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The challenge and opportunity of the Nationality and Borders Act

The Nationality and Borders Bill became an Act of Parliament on 28 April 2022. The new legislation – which has been subject to a great deal of media attention (and controversy) – intends to dramatically overhaul the system by which asylum, immigration, and citizenship rules work in the UK.

As we kicked off our new insight series highlighting key aspects of UK nationality law, we were delighted to speak to Bruce Mennell, Managing Director of Passportia, and JP Breytenbach, Director of Breytenbachs Immigration Consultants – who bring a combined (and impressive) total of 50 years experience helping clients find their way through the complexities of the British immigration and nationality system.

Together they shed some brilliant insight into the key changes of the new nationality law – looking in particular at Section 4L and its impact on immigration law practitioners and their clients and, as importantly, the main risks and benefits.

Below we share some of the key points and implications you need to be aware of – and highlight how AORA can help you navigate some of the more complex challenges.

Key changes of the new nationality law

Firstly, in a policy paper published last year, the Nationality and Borders Bill is described as *"the cornerstone of the government's New Plan for Immigration, delivering* ***the most comprehensive reform in decades****"*. The plan lists three key objectives, including making the immigration system fairer and more effective.

As well as widespread changes to the asylum and citizenship system, the Bill also makes significant changes to nationality law.

While some changes have been met with controversy, others have been largely welcomed – in particular the provisions in Part 1 of the Act, which create new routes by which a person can get British citizenship or British Overseas Territories citizenship (including children of those born on the Chagos Islands or British Indian Ocean Territory (BIOT)) by registration. In general, the new provisions try to provide similar remediation of past injustice to British citizens or British Overseas Territories citizens.

This includes Section 4L, which intends to **fix historical anomalies and areas of unfairness** in British nationality law.

This, Bruce says, is by far the most relevant – bearing the most implications – for immigration practitioners and their clients:

*"The new law has mainly been to provide various remedial provisions such as sections 4C and 4G for British Overseas Territories citizens. What was also included was **section 4L** – which in my mind is by far the most interesting provision regarding nationality in the new act."*

"The changes are very open-ended and essentially are there to provide remediation so that any past nationality law can be re-evaluated in a way that is fair."

*"There are high-level areas that have been identified, one is historical legislative unfairness, **which is by far the most relevant for clients of immigration practitioners**."*

Implications for practitioners – Section 4L

Section 4L was introduced to create a new route to British citizenship where individuals **would have been**, or **would have been able to become** a British citizen, but for a set of reasons that includes historical legislative unfairness.

(The government has set out some examples in its guidance document.)

By effectively broadening the scope by which someone with a connection to the UK or a British territory might qualify for British citizenship the new law opens up a large number of new opportunities for practitioners and their clients to take advantage of.

*"The new legislation opens up quite a lot of avenues for practitioners to assist their clients in, especially clients with a link to the UK. At the same time, it also provides an opportunity for us to **grow our business** and for **more of our clients to be able to benefit** from this legislation,"* JP comments.

For practitioners, the opportunities are multifold. It not only thrusts the door wide open for new business from clients who would not have qualified through the old legislation, but it also means practitioners can now reach out to historical clients or enquirers whose claims were not previously considered strong enough – and the repercussions of that also extend to their children.

*"It's a process that will take time, but there's a ton of historic inquiries that can be reprocessed. In fact, the biggest impact of the new law will **be re-processing old business and opening up new channels**,"* Bruce says.

Complexities and challenges of the new law

For practitioners, the opportunities are abundant, however – as with any new piece of legislation – it also brings risks and a number of complexities and challenges.

"The learning curve will be steep," JP says. *"It might not be profitable in the short term. But in the long run, once you've developed the further expertise needed and get to grips with everything, it will be valuable. The key is to tread carefully."*

Speaking about the challenges they are already facing as a result of the new legislation, he adds:

*"While the new law has already attracted a large number of new clients our way, the key thing for us as an immigration firm is to make sure that our lawyers and support staff **know enough to be able to sift through efficiently** those clients who would potentially qualify and those who won't. You have to have that balance where **you don't effectively waste your time or the client's time** to take on a matter where there's no real hope.*

"That's the challenge we're dealing with at the moment. This legislation is a little bit complex so it's something we must bear in mind when advising," JP adds.

The real onus, he stresses, is on practitioners to put across a legitimate argument to the Home Office – which is tricky business:

*"We have to be very careful as it can be very easy to misadvise. With the new legislation, I think it's either **stay away completely or embrace it completely** – it's not something you can dabble in lightly, especially with 4L and the permutations.*

Bruce also echoes JP's opinion – adding that there is "***a sting in the tail in 4L"**.*

This, he explains, is due to the two routes that have been set out for which a person *"In the Home Secretary's opinion **would have been**, or **would have been** able to become, a British citizen"* – had the law been fair (in a nutshell).

"These are being evaluated separately and in isolation," he comments*. "In other words, if somebody in the past was able to become a British citizen they are now excluded from benefitting from 4L. "*

Navigating the challenges

While 4L opens up exciting new routes, there are also a number of complexities practitioners need to get to grips with first – including learning the new law and all its permutations and opportunities.

*"The challenge is in practice applying 4L, which is tricky and potentially time-consuming. It's quite easy to overlook an opportunity that exists in 4L because the **law is so labyrinthine**. Particularly now an even bigger cast of characters has been examined in the narrative. For practitioners, **if they have the right skills and tools** then this evaluation is well worth doing,"* Bruce comments.

At **Breytenbachs,** there are already several processes and steps – and extra hands – in place to deal with the anticipated increases of cases and flood of inquiries that are already coming in.

"We have already had to recruit, some time ago – even when this law was only a whisper – extra lawyers to be able to deal with the new inquiries coming in," JP explains.

Similarly, Bruce adds that Passportia is already sifting through and re-evaluating thousands of old inquiries from clients who did not qualify for British citizenship in the past – but who might do now. But this, he says, has already flagged up some challenges:

*"What we are already finding in the evaluations that we have conducted experimentally is that there are scenarios cropping up that are just **very obscure and hard to predict**."*

So how are they handling the increase in workload – combined with absorbing everything there is to know about the new legislation?

"We have a rather large backlog of clients who we felt could potentially benefit, and for those clients we are frankly, in the first instance, running them through the AORA software," JP says. *"It's not viable to have to do it all manually, and the software is a huge benefit and **helps cut down the time by 90%.** With AORA we've found that the platform does a lot of the groundwork for you, which for us has been a game-changer."*

"The great thing with AORA is it models all the provisions – 4L is just one of the many provisions it looks at – including the most obscure ones," Bruce adds. *"We do all our inquiries through AORA, and at the end of the inquiry, **no stone has been left unturned**. If the outcome is positive, then there is a pre-drafted letter of representation for the home office and a list of evidence needed. Without AORA we would have to charge an assessment fee that few enquirers or clients are willing to pay."*

So… what exactly is AORA?

AORA is a first-of-its-kind AI platform that has been developed to, essentially, make the lives of practitioners easier. Namely, by using AI to automate the (very) complex process of determining a legal opinion regarding entitlement to claim British Nationality.

To learn more about AORA – and how we support practitioners from all parts of the UK and Ireland create applications that are reliable and watertight – visit: www.aora-nationality.com

Tell us!

Has the new legislation given your business a boost? Do you think it will have a positive impact in the long run and are there any challenges that you anticipate or are already facing?