



Clarification of the Act of Settlement 1701

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Author: Adrian Hitchins

Section Parliament and Constitution Centre

This note explains the background to the introduction of Clause 83 into the *Constitutional Reform and Governance Bill 2009-10*. The clause was introduced after it was suggested that Section 18 of the *Electoral Administration Act 2006* has introduced some difficulties of interpretation into the provisions of Section 3 of the *Act of Settlement 1701*. This affected the eligibility of Commonwealth and Republic of Ireland citizens to sit in the House of Lords. This note includes a speech by Baroness Gardner of Parkes asking the government for clarification on her eligibility to sit in the Lords and the Government's commitment to legislate in response. It also includes a written statement by the junior minister at the Ministry of Justice, Michael Wills, explaining the proposed amendment to the *Constitutional Reform and Governance Bill*.

Contents

1	Clause 83 of the <i>Constitutional Reform and Governance Bill</i>	2
2	Implications of the <i>Electoral Administration Act 2006</i> changes	3
3	Clarification of the <i>Electoral Administration Act 2006</i>	4
4	Amendment of the <i>Constitutional Reform and Governance Bill</i>	5

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1 Clause 83 of the *Constitutional Reform and Governance Bill*

Clause 83 of the *Constitutional Reform and Governance Bill* was introduced to amend confusion over the interpretation of Section 3 of the *Act of Settlement 1701* after the passing of the *Electoral Administration Act 2006 (EAA)*. Clause 57 was introduced during a Committee of the Whole House on 19 January 2010. The Clause states,

83 Section 3 of the Act of Settlement

(1) For the avoidance of doubt, the repeal in section 18(7) of the Electoral Administration Act 2006 (c. 22) of the entry in Schedule 7 to the British Nationality Act 1981 (c. 61) (entry which modified certain disqualifications imposed by section 3 of the Act of Settlement (1700 c. 2)) applied only so far as the modification made by that entry related to—

- (a) membership of the House of Commons, or
- (b) anything from which a person is disqualified by virtue of a disqualification from membership of that House.

(2) Section 3 of the Act of Settlement has effect accordingly, and has done so since

the coming into force of section 18 of the Electoral Administration Act 2006.

This doubt arose over the eligibility of Commonwealth and Republic of Ireland Citizens to sit in the House of Lords after provisions in Section 18 of the *Electoral Administration Act 2006* commenced in January 2007. These provisions on the nationality of candidates were included in the *Electoral Administration Bill* when it was introduced. Library Research Paper 05/65 states,

Section 3 of the *Act of Settlement 1700* provides that no person born out of England, Scotland or Ireland, or the dominions thereto, is capable of being a member of Parliament. The provision does not apply to Commonwealth citizens or citizens of the Republic of Ireland under s52(6) of and Schedule 7 to the *British Nationality Act 1981*, so they are able to stand without having been born in the UK or indeed without being resident there or appearing on the electoral register. There are residential qualifications for candidates for local authorities.

The *Representation of the People Act 2000* introduced new provisions to ensure that people who do not have leave to enter or remain in the UK were not entitled to register to vote and so did not have the franchise. Further details are in Library Standard Note no 419 *Franchise and Immigration Status*. The Government have taken the opportunity of the Bill to extend this prohibition to candidates. For the first time for parliamentary elections, candidacy would depend on immigration status. The qualifying conditions for candidates will be stricter, as they will be dependent on their having either indefinite leave to remain or right of abode, the principle being that candidates should expect to be able to serve their electors on a permanent basis. Asylum seekers with no leave to remain will no longer be able to stand. These changes to candidacy law were not announced in advance.¹

¹ [Research Paper 05/65](#) *The Electoral Administration Bill 2005-06*

2 Implications of the *Electoral Administration Act 2006* changes

On 10 December 2009, Baroness Gardner of Parkes raised the matter of the eligibility of Commonwealth citizens to sit in the Lords during a debate on the Commonwealth's shared goals for Democracy and Development:

Baroness Gardner of Parkes: My Lords, I thank my noble friend Lord Sheikh for giving us this opportunity to discuss this subject today. As a member of the Commonwealth, I find it particularly interesting. My family has been Australian for so many generations that I cannot really claim any rights in this country, but in 1954, I came here for six months and, somehow, I have never left. There have been all sorts of Acts over the years, and it has become increasingly difficult, but I think of the Commonwealth as a family. As the noble Lord, Lord Harrison mentioned, we are united by the English language, although some people here think I talk Strine rather than English. We are also connected by tradition and history. The present country of Australia owes its origin to Captain Cook from Yorkshire, so there is a direct line back to this mother country. I consider myself one of the family in the mother country, and I intend to speak frankly today as a member of the family and have a bit of a gripe about one or two things.

First, before I start on the downward path, I shall say how enormously loved and respected the Queen is. Whatever the position in the Commonwealth, whether in Australia or any other part of the Commonwealth-I understand that most countries in the Commonwealth are now republics-it does not make a scrap of difference. She is still Head of the Commonwealth and is still held in the same high regard.

I have a right of abode, which is stamped in my passport. Years ago, it was put in for free, but now it costs £140. I was lucky to get mine while it was still £135; it went up the next week. When I applied for it last year, I had to get a new Australian passport because my 10 years were up. I said to my children, "It's interesting. In Australia, you can have a five-year passport for half the price". They said, "Mother, as an evidence of good faith, you must go for the 10-year one", so I did, and I was glad I did when I discovered that you have to renew the right of abode every time, so £135 over 10 years was a much better buy than if I had had only a five-year passport.

But I was rather staggered to be told, when I applied for the right of abode, that the 1981 Act under which I had always been given it had changed in 2006, and I would therefore have to send all my documentation in again. This meant sending in my husband's birth certificate, his parents' marriage certificate and his father's birth certificate. None could be certified copies, but had to be the original documents. I spoke to someone and told him that I have a letter from 1985 from which I shall quote. It acknowledges that I had sent all the documents in and, on returning them, states:

"Such certificates can apparently be affixed to any future passports".

But by the time we come to 2008-09, I am told that that I have to send all the documents in again. I said that this would be the fourth grant of right of abode in 40 years, but no matter. I spoke to a very nice and extremely helpful man in the Managed Migration Directorate of the Home Office. He said, "I have taken this up with the top brass here, but there is no way that you can get away without sending everything in again because of the demands of the 2006 Act". I did think that it was a terrible waste of the directorate staff's time and effort to do this. Then, when I got the right of abode, it stated that it had been issued under Section 2(1)(b) of the 1981 Act. That puzzled me because I had been told that I had to send everything in because of the 2006 Act. I thought that mine was an isolated case until I met someone else in exactly the same position after having been given the right to abode for 20 years.

I should like to mention to the Minister a more serious point. Apparently there is a defect in the 2006 Act which may affect my right and that of any other Commonwealth or Republic of Ireland citizen to sit in this House. I seek the Minister's reassurance on that point because it might be by sheer luck that I am speaking today.

There are so many things that I would like to say about the Commonwealth. I have been involved in observing elections in the Seychelles, and I have seen lots of the work done with DfID through chairing an NGO in Africa. The Commonwealth is a marvellous body and I am very privileged to have been able to join the debate today.

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): My Lords, it may be of benefit to the whole House if I rise briefly to give the noble Baroness the assurance she seeks. The Government are aware of the legal uncertainty for Members of the House who are Commonwealth and Republic of Ireland citizens, and we will legislate before the end of the current Session of Parliament to put the issue beyond doubt. I will provide a fuller explanation when I reply to the debate, but for the time being, I hope that the noble Baroness is reassured.²

3 Clarification of the *Electoral Administration Act 2006*

The Minister for State for Justice, Michael Wills, issued a written statement on 15 December 2009 explaining the Government's desire to legislate in order to clarify the uncertainties arising from the *EAA*'s changes to the law.

House of Lords (Commonwealth and Republic of Ireland Citizens)

The Minister of State, Ministry of Justice (Mr. Michael Wills): My noble friend the Under-Secretary of State, Ministry of Justice, has made the following written ministerial statement:

During the debate on 10 December in the House of Lords-on the Commonwealth's shared goals in democracy and development-Baroness Gardner of Parkes asked about eligibility of Commonwealth and Republic of Ireland citizens for membership of the House of Lords. The Government undertook to set out the background to the issue in more detail and to legislate before the end of the current session of Parliament to remove any uncertainty. The Government's firm view is that nothing in the current circumstances prevents any Member of the House of Lords from membership or from taking a full part in the proceedings of the House.

It was suggested to the Government in April 2009 by the House authorities that the drafting of the *Electoral Administration Act 2006* ("the 2006 Act"), and modifications made by that Act to section 3 of the Act of Settlement 1701, could be interpreted to have inadvertently cast doubt on whether Commonwealth and Republic of Ireland citizens are eligible for membership of the House of Lords and to hold certain offices under the Crown.

The Government have been examining possible interpretations of the changes made by the 2006 Act carefully. Although one possible interpretation would have the effect which has caused concern, this was clearly not the intention of Parliament when passing the 2006 Act, and the Government would disagree with any suggestion that changes should be made in the way that eligibility is regarded.

The relevant provisions are complex. Section 18 of the 2006 Act included provisions about eligibility for membership of the House of Commons, which were intended to ensure that only persons with indefinite leave to remain in the UK are eligible to be

² [HC Deb 10 Dec 2009 c1166](#)

Members of the House of Commons. The Act also extended this provision to elections to the European Parliament, the Greater London Authority, local authorities, and the devolved legislatures. The provision was enacted in response to concerns that elected representatives should be able to serve their term of office in full in the UK. The provision was commenced on 1 January 2007.

Section 18(7) of the 2006 Act repealed the first entry in Schedule 7 to the British Nationality Act 1981. That entry had modified the application of section 3 of the Act of Settlement which concerns eligibility for membership of both Houses of Parliament, the Privy Council and certain offices under the Crown by disapplying part of it in relation to Commonwealth and Republic of Ireland citizens, allowing such citizens to be Members of either House and to hold offices under the Crown.

This change was made in consequence of the provision at section 18(1) of the Electoral Administration Act 2006, which substituted a new modification of section 3 of the Act of Settlement that applies only for the purposes of membership of the House of Commons: under its terms, Commonwealth citizens who do not have indefinite leave to remain in the UK are prevented from being Members of the House of Commons. However, since the drafting of the legislation did not contain provisions expressly saving the first entry in Schedule 7 to the British Nationality Act 1981 in relation to membership of the House of Lords and other offices under the Crown, a question has been raised about whether the eligibility of Commonwealth or Republic of Ireland citizens for membership of the House of Lords and other positions is affected.

Though it clearly was not the intention of Parliament in passing the 2006 Act to change the entitlement of Commonwealth and Republic of Ireland citizens to sit in the House of Lords, Ministers have concluded that it is best to put the issue beyond any doubt. Accordingly, we will introduce appropriate legislation before the end of the current Session of Parliament to remove any uncertainty on this issue. An amendment will be tabled to the Constitutional Reform and Governance Bill, currently before the House of Commons, to achieve this.³

4 Amendment of the *Constitutional Reform and Governance Bill*

New Clause 57 (now [clause 83](#)) stated that, for the avoidance of doubt, Section 3 of the *Act of Settlement 1701* had effect since the coming into force of section 18 of the *Electoral Administration Act 2006* and that the changes made in that Act applied solely to membership of the Commons. The amendments were passed without debate and without a vote.⁴

³ [HC Deb 15 Dec 2009 c116WS](#)

⁴ HC Deb 19 January 2010 c273. For further information see Library Standard Note *Clarification of the Act of Settlement*