

Lord Goldsmith QC

Citizenship Review

# Citizenship: Our Common Bond

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# To the Rt Hon. Gordon Brown MP

1. I am pleased to enclose my report on citizenship in accordance with your request to me. My terms of reference are at Annex A.
2. I have set out to consider what it means to be a citizen and to make proposals that enhance the meaning and significance of citizenship as the common bond that binds us together.
3. I start my report by a short history of how citizenship has developed in the UK – both as a political and as a legal concept. I set out the legal rights and responsibilities of citizens and considers how those rights and responsibilities differ from those of others who live in the UK – i.e. people living here with limited leave to remain, permanent residents, EU citizens (under EU law) and refugees (under the Refugee Convention).
4. I consider possible changes that would make the legal status of citizenship clearer, including changes to the right to vote, the category of permanent residence and the duty of allegiance owed by citizens to the UK.
5. These changes are important but the legal significance of citizenship is only a part of this story of citizenship. It is a component of the shared bond of citizenship but that bond is a social bond as well. So I go on to discuss the social challenges that exist for citizenship and propose practical measures that I believe would enhance our sense of shared belonging.
6. I have not considered it part of my remit to make recommendations about levels of immigration to the UK. I do, however, consider the position of new migrants and how they can best be engaged in a shared sense of belonging in the UK – including the role of the process by which they become citizens.
7. As part of my inquiries I commissioned five pieces of research. This research is published alongside the report so that it may contribute to the continuing debate on the topic. It comprises:
  - A major study of the rights and responsibilities of citizenship in international law, EU law, Australia, France, Spain and the United States prepared by the British Institute of International and Comparative Law;
  - An analysis of trends in British identity with implications for attitudes and behaviour prepared by Professor Anthony Heath and Jane Roberts;

- A summary of group research done with a cross-section of British citizens by the independent research agency Stimulating World;
  - A summary of one-to-one and group research done with new citizens and those eligible to apply for citizenship by the independent research agency EdComs; and
  - An analysis of the attitudes of newcomers to the UK, especially those from within the EU, done by the institute for public policy research.
8. I also commissioned a series of pamphlets to contribute new thinking and stimulate discussion. These are available on the website of the Review. The series comprises:
- ‘The Future of Citizenship Ceremonies’ by Mark Rimmer, Head of the Registration Service in the London Borough of Brent;
  - ‘Mentoring for New Migrants’ by the volunteering organisation TimeBank; and
  - ‘Becoming a British Citizen: A Learning Journey’ by Dr. Dina Kiwan, Academic Fellow and Lecturer in Citizenship Education at Birkbeck College, University of London.
9. Over the course of the Review, I met with a wide range of individuals and organisations who have an interest in this area. There is a list of everyone who contributed to the Review at Annex B. I have benefited greatly from the expertise and opinion of those named as well as from the work of the Commission on Integration and Cohesion. Naturally, the conclusions that I have reached reflect my own evaluation of their views and the additional evidence.
10. I want to express my considerable appreciation to those who contributed research and pamphlets and to all those who gave time to meet with me and to officials of Government Departments who provided information. All of their contributions have been invaluable. I want to express my very considerable thanks to the staff of the review and in particular, the Secretariat Head, Emran Mian.
11. Finally, I should say that this report draws on work done over a limited period of time and my recommendations are presented therefore for the consideration of government – central, devolved and local – as well as civil society organisations, with the expectation that there will be wider discussions and consultation to the extent that government and others decide to take them forward.



Lord Goldsmith QC

# Executive Summary

## Legal rights and responsibilities of citizenship

The report sets these out in detail. In summary, they are:

### Right of abode and free movement

- Right of abode and freedom of movement in the UK;
- Freedom of movement within the Common Travel Area and the European Economic Area;
- Expectation of issue of a British passport;

### Right of protection – and duty of allegiance

- Entitled to request that the State exercises diplomatic protection where they have suffered a wrong at the hands of another State;
- Entitled to request consular assistance when abroad;
- Entitled to domestic protection;
- Duty of allegiance to the Crown;
- Duty to obey the law when in the UK – liable for certain offences in the UK even if committed abroad.

### Civic rights

- Right to vote where registered as resident in Westminster and European Parliamentary elections, in local and devolved elections;
- Right to vote in Parliamentary and European Parliamentary elections where valid overseas declaration made (contingent upon UK residence and registration in preceding 15 years);
- Right to stand in elections, subject to residence requirements in local elections;
- Duty to provide information for purpose of electoral registers on request;
- Right to campaign in referendum if resident in UK or appearing on one of the electoral registers;

- Right to vote in referendum, so far as provided by Act stating question and territorial extent;
- Right to donate to a political party if on an electoral register;
- Right and duty to undertake jury service, subject to residence requirement;
- Permitted to hold public offices governed by the Act of Settlement 1700.

### **Social and economic rights**

- Full extent of access to benefits and services such as healthcare and education; and
- Duty to pay taxes and make national insurance contributions

The report observes that the history of legislation on citizenship and nationality has led to a complex scheme lacking in overall coherence or any clear and self-contained statement of the rights and responsibilities of citizens. There remain six different categories of citizenship, whose differences and whose rights and privileges can only be discovered by a close and careful analysis of a patchwork of legislation. If citizenship should be seen as the package of rights and responsibilities which demonstrate the tie between a person and a country, the present scheme falls short of that ideal.

Hence the report proposes the following measures to enhance the meaning and significance of citizenship.

- The residual categories of citizenship – with the exception of British Overseas Territories Citizenship and British Nationals (Overseas) status – should be abolished allowing people who would qualify for those categories with access to full British citizenship. Though this change will only affect relatively small numbers of people, it is important to address the history involved in the residual categories as part of renewing our common bond of citizenship;
- Only citizens should have the fullest rights to political participation – and so the right to vote of others should be phased out while retaining the rights of EU citizens living in the UK and Irish citizens who have Irish citizenship by connection to Northern Ireland subject to practical issues discussed in the report;
- Reform of the category of permanent resident. Permanent residency blurs the distinction between citizens and non-citizens. We should expect people who are settled in the UK for the long-term to become citizens. Only people who cannot become citizens because they are citizens of a country that does not permit dual nationality should be able to settle long-term without seeking citizenship – and we should recognise their bond to the UK by calling them associate citizens;

- Reform of the law of treason to make the duty of allegiance relevant to modern conditions.

## **Enhancing the bond of citizenship**

I do not assume that there is a crisis about our sense of shared citizenship. Levels of pride and belonging in the UK are high. However, we are experiencing changes in our society which may have an impact on the bond that we feel we share as citizens. I propose a range of measures that may help to promote a shared sense of belonging and may encourage citizens to participate more in society.

### **The role of education**

- Schools – to prepare citizenship manifestos, which are agreements with community stakeholders through which students get opportunities for active participation in their community;
- Students – to prepare portfolios of their citizenship work – both in the classroom and in the community; and
- Government – to consider whether there ought to be a compulsory citizenship curriculum for primary education.

### **Enhancing our national narrative**

There is no doubt that we have a rich suite of national symbols in this country. So the question is not to change what we have but to consider ways in which to add to it. I propose that further consideration should be given to a narrative, non-legalistic statement of the rights and responsibilities of citizenship; and a national day – introduced to coincide with the Olympics and Diamond Jubilee – which would provide an annual focus for our national narrative.

### **The role of ritual and ceremony**

There is a significant role for ceremonies in each of our individual lives. These ceremonies mark important stages of life and they are occasions for celebration as well as reflection. On that principle, there is a role for ceremonies in the shared experience of citizenship as well. Citizenship ceremonies for new citizens have been in place since 2004 and they have been very successful. I recommend that further consideration is now given to extending citizenship ceremonies to all young people.



### **Civic participation among young people**

- Young people who volunteer to receive a reduction in tuition fees, if they volunteer prior to going to university, and help with the repayment of student loans, if they volunteer afterwards.
- Clear policy that those on Job Seeker's Allowance will not lose entitlement if they volunteer.
- Use of volunteering as a way of developing skills and leading young people who are unemployed into work.

### **The role of the workplace**

- Portal targeted at people who have paid time off work to volunteer;
- Portal to make it easier for valuable mentoring relationships to be formed;
- Greater recognition for employers that support civic participation for their employees – new 'Investors in Communities' standard.

In addition to these sets of proposals, the following measures may also merit further consideration.

- Advertising volunteering opportunities to which councils attach a small council tax rebate – reflects the contribution of the volunteer to the community;
- Support for mentoring relationships between people past the age of retirement and others – this is becoming especially important as contact between people of different generations diminishes;
- Expand the numbers of mediators who can deal quickly and effectively with local tensions in neighbourhoods;
- Creation of a Citizens Corps – active citizens nominated for membership by others on the basis of what they have done in the community, with membership acting as a high-profile credential and a pathway to opportunities for training and development.

### **The value of politics**

Nothing in this report should suggest that political engagement is anything other than a critical component of civic participation. Citizens are now politically active in new ways and the challenge is to connect their activity to formal politics.

- Deliberation Day – established in advance of each general election, with government support for civil society organisations, including political parties, to organise political debates and events.
- Petitions – new Parliamentary Committee to consider citizens’ petitions and require, as appropriate, a response from Government or the setting aside of Parliamentary time for a debate on the issues raised.

## Engaging newcomers

I also propose a range of measures that will engage newcomers to the UK in a shared sense of belonging. Further consideration should be given to:

- Taking new steps to promote the learning of English – including ‘language loans’ for people who cannot afford to pay for lessons at the outset;
- Mentoring scheme for people aspiring to become citizens – value can be tested through pilots;
- Encouraging more people to take a citizenship course through which they would learn more and have the opportunity to talk about what citizenship means with other people;
- Adapting the Knowledge of Life in the UK test so that it does more to stimulate learning;
- Using citizenship ceremonies to engage new citizens with the local community – for example, by involving local schools, community organisations and cultural institutions; and
- Issues that may inhibit the integration of threatened migrants.

The low take-up of citizenship is another issue. We ought to encourage people who have decided to settle in the UK to seek citizenship as an expression of their commitment to this society. One way to do this is to reduce the application fee for people who apply as soon as they are eligible and to charge a higher fee as time goes on.

As part of the government consultation on the route to citizenship, there should also be consideration of a credits-based system which may be better suited to measuring a person’s commitment to living in the UK and engaging with UK society.

# 1. What is a citizen?

## The classic conception of citizenship

1. Citizenship has been the basic form of connection between individuals and the state. In modern terms it is the statement of a reciprocal relationship under which the individual offers loyalty in exchange for protection.
2. In classic, or early, conceptions, this relationship was drawn in narrow terms. It meant defence against external threat. It increasingly meant protection against other citizens. However, protection did not extend in great part to the provision of welfare, i.e. protection against poverty or sickness.
3. In this classic conception, non-citizens were not entitled to protection and they were often seen as a potential threat. For example, the 1793 Alien Act obliged aliens to register when coming in to the UK and to obtain a passport in order to travel within the country. The London Alien Office had to be kept informed of any change of address. In keeping with these restrictions, the Home Secretary had the power to deport aliens that he deemed to be suspicious.
4. Citizens could only be expelled under much more rigorous criteria. As the fundamental feature of the relationship between the state and the citizen was loyalty, reciprocated by protection, expulsion represented a total repudiation of the connection.

## The deepening of citizenship

5. The classic conception is now out of date. Especially over the last century, citizenship has gone through massive change. To support the Review, the British Institute of International and Comparative Law has done a major report on these changes and the rights and responsibilities of citizenship in international law, EU law and in Australia, France, Spain and the United States. This report is published alongside the Review.
6. The most obvious of the changes is that the relationship between the state and the citizen has deepened. The state offers many more protections to citizens than it once did – including healthcare, housing and financial assistance. The state also offers protection to workers

against mistreatment by their employers and protection to minorities in society against discrimination.

7. The state is only in a position to offer these protections because citizens have chosen them. In crude terms, the social and economic benefits of citizenship rely on the willingness of citizens to pay for them collectively. But, behind that willingness to pay, there is a much more significant change: citizenship is no longer solely a relationship between individuals and the state; it has become a basis for connection between individuals.
8. What has happened is that citizenship has risen in importance as a form of connection – though it has certainly not replaced or superseded others forms, and nor should it do so. The deepening of citizenship means that, whereas we may once have extended our protection only to other people who were in our family, or on the basis of religion or social class, we do it now on the basis of the much broader relationship of citizenship.
9. This does not mean that the other forms of connection are no longer important; though it does mean that our sense of responsibility for others has expanded beyond them.
10. This change occurred for a number of reasons: the expansion of the franchise, which meant that the broadest range of individuals became equal to one another as political citizens; the growth of cities, where we live in close contact with people of different backgrounds and different means; and the wide sense of social solidarity created by conflict and sacrifice during the Second World War.
11. The challenge that we face is to retain the strength of feeling for one another as citizens that will sustain the responsibilities that we owe to one another as citizens. From Chapter 5 onwards, I will be examining how we do that despite social changes that may put the bond of citizenship under pressure.

## **The blurring of citizenship**

12. Alongside the expansion of citizenship, there has also been, perhaps inevitably, a blurring of citizenship. When the only significant terms of citizenship were loyalty, reciprocated by protection, there was, and perhaps there needed to be, a very clear dividing line between citizens and non-citizens – or aliens, as they were commonly known. Aliens were citizens of another state, and so they had a different allegiance. This is why they were subject to restrictions and not treated the same as citizens.

13. However, as the notion of citizenship has expanded, this dividing line has become blurred. The consequence of the blurring of citizenship is that the social and economic aspects of citizenship are not closely tied to the status of legal citizen. There is a clear distinction between the rights of citizens and those with limited leave to be in the UK. However, the distinction between the rights of citizens and permanent residents – those with unlimited leave to be in the UK – is less clear. The relative entitlements of citizens, and others, are set out in Chapter 3.
14. This blurring of citizenship has also crossed over into the traditional realm of citizenship: protection and loyalty. For example, we have sought the release from the US detention centre at Guantanamo Bay not only of citizens but of non-citizens who were resident in the UK. We were right to do so – and this raises a question about whether the term and the status of permanent resident properly reflects the position of people who are settled in the UK but have not become citizens.
15. That question also arises in terms of loyalty, where the courts have suggested that non-citizens may be subject to the duty of allegiance.
16. One task for this report is hence to outline the rights and responsibilities of citizenship and to make proposals for how to introduce greater clarity to the ‘citizenship settlement’ between citizens and the state.
17. Before turning to those issues, it is important to look briefly at the history of British citizenship in particular. The general trends identified here have had a great impact on how we think about citizenship in the UK, but there is also a more particular history about how we have expressed the relationship between the UK and people with different forms of connection to it.

## 2. A short history of British citizenship

1. It is perhaps easy to imagine that British citizenship should denote a strong connection with membership of the community in the UK; that British citizenship denotes a strong commitment to, and connection with, this country. However, that is not historically the case.
2. The modern day arrangements for British citizenship are complex. This complexity is in large measure the consequence of its historical roots. For the modern day concept of citizenship started in the feudal concept of the allegiance of the subject to the sovereign; and the idea of British citizenship and the laws which underpin it are themselves fashioned by Britain's imperial past. The former has led to the idea that people are "subjects" rather than citizens; and the latter has meant a plethora of different types and concepts of citizenship with differing rights and therefore responsibilities. As a result it is not surprising that there is lacking a coherent concept of British citizenship. Or that there is lacking a simple statement of what are the rights and responsibilities of citizens.
3. It is desirable to set out a short history of British citizenship in order to make these points clearer and to see forward to a simpler and more coherent form of citizenship.

### The Position before 1948

4. The history of British citizenship through the 20<sup>th</sup> century is one of an ideal of some common British citizenship for all born within the Empire which gradually was eroded as the dominions of the Empire grew into self governing Commonwealth countries. So an Act of the Imperial Government of 1914 ("the British Nationality and Status of Aliens Act 1914") had declared that "any person born within His Majesty's dominions and allegiance" was a natural-born British subject.
5. Even at this early stage, however, some of the Dominions had immigration practices which meant that British subjects did not have an equal right to settle in any part of the British Empire. Certainly by the end of the Second World War the rise of the self-governing Dominions and the emergence within them of local citizenship legislation defining who, for example, was a citizen of Canada or South Africa called for a fundamental review of the concept of nationality.

## The 1948 Act

6. That issue was debated in an Imperial conference convened in 1947 and, after it, a further attempt was made to create some common badge of citizenship. The settlement produced the concept of “Commonwealth citizenship”. It was a complex formula in which Commonwealth countries would have their own citizenship laws but would recognize as “British subjects’ or “Commonwealth citizens” its own citizens and those of the other Commonwealth countries”. As for the United Kingdom and the remaining colonies, they were to be treated as a unit for citizenship purposes and their citizens called “citizens of the United Kingdom and Colonies”. Rules were provided for the acquisition of this status by non-nationals and how they would be treated in the overall scheme.
7. For the United Kingdom this new regime was enacted in the British Nationality Act 1948. It provided in its first section that any person who was either a citizen of the United Kingdom and Colonies or a citizen of the then Commonwealth countries (Canada, Australia, New Zealand, the Union of South Africa, Newfoundland, Indian Pakistan, Southern Rhodesia and Ceylon) had by virtue of that citizenship the status of British subject and was to be known “either as a British subject or as a Commonwealth citizen”.
8. Although the effect of these provisions was that the citizens of Australia or India or of UK colonies such as Hong Kong were alike “British subjects” or “Commonwealth citizens” it did not give a right to all those to settle anywhere they chose within the sphere of British subjects. The newly independent Commonwealth countries continued to pursue their own population policies. So, as Lord Lester of Herne Hill has pointed out, this new concept did not translate the vision of a common Commonwealth citizenship into a harmonious system of citizenship laws.<sup>1</sup>
9. As for those in the United Kingdom and Colonies they alike became citizens of the United Kingdom and Colonies, even where their countries were subsequently to become independent. All along the concepts were becoming more complex. There was already a category of British Protected Person who were not British subjects but were not aliens either and had some of the privileges of British subject status. Provision now had to be made for those who might have expected to become citizens of one of the self-governing

1 See his analysis of the citizenship laws in the foreword to the centenary edition of Halsbury’s Laws of England, from which I have drawn much insight. I am also indebted in this section to legal advisers at the Home Office and Alison Williams, my legal secretary on the Review.

Commonwealth countries but failed to do so. For them the confusing and apparently contradictory status of “British subject without citizenship” was created under Section 13 of the Act.

10. However, although the scheme had not created a single class of citizens of the British Empire or Commonwealth, it did have real consequences in the United Kingdom. Until 1962 being a British subject, whether that status derived from being a citizen of the UK and Colonies or a citizen of one of the other Commonwealth countries carried with it an unqualified right to enter and remain in the United Kingdom.<sup>2</sup> So at the time that the 1948 Act was passed creating the undivided class of citizens of the UK and Colonies did create a real connection to the UK itself, even if the position in the rest of the Commonwealth was less favourable. This was to change over the coming years.

## Further developments

11. The first was the continuing process of independence of former colonies and British protectorates as these countries, starting with Ghana in 1958, split away. Each time it was necessary to set out by legislative act the consequences for citizenship. Each case was considered separately but a “standard model” provided that relevant persons would after independence switch their citizenship from that of the UK and Colonies (or that of British Protected Person) to citizenship of the new State. Some people with a residual connection with the UK (through birth, descent or marriage – if a woman) retained their previous status. So too did people who, though closely connected with the new State, failed after independence to qualify for citizenship of the newly independent country. They too remained citizens of the UK and Colonies or British Protected Persons.
12. In some cases there were large numbers of the population who retained this status long after the countries in which they resided and with which they had their connection had become independent. A particular example of this was in the case of a number of countries in East Africa whose new citizenship laws particularly were drafted to exclude those who had migrated there from India during the colonial era. Many retained as a result their UK citizenship. This eventually led in the late 1960s to the crisis of the East African Asians who left East Africa as a result of the increasing process of Africanisation.

<sup>2</sup> *DPP v Bhagwan* [1972] AC, 60 HL.



13. Already by 1962 the rules for Commonwealth citizens were changing. Whereas previously they had been entitled freely to enter and remain and to acquire UK citizenship automatically after a period of residence, the 1962 Commonwealth Immigrants Act was to apply immigration controls for the first time to Commonwealth citizens. Some were excluded from this control, in particular those born in the UK or holding a UK passport issued by the UK Government as opposed to one issued by a dependency.
14. The influx of East Africans led to new legislation applying immigration controls to them though it was ultimately successfully challenged under the European Convention on Human Rights.
15. The second major development in the post-1948 period therefore was the separation of the right of citizenship from the right of abode i.e. the right to enter and remain in the United Kingdom without immigration control. The control started in the 1962 Commonwealth Immigrants Act was progressively extended so as to cover any Commonwealth citizen including citizens of the United Kingdom and Colonies who lacked a defined connection with the United Kingdom. The process culminated with the Immigration Act 1971 which was based on the distinction between “patrials” – broadly those with citizenship of the UK and colonies through birth, adoption and registration in the UK or who had been resident in the UK for 5 years or others with a connection through a parent (for Commonwealth citizens) or parent or grandparent (for citizens of the UK and colonies) and Commonwealth citizen women married to patrials.
16. The result of these complicated provisions was that Commonwealth citizenship no longer gave an unqualified right to enter the UK and the attempt started in the 1914 Act and continued in the 1948 Act to create some common class of citizens and British subject could be said to have failed. What is more, the resulting network of rights and differing categories was difficult to rationalise with a system based on the strength of connection with the UK. The British Nationality Act 1981 was meant to remedy that by providing a “new scheme of citizenship [which] should reflect the strength of the connection that various groups of people have with the United Kingdom in the world today.”<sup>3</sup>
17. The British Nationality Act 1981 replaced citizenship of the UK and the Colonies with 3 new categories of citizenship:
  - British citizenship: for former citizens of the UK and Colonies who essentially were patrials and for subsequent generations with similar connections to the UK;

3 1977 Green Paper: “British Nationality Law: Discussion of Possible Changes.”

- British Dependent Territories Citizenship: for people similarly connected with the remaining Colonies; and
  - British Overseas Citizenship: for former citizens of the United Kingdom and Colonies who did not qualify for new British Citizenship or citizenship of the British Dependent Territories. These were in the main people whose citizenship had been derived from a connection with a former colony and who had retained that citizenship following independence.
18. Despite the creation of these new categories, others continued to exist, notably: those who had been British subjects without citizenship remained as British subjects; and the status of Commonwealth citizen and British Protected Persons continued to exist.

## Recent changes to British citizenship

19. The aim behind the 1981 Act was to create a system which was “both satisfactory and lasting” on the basis that over time the only categories which would be left would be British Citizenship and British Dependent Territories citizenship. Three major further developments, however, occurred.
20. First, the arrangements for the transfer of the sovereignty of Hong Kong in 1997 involved detailed consideration of the citizenship status of the population and particularly the ethnic Chinese population after the handover. These arrangements were complicated and resulted in the creation of several new bases for the voluntary acquisition of British citizenship and the creation of a new and sixth form of British nationality – that of British National (Overseas). BN(O) status carried with it the right, recognized by the mainland China to use BN(O) travel documents.
21. It was a matter of political controversy at the time that Hong Kong citizens were not simply entitled to take a full British passport. But it was a part of the arrangements with China that the UK should not grant the right to live in the UK to people who were previously British Dependent Territories Citizens by virtue of a connection to Hong Kong.
22. I have taken the opportunity to hold informal discussions whilst in Hong Kong on the present state of these issues. It is apparent that the fears which lay behind some of the debate on this topic, namely violent repression of the Hong Kong people by the authorities have, fortunately, not materialized even though there remain concerns including about human rights treatment generally in China. It also

appears to be the case that many Hong Kong residents are finding it easy to travel on travel documents issued to them by China. Indeed there was a time when such travel documents were more useful in some countries than the BN(O) travel document. I discuss below whether, in the circumstances it would be right to consider changing the BN(O) arrangements.

23. The second major change occurred in the British Overseas Territories Act 2002. As well as changing the title of British Dependent Territories citizens to that of British Overseas Territories citizenship, this Act also granted to such citizens the right of abode in the United Kingdom.
24. There are 14 territories within the purview of that Act: Anguilla, Bermuda, the British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St Helena and Dependencies, South Georgia and the South Sandwich Islands, the sovereign base areas in Cyprus and the Turks and Caicos Islands.
25. The result of this change was therefore to recognise these citizens, formerly known as British Dependent Territories Citizens, as in effect full British citizens.
26. There was one further change in 2002 that followed the same trend. The Nationality, Immigration and Asylum Act inserted a new section 4B into the 1981 Act which meant that British Overseas Citizens, British subjects and British Protected Persons who had not acquired any other nationality may register as British citizens and hence acquire the right to enter and live in the UK.

## The Present Position

27. The purpose of this short historical survey has been to describe the different stages of thinking about nationality and citizenship in the UK. The determining factor has been history and a response to changing conditions. We should be driven by more recent changes to look again at our citizenship laws. For that purpose, I draw three main conclusions from this survey.
  - **First**, the present position on citizenship and nationality remains complex. There remain as a result extant 6 different categories of citizenship ranging from British citizens to those confusingly called just “British subjects” (formerly “British subjects without citizenship”). Annex C to this Report sets out the six categories and the modes for their acquisition and loss.

- **Second**, these categories have been established by reference to different degrees of connection with different territories. It is undeniable that in the past the different categories have created much unhappiness particularly as the concepts of “partiality” were seen as a way of discriminating between white and black members of overseas communities. As a result, it has been hard to see a positive and strong link between British citizenship as such and commitment to, and participation in UK society. An illustration of this is that the link between an immigration right to enter the UK and the possession of citizenship was cut from the 1960s onwards, though steps have been taken in recent years – as in the two 2002 Acts – to address this.
  - **Third**, what there has, however, never been is any attempt at a comprehensive statement of the rights and responsibilities of citizens. This might have been thought to be a useful way of cementing the concepts of citizenship. So the Government’ to ‘However, it has never happened. For example, the Government in 1981 shied away from this, arguing that “the suggestion that the Bill should also cover civic rights and obligations was self-evidently an unrealistic aim.”<sup>4</sup>
28. I consider the implications of these three points in later chapters of the report. The next chapter turns to addressing the third point: what are the rights and responsibilities of citizens?

4 Commons Hansard 28 Jan 1981 cols 934-5

# 3. Legal rights and responsibilities of citizenship

## Introduction

1. One of the issues that permeates a discussion of the legal rights and responsibilities of citizenship is the difficulty of looking for a bright line that distinguishes citizens from non-citizens so far as their legal rights and responsibilities are concerned. Many rights are enjoyed by non-citizens as they are enjoyed by citizens; this includes civil and political rights, though not all non-citizens have the same rights when it comes to economic support and healthcare. Similarly, EU citizens have many of the same rights as UK citizens, just as UK citizens have the same rights as nationals in other countries of the EU. The same issues arise in terms of responsibilities: citizens and non-citizens alike are obliged to comply with the criminal law and there are very few areas of that law which do not apply to non-citizens as they do to citizens.
2. That said there are certain key differences. The discussion that follows examines leading rights and responsibilities by reference to the different categories of person present in the UK, drawing out where the rights and responsibilities differ between citizens and others. The chapter is divided into four parts.
  - **Part 1** looks at the most central and important right of citizenship: the right of abode, and explains that the right of abode is more extensive than the right to freedom of movement enjoyed by certain non-citizens, particularly citizens of the European Union and the Republic of Ireland.
  - **Part 2** examines the nature of protection enjoyed by British nationals, both at home and abroad, and the nature of the reciprocal obligation owed to the Crown, both by British citizens and others who are here in the UK.
  - **Part 3** examines citizenship in the context of rights of political and civic participation, such as the right to vote and stand for election, to hold public office and to sit on a jury.
  - Finally, **Part 4** gives an overview of the relationship between the law on immigration and access to the main forms of benefit and public services.

3. Before looking at these aspects of citizenship, it is worth saying that the “law on citizenship” is neither a discrete nor a complete subject. It is not discrete because historically it is linked to the story of immigration control in the UK, as told in the previous chapter, and because more recently its incidents must be understood against the background of the UK’s European and international obligations. Neither is it complete because citizenship is much more than a legal subject. Its other elements are political and social, and cannot be wholly reflected by, or distilled from, a statement of the law. These other elements are developed elsewhere in the report; this chapter simply aims to capture the legal sense of the concept.
4. This chapter discusses, for the most part, British citizenship, which extends to those born in any part of the United Kingdom to a parent who is either a British citizen or who is settled in the United Kingdom. Most of the legal provisions discussed are UK-wide in effect.
5. However, it should be borne in mind that Northern Ireland is part of the United Kingdom, but not part of “Great Britain”, which comprises England, Scotland and Wales. Account must also be taken of the devolution settlements in Northern Ireland, Scotland and Wales. Matters such as nationality, immigration, foreign policy and the franchise are all reserved to Westminster, and the rights and responsibilities are, as a matter of law, uniform.
6. Further, the devolved legislatures and administrations in Northern Ireland, Scotland and Wales are bound by the same European Community, European Convention on Human Rights and international obligations, even when passing their own legislation and measures.
7. It is recognised, however, that particularly in respect of the criminal law and access to public services, the result both of history and of devolution is that rights and responsibilities may differ in each of the parts of the UK.
8. Finally, I should say that alongside this report I am publishing a major piece of research by the British Institute of International and Comparative Law. This analyses the legal rights and responsibilities of citizenship in international law and EU law; and provides a comparative analysis of Australia, France, Spain and the United States.

## Part 1: The right of abode and freedom of movement

9. People live in the UK on a number of different legal grounds. However, one group of people have an automatic right to be here: British citizens.<sup>5</sup> British citizens are set apart from all others in that their citizenship status means that they have the legal right to live here, and in most cases, to come and go from the United Kingdom largely as they please.<sup>6</sup> What is more, they will not lose that right even if they leave this country for months or even years; their status as British citizens entitles them to return freely to live here.
10. In domestic law, this right is called “the right of abode”. The Immigration Act 1971 (“the 1971 Act”) defines the right and sets out who has it. Section 1 of the 1971 Act states:

*“All those who are expressed to have the right of abode in the United Kingdom shall be free to live in, and to come and go from, the United Kingdom without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person.”*
11. The development of who is entitled to the right of abode has been inextricably linked with the law on nationality. When the law of nationality drew the distinction between subjects on the one hand and aliens on the other, all British subjects had the right of abode.<sup>7</sup> Early immigration Acts drew on the distinction drawn in the British Nationality Act 1948, which divided British subjects into Citizens of the United Kingdom and Colonies (CUKCs) and Commonwealth citizens, by introducing immigration controls in respect of the latter.<sup>8</sup> The Immigration Act 1971 granted the automatic right of abode only to those CUKCs and Commonwealth citizens who had one of a series of specified connections with the UK, through birth, or ancestral connection through a parent or grandparent, or through residence for

5 A limited number of Commonwealth citizens and British subjects whose right of abode preceded the commencement of the British Nationality Act 1981 on 1 January 1983 also retain the right.

6 There may be good reason for legally prescribed limits on the freedom of movement despite possession of the right of abode, for example to prevent disorder (banning orders under the Football Spectators Act 1989), or anti-social behaviour (Crime and Disorder Act 1998), or to protect children and others from harm (sexual offences prevention orders under the Sexual Offences Act 2003).

7 Prior to the 1971 Act, right of abode was a common law concept: *DPP v Bhagwan* [1972] AC 60, HL.

8 Commonwealth Immigrants Acts 1962 and 1968.



5 years or more. The British Nationality Act 1981 aimed to establish the link in law between British citizenship and the right of abode. The 1971 Act was therefore amended, so that now the only people who enjoy the right of abode in the UK are British citizens, and those Commonwealth citizens who before 1 January 1983 had the right of abode by virtue of their parentage or marriage.<sup>9</sup>

12. There are a number of other categories of British nationality which will be considered briefly in the next chapter. These categories apply to small numbers of people who have a form of British nationality due to their connection with former colonies.

13. The fundamental point about the right of abode linked to British citizenship is that it is a right which should be distinguished from other rules granting freedom of movement into and out of Britain under our immigration scheme:

*“What has to be understood is that essentially right of abode stems from citizenship and is an automatic benefit of it, whereas the other rights ... flow from separate quite specific provisions of the Immigration Act 1971.”<sup>10</sup>*

14. It is in particular necessary to distinguish the right of abode afforded to British citizens from freedom of movement under the Common Travel Area (which comprises the UK, Ireland, the Isle of Man and the Channel Islands), freedom of movement under the exercise of EC Treaty rights, and the grant of indefinite leave to enter or remain to a person who is subject to immigration control but who satisfies the necessary conditions to remain here on a permanent basis. These are explored further below.

15. The link between right of abode and citizenship is also acknowledged in that it is not possible to deprive a British citizen of his right of abode without first depriving him of his citizenship status. Under section 40 of the British Nationality Act 1981, the Secretary of State may deprive a British citizen of his citizenship status if he is satisfied that to do so is conducive to the public good or in cases in which citizenship through registration or naturalisation was obtained through fraud, misrepresentation or concealment of a material fact.<sup>11</sup>

9 Under s.1(1) of the BNA 1981, as amended by the British Overseas Territories Act 2002, British citizens are those who are born in the UK or overseas territory to a parent who is themselves either a British citizen or is settled in the UK or territory.

10 McDonald's Immigration Law & Practice, 6<sup>th</sup> ed. 2005, para.2.5.

11 BNA 1981, s.40, as amended by s.56 of the Immigration, Nationality and Asylum Act 2006. The Secretary of State may not make a deprivation order on the grounds of the public good if the person would thereby be rendered stateless. Section 40 applies to all forms of British nationality.



16. The right of abode and freedom of movement are recognised in international law, although the language employed variously ties these rights to lawful residence and to nationality. For example, the International Covenant on Civil and Political Rights 1966 (ICCPR), ratified by the UK in 1976, states that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and the freedom to choose his residence; freedom to leave any country, including his own, and “*no one shall be arbitrarily deprived of the right to enter his own country.*”<sup>12</sup>

17. The European Convention on Human Rights also lists freedom of movement among its protected rights and freedoms. Article 2 of the Fourth Protocol to the Convention states:

*“(1) Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

*(2) Everyone shall be free to leave any country, including his own.*

*(3) No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

*(4) The rights and freedoms set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”*

Article 2 goes on to state that no one shall be expelled or deprived of the right to enter the territory of the State of which he is a national.

The Fourth Protocol has been signed but not ratified by the UK, although the Government has acknowledged that the rights contained in it are important. It has not been ratified due to the implications of the residual categories of British citizenship that I have mentioned. As set out in the following chapter, there may be scope for re-examining those categories and ratification of Protocol 4 will be a matter for further consideration in that context.

12 ICCPR, Article 12, subject to restrictions prescribed by law and necessary to protect national security, public order, public health or morals or the rights and freedoms of others.

### Freedom of Movement: other citizens in the UK

18. The right of abode is a feature of British citizenship, but there are two other classes of citizen who exercise similar, but not equivalent, rights of freedom of movement in the UK. The first is a product of the long historical connection between Britain and Ireland, while the second is the result of our more recent membership of the European Union, and agreements between the EU and other European countries.

### Common Travel Area

19. The Common Travel Area (CTA) consists of the UK, the Channel Islands, Isle of Man and the Republic of Ireland. The Immigration Act 1971 gave statutory effect to the CTA, although agreements between the UK and Ireland allowing free movement to the citizens of each have been in place since the founding of the Irish Free State in 1922.<sup>13</sup> Section 1(3) of the 1971 Act states:

*“Arrival in and departure from the United Kingdom on a local journey from or to any of the islands (that is to say the Channel Islands, and Isle of Man) or the Republic of Ireland, shall not be subject to control under this Act, nor shall a person require leave to enter the United Kingdom on so arriving, except in so far as any of those places is for any purpose excluded from this subsection under the powers conferred by this Act; and in this Act the United Kingdom, and those places, or such of them are not so excluded, are collectively referred to as “the common travel area”.”*

20. British and Irish citizens may travel between the UK and Ireland without requiring leave to enter, or needing to present a passport (though of course some form of identification may need to be shown for security purposes). However, the freedom of movement afforded by the CTA is not total. First, it only applies to “local journeys”

<sup>13</sup> The Republic of Ireland is recognised under section 3 of the Ireland Act 1949 (the UK Act which concerned the creation of the Republic of Ireland) as being independent, and although not part of the Commonwealth, neither is it a foreign country. This recognition has informed both immigration policy and those other areas in which Irish citizens have a particular status in domestic law, such as the vote.

(i.e. those which start and end within the CTA). Further, section 9(4) of the 1971 Act sets out a series of general exceptions to the principle of freedom of movement, and those who fall within these are subject to immigration control. This includes those subject to a deportation order in Ireland or the islands and those who have previously been refused leave to enter. Further, the Secretary of State may also prevent persons from entering the UK on grounds of national security.

21. Although Irish citizens, both as falling within the CTA and as EEA nationals, do not require leave to enter the UK, they may be deported under the deportation regime applicable to all EEA nationals. Irish citizens are therefore subject to a generous regime in that they do not, unlike other EEA nationals, have to demonstrate the exercise of EC Treaty rights to enter and remain in the UK, where they do so from within the CTA, but are subject, like EEA nationals, to deportation rules based on their conduct.
22. Finally, by virtue of sections 9(5) and 9(6) of the 1971 Act, the Secretary of State may exclude either the islands or the Republic of Ireland from section 1(3) for specified purposes (i.e. from the CTA).<sup>14</sup>

### **Freedom of movement for Citizens of the European Union, the EEA and Switzerland**

23. The free movement of citizens is one of the founding principles of the European Union, and before that of the European Community. Article 18 of the EC Treaty sets out the general right:

*“Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by measures adopted to give it effect.”<sup>15</sup>*

14 There are a series of further restrictions on the freedom of movement afforded by the CTA to those who enter through Ireland but are not Irish citizens, under the Immigration (Control of Entry through Ireland) Order 1972 (SI 1972/1385).

15 The extent to which Article 18 gives a free-standing right to reside, not dependent on the exercise of Treaty rights, is discussed in the work done by BIICL. Although Article 18 has been argued, together with Article 12, as a basis for non-discrimination against EU nationals lawfully resident in other Member States, even if not economically active, it does not provide a general right to reside, and is expressly subject to the limitations and conditions laid down in the relevant Directives, which must themselves be exercised in accordance with the general principles of Community law. The Treaty of Lisbon will not change the substance of the provisions of the EC Treaty on citizenship, but they will be re-numbered.

24. Under Article 17 of the Treaty, citizens of the Union are nationals of each Member State, and it is a matter for determination by each State who is a national for Union purposes.<sup>16</sup> The principle of free movement extends to citizens of the European Economic Area (EEA), that is EU Member States and Iceland, Liechtenstein and Norway, and since 1 June 2002, to Swiss nationals.<sup>17</sup> The principle also entitles an EEA national to be accompanied or joined by certain of his family members when he moves to or resides in another Member State. This can include third country (non-EEA) nationals. UK nationals and their family members have the same rights to live and work throughout the EEA and Switzerland, and access to services and benefits on the same basis as EEA nationals in the UK.<sup>18</sup>
25. Directive 2004/38/EC (which also applies to EEA nationals) consolidated and repealed extensive pre-existing legislation into one instrument. It makes provision for the freedom of movement and the right to reside for EU citizens and their families, including setting out the limitations on the right, which in part serve to differentiate the freedom of movement afforded to European citizens from the right of abode afforded to British citizens. The key features of the Directive are the initial period of three months' residence granted to EU nationals and their families, which need not be tied to their working in the host State (but is dependent on their having sufficient means), and the circumstances for the grant of permanent residence to EU citizens and their families after 5 years' of residing and exercising Treaty rights in another Member State.<sup>19</sup> The Directive was transposed into domestic law by the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations").<sup>20</sup>
26. The 2006 Regulations grant EEA nationals and family members accompanying or joining them a right of entry to the UK on production of a valid nationality identity card or passport, and stipulate that the initial right of residence is for three months.<sup>21</sup> However, this right to

16 The UK has declared that British citizens, British subjects with a right of abode and British Overseas Territories Citizens who have a connection with Gibraltar are UK nationals for Community purposes.

17 By virtue of the agreement of 21 June 1999 between the EC and its Member States and the Swiss Confederation. For these discussions, reference to the EEA should be taken to include Switzerland unless stated otherwise.

18 Access to services and benefits for EEA nationals is examined in Part IV.

19 Directive 2004/38/EC, Articles 6, 7 and 16. For a discussion of the Directive and the relevant case law, see the BIICL work on freedom of movement.

20 SI 2006/1003. The 2006 Regulations put in place a single legislative scheme in this area for EU, EEA and Swiss nationals.

21 Ibid, Regs. 11, 13.

reside is subject to two important limitations. First, if an EEA national or his family member becomes “*an unreasonable burden on the social assistance system of the United Kingdom*”, he will lose his right of residence.<sup>22</sup> Second, admittance and residence are restricted if exclusion or removal are justified on the grounds of public policy, public security or public health.<sup>23</sup>

27. After the end of the initial three month period, the 2006 Regulations give a further right of residence to “qualified people” and members of their family. Qualified people are those who are job-seekers, workers, self-employed, students and those who are self-sufficient, by which it is meant that not only will they not become an unreasonable burden on the social security system, but also that they have in place comprehensive sickness insurance cover.<sup>24</sup> Students must satisfy the same requirements as the self-sufficient and must also be enrolled on a recognised course. Workers and the self-employed who cease to work by reason of retirement or permanent incapacity do not lose their right to reside if they have been continuously resident in the UK for a specified time beforehand, in most cases, two to three years.<sup>25</sup> Again the right to reside is subject to curtailment if the Secretary of State decides removal from the UK is justified, on the same grounds as above.<sup>26</sup>
28. The permanent right to reside in the UK is acquired by EEA nationals and their family members who have resided in the UK for a continuous period of five years, but only if this has been in accordance with the 2006 Regulations, so for example if they have been self-sufficient or have been exercising their right to work under the EC Treaty during that period. Further, the right is to be differentiated from that afforded to British citizens and others with the right of abode, and to Irish citizens in the Common Travel Area, in that it will be lost after a continuous absence from the UK of more than two years.<sup>27</sup>

22 Reg. 13(3)(b). Under Reg. 4(4), the resources of the national, and where, applicable, family members, are to be treated as sufficient if they are higher than the amount which would entitle a UK national to benefits.

23 Regs.13(3)(a) and 19(3)(b).

24 Regs. 4, 6 and 14.

25 Reg.5.

26 Regs. 14(5) and 19(3)(b).

27 Reg.15(2). EEA nationals who had lost their permanent right to reside through absence would still be able to exercise their free movement rights under the EC Treaty.

29. The grounds for removal of an EEA national who has acquired the right of permanent residence in the UK are public policy or public security, but the thresholds for removal are higher, so that a person may only be removed if the grounds are “serious”, and after ten years’ residence only on “imperative” public security grounds.<sup>28</sup> There are detailed provisions governing the making of a removal decision, stating that if on the grounds of either public policy or security, the decision must be based on the person’s conduct, which must represent “*a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.*” Further the decision must be proportionate and the decision-maker must take account of the personal circumstances of the person concerned.<sup>29</sup> A removal decision is subject to appeal to the Asylum and Immigration Tribunal or to the Special Immigration Appeal Commission (SIAC), where national security is in issue.<sup>30</sup> Where a removal decision has been taken, the deportation regime under the Immigration Act 1971 applies, albeit with modifications.
30. The rights of EEA nationals to enter and reside in the UK are evidenced, depending on the period of residence, by the issue of registration certificates, residence cards, documents certifying permanent residence and permanent residence cards, which may be refused or revoked either on same grounds as an exclusion decision, or where the person has ceased to have the right to reside in accordance with the 2006 Regulations.<sup>31</sup>
31. Not all EU nationals enjoy all of the rights set out in the 2006 Regulations. Nationals of the Eastern European countries who joined the EU on 1 May 2004 (“A8 countries”) and on 1 January 2007 (“A2 countries”) are subject to restrictions on their access to the labour market including requirements to register their employment, restrictions in the work they can take up and in the benefits they can claim.<sup>32</sup>

28 Reg. 21.

29 Reg. 21(5).

30 Regs. 25-29 and Schedule 1.

31 Regs. 16-18, 20.

32 The Accession (Immigration and Worker Registration) Regulations 2004 (SI 2004/1219), as amended, and The Accession (Immigration and Worker Authorisation) Regulations 2006 (SI 2006/3317), as amended. The schemes may be maintained for up to 5 years post-Accession or 7 years in the case of national labour market catastrophe.

### Indefinite leave to enter (ILE) and indefinite leave to remain (ILR)

32. Those who have indefinite leave to enter (ILE) or remain (ILR) are said to be “settled”. “Settled” status is defined as being ordinarily resident in the UK without restriction under immigration laws as to the length of that stay.<sup>33</sup> “Ordinary residence” has been held by the House of Lords to mean a person’s residence “*in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or of long duration.*”<sup>34</sup>
33. In some respects, the right of indefinite leave appears similar to the right of abode granted to British citizens. However, there are differences, and indefinite leave is a less secure right than the right of abode. First, freedom of re-entry into the UK is not automatic for those who have indefinite leave to enter or remain. The rules governing the rights of those with indefinite leave who stay outside the UK are set out in the Immigration (Leave to Enter and Remain) Order 2000.<sup>35</sup> In contrast to those with the right of abode, those who leave the UK and re-enter within two years will ordinarily retain their former status, but may have to show that they intend to return for the purposes of settlement. However, those who have indefinite leave to enter or remain are likely to lose their status if they are absent from the UK for more than two years.<sup>36</sup> Those who have been granted indefinite leave may also be deported where the Secretary of State deems that to do so is conducive to the public good, or upon conviction for an offence for which the defendant is punishable by imprisonment and deportation is recommended by the court.<sup>37</sup>

33 Immigration Act 1971, s. 33(2A), as amended. “Settled” status is here used in relation to those who have indefinite leave to enter or remain and are ordinarily resident, although technically it also includes those whose were settled prior to the commencement of the 1971 Act, and those who have the right of abode (the more valuable right) and who are ordinarily resident here, and others who are subject to immigration control but who may be resident here without the grant of leave, such as Irish citizens. ILE/ILR status may be evidenced by way of a United Kingdom Residence Permit (UKRP) placed in the applicant’s passport or travel document, in accordance with EC Regulation 1030/2002. People whose status pre-dated that legislation may instead have a letter or sticker in their passport denoting the indefinite nature of their leave. Biometric immigration documents are due to be phased in from 2008 onwards.

34 *Shah v Barnet London Borough Council* [1983] 2 AC 309 HL, at 343.

35 SI 2000/1161, as amended.

36 *Ibid*, Art. 13(4)(a). The 2 year rule is subject to a discretion which may be exercised to re-confer indefinite leave to remain, where injustice or undue hardship would otherwise result, or would be in breach of Article 8 of the ECHR (right to a private and family life).

37 Immigration Act 1971, s.3(5),(6). Where deportation or removal is not possible, a person’s ILR status may also be revoked under s.76 of the Nationality, Immigration and Asylum Act 2002.



### “Right” to a passport

34. A British passport will be granted to all British citizens, save in certain cases in which a passport may be refused or withdrawn on policy grounds.<sup>38</sup> For all practical purposes, it may be said that British citizens have the right to a passport, even though there will be cases in which the public interest or the interests of others mean that the right may be denied.
35. In strict legal terms, however, the grant of a passport is an exercise of prerogative power, exercised as a matter of discretion by the executive, and the entitlement to a passport is less a right than an expectation of the citizen.<sup>39</sup> In *R v SS for the Home Department, ex p Everett*, the applicant, a British citizen who was living in Spain and for whom an arrest warrant had been issued in the UK, was denied a British passport.<sup>40</sup> He sought judicial review of the decision. The Court of Appeal allowed the applicant to challenge the exercise of discretion, holding that the “*ready issue of a passport*” is “*the normal expectation of every citizen unless there is good reason for making him an exception.*”<sup>41</sup> Citizens have a right to expect that the decision whether or not to issue a passport, albeit a matter of discretion, will be made fairly, and they are entitled to reasons for any refusal of their application and to make representations as to the decision. The Court held, however, that the Secretary of State’s policy was justified and declined to interfere with his decision.
36. What rights and duties flow from a passport? In fact rights and duties flow, not from the passport itself, but from the status of the holder.<sup>42</sup> The passport evidences that status, and its importance as evidence should not be under-estimated, as under the Immigration Act 1971 a person may be restricted from exercising his right of abode if he

38 McDonald states that these grounds are five: to prevent the unlawful removal of children from the jurisdiction; to prevent people leaving the country to escape prosecution; where the applicant’s behaviour is so demonstrably undesirable that it is not in the public interest for them to continue to enjoy the benefit of passport facilities; where the holder has been repatriated at public expense and has not reimbursed the State; and where an arrest warrant has been issued, or the person is wanted for a serious crime in the UK (Immigration Law and Practice, 6<sup>th</sup> ed, para. 2.67).

39 The Government announced that the power to issue, refuse, impound and revoke passports was to be reviewed as part of its wider exercise of reform of the prerogative power. If, as was proposed in that paper, these issues are put on a statutory footing, this would serve to clarify the extent of the powers to interfere with the usual entitlement to a passport (Governance of Britain, paras. 24, 50).

40 [1989] QB 811.

41 Per Taylor LJ, *Ibid*, at 820.

42 There is some authority for the proposition that the passport itself confers the right of protection and duty of allegiance, but the decision in *R v Joyce* [1946] 1 All ER 1986, discussed below in the context of treason, should not, it is suggested, be taken to represent the position more generally on this point.



cannot prove his entitlement to it. The passport may therefore be said to evidence possession of the central right of citizen: the right to enter and leave his country freely.<sup>43</sup> Further, and very importantly, it also serves to evidence the right to seek consular assistance from the British authorities when abroad.<sup>44</sup>

## Summary

### British Citizens

- Right of abode and freedom of movement in the UK;
- Freedom of movement within and subject to the rules of the Common Travel Area;
- Freedom of movement throughout the EEA and Switzerland in the exercise of EC Treaty rights;
- Expectation of issue of a British passport;
- Deprivation of right of abode only permitted in circumstances in which citizenship is also lost.

### Irish Citizens

- Freedom of movement in the UK and treated as settled where ordinarily resident;
- Freedom of movement within and subject to the rules of the Common Travel Area;
- Freedom of movement throughout the EEA and Switzerland in the exercise of EC Treaty rights;
- May be the subject of a deportation order from the UK.

43 Sections 1(1) and 3(9) of the Immigration Act 1971, as amended. Non-British citizens who have the right of abode may evidence it by a certificate of entitlement attached to their own passports, and once in use, an identity card issued under the Identity Cards Act 2006 will also form a valid means of providing nationality and immigration status.

44 See Part 2, below. Passports are also issued to holders of the other forms of other British nationality. These passports do not, as in the case of British citizens, evidence the right of abode, but they serve as evidence of British national status and the rights of protection afforded by that status.

**Commonwealth Citizens (other than British citizens, so holders of all forms of British nationality and citizens of the countries listed in Schedule 3 to the BNA 1981)**

- Limited numbers of Commonwealth citizens may retain the right of abode, although they may be deprived of it on the basis of their conduct;
- Otherwise Commonwealth citizens are subject to immigration control;
- British nationals have an expectation that a British passport reflecting their status will be issued to them.

**EEA Nationals**

- Freedom of movement throughout the EEA and Switzerland in the exercise of EC Treaty rights;
- Right of permanent residence after 5 years' exercise of EC Treaty rights in UK. Right may be lost after 2 years' continuous absence from UK;
- May be subject of deportation order from the UK.

## Part 2: Rights of Protection

### Diplomatic Protection

37. Diplomatic protection is appropriate where a national of one state suffers an international wrongful act at the hands of another state.<sup>45</sup> It is a state-to-state process, based on the theory that an internationally wrongful act committed by one state against the national of another state amounts to a wrong committed against the state of which the person is a national. As a matter of international law, a state cannot claim diplomatic protection for anyone other than one of its own nationals, and, arguably in the case of dual nationals, cannot do so unless there is a genuine and effective connection between the national and the State claiming protection.<sup>46</sup> Subject to this, the Government may extend this protection to all British nationals under

45 See Article 1, International Law Commission's Draft Articles on Diplomatic Protection (2006). There is debate concerning the extent to which diplomatic protection is more properly viewed as the right of a state or the "right" of the national concerned. Its exercise is a matter of discretion for the State, but it will only come to be engaged once the individual has exhausted the local remedies available to him, and in this sense it follows the exercise of his individual rights. For further discussion, see the work of BIICL.

46 The test established in the decision of the International Court of Justice in *Nottebohm* (1955), discussed in the work of the BIICL.

the British Nationality Act 1981, and to companies or corporations incorporated under the law of the United Kingdom or one of its territories.<sup>47</sup> Further where a British national has an interest, as a shareholder or otherwise, in a company incorporated in another State, the UK may act in concert with that State in protection of its national.

### Consular Assistance

38. Consular assistance is to be distinguished from diplomatic protection in that it refers to the range of actions which States take to assist their nationals when they are in distress or difficulty abroad, with the permission of the State in which the assistance is given. Like diplomatic protection, it may be provided to all British nationals, although British consular assistance may be extended with the consent of the receiving State to foreign nationals who do not have a consulate in a particular country; for example, British consular officers often provide assistance to Commonwealth nationals in countries in which they are not represented by consular officers from their own country.<sup>48</sup> The extension of consular assistance in this way between countries does not, however, diminish its importance as a service provided primarily for the benefit of British nationals, and such arrangements may be reciprocal, thus further extending the territorial reach of protection of British nationals.
39. Like diplomatic protection and passport entitlement, consular assistance is not an absolute right afforded to all nationals, and is exercised as a matter of executive discretion, rather than legal obligation, albeit that the exercise of that discretion is subject to the ordinary principles of judicial review.<sup>49</sup> Again, however, it may be argued that its nature in law does not diminish its fundamental practical importance to British nationals abroad.<sup>50</sup>

47 That is British citizens, British Overseas Territories citizens, British Nationals (Overseas), British Overseas citizens, British subjects under Part IV of the 1981 Act and British Protected Persons.

48 For example, the British and Australian governments agreed that the former would provide consular assistance to the nationals of the latter in Iraq. An exception arises in respect of British Nationals (Overseas) of Chinese ethnic origin travelling in China, Hong Kong and the Macao Special Administrative Regions, because China views these nationals as their own. BN(O)s obtain the same protection as other British nationals when travelling elsewhere.

49 *R (Abbasi) v SS for Foreign and Commonwealth Affairs & SS for Home Department* [2002] EWCA Civ. 1598, in which the applicant sought through judicial review to compel the Foreign Office to make representations on his behalf to the US Government. The Court of Appeal held that the issue was amenable to the ordinary principles of judicial review, but a citizen's "right" in this context was to have his request considered by the Foreign Office, and that in consideration all relevant factors would be thrown into the balance. The Foreign Office had a very wide discretion as to whether to provide assistance, and it was not for the court to enter into decisions affecting foreign policy.

50 For a full description of consular services, see the FCO Guide, "Support for British

## Extension of Consular Assistance: Article 20 of the EC Treaty

40. Article 20 of the EC Treaty states that:

*“Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State.”*

41. Article 20 places all EU Member States under a duty to provide consular assistance to nationals of other Member States in countries where they cannot obtain consular protection from their own authorities, on a non-discriminatory basis. EU nationals, like British nationals, have no right to consular assistance from British authorities, but will be afforded assistance on an equal basis. Member States provide consular assistance on varying bases; some, like the UK, do so as a matter of policy, while others give their nationals a right to consular assistance. Those British nationals who are “citizens of the Union”, will have the same access, on the same basis, to consular assistance from the authorities of other Member States in countries in which the UK is unrepresented.<sup>51</sup>

## Domestic Protection

42. The right to protection at home is historically derived from the Sovereign’s obligation to maintain and defend the Realm and her subjects. The duties owed by the Monarch to her subjects are set out in the Coronation Oath, and include governing the peoples of Great Britain and Northern Ireland according to their respective laws and customs; causing law and justice in mercy to be executed in all judgments; and maintaining the Churches of England and Scotland.<sup>52</sup> It has long been recognised that these duties of the Sovereign are exercised through her Ministers, so section 4 of the Act of Settlement 1700 states:

*“whereas the laws of England are the birthright of the peoples thereof and all the Kings and Queens who shall ascend the throne of this realm ought to administer the government of the same according to the said laws and all their officers and ministers ought to serve them respectively according to the same”.*

*Nationals Abroad: A Guide* (2006).

51 For the European Commission’s approach to the development of Article 20, see the Green Paper on Diplomatic and Consular Protection of Union Citizens (COM (2006) 712), and the UK Government’s response to it of March 2007. A question arises as to whether assistance should be provided to non-EU family members of EU citizens under Article 20, which would broaden the scope of protection beyond the principle of nationality. The UK Government has resisted this proposal.

52 Coronation Oath Act 1688 (1 Will & Mar chap 6), s. 3, although as a matter of practice the language in which the oath is taken has altered with time.

43. The Government exercises the Monarch's powers through both the prerogative, for example in the deployment of armed forces, and, more commonly, through statute.<sup>53</sup> There is a broad range of statutory duties imposed across the field of government action on Ministers and public authorities, setting out the standard citizens are entitled to expect in the exercise of executive power.<sup>54</sup> The extent to which these statutory duties give rise to correlative individual and enforceable rights varies. In the case of *X v Bedfordshire County Council*, which concerned the statutory duties upon local authorities to safeguard the welfare and meet the educational needs of the children in their area, Lord Browne-Wilkinson, in the course of holding that no action for breach of statutory duty arose in the circumstances, stated that:

*"... although regulatory or welfare legislation affecting a particular area of activity does in fact provide protection to those individuals affected by that activity, the legislation is not to be treated as being passed for the benefit of those individuals but for the benefit of society in general."*<sup>55</sup>

44. This is in contrast with the protection provided in respect of those human rights which are protected by the European Convention on Human Rights. The Human Rights Act 1998, which incorporated the ECHR into domestic law, imposes a duty on all public authorities to act in accordance with the rights set out in the Convention and provides a cause of action in the event of a public authority acting incompatibly with the Convention.<sup>56</sup> The core rights set out in the Convention include the right to life (Art.2), the right to be free from torture or inhuman or degrading treatment (Art.3), the right to liberty and security of person (Art.5), the right to a fair trial (Art.6) and the right to a private and family life (Art.8).

45. The protection afforded by the fundamental rights and freedoms in the ECHR is afforded to all those in the jurisdiction, and Article 14 prohibits discrimination in their enjoyment on a number of grounds, including nationality. Further, the domestic statutory duties of the kind discussed above are not limited by reference to citizenship, although in real terms the vast majority who benefit from this kind of social

53 The Governance of Britain Green Paper proposes placing several of the remaining prerogative powers which are exercised by the executive, including the deployment of armed forces, on a statutory footing. A Consultation Paper on War Powers and Treaties was published on 25 October 2007 (CP26/2007).

54 See for example, the duty of the Secretary of State to promote the education of the people of England and Wales under section 10 of the Education Act 1996. See further Part 4, below.

55 [1995] 2 AC 633, 731-732. Even if an action for breach of statutory duty is not available, public authorities are under duties to exercise their powers lawfully, procedurally fairly and rationally, and may be subject to judicial review by the courts if they fail to do so.

56 Human Rights Act 1998, ss.6 & 7.

protection are British citizens by virtue of their automatic right of abode.<sup>57</sup> In general terms, however, domestic protection extends beyond British citizens to all in the jurisdiction.

### **The right to protection and the duty to obey the law**

46. Although there is no over-arching statutory duty in English law to obey the law, all who receive its protection are under a responsibility to do so, and, upon prosecution, will attract punishment if they do not. Just as the protection of the State at home is not limited to British citizens, the implied duty to obey the law is not drawn tightly by reference to citizenship. Further, while the criminal law is aimed primarily at ensuring that people take responsibility for their own behaviour, there are a series of offences, relating particularly to the reporting and investigation of crime, which point to a wider responsibility to uphold the law and to assist in preventing offences by others.
47. In relation to the reporting of crime, terrorism legislation imposes duties on those who suspect that others have committed offences relating to terrorist property or the funding of terrorist organisations to disclose both their suspicion and the information on which it is based.<sup>58</sup> The Proceeds of Crime Act 2002 creates similar offences where in the course of a business specified as regulated under the Act, a person comes into possession of information which means that he has reasonable grounds for knowing or suspecting that another person is engaged in money laundering.<sup>59</sup> Finally, in the domestic context, a person will in certain circumstances be guilty of an offence if he causes or allows the death by an unlawful act of a child or vulnerable adult in the same household as him.<sup>60</sup> The offence will be made out if the defendant was or ought to have been aware of a significant risk of serious physical harm being caused to the victim and the defendant failed to take reasonable steps to protect the victim from that risk.

57 See Part 4 below on access to benefits and services. Immigration status and residence are relevant to access to benefits and services. Article 12 of the EC Treaty prevents discrimination on the grounds of nationality, so where the protection discussed falls within the scope of the EC Treaty it is contrary to EU law to discriminate between British citizens and nationals of other EU Member States.

58 Terrorism Act 2000, s.19, as amended. The duty arises where a person has come into possession of the relevant information in the course of his trade, profession, business or employment. The offence is punishable on indictment by up to 5 years' imprisonment.

59 Proceeds of Crime Act 2002, s.330, as amended. There are further offences in relation to tipping off (s.333) and prejudicing an investigation (s.342) designed to safeguard the investigation of money laundering offences.

60 Domestic Violence, Crime and Victims Act, s.5. The offence is punishable on indictment by up to 14 years' imprisonment.



48. In relation to giving evidence in criminal cases, the general rule is that if a person is competent to give evidence, he may be compelled to do so.<sup>61</sup> In particular if a court is satisfied that a person is likely to be able to provide material oral or documentary evidence and it is in the interests of justice to secure that person's attendance at court, a witness summons may be issued.<sup>62</sup> If a person is likely to disobey the summons, a warrant may be issued for his arrest and he may be kept in custody until such time as he is to give evidence.<sup>63</sup> Failure without just excuse to obey a witness summons is punishable as a contempt of court.<sup>64</sup>

49. The implied duty to obey the law may be analysed as the main element of reciprocal obligation owed as a result of the protection extended to all in the jurisdiction. This reciprocal link between protection and allegiance is shown in the form of the oath and pledge taken by those who acquire British citizenship or one of the forms of British nationality:

*"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 Heirs and Successors according to law ... 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."*<sup>65</sup>

50. Further, those who take public office are also required to take an oath of allegiance to the Crown, including Members of Parliament, Ministers, Judges, Magistrates and Members of the Armed Forces. However, the oaths taken by some are merely evidence of the duty of allegiance owed by all British nationals.

51. The question of what duty or allegiance is owed to the UK by non-nationals is less straightforward. This is not a new issue. As far back as 1858, when the distinction in law was between subject and alien, Lord Campbell stated that:

*"those who find asylum here must ever bear in mind that while they have the protection of the law of England they are bound to obey that*

61 There are limited exceptions to this rule, so for example a husband or wife will not usually be compelled to give evidence against his spouse, but even this rule is subject to exception where the offence alleged is one of domestic violence or a sexual offence against a child (Police and Criminal Evidence Act 1984, s.80, as amended).

62 Criminal Procedure (Attendance of Witnesses) Act 1965, s.2, as amended.

63 Ibid, s.4, as amended.

64 Ibid, s.3, as amended.

65 British Nationality Act 1981, s.42 and Schedule 5, para.1. The Schedule sets out similar oaths for British Overseas Territories Citizens, British Overseas Citizens and British subjects.

*law, and they are equally liable with the subjects of Her Majesty for any crime which may be committed by them while resident in the realm. I hope that they will bear this in mind and understand that it is a crime on the part of a British subject, or for a foreigner owing temporary duty of allegiance to the Crown of England, to plot and conspire for the commission of a crime in a foreign country, or for the commission of a crime in this country.”<sup>66</sup>*

52. There can be no question that all those who are present in the UK should be subject to the general law. This can be seen as a consequence of the protection afforded by the State, and, perhaps, as a form of “temporary allegiance”, but the ambit of such a duty in the modern context is not always easy to determine. Two classes of case help to demonstrate both the principle and the ambiguities. First, liability in English law for offences committed abroad (extra-territorial jurisdiction) and second, the offence of treason, in which the duty of allegiance is a necessary element of the offence.

### Extra-territorial jurisdiction

53. In relation to extra-territorial jurisdiction, the general principle is that the courts of England and Wales do not try offences committed abroad. There are significant exceptions to this rule which are not based on the nationality of the defendant, but rather on the nature of the offence.<sup>67</sup> However, the criminal law has long asserted the right to “police” the behaviour of its nationals abroad. So, for example, under the Offences Against the Person Act 1861 (OAPA), the offences of murder and manslaughter are triable in England and Wales if the accused is a British subject.<sup>68</sup> More recently, under the War Crimes Act 1991, a British citizen or person resident in the UK on 8 March 1990 or later may be tried anywhere in the UK for murder, manslaughter or culpable homicide committed in Germany during the Second World War, irrespective of his nationality when the offence was committed. The scope of the 1991 Act is therefore both narrower (in that it does not extend to the other forms of British nationality), and wider (in that it does extend to residents) than the OAPA.

66 *R v Tchorzewski* (1858) 8 St Tr NS 1091 (*obiter*). International instruments also make reference to a duty of allegiance owed by certain classes of migrant to obey the law of the State they are in, for example in relation to refugees (Convention relating to the Status of Refugees 1951, Art.2) and the stateless (Convention relating to the Status of Stateless Persons 1954, Art.2).

67 For example, under Part I of the Criminal Justice Act 1993, in relation to offences of fraud and dishonesty.

68 OAPA 1861, s.9. For a recent affirmation of the principle by the Court of Appeal, see *R v Cheong* [2006] EWCA 524. Under the British Nationality Act 1981, s.51 a reference to a “British subject” in an Act passed before 1 January 1983, has the same meaning as “Commonwealth citizen” under s. 37 of the 1981 Act.



54. The Sexual Offences Act 2003 takes a mix of these two approaches, in that British nationals (including certain British Protected Persons) are deemed to have a sufficient nexus with the UK under the Act to be tried in England and Wales for a variety of sex trafficking offences. However, other UK residents are not caught by these provisions.<sup>69</sup> However, under section 72 of the same Act, a British citizen or resident in the UK may be tried for a number of sexual offences if the conduct in question is an offence under the law both of England and Wales and under the law of the country where the act took place (the rule of “double criminality”).<sup>70</sup>
55. The Female Genital Mutilation Act 2003 takes yet another approach in extending jurisdiction for offences committed under sections 1 to 3 of the Act to “UK nationals” and “permanent UK residents”, without insisting on double criminality. The Act therefore extends to all holders of British nationality and to those who are settled for the purpose of the Immigration Act 1971.<sup>71</sup>

## Treason

56. The offence of high treason principally dates back to the Treason Act of 1351.<sup>72</sup> The Act defines the numerous ways in which the offence may be committed, including violating the King’s wife or eldest daughter, or the Heir’s wife; and slaying the Lord Chancellor. However, arguably of most potential relevance in a modern context are, “*imagining the death of the King*”, “*being adherent to the King’s enemies*”, and “*levying war against the sovereign in his realm*”. It is also a necessary element to show that the defendant had a duty of allegiance to the Crown. It is therefore an offence which may be said to be founded on the bond between subject and sovereign, or citizen and State, and the duty of loyalty owed to the State. That the

69 Sexual Offences Act 2003, ss.57-60.

70 Sexual Offences Act 2003, s.72 and Sched.2. Part VII of the Criminal Justice and Immigration Bill would if passed amend s.72 so that the double criminality rule would be removed in the case of nationals but retained in the case of residents.

71 Female Genital Mutilation Act 2003, s.4. For the definition of “settled” see the Immigration Act 1971, s.33 (2A). The Serious Crime Act 2007, Part 2 and related provisions, when commenced, will extend the extra-territorial jurisdiction of the court in relation to offences of encouraging or assisting crime. Under the relevant provisions, a person may be convicted of an offence, regardless of his own location, if he knew or believed that the act that would amount to the commission of an offence would take place, at least in part, in England and Wales. Further, it may be possible to convict if the main offence was one for which the perpetrator could be prosecuted in England and Wales, even if it was committed outside the jurisdiction, or the act took place in England and Wales but the anticipated offence was also a crime in the country in which it was anticipated that it would be committed.

72 There are a number of other disparate statutory provisions in place, creating separate but overlapping offences, or dealing with procedure or penalty.

offence requires a breach of this duty may be said to give the offence its unique and especially serious character.<sup>73</sup> The case law as to who owes this duty and in what circumstances pre-dates the British Nationality Act 1981, but in *R v Casement* it was held that:

*“The subjects of the King owe him allegiance and the allegiance follows the person of the subject. He is the King’s liege wherever he may be, and he may violate his allegiance in a foreign country just as well as he may violate it in this country.”*<sup>74</sup>

57. Further it seems clear that resident aliens will also owe a duty of allegiance when the offence is committed “within the Realm” but it is less clear as to whether the “temporary duty of allegiance” might persist outside the jurisdiction.<sup>75</sup> This is in contrast to the offences in more recent statutes discussed above which clearly define the limits of their extra-territorial reach in respect of those who are not British citizens.
58. There have been no prosecutions for an offence of treason since 1981.<sup>76</sup> This may be partly because acts of treason are committed rarely, but it is also likely to be due at least in part to the difficulty in prosecuting the offence, due to its being couched in archaic language of ambiguous ambit. Complexities arise not only in respect of who may be said to owe the duty of allegiance, but also, for example, in relation to the meaning of the King’s enemies and whether a state of war recognised in international law is necessary for the offence to have been committed.

73 Treason was the last offence for which the death penalty was formally abolished, by the Crime and Disorder Act 1998.

74 [1917] 1 QB 98, p.137.

75 *Jagar v Natal* [1907] AC 326. See *R v Joyce* [1946] AC 347, in which an American citizen travelling on a British passport was convicted of treason for taking part in German radio broadcasts hostile to the British. It was held that the passport gave him a degree of protection and therefore the element of allegiance was made out, but the analysis is not without its problems.

76 The conviction was not under the 1351 Act, but was for discharging a gun near the sovereign under the Treason Act 1842.

59. These difficulties are discussed further in the next Chapter, where it is also suggested that there is a good case for re-framing the offence and making it a relevant part of the present-day criminal law.

## Summary

### **British Nationals (British citizens, British Overseas Territories Citizens, British Nationals (Overseas), British subjects and British Protected Persons)**

- Entitled to request that the State exercises diplomatic protection where they have suffered a wrong at the hands of another State;
- Entitled to request consular assistance when abroad;
- Entitled to domestic protection and owe duty of allegiance to the Crown;
- Implied duty to obey the law when in the UK, and will be liable for certain offences in the UK if committed abroad.

### **European nationals**

- Entitled to request consular assistance from British authorities abroad under Article 20 of the EC Treaty in a country where his own State is not represented;
- UK nationals for European purposes are entitled to reciprocal protection;
- Entitled to domestic protection if resident and may owe a temporary duty of allegiance while in the jurisdiction;
- Implied duty to obey the law of the UK, and if permanently resident in the UK, may be liable for certain offences in the UK if committed abroad.

### **Other UK residents**

- May be entitled to request consular assistance if the country of which he is a national has an agreement with the UK;
- Entitled to domestic protection if resident and may owe a temporary duty of allegiance while in the jurisdiction;
- Implied duty to obey the law of the UK, and if permanently resident in the UK, may be liable for certain offences in the UK if committed abroad.

## Part 3: Civic Rights and Responsibilities

60. The most important of the rights which allow citizens to play their part in a democracy are the rights to vote and to stand for election, both of which are guaranteed by Article 3 of Protocol 1 to the European Convention on Human Rights:

*“The High Contracting parties undertake to hold free elections at reasonable intervals, by secret ballot, under conditions which will ensure the free expression of the people in the expression of the legislature.”*

61. The decision of the European Court of Human Rights in *Mathieu-Mohin and Clerfayt v Belgium* established that Article 3 of Protocol 1 allows individuals to bring a claim alleging that their right to participate in elections has been violated.<sup>77</sup> However, the Court went on to hold that the rights conferred are not absolute, and that the Contracting States enjoy a margin of appreciation as to the limitations imposed in this sphere, subject to the Court satisfying itself that:

*“the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and the means imposed are not disproportionate.”<sup>78</sup>*

62. The Court went on to state that:

*“For the purposes of Article 3 of Protocol 1, any electoral system must be assessed in the light of the political evolution of the country concerned; features which would be unacceptable in the context of one system may accordingly be justified in the context of another, at least so long as the chosen system provides for conditions which will ensure “the free expression of the opinion of the people in the choice of the legislature.”<sup>79</sup>*

63. Several European countries do restrict the right to vote and to stand for election to their own nationals, and may apply an additional residence requirement. Such conditions are generally accepted as being in accordance with Article 3 of Protocol 1, although would be subject to scrutiny to ensure that they are proportionate and in pursuit of a legitimate aim.

<sup>77</sup> App. No. 9267/81, 2/3/87.

<sup>78</sup> Ibid, para. 53.

<sup>79</sup> Ibid, Para. 54.

## European Legal Framework relating to European and Local Elections

64. Article 19(1) of the EC Treaty states that every citizen of the Union (“*Every person holding the nationality of a Member State*” (EC Art.17(1))) residing in a Member State of which he is not a national “*shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.*”
65. Article 19(2) establishes the same right in respect of the right to vote and to stand for election to the European Parliament.
66. The detailed arrangements to give effect to Article 19 were set down in Directives 93/109/EC and 94/80/EC. The 1993 Directive relating to European elections lays down the principle of non-discrimination in respect of Union citizens resident in another Member State. The 1994 Directive regarding the right to vote and stand in municipal elections states that in relation to “basic local government units”, EU citizens are to be given the same rights as nationals.<sup>80</sup> Under both Directives, where a Member State imposes a residence requirement in that State prior to either voting or standing as a candidate, the Directive provides that residence in any Member State will fulfil that requirement. Member States are, however, permitted to retain a local residence requirement, so long as its requirement as to fulfilment is by nationals and non-nationals alike.
67. The UK’s voting arrangements were considered by the European Court of Justice (ECJ) in the case of *Spain v UK*, in relation to British Dependent Territory Citizens of Gibraltar, who by virtue of the UK’s declaration of 1982 are UK nationals for Community purposes.<sup>81</sup> The Spanish Government objected to qualifying Commonwealth citizens resident in Gibraltar being granted the right to stand and vote in European elections under the European Parliamentary Elections Act 2003, which itself was the result of the decision of the European Court of Human Rights in *Matthews v UK*.<sup>82</sup>
68. The ECJ noted the ECHR case law on the subject and rejected Spain’s argument. Although the Treaty requires non-discrimination as between citizens of the Union, there was nothing in Community Law which required Member States to limit the right to stand and vote in

80 In the United Kingdom this includes authorities for counties, regions and Islands, districts, London boroughs and the City of London, parishes and communities.

81 Case C-145/04, 12/09/06. Following the British Overseas Territories Act 2002, BOTCs of Gibraltar are now nationals for Community purposes also by virtue of their status as British citizens.

82 App.No. 24833/94, 18/2/99. The ECtHr held that it was a breach of Article 3 or Protocol 1 to deny BDTCs of Gibraltar the right to vote in European Parliamentary elections.

European elections to nationals of Member States. The Court held that who is entitled to stand and vote in European elections is a matter within the competence of each Member State, and that for reasons “*connected to its constitutional traditions, the United Kingdom chose to grant the right to vote and to stand for election to QCCs who satisfy conditions expressing a specific link with the territory in respect of which the elections are held.*” The choice of the United Kingdom was lawful.

69. As the UK’s historic ties with Ireland and the Commonwealth and membership of the European Union have shaped the law of nationality and immigration, the same historical and political context is evident in relation to our civic rights and duties: rights which are in the main exercised by British citizens extend in many cases to Irish, Commonwealth and European Union citizens who are resident here.

## PARLIAMENTARY ELECTIONS

### Right to Vote

70. The right to vote in Parliamentary elections is governed by the Representation of the People Act 1983 (“the 1983 Act”), section 1(1) of which states:

*“A person is entitled to vote as an elector at a parliamentary election in any constituency if on the date of the poll he-*

- (a) is registered in the register of parliamentary electors for that constituency;*
- (b) is not subject to any legal incapacity to vote (age apart);*
- (c) is either a Commonwealth citizen or a citizen of the Republic of Ireland; and*
- (d) is of voting age (that is, 18 years or over).”<sup>83</sup>*

71. A person is entitled to register to vote at Parliamentary elections if “on the relevant date” he:

- (a) is resident in the constituency or part of it;*
- (b) is not subject to any legal incapacity to vote (age apart);*
- (c) is either a qualifying Commonwealth citizen or a citizen of the Republic of Ireland; and*
- (d) is of voting age.”<sup>84</sup>*

83 These sections are as substituted by the Representation of the People Act 2000.

84 Section 4(1), Representation of the People Act 1983, as substituted. There are of course other limitations, such as mental capacity and that relating to serving prisoners, but these are not nationality-dependant, and are therefore outside the remit of the present discussion.

72. So far as the nationality requirements are concerned, under section 37 of the British Nationality Act 1981 (“the 1981 Act”), Commonwealth citizens are those who hold one of the forms of British nationality under that Act (all forms other than British Protected Person) or are a citizen of one of the countries listed under Schedule 3 to the Act. Most of those Commonwealth citizens who are eligible to vote are subject to immigration control. Immigration status is relevant to the exercise of the right, so section 4(6) of the 1983 Act defines a “qualifying Commonwealth citizen” as a Commonwealth citizen who is not a person who requires leave to enter or remain under the Immigration Act 1971, or who does require leave but has been granted it or is treated as having been granted it.
73. As to the necessary period of residence in a particular constituency, only in Northern Ireland is there a length of time prescribed in statute. A person must have been resident for a continuous period of three months before the relevant date of their registration.<sup>85</sup>
74. Elsewhere in the UK in relation to Westminster elections, the meaning of “residence” falls to be determined by reference to the purpose and circumstances of a person’s presence or absence at a particular address.<sup>86</sup> A person may therefore be “resident” even though absent, for example through employment or study. The “relevant date” is usually either the date of application for registration, or if the application to register is made on the annual canvass form, 15th October of the year of canvass.<sup>87</sup>

### Overseas Electors

75. Section 1 of the Representation of the People Act 1985 extended the Parliamentary franchise to British citizens resident overseas (but not to Irish or Commonwealth citizens). In order to register to vote as a British overseas elector, a person must make an overseas elector’s declaration that he is a British citizen, and that he is not resident in the UK. In order to qualify as an overseas elector in any Parliamentary constituency, the person must usually have been registered as a Parliamentary elector at an address in that constituency during the 15 years preceding his overseas’ electors declaration.<sup>88</sup> An elector who fulfils the requirements is entitled to be registered in the electoral

85 Ibid, s.4(2).

86 Ibid, s.5(2).

87 Sections 4(6) and 10A(2) of the 1983 Act.

88 Sections 1(1),(2) of the 1985 Act, as amended by the Representation of the People Act 2000. The relevant period was 5 years in the 1985 Act as originally enacted, was increased to 20 years by the Representation Act 1989, and then reduced again to 15 years by the Political Parties, Elections and Referendums Act 2000.



register for the relevant constituency (marked accordingly as an overseas elector), and therefore to vote. The right to vote from overseas is unique to British citizens.

### **Right to Stand**

76. The nationality requirements for election to the House of Commons are set out in the Act of Settlement 1700, section 3, which provides that no person born out of England, Scotland or Ireland, or the dominions, as they then were, is capable of being an MP. In fact, although section 3 is still in force, its application has long been limited. It was first disapplied in relation to all British subjects (including Commonwealth Citizens) and citizens of Ireland by the British Nationality Act 1948. Similar provision was then made in the British Nationality Act 1981. Now, by virtue of section 18 of the Electoral Administration Act 2006, the limitation is disapplied in respect of “qualifying Commonwealth citizens” and citizens of the Republic of Ireland. A “qualifying Commonwealth citizen” is a person who either does not need leave to enter or remain under the 1971 Act, or is a person who has been granted indefinite leave to remain under that Act. “Qualifying” thus bears a stricter meaning under the 2006 Act in relation to candidacy than under the 1983 Act in relation to the right to vote.<sup>89</sup>

## **LOCAL ELECTIONS**

### **Right to Vote**

77. The franchise for local elections is similar to that for Parliamentary elections. It does not extend to British citizens overseas, but it does extend to resident qualifying Commonwealth citizens, Irish citizens and “relevant citizens of the Union”.<sup>90</sup> Under section 202(1) of the 1983 Act, a relevant citizen of the Union is a citizen of a European Member State, other than a Commonwealth or Irish citizen.

### **Right to Stand**

78. To satisfy the nationality requirements for election as either a Mayor or a member of a local authority, it is necessary to be a qualifying

<sup>89</sup> Electoral Administration Act 2006, s.18(2). The relevant provisions came into force on 1 January 2007. The Explanatory Notes to the 2006 Act state that the requirement was introduced to ensure that a candidate had the right to remain in the UK throughout his term if elected.

<sup>90</sup> Representation of the People Act 1983, s.2, as amended.

Commonwealth citizen, in the sense used in the 2006 Act, an Irish citizen or a relevant citizen of the Union.<sup>91</sup> In addition, there is a need to demonstrate a connection with the local area by satisfying one of five conditions set out in section 79(1)(a)-(e) of the 1972 Act, which require the candidate to be registered to vote or to have been resident, or to have worked in the local area for the preceding year.

## EUROPEAN ELECTIONS

### Right to Vote

79. The European Parliamentary franchise is set out in domestic law at section 8 of the European Parliamentary Elections Act 2002 (“the 2002 Act”). A person is entitled to vote if he would on the day of the poll be entitled to vote in a Parliamentary election, either as a resident voter or as a result of an overseas declaration, or if he is a home or overseas peer eligible to vote in local elections, or if otherwise eligible by virtue of the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001.<sup>92</sup> The 2001 regulations state that “relevant citizens of the Union” who are registered to vote in European Parliamentary elections are also permitted to vote. A “relevant citizen of the Union” bears the same meaning as under the 1983 Act for the purpose of local elections (i.e. a national of a Member State who is not a Commonwealth or Irish citizen). Unlike Commonwealth and Irish citizens who have the European franchise by virtue of their registration for the purposes of Parliamentary elections, citizens of the Union have to apply to register separately in order to exercise their vote. Entitlement to register is based, in addition to nationality of a Member State, on residence in a particular European electoral region, age and legal capacity, as in relation to the other elections. There are no specific provisions made in respect of length of residence, except in Northern Ireland, where again provision is made for 3 months’ continuous residence preceding registration.<sup>93</sup>
80. The 2002 Act was amended and supplemented by the European Parliament (Representation) Act 2003, which provided for Commonwealth citizens resident in Gibraltar to vote and to stand in European Parliamentary elections. The provisions mirror those for Commonwealth citizens in the UK.<sup>94</sup>

91 Local Government Act 1972, s.79, as amended.

92 Section 8(2) to (5) of the 2002 Act, and SI 2001/1184.

93 SI 2001/1184, Reg.4.

94 Section 10(2) of the 2002 Act, and ss.15, 16 and 21 of the 2003 Act. The Act was necessitated by the decision of the ECtHR in *Matthews v UK* (App. No. 24833/94, 18/02/99), and it was subsequently held by the ECJ in *Spain v UK* to be lawful to allow non-Union citizens to vote in European elections (Case C-145/04, 12/09/06)(see above).

## Right to Stand

81. Qualifying Commonwealth citizens (in the sense used in the 2006 Act, above), Irish citizens and relevant citizens of the Union who are resident in the UK (or Gibraltar) are entitled to stand for election to the European Parliament (Act of Settlement 1700, s.3 and s.10 European Parliamentary Elections Act 2002). The 2002 Act is silent as to the meaning of “resident”, but a citizen of the Union may be resident in another Member State if he is exercising his right of freedom of movement under the EU Treaty and in accordance with the relevant Directives.<sup>95</sup>

## Elections in the devolved administrations

82. Those eligible to vote in elections for the Scottish Parliament and Welsh and Northern Irish Assemblies are those entitled to vote in local elections and who are registered to do so on the date of the poll.<sup>96</sup> Those eligible to stand are those not disqualified to stand for election to the House of Commons, and, in addition, resident citizens of the European Union.<sup>97</sup> The provisions of the Electoral Administration Act 2006, which introduced the concept of “qualifying” Commonwealth citizens in relation to candidacy, also apply to election to the devolved legislatures and administrations.

## Right to vote in Irish elections

83. British citizens, by virtue of the ninth amendment to the Irish Constitution (1985) and the Irish Electoral (Amendment) Act 1985, are entitled to vote at Dail elections if they are resident and registered in Ireland. They also have the right, as do all other European Union citizens, to vote in local and European elections in Ireland, although they do not vote in Presidential elections or referendums.

<sup>95</sup> See Part 1 above.

<sup>96</sup> Scotland Act 1998, s.11, Government of Wales Act 2006, s.12, The Northern Ireland Assembly (Elections) Order 2001 (SI 2001/2599), Reg. 4.

<sup>97</sup> Scotland Act 1998, ss.15 & 16; Government of Wales Act 2006, ss.16 & 17; Northern Ireland Act 1998, s.36. Elections are a matter reserved to Westminster, subject to devolved power to the Scottish Parliament to make Regulations regarding the conduct of local elections.

### Duties in relation to registration

84. There are at present a limited number of duties on those eligible to vote in the electoral field. There is no duty to vote, but there are duties with regard to the provision of information for electoral purposes. For example, by virtue of Representation of the People (England and Wales) Regulations 2001, a registration officer, who is himself under a duty to maintain the electoral registers, may require any person to give information required for the performance of the registration officer's duties.<sup>98</sup> Where a person fails to provide any information required, he may be subject to criminal prosecution and liable to pay a fine.<sup>99</sup> A similar provision exists in relation to false statements for the purpose of European Parliamentary elections.<sup>100</sup>

### Right to take part in a referendum

85. Part VII of the Political Parties, Elections and Referendums Act 2000 ("PPERA") sets out the statutory framework governing referendums in the UK, which may take place in one or more of England, Scotland, Wales and Northern Ireland, or in the regions.<sup>101</sup> "Permitted participants" who may campaign in referendums include registered parties and individuals resident in the UK or appearing on the electoral register, which is defined as any of the four electoral registers.<sup>102</sup> No provision is made in PERA for who can vote in referendums; the Act stating the question would specify who could take part by reference to geographical area and (presumably) the question in issue. By way of recent example, The Referendums (Scotland and Wales) Act 1997 stated that those entitled to vote on the devolution questions were those who on the day of the referendum were entitled to vote in local elections (Scotland) and council and borough elections (Wales). There is therefore no explicit right in law for any person, of whatever nationality, to vote in a referendum, but eligibility is linked to eligibility to vote in other elections, and therefore may include British, Irish, Commonwealth and European Union citizens.

98 SI 2001/341, Reg.23(1), as amended by SI 2006/2910.

99 Ibid, Reg 23(3). The fine is set at a level not exceeding 3 on the standard scale. A registration officer also has the right to ask for evidence of a person's age or nationality for electoral purposes (Reg.24).

100 The European Parliamentary Elections (Franchise etc.) Regulations 2001 (SI 2001/1184), Reg. 7(1).

101 PERA, s.101.

102 PERA, s.104 & s.54(8).

### Right to donate to a political party

86. Donations to political parties are also governed by PPERA. Donations to registered parties may only be accepted from “permissible donors”, including an individual registered in one of the four electoral registers or a company, firm, trade union or unincorporated association active in the UK.<sup>103</sup> Again, therefore the right of individuals to donate to a political party flows from the franchise, and may extend to British, Irish, Commonwealth and European citizens by virtue of their inclusion in one of the electoral registers.

### Right to hold public office (other than political office)

87. The Act of Settlement 1700, section 3, provides that no person born out of kingdoms of England, Scotland or Ireland or the dominions should be “*capable of enjoying any office or place of trust, either civil or military, under the Crown.*” Section 3 does not apply to Commonwealth and Irish citizens.<sup>104</sup>
88. In the civil service, the appointment of “aliens” (those who are neither Commonwealth nor Irish citizens), is governed by the Aliens’ Employment Act 1955, which permits the employment of aliens outside the UK “*in a capacity appearing to the Minister appropriate to aliens*”, or in the UK under a certificate issued by a Minister on the basis that no suitably qualified British subject was available to do the job or the alien possesses exceptional qualifications or experience. The list of certificates issued under these provisions must be laid before Parliament annually.<sup>105</sup>
89. Under Article 39 of the EC Treaty, EU nationals have the right to work in other EU States, rights which, as discussed above, extend also to EEA and Swiss nationals. This has been given domestic effect through amendment to the Aliens’ Employment Act 1955, to allow EU nationals and certain of their family members to take up jobs in the civil service. The right extends to EEA, Swiss and certain Turkish nationals and their family members.<sup>106</sup> There is, however, an exception in place in relation to “reserved posts”, in the security and intelligence services and in other areas, such as the Diplomatic Service and

103 PPERA, s.54.

104 Section 52(6) of, and Schedule 7 to, the BNA 1981.

105 Aliens’ Employment Act 1955, ss.1(2),(4). By virtue of BNA 1981, s.51(1)(b), “British subject “ in this Act means Commonwealth citizen, as defined by s.37 of the 1981 Act.

106 Aliens’ Employment Act 1955, 1(1)(c), 1(5), as inserted by the EC (Employment in the Civil Service) Order 1991 (SI 1991/1221), and amended by SI 2007/617.

Defence Intelligence, which the responsible Minister considers must be held otherwise than by a European national.<sup>107</sup>

90. Such reserved posts are permitted by Article 39(4) of the EC Treaty, which states that Article 39 does not apply to employment in public service. The ECJ has interpreted this exception strictly, holding that it does not apply to all employment in public service, but allows for limitation of certain posts to nationals which “*involve direct or indirect participation in the exercise of powers conferred by public law*” which are “*designed to safeguard the general interests of the State or of other public authorities*.”<sup>108</sup>

### Right and duty to undertake jury service

91. The Juries Act 1974 states that a person is eligible to serve as a juror if he is registered as a Parliamentary or local government elector between the ages of 18 and 70; has been ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man for any period of at least 5 years since the age of 13; is not mentally disordered; and is not otherwise disqualified for jury service.<sup>109</sup> An Irish citizen, qualifying Commonwealth citizen, or relevant EU citizen who also satisfies the residence requirement is therefore eligible to serve on a jury, and indeed would be expected to do so if summoned, subject to a potential juror having the necessary command of English to understand the proceedings.<sup>110</sup>

107 Aliens' Employment Act, s.1(6),(7).

108 Case 149/79, *Commission v Belgium* [1980] ECR 3881152/73.

109 Section 1, as substituted by Schedule 33 to the Criminal Justice Act 2003, which did not make any change on the issue of nationality. The other disqualification factors are unrelated to nationality and residence.

110 Juries Act 1974, s.10(4). The Alien Restriction (Amendment) Act 1919, s.8 provides that no alien shall sit on a jury if challenged by any party to the proceedings. The section is prospectively repealed by the Criminal Justice Act 1972 (in relation to England and Wales), although the relevant provisions have not been commenced. It has been repealed in relation to Scotland and Northern Ireland.

92. Undertaking jury service is not simply a right, but all who are eligible are under a legal duty to attend if summoned, and any person who fails without reasonable cause to do so will be punishable, either on summary conviction or as a contempt of court, to a fine not exceeding level 3 on the standard scale.<sup>111</sup>

### **Right to complain to Ombudsmen**

93. The right to complain to the various types of ombudsmen is not an incident of citizenship but may be based upon residence or on the basis of where the act complained of took place (e.g. Local Commissioners may entertain complaints about local authorities in their area from any aggrieved person, and the Financial Services Ombudsman entertains complaints about financial services provided in the UK). The right to complain to the Parliamentary Ombudsman about the maladministration of a government department is based on residence in the UK, although British nationals with the right of abode in the UK also have the right to complain to the Parliamentary Ombudsman in respect of alleged failures to provide consular assistance to them when abroad.<sup>112</sup>

111 Juries Act 1974, s.20. The same section also sets out a series of further offences for matters such as evasion of jury service.

112 Parliamentary Commissioner Act 1967, s.6, as amended by s.1 of the Parliamentary Commissioner (Consular Complaints) Act 1981. Note also in this context the right to present a petition to the European Parliament or to complain to the European Ombudsman, which may exercised by any "*natural or legal person residing or having its office in the Member State*" (Articles 194 and 195 of the EC Treaty).



## Summary

### British Citizens

- Right to vote where registered as resident in Westminster and European Parliamentary elections, in local and devolved elections. Residence a question of fact and degree (in Northern Ireland there is additional requirement of 3 months' residence prior to registration);
- Right to vote in Parliamentary and European Parliamentary elections where valid overseas declaration made (contingent upon UK residence and registration in preceding 15 years);
- Right to stand in elections, subject to residence requirements in local elections;
- Duty to provide information for purpose of electoral registers on request;
- Right to campaign in referendum if resident in UK or appearing on one of the electoral registers;
- "Right" to vote in referendum, only so far as provided by Act stating question and territorial extent;
- Right to donate to a political party if on an electoral register;
- Right and duty to undertake jury service (with additional residence requirement);
- Right to vote in Dail, Local and European elections if resident in Ireland, and in European and local elections in other Member States;
- Permitted to hold public offices governed by the Act of Settlement 1700.

### Irish Citizens

- As for British citizens, except that Irish citizens may not exercise their right to vote in the UK from overseas;
- Irish citizens are not subject to a "qualifying" requirement based on their immigration status (c.f. Commonwealth citizens), due both to the Common Travel Area and Ireland's membership of the EU, allowing freedom of movement.

**Commonwealth Citizens (other than British citizens, so holders of all forms of British nationality and citizens of the countries listed in Schedule 3 to the BNA 1981)**

- Right to vote in Westminster, local, devolved and European elections where “qualifying”, registered (thus resident). “Qualifying” for this purpose means not requiring leave to enter or remain, or having been granted it. Right extends to Gibraltar on same basis;
- Right to stand in Westminster, local, devolved and European elections where “qualifying”, meaning either not requiring indefinite leave to remain, or having been granted it. Right extends to Gibraltar on same basis;
- Duty to provide information for purpose of electoral registers on request;
- Right to campaign in referendum if resident in UK or appearing on one of the electoral registers;
- “Right” to vote in referendum, only so far as provided by Act stating question and territorial extent;
- Right to donate to a political party if on an electoral register;
- Right and duty to undertake jury service (with additional residence requirement);
- Permitted to hold public offices governed by the Act of Settlement 1700.

**Citizens of EU Member States (who are resident through the exercise of their right of freedom of movement)**

- Right to vote in European, local and devolved elections where registered (& thus resident);
- Right to stand in European, local and devolved elections where resident;
- Duty to provide information for purpose of electoral registers on request;
- Right to campaign in referendum if resident in UK or appearing on one of the electoral registers;
- “Right” to vote in referendum, only so far as provided by Act stating question and territorial extent;
- Right to donate to a political party if on an electoral register;
- Right and duty to undertake jury service (with additional residence requirement);
- Permitted to hold certain public offices governed by the Act of Settlement 1700.

## Part 4: Rights to benefits and services

94. This part explores the rights and responsibilities relating to benefits and services such as health and social care, housing and education, and the duties to pay tax and national insurance. Changes to these rules are being consulted on as part of the Government’s Green Paper on The Route to Citizenship published in February 2008.
95. There is a significant body of EU law governing the rights of EEA nationals to claim benefits and access services when resident in the UK, putting in place arrangements that are reciprocated when British citizens reside in another Member State. Also highly relevant in this area are the respective devolution settlements for Scotland, Wales and Northern Ireland. Each of the devolved legislatures and administrations are bound by the UK’s EC, ECHR and international obligations, in particular the latter in relation to refugees, so to the extent that these impact on rights of access, a common framework may be derived. Further, the Westminster Parliament remains responsible for UK-wide tax, national insurance and benefit rules.<sup>113</sup>

<sup>113</sup> The discussion on access to benefits relates to the rules in Great Britain. However, although Northern Ireland and the Channel Islands have their own social security schemes, there are reciprocal arrangements in place such that a person may access benefits on a similar basis anywhere in the UK.

96. Beyond this however, each of the devolved legislatures and administrations has freedom to set policy, within the limits of their devolved competence, in the fields of health and social care, education and housing. The result is that provision and conditions of access may vary across the UK. The discussion which follows does not seek to set out the detailed rules in each of the devolved administrations but rather to set out the UK-wide framework and some of the broad principles so far as they relate to nationality, immigration status and residence.

### Access to benefits

97. The right to claim social security benefits builds on the freedom of movement and immigration rights set out in Part I above. Although not directly based on the concept of citizenship, the distinction between those subject and “not subject to immigration control” is crucial in relation to the claim of social security funds.<sup>114</sup> The Immigration and Asylum Act 1999, section 115, sets out the basic principle that those “subject to immigration control” are not entitled to a range of non-contributory benefits, known as “public funds”, including child benefit, council tax benefit, disability living allowance, housing benefit, income-based job-seeker’s allowance and income support.<sup>115</sup>
98. Those “subject to immigration control” are all non-EEA nationals who require leave to enter or remain in the UK and do not have it, or have been granted leave with a condition of “no recourse to public funds” or subject to a formal maintenance undertaking.<sup>116</sup>
99. Those not subject to immigration control are:
- British citizens;
  - EEA nationals and their families;
  - Refugees, who under the 1951 UN Convention on the Status of Refugees have the right to public relief and assistance when in a foreign country;
  - Those granted “leave outside the rules”, so those who are granted exceptional leave, humanitarian protection or discretionary leave on the particular facts of their case;

<sup>114</sup> Asylum and Immigration Act 1999, s.115, as amended.

<sup>115</sup> Ibid, s.115 (1),(3).

<sup>116</sup> Ibid, s.115 (9). An undertaking may be given in accordance with the Immigration Act 1971, s.3, as amended, by a migrant’s sponsor that they will provide maintenance and accommodation, generally required for elderly dependent relatives. For the full list of public funds, see the Immigration Rules Para 6 HC 395, as amended by para 1HC 324. Tax credits are also listed as public funds, but are subject to slightly different rules in some cases.

- Those with indefinite leave to remain.
100. Many people who require leave to enter or remain in the UK are only granted limited leave, and that leave will be subject to a condition of no recourse to public funds. This means that the person is not entitled to claim any benefits classed as public funds, because it is a condition of their entry to the UK that they show that they can maintain and accommodate themselves without such recourse. The consequences should a person subject to a public funds condition attempt to make a claim are possible deportation, curtailment of leave and criminal prosecution.
101. There are certain categories of migrant who are entitled to claim at least some amount of a non-contributory benefit, despite being subject to immigration control. Different rules apply for different benefits:
- Asylum-seekers who have claimed asylum “on arrival” in the UK before April 2000. In relation to those claiming asylum after 2000, any assistance is awarded if they are destitute through the National Asylum Support Service (NASS);<sup>117</sup>
  - Urgent case payments of income support or income-based job-seeker’s allowance may be available to those who ordinarily support themselves or are supported by others, and therefore have no recourse to public funds, but who are temporarily without funds from abroad or due to the death of a sponsor;
  - Nationals of States which have ratified either the European Convention on Social and Medical Assistance (ECSMA) or the Council of Europe Social Charter (CESC), and who are “lawfully present” in the UK; and<sup>118</sup>
  - Third country nationals who come to work in the UK, having worked in another EU Member State, and their family members.
102. Those subject to immigration control may be entitled to claim contributory benefits, such as incapacity benefit, but this is dependent on the person’s record of contributions, which is usually dependent on their having worked in the UK for a sufficient length of time.<sup>119</sup>

117 Immigration and Asylum Act 1999, Part VI. The rules governing benefits granted to asylum seekers are complex and depend on when a person first sought asylum. Two sets of transitional provisions are in force, dating from both the 2000 changes and earlier 1996 changes.

118 Other than EEA Member States, this includes Albania, Armenia, Moldova and Turkey.

119 This serves indirectly to preclude certain classes of migrant who are prevented from working, such as visitors and asylum seekers, from claiming contributory benefit. Although parts of the UK other than Great Britain have their own social security legislation, reciprocal arrangements are in place which mean that entitlement to benefits is not lost by moving between Great Britain, Northern Ireland and the Channel Islands.

## Residence rules

103. In relation to non-contributory benefits, even those who are not subject to immigration control are subject to residence requirements before they are permitted to have recourse to benefits. There are various residence tests, one or more of which will form one of the conditions of grant for most benefits. The tests, in increasing order of permanence, are presence (presence in Great Britain for 24 hours), residence (home in Great Britain for the time being), “ordinarily resident” (residence with a degree of continuity), habitual residence (settled intention to reside and having resided for an appreciable period) and having a right to reside (legal basis upon which resident).<sup>120</sup> These tests are separate from a person’s immigration status, apart from in relation to the right to reside, but clearly British citizens and those with the right of abode or indefinite leave to remain who have been in the UK for an extended period will be in a better position to prove their position with regards to these requirements.
104. The residence test applied will vary according to the benefit claimed. So, for example, to qualify for disability living allowance, attendance allowance and carer’s allowance, the domestic conditions for entitlement are that a person must generally be ordinarily resident, present and have been present for a total of 26 weeks in the last 12 months.
105. However, to qualify for the income-related forms of non-contributory benefit, including income support, income-based job seeker’s allowance, state pension credit, housing benefit or council tax benefit, it is generally necessary for the claimant to show both a right to reside and habitual residence in the Common Travel Area. The decision-maker will first consider the right to reside as a matter of law.
106. The requirement of a right to reside will be satisfied where the person, for example:
- is a British citizen or otherwise has the right of abode;
  - has indefinite leave to remain under UK immigration law;
  - has one of a number of qualifying rights to reside under EC Law.
107. The decision-maker will then go on to consider whether the claimant is habitually resident within the Common Travel Area. Certain people are deemed habitually resident:

<sup>120</sup> The description given in brackets is intended to give a sense of the level of permanence required in a case, rather than a full definition. In particular, the terms “ordinary residence” and “habitual residence” are the subject of substantial authority.

- EEA workers and self-employed EEA nationals and their dependants and A8 & A2 nationals who are registered to work;
- Refugees and those who have been granted leave outside the immigration rules, as set out above;
- People in Great Britain who came as a result of the Montserrat volcanic eruption in 1995;
- People who have been expelled or deported from another country to the UK, and are not subject to immigration control here;
- Those who are in receipt of income support, income-based job-seeker's allowance or state pension credit may go on to claim housing and council tax benefit without needing to satisfy the test again.

### European Community Law

108. As set out above, in the domestic law benefits scheme, EEA nationals and their family members are not subject to immigration control (and therefore are not subject to a condition of no recourse to public funds), and, where they have the right to reside in EC law, will generally satisfy the right to reside for income-related benefits. Certain categories of EEA national will be exempt entirely from the habitual residence test, for example those with worker status. This treatment in domestic law is underpinned by the following EC law framework, which, broadly speaking, and in accordance with Article 12 of the EC Treaty, prohibits discrimination on the ground of nationality in the provision of benefits to EEA nationals and their families when they are exercising their Treaty rights.

109. EC Directive 2004/38 sets out limitations and conditions which apply to the rights of EEA nationals to move and to reside freely in the UK. As set out above, the Directive was transposed into law by the Immigration (EEA) Regulations 2006.<sup>121</sup> All EEA nationals are permitted a right of residence for an initial period of three months, but will cease to have the right where he or his family becomes “*an unreasonable burden on the social assistance system of the United Kingdom*”.<sup>122</sup> After the initial three months, the EEA national has to show that he is a “qualified person” (a job-seeker, worker, student, self-employed person or self-sufficient person).<sup>123</sup>

121 SI 2006/1003, as amended.

122 Ibid, Reg. 13(3)(b).

123 Ibid, Reg.6.



110. Not all EEA nationals will satisfy the right to reside requirement. UK regulations provide that those exercising their right to reside during the initial three month period do not satisfy the requirement. Those residing as job-seekers will only satisfy the requirement when they have claimed income-based job-seeker's allowance.<sup>124</sup>
111. Those exercising their freedom of movement rights as workers under Article 39 of the EC Treaty are governed by EC Regulation 1612/68. Workers, including those who have been workers in the past, are entitled to claim all benefits without discrimination, so are entitled to the same tax, housing and social advantages as nationals of the Member State in which they are residing. Also protected are those who have lived and worked in the UK for various minimum periods, but have given up work through incapacity or retirement.
112. EC Regulation 1408/71 was designed to facilitate freedom of movement for EEA workers by co-ordinating some of the rules for access to benefits for workers or self-employed persons who move between Member States. Broadly speaking, its principal purpose is to allow for the aggregation of contributions across Member States for the purpose of claiming contributory benefits, but it also prohibits discrimination in access to benefits and allows the export of certain benefits to other Member States; and (subject to conditions) allows benefit claims for family members even if they are elsewhere in the EEA.
113. In order to benefit from Regulation 1408/71, it is necessary to be an EEA national, a refugee or stateless person within the EEA, or a Third Country National moving between Member States. The person must fall within the personal scope of the Regulation: this will normally mean having been employed or self-employed in a Member State although having been insured on the national social security scheme of a Member State may also suffice. The scheme extends to dependants. Qualifying for a benefit depends on contributions or residence or both. Most benefits are covered by the scheme, although the degree to which the benefit is exportable varies. Those classed as special non-contributory benefits are not exportable (in the UK, that is income support, income-based JSA, state pension credit and the mobility component of disability living allowance).
114. A8 and A2 workers, who are nationals of States acceding to the European Union in 2004 and 2007, have a more limited right to access the UK labour market and may be required to register their work (A8 nationals) or have their work authorised (A2 nationals).

<sup>124</sup> Art. 24(2) of Directive 2004/38 permits Member States not to confer social assistance on a national of another Member State who is residing during the initial three month period or as a job-seeker.

After working in accordance with the registration or authorisation scheme for 12 months, such nationals are treated in the same way as other EEA nationals.

115. Finally, the EC has “co-operation agreements” in place with countries such as Algeria, Morocco, Slovenia, Tunisia and Turkey, by which nationals of those States will be treated on an equal footing with EEA nationals where they are “lawfully working” in an EEA Member State.<sup>125</sup>

### Access to Social Care

116. A person who may need community care services has a right to have his needs assessed by a local authority under section 47 of the National Health Service and Community Care Act 1990 (“the 1990 Act”).<sup>126</sup> Community care services are defined in section 46(3) of that Act. They are:

- residential accommodation for those who have a need for care and attention which is not otherwise available, under section 21 of the National Assistance Act 1948 (“the 1948 Act”);
- welfare arrangements for “blind, deaf, dumb and crippled persons, etc.” under section 29 of the 1948 Act;
- services promoting the welfare of old people under section 45 of the Health Services and Public Health Act 1968;
- services under section 254 of, and Schedule 20 to, the NHS Act 2006 (care of mothers and young children; prevention, care and after-care; home help and laundry facilities); and
- after-care services under section 117 of the Mental Health Act 1983

117. Local authorities make arrangements for the provision of certain of these care services pursuant to either the direction or approval of the Secretary of State, who has in certain instances directed that care is to be provided to those ordinarily resident in the relevant local authority’s area.<sup>127</sup>

125 The DWP considers those who have leave to enter, permission to work and are working to be “lawfully working” for this purpose.

126 The sections of the 1990 Act discussed here extend to England and Wales only. Community care is a devolved matter, although the immigration provisions discussed in this context are reserved and UK-wide.

127 For example, under ss.21 and 29 of the 1948 Act, residential accommodation and welfare arrangements are to be provided for those ordinarily resident in the local authority area. Statutory directions and approvals are usually set out in Local Authority Circulars.

118. The provision of community care services is dependent on a local authority decision in each case, following an assessment of the needs of the individual in question. Section 47 of the 1990 Act imposes a duty on local authorities to assess the needs only of those persons to whom the local authority “*may provide or arrange for the provision of community care services*”. Subject to any emergency provision, the existence and extent of any duty to assess, and subsequent provision, is determined by the extent to which the individual in question is subject to other exclusions.
119. Relevant in this context, as in the case of access to benefits, is section 115 of the Immigration and Asylum Act 1999 (the 1999 Act). In relation to a person to whom section 115 applies (those subject to immigration control), the duty to arrange accommodation under the 1948 Act is excluded if his need for care and attention has arisen solely because he is destitute or because of the actual or anticipated physical effects of his being destitute.<sup>128</sup> There are similar exclusions in relation to the duties to provide welfare arrangements in relation to old people and care to mothers and young children.
120. There have been a number of cases considering the scope of this restriction. The most important issue has been the circumstances in which it can be said that a person’s need for care and attention arises *solely* due to destitution. The position which has been reached, in the light of the various cases, is that any form of illness or disability which would tend to make life more difficult for an applicant if left to fend for himself on the streets will bring an individual within the scope of section 21, notwithstanding the limitation in section 21(1A). This is known as the “destitution plus” test.<sup>129</sup> It follows that an applicant, in order to cross the section 21(1A) threshold, must establish that he or she is a person whose need for care and attention does not arise solely because of destitution or its physical, or anticipated physical effects. If the “destitution plus” test is not met in any particular case then the Home Office (through NASS) is responsible for supporting the persons concerned under Part 4 of the 1999 Act.
121. Further restrictions apply in relation to much social services legislation, by virtue of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (the 2002 Act), which provides that persons who fall into one of four excluded classes may not receive support or assistance under various specified statutory provisions unless they fall within one or more specified exceptions to the exclusions.

128 S.21(1A) of the National Assistance Act 1948, as inserted by s.116 of the Immigration and Asylum Act 1999.

129 *Westminster City Council v National Asylum Support Service* [2002] UKHL 38.

122. The excluded classes are:

- Class 1 – persons with refugee status abroad or their dependents. A person has refugee status abroad if he is not an EEA national and the Government of another EEA state has determined that he is entitled to protection as a refugee.
- Class 2 – nationals of other EEA states and their dependents (although this is subject to exception in the case of workers, the self-employed and students who may be eligible pursuant to the exercise of their Treaty Rights);
- Class 3 – former asylum seekers who have failed to cooperate with removal directions, and the dependents of such persons. Removal directions will normally be given after a claim for asylum (including an appeal) has failed. An “asylum seeker” is a person over 18 who has made a claim for asylum which has been recorded by the Secretary of State but not determined.
- Class 4 – persons who are not asylum seekers and are in the UK in breach of the immigration laws within the meaning of section 11 of the 2002 Act.<sup>130</sup>

123. Briefly, the exceptions to these classes who may therefore still be entitled to receive support, are in relation to children, and where the exercise or performance of a duty otherwise excluded is necessary to avoid a breach of ECHR rights, or a breach of EU Treaty rights. In addition, there is an exception to the exclusion in connection with the arrangement of accommodation for persons with dependent children pending implementation of travelling arrangements out of the UK.

### **Access to housing assistance and housing allocation**

124. The Housing Act 1996 (the 1996 Act) sets out the legal framework relating to the provision of social housing. Local authorities are under a series of duties as to the allocation of accommodation (Part VI of the 1996 Act) and assistance in the case of homelessness or threatened homelessness (Part VII of the 1996 Act).<sup>131</sup> The general principle is that those subject to immigration control under section 115 of the Immigration and Asylum Act 1999 are not eligible for allocation of housing accommodation or assistance under Parts VI and VII of the Housing Act 1996, or for housing benefit, which is a public fund.<sup>132</sup> However, this general rule is subject to such exceptions as may be

<sup>130</sup> In this context, a person who has been temporarily admitted to the UK does not satisfy the test of being in breach of immigration laws. Such persons are entitled to support until such time as formal steps to remove them from the UK are not complied with.

<sup>131</sup> Parts VI and VII extend to England and Wales only. Housing is a devolved matter, subject to the extent to which UK-wide immigration provisions impact.

<sup>132</sup> Sections 160A and 185 of the 1996 Act.

prescribed in secondary legislation, and classes of person additional to section 115 may be prescribed as being subject to the general restriction.<sup>133</sup> Regulations have been made in relation to each of the parts of the UK. For example, in England, the Allocation of Housing and Homelessness (Eligibility)(England) Regulations 2006 set out a series of detailed exceptions to the general rule, thus allowing certain classes of person from abroad access.<sup>134</sup> These categories include:

- Refugees;
- People who have been granted humanitarian protection or discretionary leave or exceptional leave to remain “outside the immigration rules” and are not subject to a condition of no recourse to public funds;
- A person habitually resident in the Common Travel Area, whose leave to enter or remain in the UK is not subject to any condition, or whose sponsor’s undertaking was given more than 5 years earlier;
- An asylum seeker whose asylum claim was made on arrival before April 2000.<sup>135</sup>

125. The Eligibility Regulations make further provision in relation to people who are not subject to immigration control. Any person who is not habitually resident in the Common Travel Area, or whose only right to reside is related to his status as a job-seeker or the family member of a job-seeker, or who is exercising his right to reside during the initial three month period under the Immigration (EEA) Regulations 2006, will be ineligible to seek accommodation or assistance.<sup>136</sup> However, EEA nationals who are exercising their EC Treaty rights as workers or self-employed people, A8 and A2 nationals who are treated as workers for EEA purposes, relevant family members of these EEA nationals and those EEA nationals who have acquired a permanent right to reside in the UK, will be eligible.<sup>137</sup>

126. Once eligible under the Eligibility Regulations, a person’s application for housing assistance or allocation will be dealt with according to the ordinary rules of priority and need drawn up by the relevant local authority within the framework of the 1996 Act.

133 Ibid.

134 SI 2006/1294, as amended.

135 Ibid, Regs.3 & 5.

136 Reg, 4, and SI 2006/1003, Reg. 13.

137 Ibid, Regs. 4 & 6.

## Access to health care

127. Under the National Health Service Act 2006, the Secretary of State must continue the promotion in England of a “*comprehensive health service designed to secure improvement in the physical and mental health of the people of England, and in the prevention, diagnosis and treatment of illness.*”<sup>138</sup> The section goes on to place the Secretary of State under a duty to provide or secure services, and to do so free of charge except in so far as is expressly provided by statute.<sup>139</sup> The duty extends to hospital accommodation, medical, dental, ophthalmic, nursing and ambulance services, services for the care of pregnant and breastfeeding women and young children.<sup>140</sup>
128. The general principle is that all those who are ordinarily resident in the UK enjoy full entitlement to health care. The test of “ordinary residence” covers all those who are lawfully present and settled in the UK, and is not dependent on nationality, although there is an obvious correlation between ordinary residence and those who live in the UK as the result of a right of abode or indefinite leave to remain.
129. In relation to primary health care treatment, GPs have a discretion to register any new patient, regardless of immigration status or nationality and may provide free treatment to any person where it is necessary, even where the person is not registered. As such, this basic health care provision is available to all.
130. The provision of hospital treatment is governed by the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the 1989 Regulations”), which provide that charges will be levied in relation to health care provided to overseas visitors, defined as those who are not ordinarily resident.<sup>141</sup> Certain types of treatment are exempted and thus free to all. All overseas visitors have the right to emergency health care at an A&E Department or NHS walk-in centre and to treatment for specified communicable and sexually transmitted diseases (excluding ongoing HIV treatment), mental health treatment and family planning services.<sup>142</sup>

138 National Health Service Act 2006, s.1 Like social care, health care is a devolved matter, and separate but similar provisions govern the position in each of Northern Ireland, Scotland and Wales.

139 Ibid, s.1(2),(3).

140 Ibid, s.3.

141 SI 1989/ 306, as amended. These Regulations are the principal UK Regulations, although there is power to make amending Regulations in each of the devolved administrations.

142 Ibid, Reg.3.



131. Further those who fall within one of the numerous categories under Regulation 4 of the 1989 Regulations will also be exempt from charges. This head includes those who have been resident in the UK in the 12 months preceding treatment or are coming here to live permanently; who are employed by a business in the UK or own a UK business; who are studying on a course which lasts six months or longer or is funded substantially by the UK Government; is a refugee or asylum seeker who has yet to have his claim determined; or who is detained in custody or under the Immigration Act 1971.<sup>143</sup>
132. By virtue of the exercise of EC Treaty rights, the following classes are also entitled to exemption from charging under Regulation 4 and 4A: EEA workers who are making compulsory UK national insurance contributions; EEA nationals, refugees or stateless persons who come here for specified treatment; and UK State pensioners who divide their time between the UK and another EEA Member State.
133. Under Regulation 5 of the 1989 Regulations, certain visitors to the UK will be exempt from charges for treatment the need for which arose during their visit. This includes nationals of, and refugees and stateless persons who are ordinarily resident in, EEA States and Switzerland.<sup>144</sup>
134. Finally, the UK has a number of reciprocal healthcare agreements in place governing access to NHS health care for foreign nationals and for UK nationals abroad.<sup>145</sup> The arrangements vary in respect of the treatment available, and the majority are limited to UK nationals and the nationals of the country concerned.

<sup>143</sup> Ibid. Reg.4.

<sup>144</sup> Ibid, Reg. 5 and Sched. 2. EEA nationals are entitled to apply for an EHIC (European Health Insurance Card), which will cover them for treatment required as a result of illness or accident suffered when they are in another EEA country (or Switzerland), or for treatment of chronic illness requiring ongoing care (e.g. kidney dialysis). Under the same arrangements, those ordinarily resident in the UK are entitled to an EHIC and medical treatment on the same basis when travelling in EEA countries and Switzerland. Entitlements under the EHIC vary slightly according to the patient's nationality and the country in which they seek treatment, so for example people who do not have UK, EU, EEA or Swiss nationality are covered in all EU countries but not in Denmark, Liechtenstein, Norway or Switzerland. In these countries therefore UK nationals are in a better position than those who simply have ordinary residence.

<sup>145</sup> Schedule 2 to the 1989 Regulations lists those countries with which the UK has a reciprocal agreement. Many of the countries have some historical connection to the UK, for example are part of the Commonwealth or are an existing or former overseas territory.



## Access to education

135. The ECHR guarantees that no person shall be denied the right to an education and that the State, in the exercise of its functions with regard to education, will respect the right of parents to ensure that their children's education is in accordance with their religious and philosophical convictions.<sup>146</sup>
136. Education for children between the ages of five and sixteen is compulsory and is not subject to any rules based on the immigration status of either the parent or the child.<sup>147</sup> The Secretary of State is under a general duty to promote primary, secondary and further education and Local Education Authorities are under a number of duties, including to "*contribute to toward the spiritual, moral, mental and physical development of the community by securing that efficient primary education and secondary education are available to meet the needs of the population of their area.*"<sup>148</sup> Every parent of a child of school age "*shall cause him to receive efficient full-time education suitable to his age, ability and aptitude and to any special needs he may have, either by regular attendance at school or otherwise.*"<sup>149</sup> Again, this duty is unrelated to nationality or immigration status. Parents who fail to secure their child's attendance at school may be prosecuted and upon conviction sentenced to a fine or up to 3 months' imprisonment.<sup>150</sup>
137. In relation to higher and further education, nationality and immigration status are relevant to whether students are classified as home or overseas students for the purpose of whether fees are charged and at what rate. The rules vary according to the institution, which part of

146 ECHR, P1, Art.2. The UK has entered a reservation accepting the parental right only in so far as is compatible with efficient instruction and training and the avoidance of unreasonable public expenditure. The right is primarily concerned with elementary education, although it has also been held to extend to further education. Section 9 of the Education Act 1996 states that the Secretary of State should have regard to the general principle that children are to be educated in accordance with the wishes of their parents, and then repeats the language of the reservation.

147 Education Act 1996, ss. 8, 11.

148 Education 1996, s.13, as amended.

149 Education Act 1996, s.7. The duty extends to England and Wales. There are similar duties in the legislation pertaining to the devolved administrations.

150 Education Act 1996, s.444. The Education and Skills Bill, introduced in November 2007 in relation to England, raises the compulsory age for education or training to 18, and places young people under a direct duty to participate in education and training. Local authorities will also come under a range of further duties to ensure provision.

the UK the institution is in, and where the student is resident.<sup>151</sup> In broad terms, most institutions offering further and higher education courses will charge no fees, or fees at the home rate to:

- Students settled in the UK on the first day of the first academic year of the course and who have been ordinarily resident in the UK or islands for a full three year period before the first day of the first academic year of the course, and whose main purpose of residence in the UK during that three year period was not to receive full-time education;
- Students settled and ordinarily resident in the UK on the first day of the first year, who have been ordinarily resident in the EEA, Switzerland or a British overseas territory for the three years preceding the first day of the first year of the course (and immediately before that if the purpose during the three years was to receive full-time education);
- EU nationals and relevant family members who are self-sufficient or students in the UK, who have been resident in the EEA, Switzerland or an overseas territory for the three years preceding the first day of the first year of the course, and whose main purpose of residence in the UK during that three year period was not to receive full-time education;
- EEA or Swiss nationals resident in the UK as a worker or the family member of such a worker, ordinarily resident in the UK on the first day of the first year of the course, and who have been ordinarily resident in the EEA, Switzerland or an overseas territory for the three years preceding the first day of the first year of the course.
- Children of certain Swiss nationals and Turkish workers who are ordinarily resident in the UK on the first day of the first year of the course, who have for the preceding three years been ordinarily resident in the EEA, Switzerland, or in the latter case, Turkey.
- Refugees, their spouse or civil partner and children (who were under 18 at the time of the asylum application), who are ordinarily resident on the first day of the first year of their course and who have been ordinarily resident since the grant of refugee status, and;

<sup>151</sup> For example, where a student is resident and studying in Scotland, the Student Awards Agency for Scotland will pay their tuition fees. The principle of non-discrimination in EU law means that nationals of EU Member States are treated as satisfying the residence requirement.

- People granted discretionary leave or humanitarian protection, their spouse or civil partner and children (who were under 18 at the time of the asylum application), who are ordinarily resident on the first day of the first year of the course;
- Students studying under a formal exchange programme, in which case overseas fees may be waived.<sup>152</sup>

138. Further Education establishments may be more flexible and, in addition to the categories set out above, may not insist on the full 3 years' residence, and may admit asylum seekers who are in receipt on NASS or other assistance at the home rate.

### **Duties to pay tax and make national insurance contributions**

139. Residence rather than citizenship is the defining factor in whether a person is liable to pay UK income tax or capital gains tax on income and gains arising outside the UK. The UK tax system relies on the concepts of residence, ordinary residence and domicile in determining tax liability.<sup>153</sup> The general rule is that UK residents are normally liable for tax on income and gains regardless of where they arise.<sup>154</sup> A person who is not resident in the UK will, however, only be liable for tax on income and gains that arise in the UK. As a starting point, a person is treated as resident for UK income tax purposes if he is present in the UK for 183 days or more in any tax year. Those who have their home in the UK, but go abroad frequently for short periods, for example on business, will also be treated as resident, as will those who have left the UK permanently but whose return visits to the UK average more than 90 days in a tax year. Further, those who arrive in the UK with an intention to live here permanently or for 3 years' or more, or for a particular purpose which will involve living in the UK for at least 2 years' will also be treated as UK resident.

152 The detail of the extent to which it is lawful to charge fees at the home and overseas rates is set out in a series of detailed regulations for each part of the UK, for example in England the position is governed by the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 (SI 2007/778) and the Education (Fees and Awards) (England) Regulations 2007 (SI 2007/779).

153 There are certain beneficial tax rules available to those who are not ordinarily resident and non-domiciled in the UK. For a more detailed explanation of these concepts and their impact on taxation, see the HM Treasury Consultation Paper, "Paying a fairer share: a consultation on residence and domicile" (Dec. 2007).

154 Income Tax Act 2007, Part 14, in particular ss.829-832, although many of the more detailed rules are not in statute.

140. Similarly, National Insurance contributions (NICs) are dependent on being employed or self-employed in the UK, rather than on citizenship. Immigration status may be indirectly relevant where certain classes, such as asylum seekers, are prevented from working. Otherwise, all employees and self-employed workers aged 16 or over, subject to a minimum earnings requirement, will pay NICs until they reach the state retirement age. Entitlement to benefits is dealt with in greater detail above, but entitlement to contribution-based job-seeker's allowance, incapacity benefit, state pension, widowed parents' allowance, bereavement allowance and payment is dependent on making NICs.

## 4. Re-examining the citizenship settlement

1. The previous chapter sets out the key rights and responsibilities of citizens – and how these compare to the rights and responsibilities of other people living in the UK.
2. As set out in Chapter 2, there are also a number of residual categories of citizenship. Though these categories apply only to relatively small numbers of people, there is scope for updating our law of citizenship. The case for this will be made in Part 1 of the present chapter.
3. Addressing the historical issues is an important start to providing a clear articulation of what citizenship means. Part 2 of this Chapter looks at two further issues which arise from the detailed analysis of rights and responsibilities in the previous chapter:
  - whether the right to vote should be tied more closely than it is now to citizenship; and
  - what should be done to create a clearer distinction between citizens and non-citizens in terms of other rights and responsibilities.

### Part 1: Dealing with the historical issues

4. As seen in Chapter 2, a discernible trend in the history of citizenship in the UK was the loss of equivalence between citizenship and the right of abode. The many additional categories of citizenship that were created since the break-up of the Empire do not confer the right to live in the UK. This created the odd situation whereby people who hold a form of British passport are subject to immigration control.
5. In effect, the history of legislation on citizenship and nationality has led to a complex scheme lacking in overall coherence or any clear and self-contained statement of the rights and responsibilities of citizens. There remain six different categories of citizenship, whose differences and whose rights and privileges can only be discovered by a close and careful analysis of a patchwork of legislation. If citizenship should be seen, I would argue, as the package of rights and responsibilities which demonstrate the tie between a person and a country, the present scheme falls short of that ideal.

6. More recent history though has set the law in the right direction. There has been a trend towards recreating the equivalence between citizenship and the right of abode – and that is an important start to providing a clear articulation of the rights and responsibilities of citizens. There are two leading examples:
  - the British Overseas Territories Act 2002 confers full British citizenship, including the right to enter and live in the UK, to citizens of the UK's remaining overseas territories; and
  - the Nationality, Immigration and Asylum Act 2002 contains provisions to allow British Overseas Citizens, British Subjects and British Protected Persons who have no other nationality to register as British citizens and hence acquire the right to enter and live in the UK.
7. The impact of these changes is that anyone in the residual categories of British citizenship who does not also have another nationality is permitted to register as a British citizen. This was the right change to make and it addresses the lingering historical issues that were, for example, the subject of controversy in the East African Asians case. The change also means that we can expect the residual categories of citizenship to fade away – anyone who holds citizenship under one of those categories either has citizenship of another country or can now claim British citizenship. However, it is difficult to see what ongoing purpose these categories serve following the 2002 Act.
8. This raises the issue of whether we should now abolish the residual categories. This would be done by providing that anyone who holds one of those residual forms of citizenship should be given a limited period of time to register as a British citizen prior to that abolition.
9. There would probably have to be transitional provisions if the residual categories were abolished, allowing access to British citizenship for a person who would have been stateless but for the access previously provided by one of the other categories. It is right that the UK should continue to respect its obligations under the UN Convention on Statelessness. But we do now have an opportunity to simplify our law of citizenship and I propose that we should take it.
10. The exception to these considerations is British Overseas Territories citizenship. Though holders of that status do have access to full British citizenship, they are, in distinct terms, citizens of the British Overseas Territories as well and they ought to be recognised as such.

11. Finally, there is the question of British Nationals Overseas (BN(O)s) who have that status by virtue of their connection to Hong Kong and are not affected by the 2002 legislative changes. They hold the only extant and significant form of British citizenship which is not full citizenship and does not allow an unqualified right to enter and remain in the UK.
12. From discussions that I have had in Hong Kong, it is clear to me that the demand for BN(O) status is dropping. Nonetheless to remove this status without putting something significant in its place would be seen as the British reneging on their promise to the people of Hong Kong. The only option which would be characterized as fair would be to offer existing BN(O) holders the right to gain full British citizenship. It is likely that many would not take this up as the prospects economic and fiscal of moving to the UK are not favourable to those well-established in Hong Kong. However, I am advised that this would be a breach of the commitments made between China and the UK in the 1984 Joint Declaration on the future of Hong Kong, an international treaty between the two countries; and that to secure Chinese agreement to vary the terms of that treaty would not be possible. On that basis, I see no alternative but to preserve this one anomalous category of citizenship.

## **Part 2: Reconsidering the rights and responsibilities of citizenship**

### **Voting and associated rights**

13. The previous chapter set out in detail the position on voting and the rights that are associated with it, such as the right to donate to political parties. The present position is summarised below.

#### **British Citizens<sup>155</sup>**

- Right to vote in Westminster, European, local and devolved elections;
- Right to vote from overseas (for 15 years since last period of residence in the UK);

<sup>155</sup> The same rights are accorded to those Irish citizens whose rights are covered by Article 1(vi) of the British-Irish Agreement signed on 10 March 1998 to give effect to the Belfast (Good Friday) Agreement.



### **Irish Citizens**<sup>156</sup>

- As for British citizens, except that Irish citizens may not exercise their right to vote in the UK from overseas;
- In contrast to Commonwealth citizens (see below), Irish citizens are not subject to a “qualifying” requirement, due both to the Common Travel Area and Ireland’s membership of the EU.

**Commonwealth Citizens** (other than British citizens, so holders of all forms of British nationality and citizens of the countries listed in Schedule 3 to the BNA 1981).

- Right to vote in Westminster, European, local and devolved elections when “qualifying”. “Qualifying” for this purpose means not requiring leave to enter or remain, or having been granted it. Right extends to Gibraltar on same basis.

**Citizens of EU Member States** (who are resident through the exercise of their right of freedom of movement)

- Right to vote in European, local and devolved elections.

14. Voting in all elections, along with holding a passport, is the ultimate badge of citizenship. That view is reflected in the rules of most other countries around the world which do not permit anyone but citizens to participate – or to stand – in national or often even local elections.
15. Clearly in the UK we do not have the same clarity around the significance of citizenship. Those other than UK citizens may vote in UK elections – i.e. Commonwealth and Irish citizens, as well as citizens of EU member states. Hence citizens are not distinguished from others in terms of their political status.
16. Of course, there are very clear reasons why this is true for citizens of EU member states. The issue of voting rights in European and local elections across the EU is an element of a common European citizenship. I do not propose that this is re-examined.
17. However, I do propose that government gives consideration to making a clear connection between citizenship and the right to vote by limiting in principle the right to vote in Westminster elections to UK citizens. This would recognise that the right to vote is one of the hallmarks of the political status of citizens; it is not a means of expressing

<sup>156</sup> Other than those described in the previous note.

closeness between countries. Ultimately, it is right in principle not to give the right to vote to citizens of other countries living in the UK until they become UK citizens.

18. Turning citizenship into a more explicit statement of political membership in this way will also provide a clearer rationale for why acquisition should be marked by a ceremony or depend on learning about life in the UK.
19. In making this clear link between citizenship and the right to vote which, in principle, would make sense, there would need to be transitional provisions retaining the right to vote for those who have it now – whilst removing the right of new entrants to have it. The detail of how this phasing is done would be for government to determine if it accepts this recommendation.
20. In addition, there are two particular issues in relation to Irish citizens. First, the Good Friday Agreement confirms the right of the people of Northern Ireland to take either British or Irish citizenship or both. Anyone who exercises their right under the Agreement to identify themselves as Irish and to take up Irish citizenship should not lose their right to vote in Westminster elections as a result of any change made to restrict voting rights to UK citizens. Hence it would be necessary to distinguish this group of Irish citizens from others. I have not been able to examine the different practical means of doing this but this would have to be part of further consideration of the issue. My proposal is dependent on finding a satisfactory means of distinguishing the two categories in a way that did not affect the position of those exercising rights under the Good Friday Agreement.
21. Secondly, Ireland is of course a member state of the EU as well. This means that Irish citizens would retain the voting rights that other citizens of EU member states have in the UK. Hence the extent of the change that I am proposing as it relates to Irish citizens is to restrict their right to vote in Westminster elections, while retaining their right to vote in European, local and devolved elections. Also, as I have said, the restriction of the right to vote in Westminster elections should be phased, so that no person who is already resident or registered to vote in the UK loses the right to vote.

### **The distinction between citizens and non-citizens**

22. I argued at the outset of this report that there has been a blurring in the distinction between citizens and non-citizens, especially in terms of rights and entitlements. The previous chapter examined the relative entitlements in much greater detail.
23. To summarise the position, there is a clear distinction between those with limited leave to remain and those with unlimited leave – whether they be permanent residents or citizens. However, there is no clear distinction between permanent residents and citizens.
24. This is a muddle that probably exists for honourable reasons. Permanent residents are people who have lived in the UK for a long period of time and shown an intention to settle here. They pay taxes; and often contribute to society in a range of other ways as well. Hence it is fair that they should have access to certain rights and entitlements.
25. However, given that they have made a commitment to the UK and that they are entitled to certain rights and entitlements in return, it is important to consider whether they ought to be citizens. Citizenship is the closest form of political and social connection between people who live together in a society and it should not be commonplace for people to live in a society for a very long time without becoming a part of that society and taking on their social responsibilities as citizens.
26. Hence I propose that government should give consideration to moving towards a system of rules whereby people who have come to the UK either have limited leave to be here or they have to apply to become citizens. Our system for allowing people to access citizenship should be rigorous but it should also make a clear distinction between people who are temporary residents and people who are here permanently – and hence people who ought to share in a common sense of belonging, with the rights and responsibilities that go along with that.
27. What I am proposing in effect is a move towards abolishing the status of permanent resident and making a clear distinction between non-citizens and citizens. This includes providing people who are committed to settling in the UK – and have the right to do so – with a compelling route to citizenship.
28. The greatest difficulty in making such a change is that some countries do not permit dual nationality. This means that citizens of those countries, who may have lived in the UK for a long time and may very well be committed to the UK and active in society, are nevertheless reluctant to take up UK citizenship.

29. The change discussed here would force them to either renounce their other citizenship or to continue to seek limited leave – whereas, under the current system, after a number of years of limited leave (depending on whether they came to the country as a spouse, a student or a worker), they will be able to get permanent residence.
30. If they decide to take the latter option – to continue to seek limited leave – they will not obtain the broader access to entitlements that currently comes with permanent residence. There may also be difficulties in terms of the basis for seeking limited leave, e.g. if the person in question initially received limited leave because of marriage to a UK citizen, and that marriage broke down in the meantime, then it may be difficult to get an extension of limited leave.
31. The number of people affected by the circumstances described would be small. There has been a general trend over recent years for more and more countries to allow dual nationality. However, hard cases will undoubtedly arise.
32. It may be that it is not unreasonable to ask a person – after what will have been a significant period of time living in the UK – to take up citizenship, even if that means cutting links with another country. Realistically, that person is settled in the UK for the long-term and renouncing another citizenship in favour of UK citizenship is an acknowledgement of that.
33. However, personal choices are not always binary in this way. A person may be settled in the UK for the long-term but want to own property in his or her country of origin (some countries have property ownership rules that privilege citizens). Equally, that person may want to travel there freely or retire there – and again this is easier if citizenship is retained.
34. To the extent that abolishing the status of permanent resident is therefore an unattractive situation, one option may be to retain the category of permanent resident – but **only** for people who are citizens of a country that has clear restrictions on dual nationality. For others, the only options ought to be limited leave, i.e. temporary residence in the UK, or citizenship.
35. As part of this limited exception, permanent residents could become known as associate citizens. This would be meaningful, as they already have to do the Knowledge of Life in the UK test (or course), and it ought to be possible to add the requirement to attend a citizenship ceremony (with a modified Pledge). In effect, people who have lived in the UK for long enough to qualify as permanent

residents under present rules ought to have developed a commitment to the UK and it is right that we should seek to recognise that commitment.

36. Hence the change that I propose ought both to create greater clarity around the distinction between citizens and non-citizens and provide recognition of the true connection between the UK and people who are permanently resident here – they will either become citizens or, if they are unable to do so, then associate citizens. Government is consulting on these issues, following the Green Paper on The Route to Citizenship published in February 2008, and my recommendation may be usefully considered in that context.

## DUTY OF ALLEGIANCE

### Problems with the current Law

37. The present law of high treason under the Treason Act 1351 is discussed in the previous chapter, although there are a number of other provisions also in force, creating separate but overlapping offences, and dealing with matters of procedure and the penalty for committing treason (following the abolition of the death penalty by the Crime and Disorder Act 1998, that is now life imprisonment).
38. As explained in the previous chapter, under the 1351 Act, the offence may be committed in a number of ways, including, “being adherent to the Sovereign’s enemies”, and “levying war against the sovereign in his realm”. Further, the offence is contingent on the defendant owing a duty of allegiance to the Crown.
39. The principal difficulty with the current law is that the scope of each of the elements of the offence is unclear so that in practical terms it would be very difficult to determine how the statutory language might apply in a modern context, and to present a treason case in easily explicable and intelligible terms.
40. In 1977, the Law Commission examined the codification of the offences of treason, sedition and allied offences and said:  
  
*“Clearly it is unsatisfactory that the most serious of all criminal offences should turn on the construction of language some 600 years old, which is both obscure and difficult.”*<sup>157</sup>
41. Problems with the current offence of high treason include:

<sup>157</sup> The Law Commission Working Paper No.72 (1977), p.13.

- (i) **Territorial extent of the offence of adhering to the Sovereign's enemies:** the case of *R v Casement*<sup>158</sup> established that the words “*or elsewhere*” in the statute of 1351 applied to both adherence to enemies, and to the following words, “*giving them aid and comfort*”, so the offence was committed if either of those things were done outside the realm (which includes England and Wales but not Scotland or Ireland), although the construction required was not without difficulty.
- (ii) **The meaning of the breach of duty of allegiance:** although the duty was originally premised on the idea of personal allegiance owed by subject to Sovereign, it was extended by the courts to encompass the idea of loyalty to the State, as embodied by the Sovereign so that, for example, imagining the death of the Sovereign included plots to overthrow the government or destroy the constitution. However, the language used in the Treason Act does not clearly reflect the kinds of acts which might be thought treasonous today, or the means by which they may be committed;
- (iii) **Scope of the offence in terms of the persons to whom it applies:** As set out in the previous chapter, this question was last considered by the Courts at an earlier stage in the evolution of the law of nationality, when the distinction in law was between subject and alien. It is not clear where the case law sits in the context of our modern law of nationality and immigration and the position of resident non-British citizens warrants clarification.
- (iv) **Meaning of the Sovereign's enemies:** the Law Commission cited Kenny's Outline of Criminal Law, stating that the definition of “enemy” is that in international law and thus dependent on the state of war. This issue is complicated by the fact that war is no longer generally commenced by a formal declaration and the UK may be engaged in armed conflict on various scales at any given time.
- (v) **Meaning of “levying of war” against the King in his realm:** It is unclear whether this requires a formal declaration of war or in fact whether “levying” amounts to any act which might lead to war, such as acts of terrorism committed on British soil.

### The way forward

42. There are a range of criminal offences on the statute book which will be available to cover the facts which are also the subject matter of

158 [1917] 1 QB 98.

the Treason Act of 1351. Equally, there is some force in the argument that a charge of treason risks the glorification of behaviour which may be dealt with as an ordinary criminal offence. However, the offence of treason nevertheless ought to be retained in order to recognise the particularly grave nature of acts that are committed with the aim of overthrowing government or harming fellow members of society by those who, either as UK citizens or residents, owe a duty of loyalty to the UK. On the basis that there is a case for retention of the law of treason, albeit that it would be used sparingly, I recommend thorough reform and rationalisation of the law.

43. In particular, there is a need to examine the offence of treason and related offences such as sedition with a view to re-framing them in order both to resolve the current ambiguities in the law and to ensure that all the elements of the offence, including the duty of allegiance, are relevant in modern Britain.
44. The Law Commission examined these offences in detail in 1977 and much of their work remains relevant. The Commission concluded, as I have done, that there remains a case for the retention of the offence and that the present statutes should be repealed and replaced with new legislation. It is instructive that several common law countries, including Canada, New Zealand and Australia, have drawn on our law and have placed the offence of treason, in similar but updated form, in their criminal codes. It may be right that it is the Law Commission who takes this work forward in the UK building on their earlier working paper to conduct a thorough comparative analysis and make detailed proposals to modernise the law.



## 5. The social bond of citizenship

1. The legal basis of citizenship is important and the proposals that I have made over the first part of this report may contribute to making it clearer and more meaningful. However, as I said at the outset, the social bond of citizenship may be the most important element of all.
2. In some ways, the social bond of citizenship has become deeper over time. We now owe each other much more in terms of responsibilities than we ever did – at least in the formal terms of the welfare state and legal requirements to treat others fairly.
3. However, some of the bases of solidarity that made that deepening possible are subject to change.
  - *Individualisation.* It has been commonly observed that our society has become more individualistic, with fewer forms of shared experience. There is evidence to suggest that we spend more time in individual pursuits and give more importance to individual achievement than we once did. At the very least, people born after the Second World War do not have the shared experience of conflict and sacrifice which may have been key to the deepening of citizenship in the post-War period.
  - *Changes in where we live.* We have become more likely to move more often, whether that is in order to go to university or to seek employment. When we move, the connections that we have made in a particular local community may break, and the experience of moving more often may make us less likely to seek to form those local connections. There has also been a trend towards the division of cities into areas of low-cost or social housing and more affluent suburbs. This reduces the likelihood of getting to know people of different backgrounds and different means.
  - *Gap between the young and the old.* It may be that we are less likely to live in households with other generations. Even neighbourhoods may have become more segregated in terms of age. Hence the social connections between the young and the old, which may be an important bedrock for a system of welfare that, in effect, requires those of working age to help provide for those who are retired, have diminished.
  - *Confidence in other cultural identities.* British identity is strong. Work done for the Review by Professor Anthony Heath looks at

this in detail. Nevertheless, it is clear that other cultural identities are also important and may be growing in strength. This may be a reaction to social change. It is helped by technologies such as the internet, which make it much simpler than it once was for cultural identities to cross national boundaries. There can be, though there need not be, a tension between these cultural connections and the connection of citizenship.

- *International mobility*. Much as mobility within the UK may have an impact on feelings of citizenship, international mobility means that there are newcomers to the UK who have not contributed to the social and economic benefits of citizenship over time and who may leave the country in the future. This means that we have to pay particularly close attention to deciding how newcomers become part of the citizenship settlement.
4. Perhaps partly because of these changes, we have also become less willing to talk about the need for solidarity. However, there are virtues in being proud of the place where you live and the community that you share.
  5. The first task in determining how to promote the shared bond of citizenship is to look at the evidence about feelings of shared belonging and how that sense of belonging is expressed.
  6. I commissioned four studies for the Review to examine this evidence and the findings are summarised below. The first box captures the main points about identity in general, its sources and possible implications for civic attitudes and behaviour. The points are taken from work done by Professor Anthony Heath and Jane Roberts from the University of Oxford examining survey data from various sources.
  7. The second box looks at attitudes towards citizenship as an idea: what it means to people and how they think it is changing. These attitudes are drawn from research carried out with small groups by Stimulating World, an independent research agency.
  8. The third box focuses in particular on the attitudes of newcomers to the UK. The findings are based on one-to-one interviews and discussion groups run by EdComs, an independent research agency, and the Migration, Equalities and Citizenship team at ippr, a think-tank.

9. The full findings of all four studies are published alongside this report.

## Summary

### **British Identity: its sources and possible implications for civic attitudes and behaviour**

*Professor Anthony Heath and Jane Roberts*

- A sense of British identity is widespread and in all three territories the majority of Britons continue to have dual identities, as both British and Scottish, British and Welsh or British and English. A small but growing number (around 10%) of people reject all four national identities.
- Britons tend to feel proud of being British, and levels of national pride are higher than in most other countries in the EU15. In contrast levels of attachment or sense of belonging to Britain (which may be the more relevant aspect in the context of citizenship) is below the European average.
- There is evidence of decline over the last two decades in strength of national pride (although largely from 'very strong' to 'fairly strong' sense of pride) and there may well have been a very modest decline in attachment.

The main driver of a feeling of attachment or belonging to Britain is age with younger people being less strongly attached to Britain. It is likely that much of the decline in pride and attachment is generational in character, with younger generations who feel a lower sense of attachment gradually replacing older generations.

- Controlling for age, we find no evidence that Muslims or people of Pakistani heritage were in general less attached to Britain than were other religions or ethnic groups. Ethnic minorities show clear evidence of 'dual' rather than 'exclusive' identities. However, people born overseas in a non-Commonwealth country tend to have a weaker sense of belonging to Britain as do people who have arrived in Britain only recently.

Socio-economic marginality (lower social class or low income, or a limiting long-term illness) is associated with slightly weaker feelings of belonging.

- Among young people born in Britain, the lack of attachment of Black Caribbeans is especially marked, reaching one third or more. This applies to the second generation as well as to the first, migrant generation.
- A feeling of 'belonging' or 'attachment' to Britain appears to be associated with social trust and a sense of civic duty (at least as indicated by turnout in elections).
- A sense of belonging is not associated with particularly xenophobic attitudes, nor is it associated with distinctive political positions (other than on European integration and maintenance of the union) or with many other aspects of social participation or values. People with a lower sense of attachment appear to be more critical of the current social and political order.

### **Attitudes towards citizenship**

#### *Stimulating World*

- Across the research sessions there was a strong interest in the concept of citizenship and the benefits it was seen to have for society.
- Participants identified citizenship with being proud of their British identity, proud of other identities they might have and coming together as a nation and in their communities to support and help each other. Many could think of acts of being a good citizen that they or others in the community undertook, often on a daily basis.
- The demands of everyday life were, however, often more to the front of participants' minds than being a good citizen. It was recognised that these demands, in conjunction with fear of others and uncertainty about the state of society, were formidable barriers that needed to be overcome.
- There was therefore widespread support in the research for government and others to do more to act as a champion for citizenship. People saw that there was a role for government to play but they also wanted the media to focus more on the positive aspects of society and highlight how people can help each other in their communities, picking out role models that can be followed.

- In terms of the role of government a number of practical ideas were looked at in the research – ways to promote civic participation; citizenship education; citizenship ceremonies; and a national day. While the ideas received a favourable response overall, careful thought needs to be given as to how to execute them.
- Importantly, it was clear that while Government should be seen to take the lead, the ideas need to be owned by the community and reflect its needs and aspirations.

### **The views of people born outside the UK**

#### *EdComs and ippr*

- Some respondents described ‘Britishness’ in terms of personal characteristics of British people – polite, reserved or aloof. Others talked about the nation – using terms such as organised or civilised. Most respondents, however, found it hard to define ‘Britishness’, yet those who had become citizens in particular said they felt, and were proud to be, British. Others with aspirations of citizenship talked positively about being a part of British society.
- Many citizens defined themselves as British simply because they had a British passport but feeling British, as opposed to being British, was a more profound state of mind. Having a positive experience of Britain and British people helped to create a positive British identity. There was a genuine admiration among most respondents for the tolerance and honesty of the British people and the state, which became a source of pride once individuals could think of themselves as British.
- There were tensions, but no conflict, in having a dual identity as a British person and as someone born overseas. Many citizens said they were 50% British and 50% from their country of birth, some non-citizens felt that they were more than 90% British and that citizenship would make them 100% British.

*“I love my country and my family and I love this country. I think I am Ecuadorian 100% and I think I am British 100%.”*

Citizen, Ecuador

- On balance, the strong feeling of being British that many respondents expressed seemed to have arisen as a result of living here and participating in and contributing to British life. Some said they felt more British after acquiring citizenship, but most of the emotional attachment to Britain coincided with making decisions about a future life in Britain.

- Those who said they felt more British on acquiring citizenship talked about having a British identity, and a passport, that no one could take away. Citizenship was confirmation of how they felt and made official a two-way commitment between the individual and their new country. Some said that they felt they represented Britain when they went abroad on their British passports and in that sense felt more British.
- Respondents' sense of Britishness was strongly tied into their sense of belonging and the degree to which they felt part of British society. Acquiring citizenship in itself did not create more committed British citizens – their commitment was demonstrated in their desire to apply – but it did confirm their status in British society and that was of considerable personal value.
- Overseas-born UK residents wanted to be part of British life. Most felt it was important to adapt, to learn how British people live, to learn the language and mix with British people. This did not mean taking on board all aspects of British life but obeying laws and observing customs was said to be an important part of choosing to live in a new country and respondents were happy to adopt a 'when in Rome' attitude to life in the UK.
- This was not a passive response. Respondents actively wanted to contribute, through working and paying taxes. Volunteering was also seen as a duty, albeit a fulfilling one, and was very much tied in to having societal responsibilities as well as personal rights. All respondents accepted that rights and responsibilities were interlinked and volunteering was seen as a powerful way to contribute to society and to integrate fully.
- In addition to volunteering, the other key drivers for a feeling of belonging were a secure immigration status, tolerance, secure housing, English language fluency, secure housing and social networks.
- Refugees and migrants often told of how work increased their integration and sense of belonging. It aided their English language development, cultural knowledge and enabled them to make friends.

## 6. Enhancing the bond of citizenship

1. I do not assume that there is a crisis about our sense of shared citizenship. As the research by Professor Heath, described in the previous chapter, suggests, levels of pride and belonging in the UK are high.
2. These feelings are inspired by different elements of our national tradition: our culture, values, history and institutions. Different people put these elements together in different ways and this means that any measures which seek to make these feelings more manifest must have room for the diversity of ways in which they are expressed.
3. It is also crucial to understand that people can and do have multiple feelings of belonging. Being British is not an alternative to other feelings of belonging. It provides a shared sense of identity and not an exclusive one. People can feel British as well as feeling a strong sense of attachment to a local community, a faith, another nationality, or even to all of these.
4. Nevertheless, Professor Heath's analysis also shows that these feelings have fallen over time; they are less prevalent among younger people; and there is disaffection in parts of our communities.
5. So the challenge is to renew our shared sense of belonging and take steps to engage those who do not share it. Especially in the light of social changes, we need a narrative of what we stand for together; and we may need to set out that narrative in more explicit terms than we have had to use before and using frameworks that are created for this purpose.
6. The notion of frameworks is an important one. Citizenship is a shared bond but it must leave room for other forms of belonging and be capable of expression in different local and cultural communities.
7. Equally, the meaning of citizenship cannot simply be set from the top down by government. Groups that have lower feelings of belonging may be particularly adverse to efforts that are overly directive. Citizenship will be more inspiring and lead to more participation if citizens themselves have a role in evidencing what it means.



8. The role of government is to provide, as I have suggested, a framework for belonging. Accordingly, the rest of this chapter will look at some of the practical measures that we might take to provide the different parts of that framework in terms of building a greater sense of belonging.
9. The measures proposed affect many different stages in a person's life and many different aspects of society. The reason for this is that we need to create a shared narrative about citizenship which threads through very many different aspects of our lives and our lives together. What we ask of each other as citizens – in terms of mutual protection and support – is quite extensive and hence the experiences that underlie our sense of shared citizenship must be quite extensive as well.
10. I have also been guided by the idea that a core element of the shared bond of citizenship is to participate in society. Civic participation is a way of expressing the bond that we share with other people in our society; and taking part in civic activities can reinforce the bond. Hence this chapter will also examine ways in which civic participation can be encouraged and enhanced.

## THE ROLE OF EDUCATION

11. Citizenship education has a key role in terms of giving young people a sense of what they share in common and developing their interest in civic participation – in particular, by helping them to see at first-hand the value that participation in society can have.
12. Citizenship became a statutory part of secondary education in 2002. A revised curriculum will be introduced in September 2008, following the recommendations of the Diversity and Citizenship Curriculum Review. This curriculum will focus on three broad subject areas: democracy and justice; rights and responsibilities; and identities and diversities.
13. One of the aims underlying the curriculum is that students ought to learn the essential skills and processes involved in taking informed and responsible action. Such action may include:
  - Presenting a case to others about a concern;
  - Conducting a consultation, vote or election;
  - Organising a meeting, event or forum to raise awareness and debate issues;

- Representing the views of others at a meeting or event;
  - Creating, reviewing or revisiting an organisational policy;
  - Contributing to local community policies;
  - Lobbying and communicating views publicly via a website, campaign or display;
  - Setting up an action group or network; or
  - Training others in democratic skills such as advocacy, campaigning or leadership.
14. This focus on action is critical. Learning about the different elements of citizenship in the classroom is important but active participation is needed to build on that base and engage young people at an early age in making a positive difference to British society and understanding that this is the potential that they have.
15. The latest report from the Citizenship Education Longitudinal Study, carried out by the National Foundation for Educational Research, suggests that over one-third of schools are attempting to provide a 'citizenship-rich' experience which develops citizenship through the curriculum as well as by promoting opportunities for participation.
16. So one aspect of the challenge for the future is to extend this approach to the remaining schools. The other aspect is to ensure that young people understand that citizenship is an active concept. This understanding appears to be limited. A survey of over 13,000 Year 9 students carried out in 2005 showed that only 15% thought of citizenship as meaning 'Being active in the community'. They tended to think that citizenship meant being well-behaved – a 'good citizen' – and dealing fairly with others.
17. Creating a substantial change in either the proportion of schools who are delivering active citizenship education or the attitudes of young people requires a clear commitment to measures that promote active citizenship.

### **Citizenship manifesto**

18. Developed through consultation with students, teachers, parents and organisations in the community, a citizenship manifesto is a public document in which schools, including their students, outline what they can do as part of active citizenship programmes in the community and, in turn, community stakeholders state what they are willing to

offer to the school. The process of preparing the manifesto itself leads to engagement between students and community groups and encourages students to think about activities they would like to participate in.

19. Connecting schools to the rest of the community in this way will help to give young people a sense that school is not an environment that is isolated from the real world and that what they do in school can have a tangible impact on the world around them. I propose that all schools should consider preparing a citizenship manifesto. I expect that some schools will find other ways in which to achieve the same aim and hence it may not be appropriate to introduce a requirement that every school ought to have a manifesto but this may be an issue for Government to consider further.

### **Individual citizenship portfolio**

20. Though there is no formal mode of assessment for citizenship education, the Association for Citizenship Teaching encourages the use of a portfolio for each student, comprising evidence of involvement in citizenship activities and examples of written or other work that the student has produced as part of citizenship classes. The purpose of the portfolio is to create a focus on what has been done and learned as part of citizenship education; it is not a rigid form of assessment.
21. I propose that schools should consider whether assembling a portfolio ought to be a requirement for each student over the course of their citizenship education.

### **Citizenship education in the primary curriculum**

22. Though citizenship education has become a statutory part of the secondary curriculum – Key Stages 3 and 4 – it does not have that same status in primary education. Evidence provided to the Review by the Citizenship Foundation, a leading organisation in the field of citizenship education, makes a strong case that this needs to be revisited. Other people have raised the issue with me as well.
23. Young children naturally reflect on what happens to them as individuals and as members of different communities. This contributes to their developing understanding of the world and how it works. The task of the school is to engage with and extend this spontaneous reflection, as children become aware of the complexities of their lives. Arguably, changes in our society mean that children are exposed to more of the world at a young age.

24. Against this background, the absence of statutory citizenship education in the primary phase is problematic. Families have the leading role in teaching children about the world that they live in at a young age. Nevertheless there may be a role for schools as well, especially so that children may have the chance to develop the citizenship skills of engagement and participation from a younger age.
25. I propose that Government should give consideration to the case for making citizenship education a compulsory part of the primary curriculum.

### **ENHANCING OUR NARRATIVE OF CITIZENSHIP**

26. There is no doubt that we have a rich suite of symbols in the UK. So the question is not to change what we have but to consider ways in which to add to what we have.

### **Statement of the rights and responsibilities of citizenship**

27. I have earlier noted that the plethora of legislation which set up and amended British citizenship did not at any stage contain a comprehensive statement of what were the rights and responsibilities of British citizens.
28. Such a statement, if it were possible to produce, could play a valuable role in emphasising the relationship between citizen and the State sometimes described as a contract. One can imagine a number of circumstances in which such a statement could be of benefit, for example, as part of citizenship education or the coming of age ceremonies which I will discuss below. It would moreover make a much clearer statement of what we expect of citizens and what they can expect of their country.
29. Producing such a statement will not however be straightforward. An overly legalistic document will create justiciable rights and duties which may have unintended consequences as they are tested over the years in the courts. It is also today difficult to distinguish the duties which citizens owe, as opposed to non-citizens, and the position in relation to rights is not simple either. Though the proposals that I have made in previous chapters will help to bring clarity, it remains the case that, for example, all within the territory (and even some beyond) whatever their nationality are obliged to comply with the criminal law; and similarly all benefit from most of the basic rights and freedoms enshrined in the Human Rights Act.

30. In this sense, a narrative statement of citizenship rights and duties from which one draws in various different contexts could well be more productive and certainly easier to produce and with less risk to legal certainty than a legalistic document.
31. The idea of such a statement therefore deserves, in my view, further consideration as part of the wider process upon which the Government is embarked. The Government is currently considering the concept of a British Bill of Rights and Responsibilities. I recommend that as part of this process an attempt is made to formulate a statement of citizenship rights and responsibilities which is not intended to be justiciable but will draw on existing rights and duties and rely on those other laws and enactments for their force. There is a precedent here in the way that the EU Charter of Fundamental Rights and Freedoms was put together.
32. Indeed having a national debate on the contents of such a statement would itself be a valuable process in focusing attention on what being a citizen means.

### **National day**

33. In terms of enhancing our shared narrative, there is a particularly strong case for creating a national day focused on ideas about shared citizenship. The example of the Australian national day is worth looking at.

## Australia Day

\*I affirm my loyalty to Australia and its people,  
Whose democratic beliefs I share,  
Whose rights and liberties I respect,  
And whose laws I uphold and obey.

Australia Day takes place on 26 January each year. Australia Day is a holiday which is used to celebrate what it means to be an Australian, the achievements of the country and to look forward to identify the improvements that can be made.

Australians are encouraged to look back at the history of their country and to acknowledge and celebrate the diversity of contemporary Australia.

National symbols are used to reflect the national journey of Australia. These include the Australian flag, Anthem, Gem, Colours and the Floral Emblem.

There are many different activities that take place on the day including:

- community participation and grass root activities organised by local councils;
- citizenship ceremonies for new citizens;
- affirmation ceremonies for existing citizens;
- flag raising events; and
- community awards presentations.

There are also larger events such as concerts, fireworks and parades.

State funded projects are also set up which act as lasting monuments of the day. All Australians, in every setting, are encouraged to get involved in some form of community, home or office activity. Communities are encouraged to freely use the Australia day logo and promote the key messages of the day. All communities are asked to think of ways that the indigenous population can get involved in the main celebrations. They are reminded that practices and protocols differ from place to place and so local indigenous leaders should be consulted and involved in arrangements.

### **Australia Day Ambassadors Programme**

High achieving Australians volunteer to attend local community celebrations throughout Australia. It is the role of the ambassadors to inspire pride and celebration in the communities. 320 local communities hosted ambassadors in 2008. The programme started in 1990 in New South Wales with 9 ambassadors.

As part of their duties, Ambassadors give an address that captures the spirit of being an Australian.

### **Australia Day Achievement Medallions**

Government departments and agencies present medallions to their employees for their involvement in projects that have made a significant contribution to the nation or the outstanding performance of their core duties. Over 70 departments implemented the Medallion Programme in 2007.

### **Affirmation Ceremonies**

Affirmation ceremonies were introduced in New South Wales on 26 January 1999 as part of an Australia Day citizenship ceremony. The event marked the 50<sup>th</sup> Anniversary of Australian citizenship.

The Australian Citizenship council has since recommended that all councils host affirmation ceremonies for all citizens to promote citizenship in their communities.

Individuals, families, schools, organisations or community groups can organise an affirmation ceremony as well.

The Presiding Officer (person conducting the ceremony) should be an Australian citizen. The Officer distributes Affirmation cards which bear the citizenship pledge and those who wish to publicly affirm their commitment to Australia stand and join together in repeating it.

34. In terms of a British national day, what may be beneficial is a new public holiday to celebrate the bond of shared citizenship. This would not be a day to celebrate the Union nor would it be a government event. The role of government would be, as it is in Australia in respect of their national day, to provide a pool of funds for national day committees to assist with the organisation of events all around the country.



35. Devolving the responsibility for organising events in this way would also create space for local and regional expressions of shared citizenship. This is important, as identity in the UK is far from uniform and belonging to the UK is by no means the only important form of belonging that exists.
36. I do not propose that this day should be launched straightaway. It would require a lot of planning. Hence the launch of a national day could be linked to some other event, for example, the Olympics and the Diamond Jubilee in 2012.
37. The date would need to be considered carefully and it may be advantageous to have a day without historical significance, specifically because the purpose of the day is to help to forge a new modern citizenship identity and to encourage the celebration of the widest range of citizens' achievements.
38. A national day would also provide the ideal setting for a special Honours List, which focuses exclusively on the achievements of ordinary citizens rather than on those of senior figures in public life.
39. When raised in discussion groups, the idea of a day like this received a high level of support. I was particularly struck by the recognition on the part of many participants that having such a day may not be seen as part of the UK's traditional heritage but that it could become the catalyst for a positive and celebratory new image of citizenship.
40. There were undoubtedly issues raised about how a national day would be received in Scotland, Wales or Northern Ireland. But the important point to stress in this regard is that there ought to be nothing in the framework of the national day to prevent particular areas from creating events that celebrate other shared identities alongside our bond of shared citizenship. People have multiple identities and it would be false for events organised for a national day not to be responsive to that.
41. Hence I propose that Government, working with others in civil society, should give further consideration to creating a national day by 2012.

### **The role of ritual and ceremony**

42. There is a significant role for ceremonies in each of our individual lives: ceremonies that take place on the birth of a child or shortly thereafter; coming of age ceremonies; university graduation; and marriage. These ceremonies mark important stages of life and they

are occasions for celebration as well as reflection. They also have a critical social role: we invite others to participate in the ceremonies that take place in our lives and then they become a part of our shared experience.

43. On that principle, there is a role for ceremonies in the shared experience of citizenship as well. Citizenship ceremonies for new citizens have been in place since 2004 and they have been very successful, though we need to take steps to improve them further, as I will discuss in the final chapter.
44. The ceremonies for new citizens have a small amount of prescribed content – for example, taking the Pledge of Commitment to the UK. But the design of the ceremonies is otherwise left up to each local council and differs in the four nations of the UK. The ceremonies are an opportunity to express pride and to reinforce belonging. The point about frameworks applies again: local communities are able to customise the ceremonies to make local connections.
45. I recommend that further consideration is now given to extending citizenship ceremonies to all young people. There were some very positive reactions to this proposal in the discussion groups organised for the Review. People from a wide range of backgrounds felt that ceremonies for young people would emphasise what they have in common; confer a sense of achievement for what they have learned and done as part of citizenship education at school; as well as provide them with a spur to continue to be active citizens.
46. There was, however, scepticism about the proposals as well, just as there was scepticism about the idea of ceremonies for new citizens when they were introduced. Yet those ceremonies are successful and, when they are done well, they are very moving. Hence scepticism to them has diminished over time. I expect that opinion would change in the same way if the concept of citizenship ceremonies was to be broadened to include all citizens.
47. There are, however, some difficult issues to resolve. The first is in relation to the age at which citizens should be expected to participate. There is a strong case here for linking the ceremony to the end of a young person's experience of citizenship education in school.
48. This raises the related issue of whether ceremonies should take place in school or elsewhere. This may be an issue on which it is best for local communities to be given the freedom to act on their own initiative. Some areas may want to do the ceremony in schools; others may want to base it in the community; there may also be a case for

combining citizenship ceremonies for young people with the ceremonies for new citizens, but the feasibility of this will depend on local logistical issues.

49. Prior to the stage in a young person's life when a citizenship ceremony may take place, schools should also hold mock ceremonies as a part of citizenship education. Mock ceremonies have been trialled in the East Riding of Yorkshire. Young people are asked to play different roles (mayor; citizen; family of citizen) and they may be asked to think about which other people or parts of society should be at the ceremony. The effect is to give young people an opportunity to think about the purpose of the ceremony from differing perspectives; and this can deepen their understanding of the shared bond of citizenship.
50. Of course, just as with mock ceremonies, any formal citizenship ceremony for young people should draw on the ideas and imagination of the young people involved. They should have a leading role in defining the content of the ceremony.
51. In terms of orienting that content, the ceremony should be seen as a key stage in engaging a young person in the life of the community and the responsibilities of citizenship. There must be an element of celebration; but, equally, the ceremonies could be designed to help young people to understand that, by passing through this stage in life, they are also acquiring responsibilities to contribute to making a better society. Of course, many young people will already be involved in such activities, so their achievements could be highlighted and information about different kinds of civic participation and ways of becoming politically involved could be provided as well – for example, the rate of voter registration among young people is lower than the general average and the ceremonies could be used as an opportunity for young people to sign up to vote.
52. The final issue in relation to citizenship ceremonies is whether they should only be held for young people who are British citizens. However, given that the purpose of the ceremonies ought to be to promote participation by young people in the community and to create a shared bond between them, I do not propose that they should be restricted to only those young people who are British citizens. Nevertheless, it is no doubt possible for the ceremonies to recognise formal citizenship as well for those participants who are British citizens, i.e. by incorporating the Oath of Allegiance to the Queen and the Pledge of Commitment to the UK.

## THE ROLE OF ACTIVE PARTICIPATION IN SOCIETY

### Civic participation among young people

53. Following school, there is an important issue about how to engage young people, who may have other concerns and priorities at this critical point in their lives or may simply feel that their contributions will not be valued. Giving them an early opportunity to participate in society will help to build a sense of social responsibility and sustain the impact of citizenship education in school
54. Of course, many young people do participate in society, especially when the opportunity to do so is presented in inspiring and interesting ways and in relation to issues which are of interest to them. Hence the purpose of my discussion is to consider ways in which the barriers to participation can be lifted and how the emergence of the right type of opportunities which engage young people can be stimulated.
55. The Russell Commission looked at many of the issues previously and its recommendations have led to the creation of *v*, a new youth volunteering organisation that is already beginning to create new volunteering opportunities. However, among people that I spoke to during the Review, there remains considerable interest in the idea of compulsory civic service for young people. This would consist of a short period of time – perhaps six months. This is an attractive idea and it would certainly represent a massive shift in the value that we as a society attach to civic activity.
56. There are however substantial difficulties with implementing such a scheme. There would be considerable resistance to making civic participation a universal requirement. Many young people are keen to go on to university, or to vocational or technical training; equally, many young people need to work to earn money for themselves or for their families. This may suggest the need for exceptions to the scheme, but those exceptions would be divisive and would frustrate one of the core objectives in this area, which is to create links between people of different backgrounds and help them to join together in a shared sense of citizenship.
57. Many voluntary organisations would also be opposed to such a scheme; they want to attract young people who have made a willing commitment not those who are compelled to complete a period of service. This criticism may be unduly harsh, as young people would of course have choices to make, even within the context of such a scheme, about what and where to do, hence there would be a strong

element of willingness about their commitment to a particular placement.

58. But the other issue here is that of capacity. There is no point in creating a massive upsurge in the number of young people doing civic activities if the right opportunities are not in place. Hence I do not propose that government adopts a scheme of compulsory civic service but that it continues to support capacity-building in the voluntary sector so that it is an issue that can be considered in the near future.
59. Meanwhile, I propose that more is done to lift the barriers to participation. In that context, there is a strong argument for providing young people with financial assistance for further or higher education in return for a period of civic service. This is done in the US by Americorps which provides participants with financial assistance for college fees.
60. I propose that government gives consideration to introducing a similar scheme in the UK, whereby young people who take part in agreed civic activities receive assistance with tuition fees.
61. Especially given the importance of skilled or specialist forms of civic activity for many organisations – e.g. writing, editing, marketing or accountancy support – such a scheme should also look to engage young people who have already been to university or have other technical or vocational skills. Many young people may want to apply their new learning and expertise to positive work in civil society rather than or as well as using it to get a job. However, they may not be able to afford to do so due to the need to earn money and to pay back student loans incurred during further or higher education. Young people in that position could be encouraged to participate if an element of their debt is struck off in return for their service.
62. Equally, we should also take steps to engage young people – and indeed others – who are not in employment. This means, in the first instance, being absolutely clear that a person does not lose entitlement to Job Seeker's Allowance by volunteering in a civil society organisation; though that is the case in law, there is some confusion about this at present in practice.

63. However, much more importantly, I propose that government and civil society organisations should do more to engage people who are not in employment as a way of developing their skills and providing them with a pathway into paid employment. I expect that many people, once they have experienced the personal and wider benefits of participating in civil society projects first-hand, will want to continue to participate even after they make that step into paid employment.
64. This leads to a broader issue about how to generate the type of opportunities for civic participation that will engage young people. v will have an important role to play in this but it relies on partnerships with other organisations. Government should therefore continue to foster good links with non-governmental and private sector organisations, as it has done through v and the Council on Social Action.

### **The role of the workplace**

65. The workplace can be a very significant site of social interaction. It brings people together to pursue shared projects. If one of the distinguishing characteristics of modern life is its individualistic nature, work potentially provides a space where different values apply: most jobs require teamwork, co-ordination and compromise.
66. Crucially, the interactions that are created by work may not be interactions that would take place otherwise. They occur across lines of age, gender, ethnicity, religion, socio-economic status and attitudes. Workplaces can be more diverse than churches, schools or even neighbourhoods.
67. Anti-discrimination laws have helped to ensure that workplaces have this quality. And many employers take active steps to create companies that include people from many different backgrounds. The question to be considered then is how to take the positive social interactions that are taking place in many workplaces outside into the wider civic society.
68. Many employers have already taken steps to help this to happen: they offer their employees paid time off in order to volunteer. This is beneficial in terms of addressing one of the barriers to civic participation: the lack of time. Moreover, once people have tried an activity using the paid time off, and seen the positive impact that it has on themselves and on others, it also becomes more likely that they will repeat or broaden their engagement.

69. However, often people who work in companies who provide paid time off do not know that the provision exists or do not know what they would do with the time. This is where the importance of being asked matters so much.
70. Hence what I propose is that government should give consideration to setting up a portal that is specifically targeted at people with paid time off from their employers. This portal could be promoted through employers that already have such schemes; and it may be expected to encourage others to create the schemes as well.
71. The focus of the portal may be on opportunities for participation that would allow a group of co-workers to take advantage of their employers' scheme and to take on a common project. I recognise that there are organisations such as Business in the Community and do-it.org who already provide assistance in this area and it may be that government should engage them as partners.
72. Another way in which the social environment of the workplace can be utilised is through mentoring. Workplaces provide a setting where young people, people who are in education or training, or people who are trying to overcome disadvantages in order to work, can receive practical guidance and inspiration for their own careers.
73. Again the key is to make it easier for companies to set up mentoring schemes whereby their employees can engage with people looking for a mentoring relationship. These schemes can provide benefits for employers too: they deepen the connection with the local community; develop coaching skills in employees; and mentees may be potential employees for the future.
74. I propose that the government considers how it can best support the provision of guidance and assistance to employers in setting up and operating mentoring schemes; and to look at the case for a portal which would make it easier for mentoring relationships to form.
75. It may also be useful to provide greater recognition to businesses that support civic participation for their employees. As I have said, many companies are already very committed to promoting such participation.
76. One possibility is to create an 'Investors in Communities' standard. This would work in a similar way to the existing 'Investors in People' standard which provides organisations with an incentive to create effective management and development strategies for their staff. Organisations apply to be assessed against the standard and, if



successful in attaining it, they can display it on all materials and in the workplace.

77. An 'Investors in Communities' standard would be based on strategies to encourage employees to increase their level of civic participation. That may mean flexibility and time off for civic participation; the creation of mentoring links with the local community; and other partnerships with local community organisations that demonstrate corporate social responsibility.
78. Finally, government has a second role in this area as well: not only as a body which promotes such activity among other organisations, but as a large employer itself. It will be important for government to continue to look at ways in which it can support its own staff in participating more widely in society.

### **The local community**

79. A great deal of civic participation occurs at the local level. 17% of formal volunteering is done for a local community, neighbourhood or citizens' group. In addition to this, much of the volunteering that takes place in educational, religious and social welfare organisations is also based in local communities.
80. Government has made renewed efforts to support local community organisations since the conclusion of the Third Sector Review in July 2007. The Government is committed to investing £50 million in endowments for community foundations to make sure they can provide grants in the future for community groups; and there will be at least £10 million of new investment in community anchor organisations and community asset and enterprise development.
81. The role of local government in helping to foster local civic participation is of course equally important. I know that many local councils are doing excellent work in this regard. However, there is, in the context of the importance of asking people to participate, a possibility that local government could further their efforts by advertising the key opportunities and providing a clear incentive which also sends a signal about the importance that they attach to participation.
82. What I propose is that local councils give consideration to whether key opportunities such as helping children with reading in schools, organising recycling within a neighbourhood or setting up a residents' association where one does not exist, should be supported by giving

participants a partial rebate of their council tax. This idea was raised spontaneously in the discussion groups organised for the Review. Of course it would be for local councils to decide the costs and benefits involved and hence how many and which opportunities ought to be advertised.

### **The role of faith communities**

83. Faith communities create many opportunities for participation in society and they have long been a force for positive social change. From the perspective of their contribution to strengthening the common bond of citizenship, what is key is that they are alert to the risk of separateness and hence they contribute – as most do – to working across faith communities: this is interfaith action, which is an additional step beyond interfaith dialogue.
84. Where faith communities are an integral part of the community in this way, there is a dual benefit. They provide additional resources for dealing with social problems. And where they work across faith divides, they contribute to creating a greater sense of a shared purpose and inhibit the emergence of a ‘them’ and ‘us’ outlook.

### **Creating connections between generations**

85. Arguably, we are living in a society where there is less contact than ever before between young people and older people. Young people are less likely to live with their grandparents due to the decline in the number of intergenerational households. Equally, because we have become more mobile, both within the UK and outside it, it is less likely that different generations of the same family will live in the same place. The workplace is a setting where people of different ages do mix but, once older people are past the age of retirement, they lose that opportunity to have daily contact with young people as well.
86. This disconnection between generations raises an important challenge for the shared bond of citizenship. Mentoring relationships, which I have already raised in the context of talking about the workplace, could have a role to play in dealing with that.
87. There are schemes in both the US and Germany which involve older people who are past the age of retirement in mentoring young people who may be pursuing the same career or seeking to develop the same skills. Many people are in such mentoring relationships in the UK on an informal basis. I propose that government gives consideration to how it could help other people – both potential mentors and mentees

– who want such a relationship to find the right match. Good matching is a critical factor in creating successful mentoring relationships. Hence creating a high-quality matching function may be the priority in this area.

### **Community mediation**

88. Both in my discussions around the subject of migration and in the research conducted for the Review on what citizenship means in everyday life, people frequently referred to tensions in neighbourhoods which may relate to quite minor issues but have the potential to dissuade people from engaging in their local community and create a sense that community relations are deteriorating outside of their control.
89. There ought to be quick and effective methods for dealing with these tensions. But responsibility for facilitating resolution is not always clear-cut and it is not situated within local communities.
90. Hence I propose that government give consideration to expanding the numbers of mediators who are selected from local communities after putting themselves forward, trained and given technical and administrative support in mediating local disputes that are referred to them. It will be for each mediator to seek to establish relationships with local police forces and others as appropriate. The focus of their work will be informal dispute resolution rather than any sort of coercive action.

### **Recognition**

91. There are a number of awards schemes in place for recognising the efforts and achievements of those who participate to improve our society. However, I am convinced that we can do more to acknowledge their efforts and to create an incentive for others to participate as well.
92. I propose that government give consideration to creating a National Citizens Corps. Active citizens would be nominated by others and selected for membership on the basis of an assessment of what they have done in their community.

93. Membership of the Corps would provide opportunities for training and development – the acquisition of skills is frequently cited as an incentive for civic participation – and members of the Corps would be expected, on the basis of their experience and expertise, to provide advice and support to others. I expect that membership of the Corps would also come to be regarded as a high-value credential by universities and employers.

### **The value of politics**

94. Nothing in this report should suggest that political engagement is anything other than a critical component of civic participation. One of the most important ways of demonstrating a sense of belonging in a society is to take part in political debate and action. Doing so can also help citizens to form connections, learning from each other and combining to develop ideas which will improve the society we share.
95. Accordingly, I support the measures that the Government is taking – following the Green Paper on the *Governance of Britain* – to bolster the role of citizens in political debate and decision-making and to enhance the role of Parliament. However, it may be that there is a need to look at further innovations which would reinforce the value of politics in our society.

### **A duty to vote?**

96. A number of people have suggested that there ought to be an enforceable duty to vote. Turnout in elections in the UK is undoubtedly lower than I or any person who cares about the health of our democracy would like; it was only 61% in the 2005 general election.
97. Perhaps a good starting point is to consider whether people think, as a matter of their own beliefs, that they have a duty to vote. The think-tank ippr has studied this issue and their work suggests that nine out of ten people thought that they had a duty to vote in Atlee's time and that proportion has dropped to less than five out of ten people today. The belief that there is a duty to vote is lower among young people: just 31% think that such a duty exists.
98. It is regrettable that the number of people who feel that they have a duty to vote has dropped so significantly; but I do not see how enshrining a duty to vote in law, when that duty is not felt any longer by a majority of people, would help to change the way that people approach voting.

99. Creating a legal duty to vote would either attract very significant resistance, because people do not believe that they really owe such a duty; or it would lead to people merely complying with the law in order to avoid a penalty.
100. Mere compliance may be acceptable in some areas of the law but, when it comes to voting, it is important that people choose to vote, with an understanding of the reasons why they are voting. Hence, though creating a duty to vote may increase turnout, I am not convinced that it would do so for the right reasons.

### **Enhancing the involvement of citizens**

101. The central issue may not be that citizens are uninterested in political issues but that they are politically active in new ways. Hence citizens may be using alternative modes of political engagement, like joining campaigning organisations or signing petitions instead of voting. This suggests that the challenge is to connect alternative modes of political engagement to formal politics and hence help to ensure that people who take part in the former see the impact of what they do on the latter and then go on and take part in the latter as well.
102. One way to do this may be through the concept of a Deliberation Day. This would be a forum attached to a general election – possibly taking place on the Saturday before an election – which would receive government support, especially funding, and would provide an opportunity for civil society organisations – including political parties but also those other organisations that citizens are joining in increasing numbers – to organise political debates and events. No doubt some of these events would focus directly on the contest between the parties and candidates as we are used to but others may choose to highlight a particular issue or theme.
103. Creating a Deliberation Day, and providing organisations with the financial support to make it vibrant and interesting, would draw those organisations and their members into formal politics, as well as provide a very significant statement of the value attached to politics and to civic participation in general.
104. Similarly, large numbers of people sign petitions, including petitions to government and Parliament, but these petitions do not have a direct impact on formal politics. This means that active interest in politics on the part of citizens is not being converted into deliberation or action.

105. Though Parliament began a consultation in November 2007 on the use of e-petitions, this consultation assumes that e-petitions ought to have the same status as written petitions, i.e. the petition is read to Parliament and it is sent to the relevant Government Department and Select Committee but Government is not obliged to reply.
106. The Scottish Parliament has sought to address the discontinuity between citizens' interest in petitions and formal politics by creating the Public Petitions Committee. The Committee is responsible for deciding what action should be taken as a result of a petition to the Scottish Parliament. It meets every fortnight in public and considers six new petitions on each occasion. The Committee can invite the petitioner to speak at a meeting or ask for written evidence from organisations on the issues set out by a petition. It will also consult the Scottish Executive or invite the relevant Scottish Executive Minister to give evidence before it.
107. If the committee decides that the petition merits further consideration, it will usually send it to the relevant subject committee of the Scottish Executive or it may bid for parliamentary time so that the issue can be raised with the entire Parliament.
108. I propose that Parliament should give consideration to setting up a committee with the same role and that government should make resources available for advertising the process by which petitions can come before it. The Committee's role will be to decide if the petition requires further consideration and it can require, as appropriate, a response from Government or the setting aside of Parliamentary time for a debate on the issues raised.

### **An Office of Citizenship**

109. Finally, in closing this chapter, I want to comment on the fact that, again and again over the course of this Review, I have seen that the responsibility for policy and delivery associated with citizenship is divided across different parts of government – central and local – as well as among the voluntary and community sector.
110. In one sense, this is as it should be, because the bond of citizenship depends on a wide range of matters and promoting citizenship requires many different parts of society to come together. Often, the role of the local community is vital and hence the practical context of what it means to be an active citizen varies from area to area.

111. These considerations nevertheless leave open the question of whether there ought to be a national focus for activity related to citizenship, that is, an Office of Citizenship that would bring together the key central government functions related to citizenship – i.e. the acquisition of citizenship and various activities to promote civic participation among citizens new and old. The role of the Office would be to focus and facilitate activity without removing the obligation of other Departments to carry out their responsibilities.
112. This body would also provide support and guidance to others that are working to promote the crucial shared bond that citizenship represents. That role may include
- Helping to support the creation of local welcome centres and information packs where these do not exist;
  - Commissioning and publishing research on what works to integrate newcomers to the UK;
  - Commissioning and publishing research on ways to promote volunteering and participation;
  - Strengthening networks between different areas to facilitate the sharing of best practice; and
  - Providing people involved at the local level a sense of being part of a national common project.
113. This amounts together to a compelling set of functions for a new national body and hence I propose that government give consideration to establishing an Office of Citizenship along these lines. This would be a very powerful statement of the value that government attaches to citizenship and to creating an enhanced sense of its importance and role in promoting shared belonging.



## 7. Involving newcomers

1. There is abundant evidence that the early experiences that a person has on moving to the UK are critical to that person's sense of whether they belong in this society – or whether they can envisage the prospect of building such a sense of belonging in the future. Accordingly, we need to look carefully at ensuring that migrants receive an early start to the process of integration and that they continue to be engaged in society.
2. Ultimately, of course, some newcomers to the UK will want to settle here and make the UK their permanent home. This raises questions about the route to citizenship and how we ensure that the journey along this route engages a person in an expansive conception of what it means to be a citizen and gradually builds a deeper sense of belonging.
3. This final chapter looks at measures for early integration and then makes proposals for the route to citizenship. It concludes by looking at issues that are specific to threatened migrants, i.e. asylum-seekers and refugees.

### Part 1: An Early Start to Integration

#### Learning English

4. My conversations with newcomers, as well as the organisations that work with newcomers, have repeatedly suggested the importance of learning English – both as an activity, which is a way for the person involved to take integration seriously, and in terms of the outcome, i.e. greater access to British society. The research commissioned for the Review confirmed these impressions – learning English was seen by new migrants as the single most important factor in integrating in society.

5. Establishing proficiency in English for new migrants also has clear benefits for UK society, not only in terms of facilitating social intercourse but in the workplace as well. We are losing out on the full potential and skills of new migrants because of issues in the provision of English language classes.
6. Hence we need to attach high priority to helping newcomers to learn English from the outset.

### **English for Speakers of Other Languages (ESOL)**

#### **Means of ensuring availability**

Resources need to be allocated within a strategic approach to ensure that ESOL is both available to all who need it and targeted toward those who need it most.

- ESOL needs to be a clearly identified responsibility within agreements and targets established between central, regional and local government.
- The quantity and availability of ESOL needs to relate to local strategic approaches to economic regeneration and community cohesion with the cost of ESOL and the costs of not providing it being taken into the equation. Local demographic changes will also be a determining factor.
- ESOL learning should be targeted to those most in need. The priority groups identified in the recent consultation paper on ESOL issued by the Department for Innovation, Universities and Skills seem to be appropriate. These include legal residents who might reasonably be expected to stay in the UK, excluded women and those who are identified as raising particular issues for community cohesion.
- ESOL should be economic in terms of the cost-effectiveness of delivery and also the purse of the learner. Value for money criteria should ensure that the impact of ESOL be measured in relation to the life opportunities of the learner and the inflow of increased skills to the local economy.

### **Means of ensuring accessibility**

Evidence suggests that there are a number of factors inhibiting access. These include location, time of courses, relation to work and childcare requirements, and cost.

- ESOL needs to be delivered in a variety of accessible venues, recognising that formal learning institutions are not always best placed to invite all learners. Appropriate venues are: community-based introduction centres or projects which fulfil that role; workplaces (especially those firms employing low skilled workers); trade union offices; religious organisations; family centres; schools (for parents); libraries and health centres. Crucially, provision of venue does not necessarily mean taking responsibility for the delivery of the teaching as that must be done with specialist skill and knowledge.
- ESOL needs to be delivered at times convenient to the learner. Whilst for many the conventional hours of college courses are acceptable, there are significant numbers who need to access English learning at weekends or to suit child care arrangements. There should be innovation in the use and creation of open source learning centres.
- ESOL should be far less classroom-bound and make full use of innovations made possible through new technologies. It should also recognise that much language learning takes place within the lived environment. There needs to be an emphasis on mentoring and volunteer language supporters.
- Ensuring that ESOL is affordable. The principle of charging is not inappropriate but cost should not be an inhibiting factor. Fees need to be harmonised nationally as there is evidence that the more expensive courses are under-subscribed while more economical courses have long waiting lists.
- For those unable to pay, 'language loans' should be considered. These would become payable when the individual is in work and earning above a certain amount. If an individual leaves the UK without paying back the loan, then future access to the UK will be restricted.

### **Means of ensuring quality of delivery**

ESOL needs to be delivered through appropriate partnerships which combine the knowledge of local strategic intentions relating to economic regeneration and community cohesion, awareness of the needs and sensitivities of communities and appropriate learning methodologies. There is an urgent need for innovation in delivery mechanisms.

- ESOL needs to be embedded into life contexts – work, family, coping with bureaucracy, participation in civil society and democratic institutions. This should impact on the curriculum, location and method of delivery.
- The ESOL profession needs to develop greater flexibility in its capacity to meet the needs of diverse communities and life situations, which requires an investment in recruitment and training of trainers.
- ESOL curriculum must accompany a progression route identified by the learner if the learner is to continue on a learning path over a number of years. This will move from being able to function on a day-to-day basis, through accessing employment, handling bureaucracies, good parenting and educational and career progression. Courses should not be stand alone but delivered within learning pathways towards economic participation and active citizenship.
- ESOL teaching should be differentiated to meet the needs of learners from varying backgrounds and learning goals.
- ESOL qualifications should match a diversity of learning outcomes. This should be considered as part of a full evaluation of the new ESOL for work qualifications which were introduced to provide more diverse provision.

### **Means of preventing ESOL becoming a pull factor for migration**

There is no evidence that ESOL is a pull factor other than for private colleges. It should be possible to impose some simple requirements which would ensure that improved provision of ESOL does not create additional migration of itself.

- Restrictions on recruitment to the locality in which the ESOL is provided
- Clear admissions criteria related to immigration status and income level
- Provision within community-based facilities rather than private academies
- Ring-fenced funding directed within mainstream funding programmes ensuring accountability and control over delivery
- Accurate reporting and evidenced monitoring requirements

### **Early contact**

7. There are various local projects around the country which provide the opportunity for early contact with new migrants. This early contact is important for the new migrant, who is able to access advice about services in the area, for example, English lessons or health. And it is also an opportunity for the project, after consultation with the local community, to provide information which will ease the integration of new migrants and minimise issues with the settled community.
8. I have visited such a project called New Link, in Peterborough. The New Link centre receives around 600-800 visitors a month. Though its central function is to provide advice, it has also been able to train people from migrant communities to work as Community Facilitators, whose role is to mediate disputes between migrant and settled communities; and it provides citizenship lessons in the context of teaching English.
9. The centre has also created an introduction pack, which is informed by representatives of the local community, and covers those issues which the local community feels it is important for new migrants to know about. The Department for Communities and Local Government has recently issued guidance on the content of such introduction packs. These are important steps. Unfortunately, the reach of centres like New Link is limited. That centre only attracts 20% of those new migrants who register for a National Insurance card.

10. I propose that the government gives consideration to whether new migrants should be required, as a condition of receiving a National Insurance number, to register with a local welcome centre. This is a way of ensuring that a much greater proportion of new migrants receive information about the local community and that the local community knows that this is happening. With this higher contact rate, we could also reasonably expect that participation in schemes like Community Facilitators will increase.

### **Drawing newcomers into civil society**

11. Early on in my review, I had the opportunity to meet mentors and mentees from the TimeBank Time Together programme. This is a mentoring scheme for refugees and it has enormous benefits in terms of helping refugees to integrate, by improving their English through conversation and receiving orientation and advice from a mentor who is an established citizen of the UK.
12. I saw also that the mentors derive great benefits from the scheme. The mentoring relationship helps them to learn and to develop their personal skills but it also engages them in talking about their country and extending a welcome to others on behalf of their country.
13. There is a strong case for extending such mentoring arrangements so that they are available for other new migrants as well – as TimeBank have recommended in a pamphlet written for the review.
14. I propose that government gives consideration to setting up pilot schemes to test the value of mentoring for people who are on the route to becoming citizens. The mentoring relationship would be focused on a number of ‘citizenship goals’, such as learning English and developing more connections with the local community.

## **Part 2: The route to citizenship**

15. Often the most critical issue for people who have moved to the UK and want to settle here is the rules for how they will access citizenship. We have been open in this country to allowing people to acquire citizenship, even if they were not born in the UK or have no ancestral connection to the UK. This is absolutely right but citizenship must not be devalued by the fact that it is open to people who have moved to the UK. Hence there must be requirements along the route to citizenship.

16. Equally, however, any requirements that are imposed for the acquisition of citizenship ought to be meaningful. They should not be hurdles that are imposed to make the process a difficult one; they should be designed to ensure that a new citizen has demonstrated a commitment to settle in the UK and has engaged with UK society. In other words, the requirements for the acquisition of citizenship should stimulate integration and civic participation as well as constitute proof that those processes are taking place to existing citizens.
17. Finally, the conditions should also be responsive to the changing reality of international mobility. As the work done by ippr for this Review suggests, it has become more common for people to live for a period in the UK and then elsewhere before perhaps returning to the UK; existing UK citizens demonstrate this new higher level of mobility as well. If the UK is to remain competitive in a global economy based on such patterns, then our system for the acquisition of citizenship must be responsive to them. However, again I stress that this does not mean that the acquisition of citizenship should be made simpler – citizenship is a valuable shared bond and retaining that value depends on having a system for acquisition that is robust, even though it may also be flexible.
18. In the past, what we have relied on, in the UK as in other countries, is a system for acquisition whereby commitment to settle in the UK and engagement with UK society is proven merely by demonstrating that you have lived in the UK for a set period of time. This is a crude measure and there is no guarantee that people who have lived in the UK for a set period of time will, for example, be properly engaged in UK society.
19. Hence I welcome the principles of the new approach outlined by the Government in the recent Green Paper on The Route to Citizenship which suggest a more nuanced approach to recognising commitment and the responsibilities involved in becoming a citizen of the UK.
20. The Government has issued those new principles for consultation and, as part of that process, I suggest that consideration is given to establishing a credits-based system for the acquisition of citizenship which may be able to more accurately record commitment to settle in the UK and engagement with UK society; as well as to penalise those people who do not accept their responsibilities as a potential UK citizen. People who have committed particularly severe crimes clearly ought to lose the entitlement to move towards UK citizenship; however, it may be that the commission of less serious offences ought to lead to an appropriate deduction of credits.



21. A credits-based approach would also allow the system of naturalisation to be more responsive to modern conditions of mobility, under which people may live in the UK for a period earning credits but then be away for a period of time before returning to complete their journey towards citizenship. The system should not make it easier for such people to receive citizenship but it should not divest them of the opportunity to do so either.
22. Getting the details of the system right would need careful work but some illustrative principles may be that credits are gained for time spent in the UK in employment – and, equally, credits are lost for substantial periods of time spent out of the UK. It may be worth considering whether people in key jobs, e.g. in the NHS, should obtain additional credits. On the other hand, people who have come to the UK as spouses or dependents have not come to the UK primarily in order to work and hence it would be unfair to require them to do so as a condition of getting citizenship – they would build up credits based solely on the basis of living in the UK.
23. A credits-based system should also seek to gauge engagement with UK society, in addition to time spent living here or in employment. Hence aspiring citizens could earn credits for each level of ESOL progression. It is critical that the credits are earned for progression rather than for proficiency – the purpose of the credits is to provide people with an incentive to engage with UK society and learning English is a part of that. On the same principle, credits could be added for passing the Knowledge of Life in the UK test or taking the course and for civic participation activities. Certified activities may include acting as the trustee of a charity, acting as an officer in a professional or community organisations, or providing mentoring under a recognised mentoring scheme.
24. Setting the total number of credits required to be eligible for citizenship will require careful work. The total ought to be significantly lower for people who have come to the country as spouses or dependents, as their relationship to an existing UK citizen is already proof of their commitment to settle in the UK. There will also need to be consideration of the operational realities of operating such a credits system.
25. However, the benefits of the system would be significant. It would provide greater flexibility for people aspiring to be citizens, at a time when mobility is on the increase, as well as a more responsive means of recording a person's commitment to live in the UK and engage with UK society. Hence I recommend that looking at the feasibility of such a system becomes part of the Government's consultation process on The Route To Citizenship.

## Knowledge of life in the UK

26. Anyone seeking to settle permanently in the UK must have a basic level of knowledge about the UK. This is to demonstrate the ability to settle in the UK. From an objective perspective, we ought to require this because we want people to be empowered and to know about the society in which they live and its institutions. Many people will, of course, learn about life in the UK because of their own interest, or as a matter of course; however, it is reasonable for us to stimulate this process of learning and ensure that there are no significant gaps
27. On the same basis, the person seeking settlement must have a basic level of English. This is tested in conjunction with the level of knowledge about the UK.
28. However, there are two significant issues with the current regime of testing. First, the current 'Life in the UK' Handbook and hence the test focus solely on national issues. Those issues are clearly important and they must be a part of the integration process but we should be seeking to promote a sense of local belonging as well. Accordingly, I propose that government gives further consideration to whether the test should include a local element as well.
29. Alongside the integration into a local community for the individual, it is equally important that the local community feels that it has an opportunity to convey its own sense of itself and key local information. Hence it is important that the local community has a role in establishing the content of a local element in a handbook and test. I recommend that this is considered alongside the issue of whether to include a local element in the test.
30. Of course, this will need to be done within a national framework, so that the purpose of the test is consistent throughout the UK, and the level of proficiency in English required to complete the test is reasonable; nevertheless, it is important for the local community to feel that it is involved in the processes of integration for new migrants. Without that involvement, again there is a risk that we will take top-down measures which do not achieve what we expect them to do.
31. The second issue with the present test is that it is not seen typically as a stimulus for learning, though that was one of its stated aims; and the pass rate is very low, especially in certain communities – for example, the pass rate for Bangladeshi nationals is only 46.3%.
32. It seems that what is happening is that the test works as a stimulus for learning for some people; but it does not do so for others – and

they may experience the test merely as a barrier to citizenship. Additionally, many people in our research expressed the view that the test allows people to pass by rote learning without real understanding of the issues or even the language. There was a common preference for being led through the issues in a class since that would engender a deeper and longer-lasting understanding; it would also help to improve conversational English.

33. Hence I propose that, taking a diverse approach to learning, as we do in other settings, requires that the choice between the test route and the course route is more clearly advertised to people who are seeking settlement; and this may mean extending the availability of the course, provision of which is limited in some parts of the UK.
34. There is potentially a missed opportunity here in terms of using the expertise that teachers in citizenship education have developed in secondary schools. I propose that Government gives consideration to whether those teachers can be engaged in helping to expand the provision of the citizenship course for people aspiring to settle in the UK subject to issues of their capacity and workload.
35. I also propose that Government should give consideration to revising the test. Most people born in the UK would struggle to pass the current test and this creates a deep impression of unfairness among people who have to take the test. That in turn affects their willingness to treat the test as part of a learning journey – which must be the underlying objective here – and undermines the credibility of the process.

### **Citizenship ceremonies**

36. Since the introduction of ceremonies in 2004, they have become powerful ways of celebrating the acquisition of citizenship. Many Councils run excellent and successful ceremonies; there is work to do in other areas and, in partnership with Mark Rimmer, Head of the Registration Service in Brent, the Local Authority Coordinators of Regulatory Services (LACORS) and the Local Government Association (LGA), I have set up groups of local citizenship officials to make progress on improving local ceremonies.
37. The discussions of these groups will lead to the production of a best practice guide for citizenship ceremonies which will be sent to all local authorities by the end of March 2008. There are three broader issues to draw out of this work to improve local ceremonies:
  - Citizenship ceremonies ought to have a higher public profile in order to communicate the significance of the common bond of

citizenship both to new citizens and to existing ones – this means holding more ceremonies in public spaces, iconic buildings and in the context of cultural events;

- Citizenship ceremonies ought to engage the local community – this means involving local schools in the ceremony, potentially as part of the citizenship education curriculum, local community organisations and businesses; and
- Ceremonies ought to feel like a link in a process rather than an ending – involving the local community will help in this, for example, a new citizen may agree, following the ceremony, to join a local organisation that has taken part in the ceremony. On the same theme, there may be a case for developing new citizens' packs which provide information about the cultural, social and political life of the local and national community.

38. New citizens should also feel that they are being given a chance to participate in our national story. Hence I support the idea raised initially in a pamphlet written for the Review by Mark Rimmer that new citizens who have shown this participation through outstanding acts of volunteering should be rewarded in a special citizenship ceremony held each year, potentially attended by the Prime Minister and even perhaps a very senior member of the Royal Family, as well as prominent public figures who have also become UK citizens rather than being born citizens. This ceremony could be held to coincide with a new National Day if one is established.

39. Finally, though citizenship ceremonies are a celebration of the common bond of citizenship, they do not yet provide new citizens with enough opportunity to talk about their experience or what becoming a citizen means to them. Therefore I propose that every new citizen should be given the opportunity to write a statement of his or her journey to citizenship and what Britain means to them – and those statements should be held in Town Halls. A person on the route to citizenship should be given examples of these statements to stimulate reflection when he or she applies for citizenship.

### **Encouraging the take-up of citizenship**

40. As part of the research done for the Review, people who had recently become citizens or who are now eligible to apply, were asked to identify any barriers to applying for citizenship. This question was asked because a significant proportion of people who are eligible for citizenship do not apply for it. Figures from the Home Office suggest that over half of the people who have lived in the UK for over 11 years are not citizens.

41. In our research, the most-mentioned deterrent to applying for citizenship was cost. The current fee is £655. Many respondents felt that the cost was designed to deter people from seeking citizenship; yet this is not the impression that we should be seeking to create. The rules for gaining citizenship should be rigorous but there is no advantage to having people, who have lived in society for over a decade, deciding not to become a part of it in the fullest sense by seeking citizenship.
42. Therefore I propose that there should be a financial incentive for people to apply for citizenship as soon as they become eligible. Government should give consideration to lowering the fee substantially for people who apply as soon as they are eligible – and to gradually increase the fee as time goes by without an application having been made.
43. The proposals that I have made in Chapter 4 on the status of permanent residents will also have an impact in this regard.

#### **Integration of threatened migrants**

44. There are specific issues relating to the integration of threatened migrants. Refugees have often had harrowing experiences. They may have lost their livelihood or home; they may even have come close to losing their lives. Hence, even though they may obtain physical security by coming to the UK, they may not immediately experience psychological security – a sense of being settled and safe.
45. Though, strictly speaking, it may be said that the issues facing threatened migrants are outside the terms of reference of my Review, they were raised with me by many of the individuals and organisations that I met with, who work with threatened migrants on a daily basis. Throughout this report, I have been considering whether there are practical measures that ought to be adopted to promote a sense of shared belonging. In that context, and since these issues were raised with me, I felt that it was important to cover them here.

#### **The right to work**

46. Working is widely recognised as a driver of integration as well as an important source of self-worth and confidence. More than that, it provides forced migrants with a means of becoming self-reliant and making an economic contribution to the country which has provided them with protection. The following have the right to work in the UK:
  - Refugees;

- Those with Humanitarian protection or Discretionary leave; and
  - \* An asylum seeker who has not received a decision on their initial application within 12 months and has received permission to work from the Home Office. In order to gain permission, the delay to the initial decision must not have been caused by the applicant.
47. The right to work for asylum seekers was first introduced in 1986. The concession gave asylum seekers the right to work if they had not received an initial decision on their case after six months. The Government announced that the concession was to be removed in 2002. The purpose of the decision was to create a clear distinction between migration to seek asylum and migration for economic purposes and to make sure that the right to work was not encouraging people to apply for asylum.
48. This is a legitimate aim. However, even though a high proportion of claims receive an initial decision within six months, a substantial number of cases take longer to resolve – 6,400 in 2006. This means that asylum seekers can spend an extended period of time in the UK without the right to work.
49. I was told by many that denying the right to work to asylum seekers also has a negative effect on the future integration of those who are subsequently recognised as refugees. This is particularly so for those with specialist skills, such as health professionals, who need to keep their skills up to date.
50. There are also pragmatic considerations. If asylum seekers cannot work, then it is the state that has to provide support. Equally, providing asylum seekers with access to the labour market may reduce the likelihood of illegal working – which can be dangerous for the migrants in question and depress wages for legal workers.
51. I understand the reasons why the government removed the concession to work in 2002 but I propose that government should give further consideration to the issue of whether the right to work for asylum-seekers should be restored with the benefits that this would bring for integration and the savings that it would realise for public funds – though government will also wish to consider the risk that people may claim asylum in order to work in the UK.

### **Leave to remain in the UK**

52. The second major issue for threatened migrants relates to how long they can remain in the UK.

53. For other migrants, this depends on why they have come to the UK – for example, a person who has come as a spouse initially receives leave to remain in the UK for 2 years and his or her status becomes permanent once it is clear that the marriage is expected to be permanent.
54. Other migrants are hence required to demonstrate their commitment to settling in the UK before they are given permanent status – that is, unlimited leave to enter and remain in the UK.
55. As I suggested at the outset of this discussion, threatened migrants are in a different situation. It may take a significant period of time for them to develop a thorough-going commitment to settle in the UK. They did not leave their country of origin out of choice and they may want to return to that country when circumstances there have changed. However, because of the difficulty of the situation that they have fled, they nevertheless need to feel a sense of security in the country where they have sought protection.
56. While it used to be the case that refugees received unlimited leave to remain in the UK, policy has now changed so that they only receive an initial period of 5 years leave, after which their case is reconsidered. The change arose as a result of the Government's Five Year Strategy for Asylum and Immigration, published in February 2005.
57. The rationale for the change was that it should be possible to ask a person to return to their home country if a temporary issue, which required them to seek protection elsewhere, has since been resolved.
58. While this is a legitimate aim, what I have been told by the individuals and organisations who work with refugees is that this change tends to 'freeze' the life of refugees who have come to the UK, as they do not know whether they will be permitted to stay. Hence there is a disincentive to train to work in the UK, to learn English or to integrate with UK society. I was told that this can be damaging not only for the individuals and their families but for UK society, as we fail to harness the talents and abilities of people who have come here as refugees.
59. This is of course a difficult issue and I appreciate the force of the argument for the change made in 2005. What I propose is that government should review the effects of the policy in practice and re-examine the issue in that light.



# Annex A

## Terms of Reference of the Review

**Published on 5 October 2007**

The Prime Minister has asked Lord Goldsmith to carry out a review of British citizenship.

In particular:

- To clarify the legal rights and responsibilities associated with British citizenship, in addition to those enjoyed under the Human Rights Act, as a basis for defining what it means to be a Citizen in Britain's open democratic society
- To consider the difference between the different categories of British nationality
- To examine the relationship between residence, citizenship and British national status and the incentives for long-term residents to become British citizens
- To explore the role of citizens and residents in civic society, including voting, jury service and other forms of civic participation

The Review will report to the Prime Minister by 31 March 2008

# Annex B

## List of individuals and organisations who have contributed to the Review

Alfonso Aguillar – Chief, Office of Citizenship, USCIS  
Khurshid Ahmed – British Muslim Forum  
Dr Manazir Ahsan – Muslim Council of Britain  
T. Alexander Aleinikoff – Georgetown University, USA  
Graham Allen MP  
Professor Kader Asmal  
Gordon Banks MP  
The Bar Council  
Curtis Barlow – CEO, Canadian Institute for Citizenship  
Sir Jeremy Beecham – Local Government Association  
Hielen Tekeste Berhe – ISMU Foundation, Italy  
Bertelsmann Stiftung  
Keith Best – Chief Executive, Immigration Advisory Service  
Anil Bhanot – Hindu Council UK  
Miroslaw Bieniecki – Warsaw School of Social Psychology, Poland  
Paul Birtill – Director of Investment and Development, Refugee Support  
Rt Hon Hazel Blears MP – Secretary of State for Communities and Local Government  
Reverend Graham Blount – Scottish Churches Parliamentary Office  
Rt Hon David Blunkett MP  
Board of Deputies of British Jews  
Professor Vernon Bogdanor – Brasenose College, Oxford University  
Peter Bottomley MP  
Tony Breslin – Chief Executive, Citizenship Foundation  
British Council  
British Humanist Association  
British Institute of International and Comparative Law  
Patrick Butor, Director – Ministry for Immigration, Integration, National Identity and Co-Development, France  
Liam Byrne MP – Minister of State, Home Office  
Frances Carlisle – Director, LAWRS  
Carnegie UK Trust  
Centre on Migration, Policy and Society  
Changemakers  
Karla Charles – NCRRI, Ireland

Michael Chertoff – Secretary of Homeland Security, US Government  
Corporation for National & Community Service, USA  
Dr Harriet Crabtree – Director, Interfaith Network for the UK  
The Lord Crathorne  
Professor Sir Bernard Crick  
Mary Cussey – Chair, ABNI  
Monsignor John Devine – Churches’ Officer for the North West  
The Lord Dholakia  
Andrew Dick – TimeBank  
The Ditchley Foundation  
EdComs  
Reverend Aled Edwards – Welsh Interfaith Council  
Jonathan Ellis – Director of Policy and Development, Refugee Council  
Clare Ettinghausen – The Electoral Commission  
The Baroness Falkner of Margravine  
Ruth Ferrero – Universidad Complutense de Madrid, Spain  
Catherine Fieschi – Director, Demos  
Reverend Mark Fisher – Free Churches Group  
Doreen Finneron – Faith Based Regeneration Network UK  
Bob Fyffe – Churches Together in Britain and Ireland  
The Baroness Gardner of Parkes  
Sarah Gibb – Mentor, Time Together  
Dina Gold – Board of Deputies of British Jews  
Maria Golubeva – Centre for Public Policy, Latvia  
David Goodhart – Prospect  
Edwin Graham – Northern Ireland Inter-Faith Forum  
Professor Anthony Heath – Nuffield College, Oxford University  
Alison Harvey – General Secretary, Immigration Law Practitioners Association  
Highly Skilled Migrant Program Forum  
Institute for Public Policy Research  
Professor Engin Isin – Open University  
Rt Hon the Lord Janvrin  
Paurushasp B Jila – Zoroastrian Trust Funds of Europe  
Joint Council for the Welfare of Immigrants  
Vaughn Jones – Director, Praxis  
Ramesh Kallidai – Hindu Forum of Britain  
Pramila Kaur – The Scottish Inter-Faith Council  
Samina Khan – ABNI  
Yousif Al-Khoei – Al-Khoei Foundation  
Dr Dina Kiwan – Birkbeck College, University of London  
Leena Koivisto – e2, Finland  
Professor George Kolankiewicz – UCL  
Daniel Kozak – International Organization for Migration, Romania  
LACORS  
Barney Leith – Religion and Belief Consultative Group  
Gerard Lemos – Lemos & Crane

Professor Richard M. Lerner – Tufts University  
Lord Lester of Herne Hill, QC  
Yann Lovelock – Network of Buddhist Organisations  
Leonie Lewis – Office of the Chief Rabbi  
Local Government Association  
Guy Lodge – ippr  
Jan Luff – ABNI  
Sir Ken Macdonald – Director of Public Prosecutions  
Peter MacLeod – The Planning Desk  
Fiona Mactaggart MP  
Rt Hon the Lord Mawhinney  
Leonie McCarthy – New Link, Peterborough  
Professor Elizabeth Meehan – Queen’s University, Belfast  
Mekonnen Mesghena – Heinrich Böll Foundation, Germany  
Professor David Miller – University of Oxford  
Sir Simon Milton – Local Government Association  
Jean-Philippe Moinet – Ministry for Immigration, Integration, National Identity and Co-Development, France  
Linda Mortensen – Australian Embassy, Berlin  
R David Muir – Evangelical Alliance  
Rick Muir – ippr  
Dr Andrew Mycock – University of Huddersfield  
Michel Ngue – Volunteer, Praxis  
Benedict North  
Northern Ireland Office Officials  
Nick Oakeshott – Head of Legal Services, Refugee Legal Centre  
Dr Varun Oberoi – University of Bristol  
Ashok Ohri – ABNI Scotland  
Julia Onslow-Cole – PricewaterhouseCoopers Legal  
Robert Orr – Canadian High Commission  
Dr Nick Palmer MP  
Demetrios G. Papademetriou – President, Migration Policy Institute  
Professor the Lord Parekh  
Bharti Patel – Secretary, ABNI  
Zandria Pauncefort – Chief Executive, Institute for Citizenship  
Warren Pearson – National Director, National Australia Day Council  
Trevor Phillips – Commission for Equalities and Human Rights  
Lord Phillips of Sudbury – Chairman, Citizenship Foundation  
Policy Network  
The Baroness Prashar  
Habib Rahman – Chief Executive, Joint Council for the Welfare of Immigrants  
General the Lord Ramsbotham  
Refugee Council  
David Reizenzein – International Organisation for Migration, Austria  
Mark Rimmer – Director of Registration and Nationality, Brent Council  
The Lord Rix

Ben Rogers – Head of Strategy, Haringey Council  
Runnymede Trust  
Jill Rutter – ippr  
Sir Jonathan Sacks – Chief Rabbi  
Professor Rosemary Sales – Middlesex University  
Rt Hon Alex Salmond MSP  
Gill Saunders – the FAN groups  
Scottish Executive Officials  
Dr Natubhai Shah – Jain Samaj Europe  
Darra Singh – Chief Executive, Ealing Council  
Dr Indarjit Singh – Network of Sikh Organisations  
Jasdev Singh Rai – British Sikh Consultative Forum  
Michael Smyth – Head of Public Policy, Clifford Chance  
Matthew Spalding – Center for American Studies, the Heritage Foundation  
Sarah Spencer – COMPAS, Oxford University  
Danny Sriskandaraja, ippr  
Stimulating World  
Rt Hon Jack Straw MP – Secretary of State for Justice and Lord Chancellor  
Andrew Stunell MP  
Moira Swinbank – Chief Executive, TimeBank  
Emily Thornberry MP  
Simon Tonelli – Head of Migration Division, Council of Europe  
Dr Ellie Vasta – COMPAS, Oxford University  
Voice of Britain's Skilled Migrants  
Volunteer Centre Westminster  
Lord Wallace of Saltaire  
Welsh Assembly Officials  
The Baroness Whitaker  
Canon Guy Wilkinson – Church of England  
Michael Wills MP – Minister of State, Ministry of Justice  
Ruth Wilson – Director, Tandem  
Patrick Wintour – Director, Employability Forum  
Maurice Wren – Director, Asylum Aid  
HE James Wright – Canadian High Commissioner

# **Annex C**

## **Rules for the acquisition and loss of the different forms of British citizenship**

*Abbreviations used:*

*BNA: British Nationality Act*

*CUKC: Citizens of the United Kingdom and Colonies*

Status	Transitional provisions for acquisition at and after commencement of current law	Continuing provisions for acquisition	Loss
<b>British citizen</b>	<p>Acquired automatically on 1.1.83 by Citizens of the United Kingdom and Colonies (CUKCs) who had the right of abode under the Immigration Act 1971 (as then in force) (s 11 BNA 1981)</p> <p>By registration for up to 5 (&amp; by discretion) 8 years after commencement in limited special cases (ss 7-9)</p>	<ul style="list-style-type: none"> <li>• Automatically by those born or adopted in UK or overseas territory to a parent who is either a British citizen or is settled in UK or territory (s 1 BNA 1981)</li> <li>• By descent (s 2 BNA 1981)</li> <li>• By registration of minors (s 3), of a holder of another form of British nationality (ss 4(2),(5))</li> <li>• s 4A (where a BOTC, other than from a foreign base)</li> <li>• s 4B (if otherwise stateless)</li> <li>• s 4C (born overseas to British mothers between 1961 and 1983),</li> <li>• s.10 (certain CUKCs who before 1983 had renounced their status); if renounced and then resumes (s 12); where otherwise stateless and born in UK to a British national (s 36, Sched.2),</li> <li>• by naturalisation (s 6, Sched.1)</li> </ul>	<p>By voluntary renunciation (s 12) or deprivation (s 40 BNA 1981)</p>



Status	Transitional provisions for acquisition at and after commencement of current law	Continuing provisions for acquisition	Loss
<p><b>British overseas territories citizen (BOTC)</b></p> <p>[Note: Before 26/2/2002 known as British Dependent Territories citizens (BDTCs)]</p>	<p>Acquired automatically on 1/1/1983 by CUKCs who had that status through a connection with a dependent territory. (s 23/ Schedule 6 BNA 81)</p> <p>Provisions for acquisition by registration within 5 years after commencement for those who had an entitlement to registration under the previous legislation, wives of BDTCs and children of BDTC fathers (sections 19, 20, 21 BNA 1981)</p>	<ul style="list-style-type: none"> <li>• Automatically, through birth in an overseas territory to a BOTC or settled parent (s 15(1) BNA 81)</li> <li>• Automatically, through adoption in an overseas territory (s 15(5) BNA 81)</li> <li>• Automatically, through descent (s 16 BNA 81)</li> <li>• By registration, on application, as a minor (sections 15(3), 15(4) 17(1), 17(2), 17(5) BNA 81)</li> <li>• By naturalisation, on application (s 18 BNA 81)</li> <li>• By registration, on application, following previous renunciation of status (s 22 BNA 81 and s 24)</li> <li>• Automatically or, in some instances, by registration on application by certain persons who would otherwise be stateless (Schedule 2, BNA 81)</li> </ul>	<ul style="list-style-type: none"> <li>• By voluntary renunciation (section 24 BNA 81)</li> <li>• By deprivation (section 40 BNA 81)</li> <li>• Automatically, on removal of relevant territory from Schedule 6 BNA 1981 (St Christopher &amp; Nevis (Modification of Enactments) Order 1983/No.882; Hong Kong (British Nationality) Order 1986/No.948)</li> </ul>

Status	Transitional provisions for acquisition at and after commencement of current law	Continuing provisions for acquisition	Loss
<p><b>British Overseas citizen (BOC)</b></p>	<p>Acquired automatically on 1/1/83 by Citizens of the United Kingdom and Colonies who did not become a British citizen or British overseas territories citizen (section 26 BNA 81)</p> <p>Provisions for acquisition by registration within 5 years after commencement for wives of BOCs and children who could have become BOCs had the earlier legislation remained in force (sections 27 and 28 BNA 1981)</p> <p>Acquired automatically on 1/7/97 by Hong Kong BDTCs who would otherwise have been rendered stateless on that date (Art 6(1), Hong Kong (British Nationality) Order 1986/No.948)</p>	<ul style="list-style-type: none"> <li>• By registration, on application, as a minor (s 27(1))</li> <li>• Automatically or, in some instances, by registration on application by certain persons who would otherwise be stateless (Schedule 2, BNA 81; Art. 6(2) and (3), Hong Kong (British Nationality) Order 1986/No.948)</li> </ul>	<ul style="list-style-type: none"> <li>• By voluntary renunciation (s 29 BNA 81)</li> <li>• By deprivation (section 40 BNA 81)</li> </ul>

Status	Transitional provisions for acquisition at and after commencement of current law	Continuing provisions for acquisition	Loss
<p><b>British National (Overseas) (BN(O))</b></p> <p>[Status introduced on 1 July 1987]</p>	<p>Provision for acquisition by registration, on application within specified periods ending on 30/3/97, for British Dependent Territories citizens with a connection with Hong Kong (Article 4(2) Hong Kong (British Nationality) Order 1986/No.948)</p>	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• By voluntary renunciation (Article 7(10) Hong Kong (British Nationality) Order 1986/No.948)</li> <li>• Automatic loss if the holder ceased to be a BDTDC by renunciation or deprivation before 1/7/1997 (Article 4(3) Hong Kong (British Nationality) Order 1986/No.948)</li> <li>• By deprivation (section 40 BNA 81)</li> </ul>
<p><b>British Protected Person (BPP)</b></p>	<p>Retained on and after 1/1/83 (subject to possible loss as detailed in 3rd column opposite) by</p> <ul style="list-style-type: none"> <li>• Persons who were BPPs under previous legislation (Art. 6, BPs, PSs and PPs Order 1982/No.1070)</li> <li>• Citizens or nationals of Brunei under laws of Brunei (Art. 5, BPs, PSs and PPs Order 1982/No.1070 – revoked by British Nationality (Brunei) Order 1983/No.1699)</li> </ul>	<ul style="list-style-type: none"> <li>• Automatically or, in some instances, by registration on application by certain persons who would otherwise be stateless (Art. 7, BPs, PSs and PPs Order 1982/No.1070)</li> </ul>	<ul style="list-style-type: none"> <li>• By voluntary renunciation (Article 11 BPs, PSs and PPs Order 1982/No.1070)</li> <li>• Automatically, on acquiring another citizenship or nationality (Article 10 BPs, PSs and PPs Order 1982/No.1070)</li> <li>• By deprivation (section 40 BNA 81)</li> <li>• Automatic loss on 1/1/84 where previously held through connection with Brunei (British Nationality (Brunei) Order 1983/No.1699)</li> </ul>

Status	Transitional provisions for acquisition at and after commencement of current law	Continuing provisions for acquisition	Loss
<p><b>British subject (BS)</b></p>	<p>Retained on 1/1/83 by persons who had been “British subjects without citizenship” under previous legislation, or who were women registered as British subjects on the basis of marriage to men with this status (s 30 BNA 81) or who, having been British subjects by connection with Southern Ireland before 1949, had before 1983 declared their intention to retain British subject status (s 31(2) BNA 1981)</p> <p>Provision for acquisition by registration within 5 years after commencement by wives of British subjects (s 33 BNA 81)</p>	<ul style="list-style-type: none"> <li>• By registration, on application, as a minor (s 32 BNA 81)</li> <li>• By declaration by person who was a British subject by connection with Southern Ireland before 1949 (s 31(3) BNA 1981)</li> <li>• Automatically or, in some instances, by registration on application by certain persons who would otherwise be stateless (Schedule 2, BNA 81)</li> </ul>	<ul style="list-style-type: none"> <li>• By voluntary renunciation (s 34 BNA 81)</li> <li>• Automatically, on acquiring another citizenship or nationality (does not apply to British subjects under s 32 BNA 1981) (s 35 BNA 81).</li> <li>• By deprivation (section 40 BNA 81)</li> </ul>