpretation of the Bill.

This Research Paper analyses the nationality provisions that are contained in Part 1 of the Bill. The remaining parts of the Bill that deal with immigration and asylum are discussed in a separate Library Research Paper RP 02/26

The analysis examines the background to the provisions, and the policy put forward by the White Paper where appropriate. Some reactions to the issues raised are discussed in the course of this paper as they arise in relation to the different aspects of the Bill. Finally, some suggestions by interested parties as to what they think is missing from Part 1 of the Bill are considered

II Part 1 of the *Nationality, Immigration and Asylum Bill*

A. Introduction

The *Nationality, Immigration and Asylum Bill* will reform current nationality law, principally the *British Nationality Act 1981*.

The Bill will make changes to the current system of naturalisation by which a person may acquire British citizenship. The more contentious of the Bill's provisions will require a person to have a knowledge of life in the UK before they can become a British citizen. This will be in addition to the existing requirements.⁷ The Bill contains the power to make regulations to determine whether a person has sufficient knowledge of English, Welsh or Scottish Gaelic, and sufficient knowledge about life in the UK. The Bill will introduce a citizenship ceremony, and will update the current oath of allegiance. The

⁷ The existing requirements are contained in Schedule 1 of the *British Nationality Act 1981*

grounds for deprivation of citizenship will be amended, and a new right of appeal for deprivation will be introduced.

The Bill will effectively prohibit those who make decisions under the various nationality Acts from discriminating on the grounds of nationality, ethnic or national origin. The Bill will remove an exemption in the current nationality legislation so that reasons may be required for nationality decisions. It will also extend the courts' power to review nationality decisions. The Bill will enable the procedure for applying for a certificate of entitlement to the right of abode in the UK to be regulated.

A number of these amendments are necessary to enable the UK to comply with the provisions of the European Convention on Nationality which it is expected to ratify in due course. The UK has had a key role in drafting the Convention which is designed to introduce some measure of harmonisation between the nationality laws of the different States. The Convention will establish common rules and principles relating to nationality, multiple nationality and statelessness.

The different aspects of Part 1 of the Bill are considered below under the following headings:

- Citizenship requirements
- Citizenship ceremonies
- Deprivation of citizenship
- Decision making in nationality cases
- Miscellaneous provisions
- Additional reactions regarding what the Bill should contain
- Financial effects of the Bill

B. Citizenship Requirements

1. The Current Law

There is no general requirement within the current immigration rules that people applying to come to the UK on a **temporary** basis should be able to speak English or any other of the languages of the United Kingdom. One exception arises when fluency in English is a prerequisite for a particular job under a work permit.⁸ There is similarly no general requirement on those people who want to **settle** in the UK to be able to speak English. Settlement is when a person chooses to live permanently in the UK, and has been granted indefinite leave to remain by the immigration authorities.

⁸ An obvious example would be teaching English.

However, there is a language requirement for a person who wants to become a British citizen. The *British Nationality Act 1981* states that, for the granting of British **nationality**, the applicant should have sufficient knowledge of English, Welsh or Scottish Gaelic.⁹ Guidance on what amounts to sufficient knowledge of a UK language can be found on the web-site of the Immigration Nationality Directorate.¹⁰ This states that the applicant does not have to speak the language fluently. Rather, applicants must speak one of these languages well enough to cope with everyday situations. The Home Secretary may waive the language requirement if the applicant is old, or physically or mentally disabled. The language requirement is not applied to those who are seeking naturalisation on the basis of their marriage to a British citizen.¹¹

Other requirements for those seeking to naturalise as a British citizen can be found in Schedule 1 of the *British Nationality Act 1981*. They include, for example, the requirement for an applicant to be of good character and to make the UK his¹² principle home. However, there is no requirement in the current law for an applicant to undertake citizenship classes.

2. Requirements for citizenship in other countries

Except where otherwise indicated, these summaries have been prepared from information provided by the relevant parliamentary library in each of the countries and from the White Paper.

a. Australia

Historically, free English tuition has been provided to migrants to Australia as part of a range of settlement services. These services have intended to integrate new arrivals into the community as quickly as possible. A less publicised aim has been to maintain public support for the migration intakes.

English language tuition for adults is through the Commonwealth's Adult Migrant English Program (AMEP). The Child Migrant English Program is delivered through the school system. Both programmes have been available to migrants and their children for over 50 years, and were, until recently, free of charge. Originally, attendance was not compulsory. Around two million people are estimated to have participated in the Government-provided English language classes.

⁹ Schedule 1 Paragraph 1(1)(c)

¹⁰ *BN7: Information About Naturalisation As A British Citizen*: Home Office – available on Home Office web-site at www.ind.homeoffice.gov.uk/default.asp?PageId=151

¹¹ *Ibid.* Part B

¹² For the purposes of this Paper, the pronoun “he” will be used to refer to the third person singular rather than the “he or she” or “they” formula. This formula is preferred in the interests of clarity, and it is hoped that no offence is caused.

Thus the provision of English language tuition has always been seen as part and parcel of running an immigration program in Australia. A highly specialised workforce developed who had English as their second language. In addition, flexible learning arrangements, including self and distance learning, and home tuition, became available over the years. Currently about \$120 million is allocated each year through the Department of Immigration and Multicultural Affairs for the AMEP, which delivers basic English. Higher level (professional) English and school level English arrangements are administered and funded through other departments.

After the 1970s, the rationale for the immigration programme shifted. Large intakes of unskilled migrants for expanding Australia's manufacturing industries and 'nation-building' were no longer widely perceived to be needed. There was an increasing emphasis on skilled migration for economic purposes, along with social and humanitarian reasons. In the 1980s, changes were made so that English became a requirement for entry, rather than the central feature of post-arrival settlement assistance. English language skills have been progressively included in the points test for skilled or independent migrants since the early 1980s.

Today, vocational level English language skills are a basic or mandatory requirement for independent or skilled migration to Australia. There are exceptions, notably in the case of (the relatively few) people willing to settle in non-urban areas which are suffering economic and population decline. Or in the case of business migrants who are investing significant amounts of money in Australia. Family members accompanying principal migrants, or family migrants sponsored by citizens or permanent residents, do not have to speak English as a requirement of entering Australia.

Since the early 1990s, English tuition has not been free of charge for everyone. Some categories of immigrants (business migrants, and independent or skilled migrants and their spouses) are now required to pay for some or all of the costs of their English tuition. Prospective migrants are tested overseas (using the Australian Assessment of Communicative English Skills test). Those who are assessed as not having 'functional English' must pay a fee for tuition as part of their visa charges. Humanitarian and refugee entrants and people who enter under the sponsored family migration stream are not required to pay anything.

Those who pay, and those who are not required to pay, are eligible for 510 hours of English language tuition through the AMEP. This is the average number of hours required to achieve functional proficiency. Humanitarian and refugee entrants are eligible for an extra 100 hours of free English tuition. The entitlement must be taken up within one year of entering Australia, and completed within 5 years.

b. Austria

Under the relevant provisions of the *Foreigners Act* ("Fremdengesetz") there is no legal obligation for those who wish to settle in Austria to learn German. There is similarly no obligation for husbands and wives, or under age children, joining settled spouses or

parents to learn German. However, section 10a of the *Nationality Act* (“Staatsbürgerschaftsgesetz”) lays down that sufficient knowledge of the German language is a prerequisite for any naturalisation.

Although these are the legal regulations in force, there are political discussions in Austria about the extent to which immigrants should be encouraged or expected to learn German.

c. Belgium

In federal Belgium, the 3 language community Governments are responsible for the immigration policy.

In the Flemish Community, there is no written text that requires immigrants to learn Dutch. However, there exists a practice by which an immigrant and the town's authorities agree a contract between them. The contract is agreed to enable the immigrant to become a member of the local community. At local (town) level, to register as a resident, the immigrant must undertake a social orientation course, a course of Dutch language, and a job training course. All the courses are free of charge.

Currently, there is a blue-print decree which would regulate this practice. Initially this would be on a trial basis for new immigrants. In this trial phase, this projected decree would not compel the immigrants to learn Dutch. Later, learning Dutch is expected to become an obligation.

In the French-speaking community, there is no decree requiring immigrants to learn French.

d. Denmark

In August 2001, the Danish People's Party controversially placed a newspaper advertisement drawing attention to the number of immigrants granted Danish nationality and listing their names. Part of the Danish People's Party's complaint was the number of these new citizens who could not speak Danish:¹³

[...]

The episode has provoked a fierce debate about freedom of speech in Denmark.

[...]

The DPP is supported by about 12% of Denmark's 5.3m population and is widely expected to prop up the minority Liberal-Conservative government in the

¹³ *Uproar As Danish Far Right Lists Immigrants Given Citizenship* The Guardian 22 August 2001

forthcoming general election. The party, which has 13 MPs in the Folketing (parliament), advocates the repatriation of refugees to their countries of origin.

It says that only small numbers should be accepted provisionally, but it insists that it is not racist. "We're colour blind in our party," its strategist, Soren Espersen, said. "The purpose of this ad was to make people understand the amount of people who get citizenship.

"When you look at this page it looks overwhelming. More than 40,000 people have been granted citizenship in the last three years, which is a lot for a country of this size. We've never had these amounts of people before, we've never had ghettos in Copenhagen and we've never had so many people living here who can't speak Danish. We find that very disturbing.

"Sixty or seventy per cent of the people on this list originally arrived as refugees, but once they get Danish citizenship they'll be able to vote and join the army and the police, and we find that very disturbing, too."

He said the citizenship requirements were too lax and took no account of criminal activity or Danish language skills.

Lars Kjolbye, international secretary of the Conservative People's party, condemned the advert.

[...]

e. Finland

Immigrants to Finland – whether they are applicants for residence permits, refugees or asylum seekers - are not required to speak Finnish or Swedish, the nation's official languages. However, immigrants who are unemployed may seek assistance to help them to integrate into the community. This assistance includes the preparation of a plan in co-operation with municipal officials and the local employment office. Such a plan may include instruction in Finnish or Swedish. The assistance is enabled by the *Act on the Settlement of Immigrants and Reception of Asylum Seekers* (493/1999).

Immigrants applying for Finnish citizenship must demonstrate proficiency in Finnish or Swedish. In practice this means that they must speak the language well enough to get along in everyday situations. They do not need to demonstrate written language skills.

f. Germany

In Germany the question over whether immigrants should be required to learn German is also controversial.

Under German law, immigrants arriving in Germany are not required to demonstrate proficiency in the country's language. However, if they are not proficient in German on arrival, they are encouraged to learn the language. For attainment of a permanent

residence permit ('unbefristete Aufenthaltserlaubnis') they must be able to make themselves understood in German.¹⁴

g. Netherlands

Information about asylum and immigration policy in the Netherlands is available on the Ministry of Justice web-site.¹⁵ Also on the web-site is a report (dated 1997) of a speech in which the Secretary of State drew attention to the difficulty of assimilating people who did not speak the language.¹⁶

h. Spain

There are no language requirements for migrants in Spain.

i. Sweden

Immigrants in Sweden do not have to be proficient in Swedish when they arrive in the country. While waiting for a decision on their cases, adult asylum-seekers are required to take part in a Swedish language course. Those who fail to take part without good reason risk having their daily benefit reduced. When a person obtains a permanent Swedish residence permit, he is encouraged to take part in a language course offered to him by the municipality in which he lives. Sweden's 280 municipalities have the power to determine the law on this issue. Some of the municipalities reduce the benefits for those who fail to participate without good reason.

j. USA

According to the *Guide to Naturalization* published by the United States Immigration and Naturalization Service, applicants for American citizenship must (with some exceptions) demonstrate a basic knowledge of English and of American history and government:¹⁷

English and Civics

According to the law, applicants must demonstrate:

- "an understanding of the English language, including an ability to read, write, and speak...simple words and phrases...in ordinary usage in the English language...."

¹⁴ According to an article in the *Financial Times* in August 2001, draft legislation has been presented by Germany's interior minister Otto Schily which would include (inter alia) compulsory integration courses for new migrants. See: "German Parties Agree About Immigration Legislation" *Financial Times* 4 August 2001

¹⁵ at http://www.minjust.nl:8080/A_BELEID/THEMA/VREEMD/VREEMD.HTM

¹⁶ at http://www.minjust.nl:8080/C_ACTUAL/PERSBER/PB0159.HTM

¹⁷ *Guide to Naturalization* United States Immigration and Naturalization Service – available at <http://www.ins.gov/graphics/services/natz/insfnl.pdf>

- "a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States...."

This means that to be eligible for naturalization, you must be able to read, write, and speak basic English. You must also have a basic knowledge of U.S. History and Government (also known as "civics").

Exceptions. Certain applicants, because of age or disability, have different English and civics requirements. Age and disability exceptions are discussed below.

Age — There are three important exemptions for testing based on age:

(a) If you are over 50 and have lived in the United States as a Permanent Resident for periods totalling at least 20 years, you do not have to take the English test. You do have to take the civics test in the language of your choice;

(b) If you are over 55 and have lived in the United States as a Permanent Resident for periods totalling at least 15 years, you do not have to take the English test. You do have to take the civics test in the language of your choice;

(c) If you are over 65 and have lived in the United States as a Permanent Resident for periods totalling at least 20 years, you may also take a simpler version of the civics test in the language of your choice.

You must meet these requirements at the time you file your application. To qualify for one of these exceptions, your time as a Permanent Resident does not have to be continuous. You are eligible for the exemption as long as your total time residing in the United States (as a Permanent Resident) is at least 15 or 20 years. You may not count time when you were not a Permanent Resident.

Disability — If you have a physical or developmental disability or a mental impairment, you may be eligible for an exception to the English and civics requirements. To request an exception, you must file a "Medical Certification for Disability Exceptions" (Form N-648) with your application. If you believe you qualify, contact a licensed medical doctor or licensed clinical psychologist who will need to complete and sign your N-648.

[...]

Preparing for the Test.

Many schools and community organizations help people prepare for their citizenship test. Some of these programs are very good. However, INS does not review or approve any of these outside classes or materials.

3. The recent UK debate

In July 2001, Ann Cryer, the Labour Party Member for Keighley, suggested that people coming to the United Kingdom to join spouses here should be required to learn English.¹⁸ The *Daily Telegraph* reported that she called on the Home Secretary David Blunkett to consider imposing conditions on those people coming to Britain to take part in arranged marriages without knowledge of English. She said that the tradition of bringing partners from the Indian sub-continent contributed to a “vicious circle” of under achievement, and she described the problem as “importing poverty.”¹⁹

Mrs Cryer said: "Inter-continental marriages mean that around 50 per cent of the marriages that take place in the Asian community result in an intake of new residents who are unable to communicate in the English language. This limits participation in mainstream social and educational activities.

"I'm looking to get the support from the Asian community, more specifically from Asian parents, to consider when arranging the marriage of their child, thinking a little more about arranging a marriage with a young Muslim of UK origin. Let's improve the teaching of English as a secondary language through further education in community centres. If necessary let's put more money into it."

Ms Cryer proposed compulsory adult education as one way of tackling academic, social and economic problems affecting Asian communities in West Yorkshire.

However, some of the reported responses to Ms Cryer's proposals criticised the suggestion.²⁰

Mohammed Riaz, a Tory politician based in Bradford and an adviser to William Hague, said the idea was "one of the most ridiculous I have come across". He said the state had no right to tell people who to marry. "This would take immigration policy to extremes."

Liaqat Hussain, former president of the Bradford Council for Mosques, said Mrs Cryer's suggestions would infringe the rights of British-born Asians and would not solve any problems.

Home Office officials said it would be difficult to introduce legislation forcing an individual to learn a language. Human rights and, possibly, race relations acts could be used to mount legal challenges to any such move.

¹⁸ *Immigrants Should Be Forced To Learn English, Says Labour MP*, Daily Telegraph, 13 July 2001

¹⁹ Ibid.

²⁰ Ibid.

However, a Home Office spokesman for the Home Secretary indicated that citizenship classes were being examined as part of the process of integrating migrants to Britain.²¹

Then, in August 2001, it was reported that Ministers were considering changing the rules on citizenship to compel those seeking British nationality to learn English. According to the *Independent*, the Home Secretary said that he wanted to provoke a debate about whether immigrants seeking British nationality should be forced to learn English.²² This was part of a wider discussion about citizenship and racial integration. In a statement, the Home Secretary said that he believed understanding English played an “important and central part... in developing good community and race relations.” He observed that it improved the chances of obtaining both education and employment.²³ The Home Secretary’s comments came after racial tensions had resulted in extensive civil disturbances in some northern towns over the summer. The disturbances were reported to be due to a lack of community cohesion arising from racial divisions and social exclusion.²⁴

Opposition to the Home Secretary’s proposal was reported. The proposal was condemned by the chief executive of the Joint Council for the Welfare of Immigrants (JCWI), Habib Rahman, as “linguistic colonialism”.²⁵

The argument that being a good citizen is conditional upon fluency in English is the intellectual residue of the same racist debate brought to the fore by Enoch Powell.

Mr Rahman criticised the suggestion that immigrants with poor English were to blame for harming race relations. Claude Moraes, the former director for JCWI, now a Labour MEP, accused Ministers of returning to the racist rhetoric of the 1960s:²⁶

Most immigrants learnt English quickly without being forced to do so, he said. "This is not the major obstruction to entering the labour market. Race discrimination is," he added. "It's misleading to emphasise language and it's a throwback to the Sixties and Seventies. Compulsion sends out the wrong message."

The *Observer* suggested that the requirement to learn English would be restricted to refugees.²⁷

²¹ Ibid.

²² Blunkett ‘English for Passports Plan’ *Independent* on Sunday, 19 August 2001

²³ Ibid.

²⁴ See BBC report: *Long History of Race Rioting* at http://news.bbc.co.uk/1/hi/english/uk/newsid_1355000/1355718.stm

See also *Community Cohesion: A Report of the Independent Review Team Chaired, Ted Cantele*, Home Office December 2001 which is discussed below.

²⁵ Page 10, JCWI Bulletin, Autumn/Winter 2001

²⁶ Blunkett ‘English For Passports’ Plan *Independent* on Sunday, 19 August 2001

Then, in October 2001, press reports speculated that the forthcoming White Paper on nationality and immigration would contain proposals for citizenship classes. People wishing to be naturalised as British citizens would be required to learn English and develop an understanding of British culture.²⁸ The *Guardian* reported:

The idea has already privately sparked debate among some Labour MPs, who are concerned that such "nanny state" behaviour will undermine Britain's traditional tolerance of multicultural diversity

[...]

Mr Blunkett has said: "A political community can require new members to learn about its basic procedures and fundamental values. With citizenship on the school curriculum, it is clearly time to ensure that the same understanding is available for those seeking naturalisation in Britain.

"That is why I believe we need to educate new migrants in citizenship and help them to develop an understanding of our language, democracy and culture."

The Home Secretary believes that induction of new immigrants has been neglected for too long, with the result that it has contributed the effective segregation along ethnic lines of parts of British society. It has been exacerbated by little official integration by those who have the right to long-term residence in Britain but choose to accept neither citizenship nor dual nationality.

The debate continued following the publication of the Community Cohesion Report in December 2001.²⁹ This report was commissioned by the Home Office to investigate the summer disturbances in some northern towns. The issue of fluency in English was raised, this time in the context of its contribution to social cohesion and the ability to participate in community life. The review team advocated a national debate on the complex and contentious issues raised. In particular, they drew attention to the significance of language as, they suggested, a measure of shared nationhood.³⁰

4. The White Paper

The Home Secretary made an announcement in the House on 29 October 2001 on the Government's immigration and asylum policy. He confirmed that the White Paper would contain proposals for language and nationality requirements for those seeking naturalisation as British Citizens.³¹

²⁷ *Blunkett Reignites Asylum Row*, The Observer, 19 August 2001

²⁸ *Citizenship Classes For Immigrants*, The Guardian, 26 October 2001

²⁹ *Community Cohesion: A Report of the Independent Review Team Chaired*, Ted Cante, Home Office December 2001.

Available at: www.homeoffice.gov.uk/reu/community_cohesion.pdf

³⁰ *Ibid.* Paragraph 5.1.11, Page 19

³¹ HC Deb 29th October 2001 Col 629

Secure Borders, Safe Haven set out the Government's plans in more detail:³²

9. In an increasingly diverse world, it is vital that we strengthen both our sense of community belonging and the civic and political dimensions of British citizenship. In particular, we intend to offer language teaching and light touch education for citizenship for those making a home in the UK – with a view to a simple examination for citizenship applicants similar to that which exists in many other countries. This will strengthen the ability of new citizens to participate in society and to engage actively in our democracy. This will help people understand both their rights and their obligations as citizens of the UK, and strengthen the bonds of mutual understanding between people of diverse cultural backgrounds. It will also help to promote individuals' economic and social integration. We have no wish to see applicants fail the requirements. We want to see them meet the requirements and become British citizens. If they do fail, they can apply again whenever they wish.

Later, the White Paper offered developed the proposals:

Preparing people for citizenship

2.11 Becoming British through registration or naturalisation is – or should be – a significant life event. It can be seen as an act of commitment to Britain and an important step in the process of achieving integration into our society. Yet, in spite of this, some applicants for naturalisation do not have much practical knowledge about British life or language, possibly leaving them vulnerable and ill-equipped to take an active role in society. This can lead to social exclusion and may contribute to problems of polarisation between communities. We need to develop a sense of civic identity and shared values, and knowledge of the English language (or Welsh language or Scottish Gaelic, which are provided for in the British Nationality Act 1981), can undoubtedly support this objective.

[...]

2.14 In order to promote both the importance of an adequate command of English (or one of the recognised languages) and an understanding of British society, the Government intends to require applicants for naturalisation to demonstrate that they have achieved a certain standard. We envisage that, subject to certain limited exceptions, applicants would need to produce certificates showing that they had passed a test, if necessary after taking part in a suitable course.

2.15 Courses in English for speakers of other languages (ESOL) are already available, free of charge to many people whose command of English is non-existent or poor. At present, this includes those who have been granted indefinite leave to remain and who have been settled here for 3 years; refugees; asylum seekers receiving support; and persons with exceptional leave to remain and their

³² Executive Summary, Page 11

spouses and children. In England, funding is provided through the Learning and Skills Council but different arrangements apply in Scotland and Wales where the respective Executives are responsible for basic skills provision. People who are here in categories leading to settlement also need to be encouraged to access courses as well as those already settled here and intending to seek British citizenship.

2.16 The Government intends to reconsider the eligibility criteria in order to ensure that discrepancies are remedied. In particular, spouses who are joining their partners here ought to be able to access these courses free of charge too. We will also try to ensure that any inconsistencies in provision in different parts of the country are ironed out.

2.17 A national core curriculum for ESOL, applicable in England, was published in December. The curriculum is context-free and we plan to develop learning programmes in a specific citizenship context so that a simple programme can be followed by those who need to develop an understanding in both language and citizenship. There will be consultation with interested bodies about the content of these new learning programmes. In the case of those who already have a good command of English, Welsh or Scottish Gaelic, suitable materials will be available to provide information about British society and the rights and responsibilities of becoming a British citizen.

2.18 We envisage these requirements extending to the spouses of applicants who are married to British citizens and British Dependent or Overseas Territories citizens who are not at present subject to the language requirement. The Government is concerned that everyone should be able to take a full and active part in British society. We do not think it is sufficient simply to rely on a spouse's knowledge of the language.

Announcing these proposals in the House, The Home Secretary, David Blunkett argued that language skills were necessary to enable full participation in society:³³

I confirm that, to give new meaning and value to the acquisition of British nationality, we will introduce a number of key reforms: there will be new light-touch arrangements to ensure that those who take on nationality have the language skills and basic knowledge of our society that are needed to contribute fully; there will be ceremonies at which the confirmation of citizenship can be celebrated; and we will modernise the oath of allegiance to provide new wording to make clear the fundamental rights and duties of citizenship. That will be a citizenship pledge.

³³ HC Deb 7 February 2002 Col 1027

5. Some reactions to the White Paper's citizenship requirements

a. *The Refugee Council*

The Refugee Council is one of the leading refugee agencies in the UK. They offer direct services to refugees and asylum seekers, and are concerned with promoting refugee rights in the UK and abroad.

The Council respond to the White Paper's proposals in respect of citizenship by observing that fostering participation and a sense of belonging to the community depends on how people are treated rather than what they are taught:³⁴

People will only feel that they are able to participate meaningfully in society if they are welcomed and valued.

The Refugee Council go on to consider specifically the language and citizenship requirements. They agree that the lack of adequate knowledge of the English language can lead to social exclusion, and acts as a major barrier to education, training and employment. In their experience, refugees are very keen to learn English and to contribute by participating in the community. However, in their view, the main obstacle which refugees face in trying to learn English is not a lack of willingness. It is the lack of suitable language courses that prevents them. The Council says that more provision of English language courses is vital if people are prepared for citizenship through language training and citizenship education. This should take account of the needs of specific groups of learners to avoid exclusion. They suggest, for example, that the needs of those with caring responsibilities or those with mobility problems need to be taken into account. They point out that language classes will have to be accessible, so help with travel and childcare costs must be provided where appropriate.

The Council suggest that full integration of refugees depends on them being given the chance to learn English as soon as they arrive in the UK. This, they say, will ensure that refugees have sufficient time and opportunities to improve their comprehension, literacy and communication competence to pass a language test, and integrate into society. The Council note that, although courses for English for Speakers of Other Languages (ESOL) are available free of charge to asylum seekers and refugees, their experience and a recent report by the Audit Commission suggest that there is an acute shortage of courses available.

b. *Joint Council for the Welfare of Immigrants*

On their web-site, JCWI describe themselves as:

³⁴ Chapter 2. Refugee Council responses available online at:
www.refugeecouncil.org.uk/infocentre/asylumprops/cons_response/contents.htm

an independent national voluntary organisation, campaigning for justice and combating racism in immigration and asylum law and policy.

The JCWI doubt that the citizenship reforms proposed by the White Paper would solve the problems that led to the summer disturbances in the north:³⁵

The White Paper predicated its discussion on citizenship and nationality on a sense of failure arising from the disturbances in the summer of 2001 in Bradford, Oldham and Burnley. It refers to reports that 'signalled the need to foster and renew the fabric of our communities, and re-build a sense of common citizenship [...].' Whilst recognising these sentiments are sincerely felt, it is difficult to relate them to the specific proposals which are then set out in relation to naturalisation procedures. As we understand the position, the disturbances involved people who in the main already possessed British citizenship by virtue of their birth in the UK.

The JCWI go on to question whether imposing requirements to "prepare people for citizenship" will necessarily tackle social exclusion:³⁶

We are concerned by the tone of the discussion in the section 'Preparing people for citizenship'. It is clear to us that the issue of social exclusion does not relate in a strong way to the concept of citizenship, since there are many people who are British citizens who are excluded, and equally many non-citizens who are integrated into British society. The issues that determine exclusion are vastly more complicated than anything presented in the White Paper.

The JCWI feel that issues of what is required for citizenship should be kept separate from issues of the desirability of English language provision and other courses to familiarise immigrants with life in Britain:³⁷

If there is intrinsic value in promoting great facility in English which is measured in terms of better-paid employment, etc, then this should be pursued as an end in itself for all people settled in the UK without reference to their intentions with regard to citizenship. It would be counterproductive to coerce people into taking important decisions on enrolment on language courses; far more will be gained by leaving such issues to the voluntary will of each individual.

c. Immigration Law Practitioners' Association

ILPA is the UK's professional association of lawyers and academics practising, or concerned with, immigration, asylum and nationality law.

³⁵ Initial response available from the web-site of the JCWI at:
www.jcwi.org.uk/index.html

³⁶ Ibid.

The position of the ILPA on the citizenship requirements set out in the White Paper can be found on their web-site.³⁸ Firstly they address the question of citizenship training:

ILPA takes the view that a substantial new focus on the understanding of citizenship is incomplete without also considering a codification of the various rights and duties associated with citizenship. We refer, for example, to the Report of the Commission on Citizenship, which recommended ‘a review and codification of the law relating to the legal rights, duties and entitlements of the citizen in the United Kingdom’ (HMSO, 1990, recommendation no.10).

Later, they respond specifically to the English language requirements:³⁹

Most people want to learn English without need of coercion, but the language requirement cannot fairly be enforced, let alone extended to those applying for citizenship on the basis of three years residence and marriage if that is indeed what is intended, unless much more provision, and more flexible provision for learning is made (eg tapes, distance learning). Existing courses are often oversubscribed and funding and training for ESOL teachers needs to be improved.... The existing discretion to exempt, for example, the incapacitated and very old from the language requirement should be retained.

d. *The Local Government Association*

On their web-site, the LGA say that they:⁴⁰

...Represent all local authorities in England and Wales – a total of just under 500 comprising 34 county councils, 36 metropolitan district councils, 47 English unitary authorities, 33 London authorities, 238 shire district councils and 22 Welsh unitary authorities. The LGA also represents police authorities, through the Association of Police Authorities (APA); fire authorities and passenger transport authorities.

The LGA recognises the value of asylum seekers and new immigrants acquiring English language skills. They note, however, that the proposal has resource implications that will need to be addressed in order to ensure that there is adequate access to appropriate language classes.⁴¹

e. *The Commission for Racial Equality*

The Commission for Racial Equality is a publicly funded, non-governmental body set up under the *Race Relations Act 1976* to tackle racial discrimination and promote racial equality.

³⁷ Ibid.

³⁸ Page 2, Chapter 2, Response to the White Paper available from www.ilpa.org.uk under “Latest News”

³⁹ Page 3 Ibid.

⁴⁰ www.lga.gov.uk/about.asp?lsection=456

⁴¹ Response to the White paper. Available from www.lga.gov.uk/Briefing.asp?&lsection=0&id=SX931C-A780DA94

The Chairman of the CRE, Gurbux Singh, welcomes the planned new measures to help refugees and immigrants learn about British society and what it means to be a British citizen. He observes that the White Paper provides a real opportunity to offer full and active citizenship to new arrivals to the country. In respect of the language requirement, he says:⁴²

The Government's proposal on a test for English as a condition of naturalisation is one of the details we need to look at more carefully. I agree entirely that those who cannot speak English should be encouraged to learn the language of the land as part of the formal induction process. But, we must think about those who may have learning difficulties or are illiterate. Elderly people find it more difficult to learn languages quickly and integrate confidently into a new environment. Will the Government make exceptions for people who have these difficulties?

f. The Muslim News

On its web-site, *The Muslim News* says that it:⁴³

...provides objective news and views of Muslims in the United Kingdom. [The Muslim News] is the *only* independent monthly Muslim newspaper in the UK - it is neither backed by any country nor by any organisation or party.

The Muslim News presents an analysis of the White Paper.⁴⁴ In respect of the citizenship requirements the article observes:

The Home Office identifies a lack of common values or a shared civic identity as one of the reasons behind the disturbances of last summer. Yet it is hard to imagine anger and frustration at the lack of civic values on the streets of Bradford was the cause of the anger displayed by the White and Asian youth. It is more likely that material consideration featured higher up on their list of priorities: unemployment, lack of proper housing and racial and religious discrimination. So for the current generation of young people living in Bradford, Oldham and Burnley, this document holds out little promise. But by acting now the Government clearly thinks it can forestall similar problems in the future, perhaps by involving minority communities. Examined from such a longer term perspective, the policy proposals make more sense.

⁴² News Release, 8th February 2002, CRE web-site

www.cre.gov.uk/media/nr_arch/nr020208.html

⁴³ www.muslimnews.co.uk/index/section.php?page=about_us

⁴⁴ Issue 155, 29th March 2002 available from:

www.muslimnews.co.uk/paper/index.php?article=585

6. *The Nationality Immigration and Asylum Bill*

The *Nationality Immigration and Asylum Bill* will amend the requirements for naturalisation contained in Schedule 1 of the *British Nationality Act 1981*. **Clause 1(1)** will add the requirement for an applicant for citizenship to demonstrate “sufficient knowledge about life in the UK.”⁴⁵ **Clause 1(2)** will enable the Secretary of State to make regulations which determine whether a person has sufficient knowledge about life in the UK, and whether a person meets the existing language proficiency requirement.⁴⁶

The Bill provides how any future regulations made under **Clause 1(2)** may determine whether an applicant meets the language and “knowledge of the UK” requirements. Several possibilities are listed. The regulations may provide that eligibility is established by the possession of a specified qualification, or a kind of qualification. Attendance on a specific course, or type of course may be prescribed as sufficient. An applicant may qualify if he has attained a specified level of achievement. Alternatively, a person may be appointed to evaluate whether an applicant meets the requirements. Finally, future regulations may enable the Secretary of State to accept a person’s qualification as sufficient.⁴⁷

Clause 2(1) will extend the existing language requirement to include those who are applying for naturalisation as the spouses of a British citizen or a British overseas territories’ citizen.⁴⁸ Under the Bill, spouses will also have to comply with the “knowledge of the UK” requirement.⁴⁹

Under the Bill, it will be continue to be possible for the language requirement to be waived by the Secretary of State on grounds of age or physical or mental condition. The Bill does not specifically provide that the “knowledge of the UK” requirement can be waived by the Secretary of State on the grounds of the applicant’s age, physical or mental condition, in contrast with the language requirement.

⁴⁵ By inserting Paragraph 1(1)(ca) to the *British Nationality Act 1981*.

⁴⁶ The existing language proficiency requirement can be found in Schedule 1 Paragraph 1(1)(c) of the *British Nationality Act 1981*

⁴⁷ Clause 1(3)

Formally known as British Dependent Territories Citizens until the *British Overseas Territories Act 2002* was passed in February 2002. These are citizens of a place which is not yet independent from the UK. The remaining territories under British rule are: Anguilla, Bermuda, British Antarctica, British Indian Ocean Territory, Cayman islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St Helena, Turks and Caicos Islands, Virgin Islands, Cyprus sovereign base areas.

⁴⁹ Clause 2(2)

C. Citizenship Ceremonies

1. The Current Law

The Immigration and Nationality Directorate web-site explains the procedure for acquiring citizenship.⁵⁰ An applicant for British citizenship must complete and submit an application form with the required documents. The applicant may then be required to attend an interview to provide more details on his application. A successful applicant must swear an oath of allegiance. He is then sent a certificate of naturalisation.⁵¹ There is currently no provision for a public ceremony to mark the acquisition of citizenship, unlike other countries such as Australia, Canada and the United States.⁵²

Under current law, the oath of allegiance must be sworn by all those who seek British citizenship unless they come from a country that already has an allegiance to the Queen.⁵³ The present oath is as follows:

I, [*name*], swear by Almighty God that, on becoming a British citizen, I will be faithful and bear true allegiance to her Majesty the Queen Elizabeth the Second Her Heirs and Successors according to the law.⁵⁴

2. The White Paper

The White Paper set out its proposals under the heading “Celebrating the acquisition of citizenship.”⁵⁵ It criticised the “low key and bureaucratic approach” which the UK has traditionally adopted towards the acquisition of citizenship. It observed that, unlike most other countries, there are no arrangements for any kind of public act to mark becoming a British citizen.⁵⁶ The Paper stated that there is evidence to suggest that these ceremonies can have an important impact on promoting the value of naturalisation, and that immigrant groups welcome them.⁵⁷ It proposed that the oath should be modernised.

⁵⁰ Guide AN: Naturalisation as British Citizen: a Guide for Applicants, available on the IND web-site at: www.ind.homeoffice.gov.uk/default.asp?PageId=1196#nat5

⁵¹ Ibid.

⁵² Further information on naturalisation ceremonies in these countries can be found on the Immigration Service web-sites of the respective countries:

US at www.ins.gov/graphics/services/natz/guide.htm;

Australia at www.citizenship.gov.au/ceremonies.htm;

Canada at www.cic.gc.ca/english/citizen/index.html

⁵³ The *British Nationality Act 1981* section 42. For example, a British Overseas Territories citizen would not have to swear the oath because they already owe the Queen allegiance from their existing citizenship.

⁵⁴ Schedule V *British Nationality Act 1981*

⁵⁵ pp34 - 35 *Secure Borders Safe Haven*

⁵⁶ For example Australia, Canada, US

⁵⁷ p34

The Paper stated that the Government intends to introduce a citizenship ceremony. The precise format of the ceremony would be subject to further consultation. The Paper envisaged that the ceremonies would be conducted at Registry Offices, and other suitable places. Ceremonies may be conducted on a group or individual basis. The Paper went on to say:⁵⁸

While it would be inappropriate to ask those immediately entering the country to swear an oath, applicants for British citizenship currently swear an oath of allegiance to the Queen. We intend to modernise this oath so that it reflects a commitment to citizenship, cohesion and community. Specifically, in addition to allegiance to the Queen, it will make clear the fundamental tenets of British citizenship: that we respect human rights and freedoms, uphold democratic values, observe laws faithfully and fulfil our duties and obligations. It will be a citizenship pledge. This pledge will be at the heart of the new citizenship ceremony and will be the point at which citizenship will be conferred.

The proposed wording for the modernised citizenship pledge set out in the White Paper is:⁵⁹

I [swear by Almighty God][do solemnly and sincerely affirm] that, from this time forward, I will give my loyalty and allegiance to Her Majesty the Queen Elizabeth the Second Her Heirs and Successors and to the United Kingdom. I will respect the rights and freedoms of the United Kingdom. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British citizen.

3. Some reactions to the White Paper's citizenship ceremony proposals

a. The Refugee Council

The Refugee Council is one of the leading refugee agencies in the UK. They offer direct services to refugees and asylum seekers, and are concerned with promoting refugee rights in the UK and abroad.

In their response to the White Paper, the Refugee Council state that they welcome any initiatives to promote the inclusion of refugees into mainstream British society. They go on to comment on the proposals for citizenship ceremonies:⁶⁰

Whilst we are not opposed to the notion that acquiring citizenship is in itself to be celebrated, this will have to be backed by concrete strategies that remove the barriers to inclusion. We believe what makes people feel and act like citizens is the respect they are accorded by society. As stated earlier, how people are treated

⁵⁸ p34

⁵⁹ Annex B, *Secure Borders Safe Haven*

⁶⁰ Paragraphs 2.19 – 2.21, Response to the White Paper; available from the web-site of the Refugee Council at:

www.refugeecouncil.org.uk/infocentre/asylumprops/cons_response/contents.htm

is far more important than anything they may be taught through citizenship classes. This obviously goes much further than swearing an oath of allegiance or attending a ceremony.

b. *Joint Council for the Welfare of Immigrants*

On their web-site, JCWI describe themselves as:

an independent national voluntary organisation, campaigning for justice and combating racism in immigration and asylum law and policy.

In contrast to the Government's criticisms in the White Paper of the current "low key and bureaucratic approach" to citizenship, the JCWI feel that many of the positive aspects of the current informal system for naturalisation have been overlooked.⁶¹

It is probable that current procedures, with their lack of formality and generally pragmatic approach, are likely to be more attractive to immigrants with a strong orientation towards integration precisely because they are so much less formidable and threatening than the ritualistic and symbolically charged procedures favoured in continental Europe and the Americas. We are concerned that ill thought out changes to the system intended to instil Jacobin-style patriotic values will simply deter people from applying for citizenship without undermining their commitment to maintaining their lives in the UK. If this happens there will be no net gain for citizenship, but rather a sharper polarisation between those who have been awarded the citizen's badge of honour, and those who have abstained from the process.

c. *The Immigration Law Practitioners' Association*

ILPA is the UK's professional association of lawyers and academics practising, or concerned with, immigration, asylum and nationality law.

In response to the White Paper proposals in respect of citizenship ceremonies, ILPA observe:⁶²

[We] welcome the proposal to update the wording of the oath of allegiance.

d. *Liberty*

Liberty is an independent human rights organisation which campaigns to defend and extend rights and freedoms in England and Wales.

⁶¹ Response to the White Paper available from <http://www.jcwi.org.uk/whitepaper/jcwiresponse.html>

⁶² Page 2, Chapter 2; available from www.ilpa.org.uk under "Latest News"

Liberty welcomes the new citizenship pledge as a commitment to fundamental rights and freedoms.⁶³

e. Commission for Racial Equality

The Commission for Racial Equality is a publicly funded, non-governmental body set up under the *Race Relations Act 1976* to tackle racial discrimination and promote racial equality.

The Chairman of the CRE, Gurbux Singh, says in his response to the White Paper:⁶⁴

Any oath of allegiance or citizenship ceremony should be used to welcome new citizens into our society. In addition, central and local Government must do more to ensure local communities welcome these people on the ground and are prepared to accept newcomers.

4. The Nationality Immigration and Asylum Bill

Clause 3 and **Schedule 1** make provision for the introduction of citizenship ceremonies. The current oath of allegiance will be renamed the citizenship oath. A new citizenship pledge will be introduced.

Paragraph 1 Schedule 1 will substitute a new section 42 of the *British Nationality Act 1981*. Under this provision, an adult who wishes to naturalise or register as a British Citizen will have to make a citizenship oath and pledge at a citizenship ceremony. An adult who wishes to naturalise or register as a British overseas territories citizen, will have to make the citizenship oath or pledge, although the provisions do not specify that this shall be at a ceremony. Finally, an adult who wishes to register as a British overseas citizens or British subject will have to make the citizenship oath, but not the pledge. There will be no requirement for this to be at a ceremony. The Secretary of State will have the discretion to waive these requirements in special circumstances. Applicants will not be registered or naturalised unless they pay the appropriate fee.⁶⁵

Under the Bill, a person who is registered or naturalised as any type of British citizen or subject will become that citizen or subject immediately upon making the citizenship oath and pledge (where the pledge is required). Where the requirement to make the oath or pledge has been waived, the person will become a citizen or subject upon registration, or on the grant of the naturalisation certificate.

⁶³ Paragraph 6, Initial Response to the White Paper available from:
www.liberty-human-rights.org.uk/mpress103.html

⁶⁴ News Release, CRE web-site 8th February 2002
www.cre.gov.uk/media/nr_arch/nr020208.html

⁶⁵ Schedule 1(1) inserts a new section 42A into the *British Nationality Act 1981*

Paragraph 2 Schedule 1 contains the wording of the citizenship oath and pledge which will replace the existing Schedule 5 of the *British Nationality Act 1981*. The form of the citizenship oath for registration or naturalisation as a British citizen will be:

I, [name], swear by Almighty God that, on becoming a British citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the second, her Heir and Successors according to law.

As such the citizenship oath will retain the wording of the existing oath of allegiance.

The wording for the citizenship pledge will be:

I will give my loyalty to the United Kingdom and respect its rights and freedoms.
I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British citizen.

This is almost identical to the wording suggested by the White Paper.⁶⁶

The Bill sets out the wording for the citizenship oaths and pledges for those who wish to register or naturalise as one of the other categories of British citizen, or as a British subject. The wording is identical to the oath and pledge above except that the name of the appropriate type of citizenship and/or territory is substituted where necessary.

The Bill will provide the power for the Secretary of State to make regulations in respect of the citizenship ceremony, and the oath and pledge.⁶⁷ This will supplement the wide powers to make regulations that currently exist under the *British Nationality Act 1981*.⁶⁸ The regulations may dictate time limits within which the ceremony must take place, or within which the oath and pledge (where required) must be made. The regulations may specify the content and conduct of the ceremony, and how the making of the oath or pledge will be administered. How an oath or pledge is to be recorded and certified may also be provided for.

The Bill provides the power for the Secretary of State to appoint a person to exercise functions in connection with citizenship ceremonies, or the oath and pledge. These functions may include the exercise of discretion by the designated person. In addition, local authorities may be required to provide facilities for the ceremonies. The regulations may impose a statutory duty on local authorities or registrars to carry out specified functions in respect of the ceremonies.⁶⁹ Again, these functions may involve the exercise of discretion by the authority or the registrar.⁷⁰ The definition of local authorities and

⁶⁶ Annex B, *Secure Borders Safe Haven*. Set out in this Research Paper above at page 27

⁶⁷ Schedule 1(3) and (4) substitute a new s41(1)(d) in the *British Nationality Act 1981*

⁶⁸ Section 41 *British Nationality Act 1981*

⁶⁹ Schedule 1(7) and (9)

⁷⁰ Schedule 1(7) inserts a new section 41(3A) into the *British Nationality Act 1981*

registrars is set out in the Bill.⁷¹ The Secretary of State will have the power under the Bill to reimburse the local authority for the cost of carrying out these functions.⁷² The local authority will be able to provide facilities beyond the minimum required by any new statutory duty under future regulations.⁷³ If the authority does make further provision over and above the minimum requirements, the authority will be able to charge applicants for the provision of additional facilities, to cover their cost.⁷⁴

D. Deprivation of Citizenship

1. The Current Law

There is a power to deprive a person of their citizenship in the *British Nationality Act 1981*. By section 40 of that Act, the Secretary of State may order a citizen to be deprived of their citizenship.⁷⁵ This applies to those who became British citizens through a process of naturalisation or registration. The Secretary of State may make such an order if he is satisfied that the registration or naturalisation was obtained by fraud, false representation or the concealment of any material fact. The Secretary of State also has the power to withdraw the citizenship of certain citizens if he is satisfied that the citizen has:⁷⁶

- shown himself to be disloyal or disaffected to the Queen;
- unlawfully communicated or traded with an enemy during wartime or engaged or associated with a business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or
- within the period of five years from the date of registration or naturalisation, been sentenced to a term of imprisonment in any country exceeding twelve months.

The section goes on to provide that the Secretary of State shall not withdraw citizenship unless he is satisfied it is conducive to the public good.⁷⁷ Furthermore, a person cannot be deprived of his citizenship on the ground that he has been sentenced to a term of imprisonment if that would mean the person became stateless.⁷⁸ Before making a deprivation order, the Secretary of State must give the person concerned notice in writing informing him of the grounds for the proposed order.⁷⁹ That person then has the right to an inquiry into the matter.⁸⁰ The last time that the power to deprive a person of citizenship was used was in 1973 (under a similar power contained in the previous Act).⁸¹

⁷¹ Schedule 1(7) inserts a new section 41(3B) into the *British Nationality Act 1981*

⁷² Schedule 1(8)

⁷³ Schedule 1(9)(2)(a)

⁷⁴ Schedule 9(2)(b)

⁷⁵ Section 40 is to be read together with the *British Citizenship (Deprivation) Rules 1982* SI 1982/988

⁷⁶ Section 40(3)

⁷⁷ Section 40(5)(a)

⁷⁸ Section 40(5)(b)

⁷⁹ Section 40(6)

⁸⁰ Section 40(7)

⁸¹ *Safe Haven, Secure Borders* p35

It has been suggested⁸² that the current statutory deprivation power is partially at odds with the European Convention of Nationality 1997.⁸³ The UK was a principal party involved in drafting the Convention, and is expected to sign and ratify it in due course. The Convention is designed to introduce some measure of harmonisation between the nationality laws of the different States by establishing rules and principles relating to nationality, multiple nationality and statelessness. Article 7 of the Convention provides that the loss of nationality on the initiative of the State may not occur except in certain specified circumstances. Deprivation following a prison sentence of not less than twelve months (as provided for by the current UK law) is not one of the specified circumstances under the Convention.

It is likely that the UK will ratify the Convention, with some minor reservations, within 2 years.⁸⁴ Many of the amendments contained in the *Nationality Immigration and Asylum Bill* are designed to bring UK law in line with the requirements of the Convention.⁸⁵

2. The White Paper

In *Safe Haven, Secure Borders* the Government stated its intention to update the current deprivation procedure.⁸⁶ The Paper noted that such deprivation will be a rare event, but one which may be appropriate in certain circumstances. Such circumstances might include, in particular, those cases when a person has been granted British citizenship while concealing past involvement in terrorism or war crimes. The Government recognised that it would not always be possible to remove such individuals.⁸⁷ However, it stated that the deprivation action would mark the UK's abhorrence of the crimes and make it clear that the UK does not want individuals who have been involved in such activities as citizens. The deprivation procedure would also enable the UK to withdraw protection provided to British citizens abroad, and representation by the Diplomatic Service.

⁸² Page 234, Fransman's British Nationality Law (1998) Butterworths London

⁸³ ETS 166 available online from:

<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=166&CM=3&DF=26/03/02>

⁸⁴ Telephone call to Home Office source, 16th April 2002

⁸⁵ Ibid.

⁸⁶ Page 35

⁸⁷ For example if removal was contrary to the UK's obligations under the European Convention on Human Rights.

3. Reactions to the White Paper’s proposals for deprivation

Immigration Law Practitioners’ Association

ILPA is the UK’s professional association of lawyers and academics practising, or concerned with, immigration, asylum and nationality law.

In their response to the deprivation proposals in the White Paper, ILPA “note with regret” the intention to update, rather than repeal the current deprivation provisions, even though they have not been used since 1973. They state that the current deprivation procedure is already wide enough. ILPA welcome, however, the intention to “ensure the arrangements contain appropriate safeguards.” They hope that they will be consulted on the content of any Deprivation Rules in due course.⁸⁸

4. The *Nationality Immigration and Asylum Bill*

Clause 4 of the *Nationality Immigration and Asylum Bill* will substitute a new section 40 of the *British Nationality Act 1981*.⁸⁹ This will bring the grounds for deprivation into line with those set out in the European Convention on Nationality.⁹⁰

a. Who may be subject to a deprivation order

The new section starts with a comprehensive list of all the types of British citizenship that may be subject to the deprivation procedure. These are:

- (a) a British citizen
- (b) a British overseas territories citizen
- (c) a British overseas citizen
- (d) a British National (overseas)
- (e) a British protected person
- (f) a British subject

b. Grounds for deprivation

The Bill will enable the Secretary of State to deprive a person of their citizenship status if he thinks that the person has done anything seriously prejudicial to the vital interests of the United Kingdom or a British overseas territory.⁹¹ However, a person may not be deprived of citizenship status if it would make him stateless.⁹²

⁸⁸ Page 3, Chapter 2, Response to the White Paper; available from www.ilpa.org.uk under “Latest News.”

⁸⁹ Clause 4

⁹⁰ The Convention is discussed above at page 32

ETS 166 available online from:

<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=166&CM=3&DF=26/03/02>

⁹¹ By the substituted section 40(2) of the *British Nationality Act 1981* inserted by Clause 4

⁹² By the substituted section 40(4) of the *British Nationality Act 1981* inserted by Clause 4

Unlike the existing section 40, the new power to deprive a person of citizenship will not be restricted by the wording of the Bill to those who have acquired their citizenship status through registration or naturalisation. Thus, it appears that citizens by birth or descent may also be deprived of their citizenship under this clause. It should be noted, however, that the deprivation of citizenship from, for example, a British born citizen who doesn't have dual nationality will be limited by the requirement that the person cannot be made stateless.

Clause 4 provides that a person who has registered or naturalised as citizen may be deprived of their citizenship status if it has been obtained by fraud, false representation, or concealment of a material fact. This power of deprivation may be used irrespective of whether the naturalisation or registration occurred before commencement of the *British Nationality Act 1981*, or afterwards.⁹³ There is no provision in the Bill that will prevent such an order being made if it would render the person stateless. Although a person who is naturalised or registered will usually have had a previous nationality, it may not be subsisting. Under the nationality laws of some countries, a person will automatically lose his old nationality if he becomes a citizen of another country. Conceivably, therefore, a naturalised or registered citizen who is deprived of citizenship under this heading could be made stateless. However, this is consistent with the terms of the European Convention on Nationality which permits a person to be deprived of citizenship in these circumstances, even when he will be made stateless.⁹⁴

Before making a deprivation order, the Secretary of State will have to give the person written notice specifying that he has decided to make the order, the reasons for the order, and the person's right of appeal.

c. Rights of appeal at first instance

The Bill will introduce a new right of appeal by inserting a new section 40A into the *British Nationality Act 1981*. A person who is given notice of the decision to make a deprivation order will be able to appeal to an adjudicator appointed under the *Nationality Immigration and Asylum Bill*.⁹⁵

However, there will be no right of appeal to an adjudicator if the Secretary of State certifies that the decision to deprive was made on the basis of information which should not, in his opinion, be made public.⁹⁶ In order to certify a decision in this way, the Secretary of State must be of the opinion that the information should not be made public on one of the following three grounds:

⁹³ By the substituted section 40(3) and (6) of the *British Nationality Act 1981*

⁹⁴ Article 7(3) ETS 166 available online from:
<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=166&CM=3&DF=26/03/02>

⁹⁵ Inserted by the new section 40A(1) of the *British Nationality Act 1981*

⁹⁶ Inserted by the new section 40A(2) of the *British Nationality Act 1981*

1. the interests of national security;
2. the interests of the relationship between the UK and other country;
3. another matter of a political kind.

No definition of these grounds is contained in the Bill.

However, the Bill provides that where a person is not permitted to appeal the deprivation of citizenship to an adjudicator because it has been certified on one of these three grounds, he may nevertheless appeal against the deprivation order to the Special Immigration Appeals Commission.⁹⁷

The Commission was set up in response to criticisms by the European Court of Human Rights. The European Court criticised the lack of appeal against the Home Secretary's decision to deport on national security grounds, or to exclude from the United Kingdom on grounds that this was conducive to the public good. The Commission now also hears appeals against the decision of the Secretary of State to certify suspected terrorists under the *Anti-terrorism, Crime and Security Act 2001*.

In conducting this type of appeal, the Commission will be able to consider sensitive information that it does not have to disclose to the appellant. The interests of the appellant will be protected by a Special Advocate, appointed by the Attorney General, who will have access to all the material relied upon by the Home Secretary. Further information on the operation of the Commission can be found in the Library's standard note entitled "Immigration and Asylum: the Special Immigration Appeals Commission."⁹⁸

d. Further rights of appeal

For appeals which are heard by an adjudicator, rather than by the Special Immigration Appeals Commission, the *Nationality Immigration and Asylum Bill* provides for further rights of appeal. Either party will be able to appeal the adjudicator's decision to the Immigration Appeal Tribunal, provided that the tribunal has given permission. Such an appeal to the tribunal will only be available on a point of law.⁹⁹ Either party to an appeal will be able to bring a further appeal on a point of law to the Court of Session or the Court of Appeal, according to whether the initial determination took place in Scotland or elsewhere in the UK.¹⁰⁰ This further appeal may be brought only with the permission of the Tribunal or the higher court.¹⁰¹ A deprivation order may not be made while any

⁹⁷ Clause 4(2) inserts a new section 2A into the *Special Immigration Appeals Act 1997*

⁹⁸ SN/HA/1083

⁹⁹ Inserted by the new section 40A(3) of the *British Nationality Act 1981*

¹⁰⁰ Inserted by the new section 40A(4) of the *British Nationality Act 1981*

¹⁰¹ Inserted by the new section 40A(5) of the *British Nationality Act 1981*

appeal is pending, or while the possibility of an appeal being brought within the time limits remains.¹⁰²

e. Power to make rules in relation to an appeal against deprivation

Further rules in relation to an appeal against deprivation of citizenship may be made by the Lord Chancellor under **Clause 84** of the Bill. These rules may regulate the exercise of the right of appeal and prescribe the procedure to be followed in connection with the appeal.¹⁰³ **Clause 84** then goes on to provide a list of what the rules *must* do and what they *may* do.¹⁰⁴

E. Decision making in nationality cases

1. Discrimination

The *Nationality Immigration and Asylum Bill* will amend the *Race Relations Act 1976*.¹⁰⁵ The 1976 Act makes racial discrimination unlawful in employment, training and related matters, in education, in the provision of goods, facilities and services and in the disposal and management of premises, and to all the functions of public bodies including the police.

Under the 1976 Act, as amended, authorised persons carrying out “immigration and nationality functions” are exempt from the general prohibition¹⁰⁶ on discrimination on the grounds of nationality, ethnic or national origins.¹⁰⁷ Nationality functions are those functions required to be carried out under the specified nationality Acts.¹⁰⁸ Under the *Nationality Immigration and Asylum Bill*, that exemption will no longer apply to “nationality functions” although it will continue to apply to “immigration functions.”¹⁰⁹

This amendment is to enable the UK to ratify the European Convention on Nationality in due course.¹¹⁰ Article 5(1) of the Convention provides:¹¹¹

¹⁰² Inserted by the new section 40A(6) of the *British Nationality Act 1981*

¹⁰³ Clause 84(1)

¹⁰⁴ Clause 84(2)

¹⁰⁵ As amended by the *Race Relations (Amendment) Act 2000*

¹⁰⁶ The general prohibition is contained in section 19B which was inserted into the 1976 Act by the *Race Relations (Amendment) Act 2000*

¹⁰⁷ Section 19D *Race relations Act 1976*

¹⁰⁸ Section 19D(5) *Ibid.*

¹⁰⁹ Clause 6

¹¹⁰ Telephone call to Home Office source – 16th April 2002

¹¹¹ ETS 166 available online from:

<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=166&CM=3&DF=26/03/02>

The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.

2. Reasons for nationality decisions

The *British Nationality Act 1981* currently exempts the Secretary of State from having to give reasons when he grants or refuses, at his discretion, any application under that Act.¹¹² Similar provisions exist in the *British Nationality (Hong Kong) Act 1990*.¹¹³ **Clause 7** of the *Nationality Immigration and Asylum Bill* will repeal these provisions. The White Paper stated that the proposed repeal would confirm the current Government policy of giving reasons for refusal of nationality in all cases.¹¹⁴

Although this does not positively impose a duty to give reasons, the removal of the exemption would allow for the application of common law principles. According to these principles, the courts may require reasons for administrative decisions to be given as a matter of procedural fairness.¹¹⁵

The amendment in **Clause 7** is necessary for the Government to ratify the European Convention on nationality which provides in article 11:¹¹⁶

Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain reasons in writing.

In their response to the White Paper, the Immigration Law Practitioners' Association welcomes the abolition of the exemption from any requirement to give reasons.¹¹⁷

3. Review of nationality decision

The *British Nationality Act 1981* currently provides that any decision made by the Secretary of State under the Act, which is a matter for his discretion, is not subject to a right of appeal or review in any court.¹¹⁸

Clause 7 of the *Nationality Immigration and Asylum Bill* will repeal this provision so that any such decision may be subject to appeal and/or review. Although there are currently

¹¹² Section 44(2)

¹¹³ Section 1(5)

¹¹⁴ Page 35 *Secure Borders, Safe Haven*

¹¹⁵ For further discussion on the requirement for a body to give reasons in administrative law please see: Page 639 Fordham, *Judicial Review Handbook* (1997) 2nd edition Wiley and Sons, Chichester

¹¹⁶ ETS 166 available online from:

<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=166&CM=3&DF=26/03/02>

¹¹⁷ Page 2, Chapter 2, Response to the White Paper. See under "Latest News" www.ilpa.org.uk

¹¹⁸ Section 44(2). Similar provision is contained in section 1(5) of the *British Nationality (Hong Kong) Act 1990*.

no express powers for appeal, decisions will be subject to review under normal principles of judicial review.

The amendment in **Clause 7** is necessary for the Government to ratify the European Convention on Nationality that provides in Article 12:¹¹⁹

Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality be open to an administrative or judicial review in conformity with its internal law.

In their response to the White Paper, the Immigration Law Practitioners' Association welcomes this amendment.¹²⁰ However, it argues that the Government should consider extending the statutory immigration appeal system to apply to nationality refusals. ILPA state that while the repeal of section 44(2) of the *British Nationality Act 1981* would result in challenges by way of judicial review, it would be much more appropriate to deal with the factual issues before an immigration adjudicator who can already deal with nationality refusals in some limited circumstances.¹²¹

F. Miscellaneous Provisions

The *Nationality Immigration and Asylum Bill* contains further miscellaneous provisions in respect of nationality.

1. Legitimacy of children in nationality cases

The *British Nationality Act 1981* distinguishes between whether a child is legitimate or illegitimate for the purposes of acquiring nationality. **Clause 9** of the *Nationality Immigration and Asylum Bill* will remove the distinction. It will insert a new definition of "father" into section 50 of the *British Nationality Act 1981*. For the purposes of the Act, a child's mother will be the woman who gives birth to the child. For the purposes of the Act, a child's father will be:

- the husband, at the time of the birth of the woman who gave birth to the child;
- a person who is treated as the father of the child under section 28 of the Human Fertilisation and Embryology Act 1990;
- or, where neither of the previous paragraphs apply, any person who satisfies prescribed requirements as to proof of paternity.

The Secretary of State will be able to prescribe, by regulations, who satisfies the requirements as to proof of paternity.

¹¹⁹ ETS 166 available online from:

<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=166&CM=3&DF=26/03/02>

¹²⁰ See under "Latest News" www.ilpa.org.uk

¹²¹ When a certificate of entitlement to right of abode is refused.

This amendment is necessary to enable the UK to ratify the European Convention on Nationality.¹²² In their response to the White Paper, the Immigration Law Practitioners' Association welcome this amendment.¹²³

2. Registration through a connection with the UK by marriage

Under the existing provisions of the *British Nationality Act 1981* a woman who renounced her citizenship of the United Kingdom and Colonies before 1983 can qualify to register as a British citizen or British overseas territories' citizen as appropriate. This is provided that she has been married to a person with a connection to the UK or the overseas territory in question.¹²⁴ The *Nationality Immigration and Asylum Bill* will extend the existing provisions so that a man can qualify to register as a citizen if he has a connection with the UK through marriage in these circumstances.¹²⁵

This is to enable the UK to ratify the European Convention on Nationality in due course.¹²⁶ The Convention provides that a State cannot discriminate on the grounds of gender in the application of its nationality laws.¹²⁷ Moreover the State is under an obligation to facilitate the recovery of nationality by the spouse of one of its nationals in certain circumstances.¹²⁸

3. Registration of a stateless non-British citizen born in the UK

Under the current provisions for reducing statelessness, a stateless person who was born in the UK (or a British overseas territory) after 1983 may apply to acquire British citizenship (or British overseas territories' citizenship).¹²⁹ In order to register under this provision, a person must be at least 10 years old but under 22.

The *Nationality Immigration and Asylum Bill* will remove the minimum age limit, although the applicant will still have to be under 22 to qualify. The current requirement for the applicant to have resided in the UK for 5 years will continue.¹³⁰ The amendment will bring the law into line with the European Convention on Nationality. The

¹²² Telephone call to Home Office Source 16th April 2002

ETS 166 available online from:

<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=166&CM=3&DF=26/03/02>

¹²³ Page 2, chapter 2 Response to White Paper. See under "Latest News" www.ilpa.org.uk

¹²⁴ Sections 10(1) and (2) and sections 22(1) and (2) of the *British Nationality Act 1981*

¹²⁵ Clause 5

¹²⁶ Telephone call to Home Office Source 16th April 2002

¹²⁷ Telephone conversation to Home Office source 16th April 2002

Article 5, ETS 166 available online from:

<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=166&CM=3&DF=26/03/02>

¹²⁸ Article 9 Ibid.

¹²⁹ Paragraph 3(1)(b) of Schedule 2 *British Nationality Act 1981*

¹³⁰ Paragraph 3(1)(c)

Convention provides that a state must make provision for a stateless child to be registered after a period of residence not exceeding 5 years.¹³¹

In their response to the White Paper, the Immigration Law Practitioners' Association welcome this amendment.¹³²

4. Certificates of entitlement to right of abode

A person with a right of abode is entitled to come and go from the UK free from immigration restrictions. Various people have a right of abode, the most obvious being British citizens. In addition, Commonwealth citizens may have the right of abode in certain circumstances. Those who have a right of abode, but who are not British citizens travelling with British passports, need to apply for a certificate of entitlement to prove their right of abode before they come to the UK.

The procedure for issuing a certificate of entitlement to the right of abode is currently unregulated, except in regard to the level of fee payable and the procedure to be followed to appeal against the refusal to issue such a certificate.

The *Nationality Immigration and Asylum Bill* will enable the Secretary of State to make regulations in relation to the issuing of a certificate of entitlement.¹³³ The regulations must be made by statutory instrument subject to the negative resolution procedure.¹³⁴ The regulations may specify matters such as the person to whom the application must be made, the form of the application, the documents which are to accompany it and the fee payable. They may also make provision for the certificates to be revoked in certain circumstances. This may be, for example, when they were obtained by the provision of false information.¹³⁵ The regulations may provide for the certificate to cease to have effect after a specified time. At the moment, a certificate is valid for the same length of time as the passport on which it is stamped.¹³⁶ The regulations may preserve the effect of any certificates issued before the *Nationality Immigration and Asylum Bill* commences.¹³⁷

5. Definition of “unlawful presence in the UK”

Under the *British Nationality Act 1981*, periods of residence in the UK are relevant to whether a person is entitled to register or naturalise. The Act provides that periods of

¹³¹ Article 6(2)(b)

ETS 166 available online from:

<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=166&CM=3&DF=26/03/02>

¹³² Page 2, Chapter 2, Response to the White Paper. See under “Latest News” via www.ilpa.org.uk

¹³³ Clause 10

¹³⁴ Clause 10(4)

¹³⁵ Paragraph 42, Explanatory Notes to the Bill: Bill 119-EN

¹³⁶ Page 255, Joint Council for the Welfare of Immigrants Immigration, Nationality and Refugee Handbook (1999) London.

¹³⁷ Clause 10(6)

residence “in breach of the immigration laws” do not count. **Clause 11** of the *Nationality Immigration and Asylum Bill* expands on what this phrase means for the purposes of interpreting the Act.

6. Repeal of spent provisions

Clause 13 introduces **Schedule 2** of the *Nationality Immigration and Asylum Bill*, which will repeal the spent transitional sections of the *British Nationality Act 1981*. **Paragraph 2(1)** of **Schedule 2** provides that the status of people who were registered under any of these sections is unaffected by the repeals.

G. Additional reactions regarding what the Bill should contain

Reactions of various interested parties have already been discussed in the course of this Research Paper in relation to the issues as they arise in the Bill. However, the Immigration law Practitioners’ Association comment on what they consider the White Paper has failed to address in relation to citizenship and nationality. In their view, the *Nationality Immigration and Asylum Bill* should contain other measures in respect of citizenship.

ILPA urge the Home Office to meet the duty in Article 34 of the UN Refugee Convention to expedite naturalisation proceedings for refugees. ILPA state that they should be eligible to apply for naturalisation straight after being granted settlement.

ILPA say that the Government should use the *Nationality Immigration and Asylum Bill* to remedy the position of British Overseas Citizens who are, in their view, *de facto* stateless. Such persons have no other status apart from BOC status which does not entitle them to a right of abode in the UK. Previously this could be obtained through the special voucher scheme. However, ILPA notes that the scheme has been abolished since the publication of the White Paper. ILPA states that BOCs are technically British nationals, but they are effectively stateless as they have no right to enter or reside in any state. ILPA urges the Government to use the Bill to resolve the uncertainty over the status of such persons. Once their status is resolved, the UK would be able to ratify Protocol 4 of the ECHR.

H. Financial Effects of the Bill

The Explanatory Notes to the Bill consider the costs arising from the Citizenship and Nationality Provisions of the Bill.¹³⁸

218. All costs resulting from the introduction of citizenship ceremonies will be met from applicants’ fees. The majority of costs incurred through the provision of language and British society education will be met from existing provision.

¹³⁸ Page 39, Bill 119-EN

Future funding decisions in relation to any additional costs will be made in relation to other Government spending priorities.