Nationality and Borders Bill
Part 1 (Nationality)

House of Commons Report & Third Reading
7 & 8 December 2021

(good character, deprivation of citizenship, statelessness, registration fees and Chagossians)

Introduction

1. This joint briefing by the Project for the Registration of Children as British Citizens (PRCBC) and Amnesty International UK solely concerns Part 1 (Nationality) of the Bill. It addresses the following amendments:

    - Good character & **Amendment 108** – paragraphs 4ff
    - Notice of decision to deprive citizenship & **Amendment 12** – paragraphs 7ff
    - Stateless children & **Amendment 2** – paragraphs 15ff
    - Registration fees & **New Clauses 8 & 34** – paragraphs 19ff
    - The Chagossians & **New Clause 2** – paragraphs 26ff

2. Part 1 of the Bill concerns British nationality law as established by the British Nationality Act 1981. The Bill's first seven clauses are to remove historical injustice relating to British citizenship and British overseas territories citizenship. That injustice largely concerns two types of discrimination:

    (a) Discrimination that has caused people to be without citizenship because British nationality law has previously not permitted citizenship to be derived from a person's British mother in circumstances where it could be derived from a British father.

    (b) Discrimination that has caused people to be without citizenship because British nationality law has previously not permitted children born out of wedlock to derive citizenship from their British father.

3. The Bill will correct this by providing new rights to be registered with citizenship. PRCBC and Amnesty support these seven clauses and clause 8 because they are all means of giving effect to the underlying purpose of the British Nationality Act 1981. That is to ensure the shared connection of British people is recognised by their shared citizenship. We have more fully described the purpose, history, and application of these eight clauses in our evidence to the Public Bill Committee.[1] We do not repeat that here. In this submission, we

[1] https://publications.parliament.uk/pa/cm5802/cmpublic/NationalityBorders/memo/NBB14.htm

address under distinct subheading our strong objections to clauses 9 and 10 and our position in relation to some of the amendments that have been tabled for Report stage.

Good character – Amendment 108

4. PRCBC and Amnesty support Amendment 108 to remove the good character requirement included within clause 3.

Ms Harriet Harman & others
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Clause 3, page 8, line 33, leave out subsection (4)

5. The British Nationality Act 1981 included no good character requirement when it was first enacted for anyone to be registered as a British citizen or British overseas territories citizen. There was good reason for that. The right of registration reflected Parliament's clear intention to recognise as citizens all British persons connected to the relevant territory – the UK in the case of British citizenship, the overseas territories in the case of British overseas territories citizenship. The Home Secretary's assessment of a person's character was irrelevant to the question of whether any British person should be recognised with citizenship, automatically or by registration. That position should never have been changed. The injustice that continues to be done – including to British people born in the UK (or British overseas territories) who have lived nowhere else – must not be extended by this Bill. More information about the good character requirement is available from PRCBC's website including joint briefings with Amnesty.[2]

Registration and naturalisation distinguished

6. Unlike registration, good character was always a statutory requirement for naturalisation under the British Nationality Act 1981.[3] This reflected the critical difference between registration and naturalisation. Registration is how people already connected to the UK (or British overseas territories) are entitled to acquire citizenship by right, if they do not have this automatically. This applies to many children born in the UK who grow up and are connected here. Naturalisation is how an adult migrant to the UK may, at the discretion of the Home Secretary, be made a British citizen after she, he or they have become settled in the UK. The 1981 Act was first amended to introduce a good character requirement for registration of anyone aged 10 years or older by the Immigration, Asylum and Nationality Act 2006.[4] At the time, Ministers said this was necessary to bring naturalisation and registration into line. But naturalisation and registration are, and always were, distinct. Failing to recognise that distinction does and has done grave injustice and continues to wrongly exclude many British people from British citizenship.[5]

Notice of decision to deprive a person of citizenship – Amendment 12

7. PRCBC and Amnesty support Amendment 12 to remove clause 9 from the Bill. Clause 9 is concerned with stripping a person of the citizenship they have and are recognised to have; and is to permit this to be done without the person affected being informed.

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[2] https://prcbc.org/research/

[3] Paragraph 1(1)(b) of the British Nationality Act 1981

[4] The relevant provision is now section 41A of the British Nationality Act 1981

[5] See briefing *op cit*: https://prcbc.files.wordpress.com/2019/10/briefing_good-character_oct-2019-1.pdf

David Davis & others	12
Page 11, line 35, leave out Clause 9	

Deprivation of citizenship by stripping a person of that citizenship

8. Like all deprivation it is a very severe step with profound and potentially very harmful consequences for the person affected. PRCBC and Amnesty remain with serious concerns as to the extent of powers of deprivation and their disproportionate impact on individual people and communities that share racial and religious protected characteristics. Clause 9 is solely concerned, however, with the question of whether a person, whom the Home Secretary decides to strip of their British citizenship, is to be notified of that decision or event.

High Court judgment in case of *D4*

9. Clause 9 is, on its face, a response to the decision of the High Court on 30 July 2021 that the current powers of the Home Secretary to strip a person of citizenship may not be exercised by merely recording the decision to do this on the Home Office file. PRCBC and Amnesty have provided evidence to the Joint Committee on Human Rights providing greater detail of the High Court case and the content and injustice of clause 9 (which was then new clause 19 introduced during the Bill's Committee stage).[6] Clause 9 goes far further than even the submissions of the Home Secretary to the court in seeking to explain the rationale for her previous unlawful policy and practice by which she did not notify some people of her decision to strip them of citizenship.

The circumstances in which clause 9 will permit the Home Secretary to not inform a British citizen of her decision to strip that person of that citizenship

10. If implemented, clause 9 will permit the Home Secretary to strip a person of British citizenship secretly. The circumstances in which the Home Secretary will be permitted to do this are that:

    (a) she considers she does not have information needed to inform the person;

    (b) she has the information needed but does not think it "*practicable*" to inform the person; or

    (c) she has the information and it is practicable to inform the person but she thinks it is in the interests of national security, the relationship between the UK and another country or otherwise in the public interest.

Government's justification

11. In advancing this provision, introduced as Government new clause 19 in Committee, the Government Whip, Craig Whittaker, argued:[7]

    "*Preserving the ability to make decisions in this way* [that is without informing the person affected] *is vital to preserve the integrity of the UK immigration system and protect the security of the UK from those who would wish to do us harm.*"

[6] https://committees.parliament.uk/writtenevidence/40868/pdf/

[7] *Hansard* HC, Public Bill Committee, Fourteenth Sitting, 2 November 2021 : Col 584

Injustice

12. It is a profound error and injustice that Government continues to treat the citizenship and citizenship rights of many British people as concerning the immigration system. At the heart of this is an enduring prejudice that some British people are never to be truly accepted as British. The people affected are disproportionately of a minority in this country identifiable by a protected characteristic of either race or religion or both. That this prejudice is to be extended to empowering the State to secretly remove someone's citizenship is wholly intolerable. Not informing a British citizen of the stripping of that person's citizenship will mean that person is unable to take any step to correct or challenge the decision to do this. Not information the person also risks that they may take steps that put them in danger, such as entering or remaining in a particular country, because they wrongly believe they continue to have the protection of British citizenship.

13. If it is believed necessary and appropriate to exercise the power to strip a person of their citizenship – we have grave reservations about the extent and use of this – the very least that should be expected of the State is to notify the person. The State should not be excused from notifying the person because it prefers to sacrifice the interests of its citizen to the interests of another country or because of some notion of national security or public interest. The national and public interest, however, lie squarely in respect for our shared British citizenship. That this could be taken away in secret from anyone of us is disdainful of our citizenship and the duty of Government to respect and protect it. Nor do practical difficulties provide any justification to secretly strip a British citizen of her, his or their citizenship.

14. As recently affirmed by the High Court, citizenship is not merely a privilege but is a fundamental right[8] and, unless and until the State is able to notify someone of such a drastic decision, no power to strip a person of citizenship should be exercisable.

Stateless children – Amendment 2

15. PRCBC and Amnesty support Amendment 2 to remove clause 10 from the Bill. Clause 10 is to withhold, from some stateless children born in the UK, their existing right to British citizenship by registration.[9]

Mr Alistair Carmichael & others	**2**
Page 12, line 33, leave out Clause 10	

Origins of right of stateless children to be registered as British citizens

16. The right of stateless children born in the UK to be registered as British citizens was introduced by necessity when the British Nationality Act 1981 was first enacted. The necessity arose because the Act removed from British nationality law the principle by which anyone born on British territory would automatically acquire British citizenship (*jus soli*).[10]

[8] *R(D4) v Secretary of State for the Home Department* [2021] EWHC 2179 (Admin) at paragraphs 26 & 50.
[9] Paragraph 3 of Schedule 2 of the British Nationality Act 1981
[10] The provision applies equally to British overseas territories citizenship; and clause 10 similarly applies to British citizenship and British overseas territories citizenship.

Because birth in the UK (or on other British territory) would no longer automatically make someone a citizen, this meant that some people would be born stateless on British territory.

Injustice of clause 10

17. The right to register as a British citizen – that clause 10 proposes to delay (potentially throughout childhood in the UK) – currently arises, at the very earliest, at the age of 5 years if the child has lived here all his or her life. It applies only to children born in this country and only to children who were stateless at birth and have remained so ever since. It is not in these children's best interests to continue their statelessness and delay their citizenship. Doing so does not fulfil the original intention of Parliament or this country's obligations under the 1961 UN Convention on the Reduction of Statelessness. Doing so generally undermines international effort to encourage States to make greater efforts to eliminate statelessness altogether.

18. In seeking to justify the clause, Ministers say that some parents are not securing their children's citizenship of other countries. They advance no evidence for this. They wrongly point to a rise in the number of children registering as British citizens in the wake of a decision of the High Court in 2017.[11] As we have previously said, including to the Home Office, the rise in applications by stateless children arises from an increased awareness of stateless children's rights. This is something to which PRCBC has particularly contributed. It is a matter of serious concern that lack of awareness has been one significant factor in why so many stateless children have not previously been registered as British citizens. It is deplorable that the response of the Government is to seek new means to perpetuate statelessness among children born and growing up here. Instead, Government should be making greater effort to remove other barriers to stateless children exercising their right to register as British citizens such as by removing the prohibitive and above-cost fee, ensuring access to legal aid and raising awareness of registration rights.

Registration fees – New Clauses 8 & 34

19. PRCBC and Amnesty support New Clause 8 and New Clause 34. These new clauses concern the fee - £1,012 in the case of a child – for people to exercise their right to be registered as a British citizen.

> Bell Ribeiro-Addy & others
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> **NC8**
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> To move the following Clause—
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> "**Children registering as British citizens: fees**
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> (1) Within two months of this Act being passed, the Secretary of State must amend the Immigration and Nationality (Fees) Regulations 2018.
>
> (2) The amendments referred to in subsection (1) must include—
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> (a) provision to ensure that the fees charged for applications for registration as a British citizen under the British Nationality Act 1981 or the British Nationality (Hong Kong) Act 1997, where the person in respect of whom the application is made is a child at the time the application is

[11] *R (MK) v Secretary of State for the Home Department* [2017] EWHC 1365 (Admin)

made, do not exceed the cost to the Home Office of processing the application;

(b) provision to ensure that no fees are charged for applications for registration as a British Citizen under the British Nationality Act 1981 or the British Nationality (Hong Kong) Act 1997 where the person in respect of whom the application is made—

(i) is a child being looked after by a local authority at the time the application is made; or

(ii) was looked after by a local authority when they were a child, and at the time the application is made is either—

(A) under the age of 21; or

(B) under the age of 25 and in full-time education.

(3) Within six months of this Act being passed, the Secretary of State must lay before Parliament a report setting out the effect of such fees on the human rights of the children applying for registration as British citizens under the British Nationality Act 1981 and the British Nationality (Hong Kong) Act 1997."

Stuart C McDonald & others

NC34

To move the following Clause—

"Registration as a British citizen or British overseas territories citizen: Fees

(1) No person may be charged a fee to be registered as a British citizen or British overseas territories citizen that is higher than the cost to the Secretary of State of exercising the function of registration.

(2) No child may be charged a fee to be registered as a British citizen or British overseas territories citizen if that child is being looked after by a local authority.

(3) No child may be charged a fee to be registered as a British citizen or British overseas territories citizen that the child or the child's parent, guardian or carer is unable to afford.

(4) The Secretary of State must take steps to raise awareness of rights under the British Nationality Act 1981 to be registered as a British citizen or British overseas territories citizen among people possessing those rights."

The effect of the New Clauses

20. New Clause 8 relates solely to British citizenship (and not British overseas territories citizenship). It solely concerns children and care leavers. In summary, it would require that no fee above administrative cost is charged to register any child as a British citizen; and that no fee at all is charged to register a child in care or a care leaver as a British citizen. It sets a time for giving effect to this and requires a report on the impact of these fees upon the human rights of the children to whom they apply.

21. New Clause 34 relates to both British citizenship and British overseas territories citizenship. It concerns children and adults. In summary, it would require that no fee above administrative cost is charged to register any person as a British citizen; that no fee at all is charged to register a child in care as a British citizen; and that no child is prevented from exercising their right to be registered as a British citizen by a fee the child cannot afford. It additionally requires the Home Secretary to take steps to raise awareness of rights to British citizenship and British overseas territories citizenship. That would encourage people to understand these rights and be able to exercise them.

The £1,012 fee – above administrative cost

22. It is noteworthy that, in Committee, the former Home Office Minister, with responsibility for these fees, emphasised:

> "*The principle of fees reflecting the cost of delivering the service is a good one that should be widely applied across Government.*"[12]

23. With respect to Robert Goodwill and others, what is so striking about his intervention – repeated on several occasions during the short debate on what is now new clause 34 – is that the registration fee does not reflect the cost of registration. The fee for a child to register as a British citizen currently stands at £1,012.[13] The previous Home Secretary described this – rightly – as "*a huge amount of money to ask children to pay*", when it was put to him in an evidence session before the Home Affairs Committee.[14] The Home Office publishes data about fees, which confirms the cost of registration to be £372.[15] The remaining £640 is, therefore, money made above the delivery of the service. Ministers frequently explain that this money is used to pay towards the immigration system. This is to take advantage of the department's registration of citizenship function to tax some British people but not others for a system that has no proper application to them.

Unjust alienation and exclusion of British children

24. PRCBC has, since 2012, drawn attention to the harm and injustice done to thousands of British children and young adults who continue to be effectively deprived of their citizenship rights. In November 2014, PRCBC published research drawing attention to several barriers that cause this deprivation, including this fee (then £669).[16] PRCBC and Amnesty have drawn this injustice to the attention of Parliament repeatedly, including during the passage of legislation in 2015-2016 and subsequently. We have met Ministers and officials. The underlying error that persists at the Home Office is to fail or refuse to recognise that registration concerns rights to citizenship that Parliament established so that the connection of all British people would be secured by their shared citizenship.[17] The impact of depriving many British children, who are born and grow up in the UK, of their citizenship rights by an above-cost and prohibitive fee is to defeat the originating purpose of Parliament in creating

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[12] *Hansard* HC, Public Bill Committee (Fifth Sitting) 19 October 2021 : Col 150

[13] The fee for an adult is £1,206. The administrative cost is also £372 (but the fee includes the £80 fee for a citizenship ceremony) and so the excess is £754.

[14] Q276: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/windrush-children/oral/82932.html

[15] It is a mark of disrespect of citizenship rights that this data is referred to as 'visa fees': https://www.gov.uk/government/publications/visa-fees-transparency-data

[16] https://prcbc.files.wordpress.com/2015/08/systemic-obstacles-on-the-registration-of-children-as-british-citizens.pdf

[17] See e.g. https://prcbc.files.wordpress.com/2019/07/commentary_-hansard-bna-1981-_registration_aug-2018-2.pdf

British citizenship. It is also – as the High Court,[18] affirmed by the Court of Appeal,[19] has found based on "*a mass of evidence*" produced by PRCBC – to make these children:

> "*…feel alienated, excluded, isolated, 'second-best', insecure and not fully assimilated into the culture and social fabric of the UK.*

25. The Home Secretary now neither contests that finding of the courts nor the conclusion that arose from it and the totality of the evidence presented. That conclusion being that she had failed to address the best interests of children in setting this fee and indeed failed even to identify what the children's best interests were before setting it. Nonetheless, the fee has still neither been reviewed nor revised even as children – an increasing number of children – continue to be made to suffer this unjust exclusion and deprivation of citizenship. Ministers have repeatedly said it is necessary to await the outstanding judgment of the Supreme Court before conducting that a review of the fee in light of the best interests of children. This is an extraordinary position. The Supreme Court is not considering the best interests of children precisely because the Home Secretary has conceded that she acted unlawfully by failing to assess and apply those interests in setting her fee. Despite this, the Home Secretary has unlawfully maintained both her failure to assess the best interests of children and the fee that arises from that failure.

<u>The Chagossians – New Clause 2</u>

26. PRCBC and Amnesty recognise there to be many remaining injustices in British nationality law. Of particular significance to a Bill seeking to address historical wrongs done in relation to British citizenship and British overseas territories citizenship is the ongoing injustice done to the Chagos Islanders and their descendants by and following their forced eviction from their homeland in the British Indian Ocean Territory. PRCBC and Amnesty accordingly support New Clause 2, which is to restore citizenship rights to the Chagossians.

Henry Smith & others

NC2

To move the following Clause—

"**Acquisition by registration: Descendants of those born on British Indian Ocean Territory**

(1) The British Nationality Act 1981 is amended as follows.

(2) After section 17H (as inserted by section 7) insert—

"17I Acquisition by registration: Descendants of those born on British Indian Ocean Territory (1) A person is entitled to be registered as a British Overseas Territories citizen on an application made under this section if they are a direct descendant of a person ("P") who was a citizen of the United Kingdom and Colonies by virtue of P's birth in the British Indian Ocean Territory or, prior to 8 November 1965, in those islands designated as the British Indian Ocean Territory on that date.

[18] *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin)

[19] *R (Project for the Registration of Children as British Citizens & O) v Secretary of State for the Home Department* [2021] EWCA Civ 193

(2) A person who is being registered as a British Overseas Territories citizen under this section is also entitled to be registered as a British citizen.

(3) No charge or fee shall be imposed for registration under this section.""

British nationality and the Chagossians

27. The eviction and exile of the Chagos Islanders by the UK Government in the late 1960s and early 1970s was a profoundly serious injustice that has persisted and been compounded ever since. One impact of this eviction has been to deprive descendants of their citizenship rights. The British Indian Ocean Territory, of which the Chagos Islands is a part, were and remain a British overseas territory. Had the Chagossians not been evicted from their homeland, they would have passed British overseas territories citizenship from generation to generation. They and their descendants would also, in certain circumstances, have acquired an entitlement to be registered as British citizens.[20] Additionally, since 21 May 2002, they would have benefitted from a general discretion for the Home Secretary to register them as British citizens.[21]

Effect of New Clause 2

28. Rather than recounting all the injustice and harm done to the Chagossians since the 1960s, we merely emphasise that New Clause 2 is an obvious omission from this Bill. It would finally entitle all Chagossians to be registered as British overseas territories citizens. It would also entitle anyone registered under it to be registered as a British citizen. That is not merely a necessary inclusion towards righting this longstanding injustice. It is wholly consistent with the Bill, which includes in clause 3 the very same entitlement for people who have been affected by those injustices the Bill currently seeks to remedy.

Final observations

29. We have identified the above matters as more closely within our collective experience and expertise and/or of especial urgency among the various amendments tabled in relation to Part 1 (Nationality). This ought not to be taken as indication that we are unsupportive of other amendments or correction of further injustices. We are a grateful to individuals, who are affected by the discrimination and injustices to which Part 1 and the above amendments relate, meeting with us and sharing their experience. This includes members of the British Overseas Territories Citizenship Campaign, UK Citizenship Equality and the British Indian Ocean Territory Campaign.

[20] Section 4 of the British Nationality Act 1981

[21] Section 4A of the British Nationality Act 1981