Nationality and Borders Bill
Part 1 (Nationality)

House of Lords Second Reading
5 January 2022

Introduction

1. This joint briefing solely concerns Part 1 (Nationality) of the Bill. It highlights key areas of concern and identifies specific amendments that we would be pleased to support at Committee Stage. It is divided under distinct main headings into the following sections:

Overview of Part 1 (Nationality)

2. Part 1 of the Bill concerns British nationality law – particularly British citizenship and British overseas territories citizenship. The first eight clauses of the Bill are to correct injustice and discrimination in this area of law. We support these eight clauses. This injustice largely (clauses 1 to 7) concerns two types of discrimination:[1]

[1] The primary purpose of clause 8 is to amend the requirements for naturalisation to ensure that members of the Windrush generation who were wrongly deprived of their citizenship rights (by registration) are now able to be made British citizens to remedy that injustice. More about Part 1 of the Bill is available from PRCBC & Amnesty UK's evidence to the Commons' Public Bill Committee: https://publications.parliament.uk/pa/cm5802/cmpublic/NationalityBorders/memo/NBB14.htm

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

3. British citizenship and British overseas territories citizenship were each created by the British Nationality Act 1981 when that Act took effect on 1 January 1983. The people, who at that moment became either British citizens or British overseas territories citizens had previous shared the same citizenship – citizenship of the UK and Colonies (CUKC). Since 1983, however, British citizenship has been the citizenship intended to unite all British people with connection to the UK; and British overseas territories citizenship has been the citizenship intended to unite all British people with connection to the British overseas territories.[2]

4. Another critical change made in British nationality law by the British Nationality Act 1981 was to end the application of the principle that citizenship was automatically acquired by birth on the territory (*jus soli*).

5. The British Nationality Act 1981 was a seminal moment in British nationality law. The Act was preceded by both a Green Paper and a White Paper. Ending citizenship of the UK and Colonies and *jus soli* were major steps affecting millions of British people. Parliament was acutely aware of the need to ensure the respective citizenship rights of all British people – people connected to the UK or connected to the British overseas territories – including the generations that would be born after 1983. The Act therefore includes several provisions for citizenship to be acquired as of right. In some cases, it is acquired automatically. For British people with the relevant connection who do not have citizenship automatically, the Act includes several provisions by which people are to be registered as of right. Finally, for adult migrants connected to other places but who settle in the UK, the Act includes discretion for the Home Secretary to make someone a citizen and so make their connection to either the UK or the British overseas territories.

6. Two ways by which rights to registration are critically important are:

(a) Registration is the means Parliament provided to ensure that people born in the UK or the British overseas territories, who grow up in and connected to the UK or those territories are not deprived of citizenship by the ending of *jus soli*. It was vital that they did not grow up excluded and alienated. Parliament, therefore, provided various rights for these people to be registered as citizens.

(b) Registration is also the means Parliament has provided to correct injustice and discrimination that has wrongly excluded British people from citizenship. The new rights to citizenship to be created by this Bill are all by registration.

[2] The British overseas territories are listed in Schedule 6 to the British Nationality Act 1981. They include Anguilla, Bermuda, British Arctic Territory, British Indian Ocean Territory, Cayman Islands etc.

This reflects this nature of registration as providing rights to citizenship to British people, who share the same connection to the UK or British overseas territories as all citizens.

7. Our primary concern in relation to Part 1 of the Bill is to ensure, so far as is possible, that the originating purpose of Parliament in passing the British Nationality Act 1981 is fulfilled. That purpose was to establish citizenship rights that secured the shared connection of all British people in accordance with connection to the UK or British overseas territories as identified by Parliament in that Act. This joint briefing, therefore, addresses particular injustices and omissions in this Bill that undermine Parliament's originating purpose. We address these under distinct heading. Where possible – and looking ahead to later stages – we include suggested amendments to the Bill that we would welcome.

Notice of decision to deprive a person of citizenship – Clause 9

8. PRCBC, Amnesty and ENS oppose clause 9, which should be removed from the Bill. Clause 9 is about stripping a person of the citizenship they have and are recognised to have.[3] It is specifically to permit this to be done without the person affected being informed. The following amendment (adjusted to reflect new page and line numbering) was tabled by the Rt Hon David Davis and others at Commons' Report. We support it.

> Page 11, line 26, leave out Clause 9

Deprivation of citizenship by stripping a person of that citizenship

9. Like all deprivation it is a very severe step with profound and potentially very harmful consequences for the person affected. It may have similar effects for family members. PRCBC, Amnesty and ENS remain with serious concerns about 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 citizenship, is to be notified of that decision or event. It has already attracted considerable disquiet, fear and anger among many people and communities as is reflected by the petition on the Parliament website that in the space of barely a fortnight has passed 260,000 signatures.[4]

High Court judgment in case of *D4*

10. 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.[5] PRCBC and Amnesty have provided evidence to the Joint Committee on

[3] Clause 9 amends section 40 (deprivation of citizenship) of the British Nationality Act 1981
[4] https://petition.parliament.uk/petitions/601583
[5] *R (D4) v Secretary of State for the Home Department* [2021] EWHC 2179 (Admin)

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 their citizenship

11. 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 nonetheless 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

12. In advancing this provision, introduced as Government new clause 19 in Commons' Committee, the Government Whip, Craig Whittaker, argued:

> "*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.*"[7] (underlining added)

13. At Commons' Report, the Minister, Kevin Foster stated that the amendment advanced by Rt Hon David Davis to delete the clause, with support from all sides of the House, would undermine:

> "*…the integrity of the immigration system and this Government's efforts to keep dangerous people out of this country. To reiterate, there is no change in the scope of who could potentially be deprived, no change in the criteria, and appeal rights are still there.*"[8] (underlining added)

14. The Minister sought to emphasise that the power to deprive a **British citizen** had existed for many decades. He neglected to point out how much more widely it has been developed and used in recent years. He made no mention of the ways in which it disproportionately affects black and brown British citizens. He emphasised the clause permitting the Home Secretary to strip a person of citizenship without

[6] https://committees.parliament.uk/writtenevidence/40868/pdf/
[7] *Hansard* HC, Public Bill Committee, Fourteenth Sitting, 2 November 2021 : Col 584
[8] *Hansard* HC, Report, 7 December 2021 : Col 257

informing them was to be used where they could either not be found or safely reached. But he did not explain why it should be necessary to take this drastic step before the person is located and can be reached. He did not explain why it should be necessary for the clause to enable stripping a person of citizenship without warning or telling the person simply because the Home Secretary took the view that it was not "*reasonably practicable*" to do so. He also made no mention that the clause also permits this in circumstances where it is reasonably practicable to do so but the Home Secretary thinks or claims it is the interests of the public, relations with a foreign government or national security to not tell the person.[9]

Injustice

15. With respect, it is a serious insult to **British people** and their citizenship to speak of its deprivation as being necessary for 'immigration purposes'. British citizens are not subject to the immigration system – whether they are said to be dangerous or not. People put at risk of, or liable to, deprivation powers are mostly British people who can be identified by particular racial, including colour, and/or religious characteristics that are protected under equalities legislation.[10] Suggesting this power has something to do with the immigration system tends to confirm the inherent discrimination in the power to deprive, that applies to some British people and not to others, that some people's citizenship is worth less than others. That is profoundly divisive and antithetical to the very purpose of citizenship to unify people by their shared citizenship. At the heart of this is an enduring prejudice that some British people are never to be truly accepted as British. A prejudice that can be traced all the way back to the very origins of the Windrush scandal in the legislation leading up to the British Nationality Act 1981 and the failure of the Home Office, by design and intention, to give effect to the right of the Windrush generation to be registered as British citizens.[11]

16. 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. The right of appeal will, as Ministers say, still be there. But what value can that possibly have if the person who has the right of appeal neither knows of this right nor that the need to exercise this right has arisen? The answer, of course, is that it is of no value in circumstances such as these.

17. Not informing someone that they are no longer a citizen may have dangerous consequences. The person may unwittingly put themselves in danger because they believe they continue to have an option to leave a foreign country on a British passport and may continue to seek consular or other assistance from the UK

[9] *Hansard* HC, Report, 7 December 2021 : Cols 257-258

[10] This arises because the power in section 40(2) of the British Nationality Act 1981 is more widely applicable to people with dual citizenship or who are British citizens by naturalisation. That is because the power generally cannot be exercised where this would leave someone stateless: section 40(4). But the power can be exercised in certain circumstances specified in section 40(4A) where this would make a person stateless. There is a separate power under section 40(3) to deprive a person of British citizen where it is said that she, he or they acquired citizenship by some form of deceit. This power may also be exercised where that would make a person stateless.

[11] This is briefly touched on at Section D of the submission to the Public Bill Committee *op cit*: https://publications.parliament.uk/pa/cm5802/cmpublic/NationalityBorders/memo/NBB14.htm

Government. It is especially disturbing, therefore, that clause 9 would permit the Home Secretary not to tell a British citizen of her decision to strip that person's citizenship "*in the interests of the relationship between the United Kingdom and another country*." It may be in the interests of that relationship precisely because that other country wishes to do the British citizen harm.

18. It may also lead to their appeal rights being made permanently inaccessible, even if the decision is ever communicated to them:

    - Seeking to find and instruct a lawyer with experience and expertise in British nationality law from abroad is itself likely to be prohibitively difficult.
    - Legal aid is generally not available for British nationality law cases.
    - The person will be especially unlikely to be able to obtain any or full disclosure from the Home Office of the reasons for the decision and evidence upon which it is said to be based, yet even if the person is able to contact a lawyer the absence of this information may mean that lawyer is unable to assist.
    - Even if the person can secure a lawyer, communicating with them and engaging effectively in appeal processes will in many circumstances be extremely difficult if not impossible. As highlighted by the Supreme Court in the case of Shamima Begum, it may simply be the case that no effective appeal can take place.[12]

19. The power to deprive a person of citizenship without telling them, therefore, threatens to effectively prevent a British citizen bringing any challenge to the legality of the decision to strip her, him or them of citizenship, let alone remedy any illegality. If so, the person affected will have no opportunity to demonstrate that the decision is not merely disproportionate but even wholly outside the Home Secretary's power – including where she has wrongly determined the person's citizenship to have been falsely acquired,[13] wrongly suspects the person of some serious misconduct[14] or wrongly decided that the person has another nationality.[15] It may even be that the Home Secretary has mistaken the person for someone else; or been maliciously misled by the authorities of another State. None of this is compatible with any reasonable conception of justice or legality. It is also contrary to international law obligations including to reduce statelessness.[16]

20. 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 for national security

[12] *R (Begum) v SIAC & Secretary of State for the Home Department* [2021] UKSC 7

[13] Section 40(3) empowers the Home Secretary to deprive a person of citizenship if she is satisfied the person acquired it by registration or naturalisation based on fraud, false representation or concealment of a material fact.

[14] Section 40(2) empowers the Home Secretary to deprive a person of citizenship if she is satisfied that it is conducive to the public good to do so.

[15] Section 40(4) prohibits the exercise of the power in section 40(2) if the Home Secretary is satisfied this would make the person stateless; but section 40(4A) nonetheless permits the exercise of the power if the person acquired citizenship by naturalisation and she is satisfied that the person has done something seriously prejudicial to the vital interests of the UK and the person would be able to acquire another nationality.

[16] e.g., Article 8, 1961 UN Convention on the Reduction of Statelessness

reasons or some notion of the public interest. The public interest lies squarely in respect for the shared British citizenship of all citizens. That this could be taken away in secret from any one citizen is disdainful of that citizenship, its shared and unifying nature, 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.

21. As recently affirmed by the High Court, citizenship is not merely a privilege but is a fundamental right.[17] 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 – Clause 10

22. Statelessness is the condition of being without any nationality (whether or not it may be possible to acquire a nationality of the country in which you were born or some other place). PRCBC, Amnesty and ENS oppose Clause 10, which should be removed from the Bill. Clause 10 is to withhold from some stateless children born in the UK, their existing entitlement to British citizenship by registration.[18] The following amendment (adjusted to reflect new page and line numbering) was tabled by Mr Alistair Carmichael and others at Commons' Report. We support it.

> Page 12, line 25, leave out Clause 10

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

23. 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*).[19] 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.

Government's justification

24. At Commons' Report, the Minister, Kevin Foster stated that the amendment advanced by Mr Alistair Carmichael to delete the clause, with widespread support in the House, was needed to respond to:

> "*…an increasing trend of applications for children whose parents did not take the step of registering their child's birth with their embassy or high commission, leaving their child without a nationality.*"

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

Injustice of clause 10

25. 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 eliminate statelessness altogether.[20]

26. We are aware of the increased registration of children born stateless in the UK as British citizens in recent years. PRCBC's work, in particular, has been integral to that achievement by raising awareness of rights to British citizenship – something the Government has long neglected and continues to neglect. It is deplorable that the Home Office has simply responded to a rise in children exercising the rights Parliament has given them by seeking to curtail the rights in question. It has done so with no appreciation of the injustice it has long done by effectively leaving many children born in this country stateless by its failure to take steps to raise awareness of the children's rights and remove barriers to registration of citizenship, including the prohibitive fees it continues to charge. It has made no assessment of the best interests of the children and the impact of their growing up excluded and alienated by their continued deprivation of any citizenship, and in particular the citizenship of the country in which they were born and, in almost every case, will have lived every day of their lives.[21]

Chagossians

27. Clauses 1 to 8 address longstanding injustices in British nationality law. However, injustices remain. One such injustice arises from the forced eviction of the Chagos Islanders by the UK Government in the late 1960s and early 1970s to allow the US Government to build and maintain a naval base. This was a profoundly serious injustice that has persisted and been compounded ever since, including by the ongoing enforced exile of the Chagossians from their homeland. The Chagossians' exile has been secured and maintained by force, including force of law. The British Indian Ocean Territory (Constitution) Order 2004 deprives and excludes the Chagossians from the right of abode in their homeland and prohibits any entry or presence on the islands save as is authorised by or under the Order or laws made under it.[22]

[20] In 2014, the international body responsible for the international conventions on statelessness – UNHCR – called on States to eliminate stateless within ten years: https://www.unhcr.org/ibelong/special-report-ending-statelessness-within-10-years/

[21] *R (PRCBC & Ors) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin), affirmed [2021] EWCA Civ 193. Whereas the failure was there highlighted in connection with the setting of the fee for children, including stateless children, to be registered as British citizens, the impact of the failure is not limited to the matter of this fee.

[22] Section 9 of the Order

28. One impact of the 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.[23] Additionally, since 21 May 2002, they would have benefitted from a general discretion for the Home Secretary to register them as British citizens.[24]

29. PRCBC, Amnesty, the British Indian Ocean Territory Citizens, Chagossian Voices, and the British Overseas Territories Citizens Campaign, therefore, strongly support inclusion in this Bill of provision to address this injustice as it relates to nationality law. Accordingly, we supported the amendment moved by Henry Smith MP at Commons' Report to restore the citizenship rights of the Chagossians. The amendment was defeated by 309 to 245 votes, but with support from all sides of the House including Government backbenches. Ministers have provided no justification for rejecting the amendment. We would support its being brought back.

Government's justification

30. At Commons' Report, the Minister, Kevin Foster, said of the amendment brought by his backbench colleague:

> "*I am afraid* [it] *would undermine a long-standing principle of British nationality law dating back to 1915, under which nationality or entitlement to nationality is not passed on to the second and subsequent generations born and settled outside the UK and its territories, creating quite a major precedent.*"[25]

Injustice of the Government's position

31. The Government's reliance on the argument, briefly put by the Minister at Commons' Report, is essentially to rely on the very cause of the injustice – eviction and exile of British people by the UK Government – to refuse to correct that injustice. The people of the second and subsequent generations are born outside British territory precisely because of the original evictions and continued exile. Correcting the nationality law consequences of this would not, therefore, set any wider precedent.

Registration: Fees & Awareness-raising

32. Rights are made worthless if the people don't know or are prevented, such as by prohibitive fees, from exercising the rights they have. This is of especial importance in relation to citizenship. Citizenship has been described as "*the right to have rights.*"[26] What is emphasised here is the vital link between possessing citizenship

[23] Section 4 of the British Nationality Act 1981
[24] Section 4A of the British Nationality Act 1981
[25] *Hansard* HC, Report, 7 December 2021 : Col 258
[26] The term has been referred to in high judicial authority, including by the Supreme Court in *Secretary of State for the Home Department v Al-Jedda* [2013] UKSC 63, para. 12.

and being fully and equally respected by the State and among the wider community. The effect upon a person of being excluded from the citizenship of their home country and to which they are entitled is deeply alienating and fundamentally undermining of Parliament's intention in creating rights to citizenship by registration. In some instances, this is exacerbated by a child being left stateless.

33. PRCBC and Amnesty supported new clauses tabled by Bell Ribeiro-Addy and Stuart McDonald and others at Commons' Report. The second of these is reproduced below (it was also tabled at Commons' Committee). It addresses two distinct barriers to citizenship rights – fees and lack of awareness.

> To move the following New 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."

Purpose of this New Clause

34. This New Clause relates to both rights to 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 citizen; that no fee at all is charged to register a child in care as a citizen; and that no child is prevented from exercising their right to be registered as a 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 is necessary to assist people to understand and exercise these rights.

Awareness-raising

35. Awareness-raising is vital to address the current situation, in which many thousands of children grow up in the UK excluded from their citizenship rights because they are unaware that they are without British citizenship and need to exercise their right to be registered.

36. It is also vital to ensure that the correction of historical injustice and discrimination, as intended by clauses 1 to 7 of this Bill, is effective. If people are not aware of these new rights, the injustice done to them will not be corrected.

37. Clause 7 raises especially poignant concerns. It is a welcome provision. It introduces a power for the Home Secretary to register a person to correct some legislative unfairness or other injustice that has wrongly deprived the person of citizenship. But this power can only be exercised if people who have been wronged are encouraged to apply to be registered. If the Home Secretary does not ensure that people are aware of this power, people will not apply. If she does not ensure that when, in one case, she recognises an example of injustice that requires the exercise of this power in one case, she publishes and disseminates information identifying that injustice, people will not apply. If she identifies legislative unfairness but fails to take the earliest opportunity to correct it on the face of the legislation, people will not apply. The Home Secretary must, therefore, ensure that she does take the necessary steps to ensure people are aware of their rights and will exercise them. Otherwise, clause 7 will be of no more than mere paper value and the injustice that it is intended to correct will continue.

The registration fee

38. The fee for a child to register as a British citizen currently stands at £1,012.[27] At the time the British Nationality Act 1981, the fee was £35.[28] There was no intention that the fee should ever become a means for the Home Office to raise funds by charging above cost. The previous Home Secretary described this £1,012 fee – 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.[29] The Home Office publishes data about fees, which confirms the cost of registration to be £372.[30] The remaining £640 is, therefore, money made above the delivery of the service.

39. The interventions in Committee of Robert Goodwill, the former Home Office Minister, with responsibility for these fees, suggest a profound misunderstanding on the part of Ministers. He said:

> "*The principle of fees reflecting the cost of delivering the service is a good one that should be widely applied across Government... I hope that the Minister will reassure us of the principle that was certainly in effect when I was in the*

[27] 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.
[28] The rise in fees is briefly summarised by the Court of Appeal in *R (PRCBC & O) v Secretary of State for the Home Department* [2021] EWCA Civ 193, para. 30: "*The fee charged for an application for registration by children rose from £35 in 1983 to £200 in 2005. Following the changes made by the 2004 and 2007 Acts, the fee rose to £400 in 2007 and then by stages to £669 in 2014. Following the introduction of new powers by the 2014 Act, the fee rose annually to its current level of £1,012 in 2018.*"
[29] Q276: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/windrush-children/oral/82932.html
[30] 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

Home Office: that this is not an opportunity to make a profit out of these people, but merely to recover the cost."[31]

40. The former Minister, with respect, is wrong not only about the fees currently charged but also about the fees charged when he was in office. Since 2007, these fees have been set significantly above the cost to the Home Office of discharging its function of registering the citizenship of people entitled to that citizenship. The fee for children to be registered was raised to £1,012 in 2018. In 2017, Mr Goodwill, when the Minister, had raised the fee to £973 (when it was said that the administrative cost to the Home Office was £386). The implication is that Ministers are not fully aware of the fee that is charged – an implication that is also consistent with the conclusive findings of the High Court and Court of Appeal in *R (PRCBC & Ors) v Secretary of State for the Home Department* that the fee has been set with no consideration of the best interests of children.

41. It must be recalled that this function is nothing more than registering a right to citizenship bestowed by the British Nationality Act 1981 to give effect to Parliament's will that all people connected to the UK be recognised as its citizens. It is entirely improper for the Home Office to seek to use this function as a means of raising funds.

42. Ministers frequently explain that this money is used to pay towards the 'immigration system'. The children – and indeed adults – with rights to citizenship by registration are **British people**. Parliament determined this by enacting the British Nationality Act 1981 and providing statutory entitlements to registration to ensure all people connected to the UK or British overseas territories would have the citizenship of the country or territory to which they shared connection. These British people – thousands of children born in the UK among them – have no more to do with the immigration system than any other British citizen, with whom they share the same connection. It is improper, therefore, to exploit the Home Office function of registration to tax children's and adult's citizenship rights to raise funds to pay for a system that has no proper application to them and by a tax that no other British citizen is compelled to pay. In the case of a stateless child, it is additionally improper to exploit the means by which the Home Office is to fulfil is international obligations to reduce statelessness to raise these funds.

Government's justification

43. At Commons' Report, Kevin Foster, the Minister, declined to say anything beyond:

> "*I am grateful for the opportunity to debate children registered as British citizens under* [new clauses on the registration fee]*. However, I must be clear that we are still waiting for the Supreme Court to give its judgment on this issue, and we will then look to respond.*"[32]

44. At Commons' Committee, Tom Pursglove, the Minister, also relied upon the outstanding Supreme Court judgment.[33]

[31] *Hansard* HC, Public Bill Committee (Fifth Sitting) 19 October 2021 : Cols 150-152
[32] *Hansard* HC, Report, 7 December 2021 : Col 260
[33] *Hansard* HC, Public Bill Committee, Fifth Sitting, 19 October 2021 : Col 164

45. As regards, Ministers' position that they are awaiting the decision of the Supreme Court in *R (PRCBC & O) v Secretary of State for the Home Department*,[34] this is an extraordinary position for them to take. The High Court and Court of Appeal[35] each ruled in that litigation that the fee is unlawful because it has been set without consideration to the best interests of children. The Home Secretary has accepted that ruling by choosing not to appeal against it to the Supreme Court. Accordingly, the Supreme Court if not considering the best interests of children and, whatever their decision, the fee remains unlawful for the reasons given by the High Court and Court of Appeal.

46. The Supreme Court is considering whether the fee is also unlawful for rendering nugatory the statutory right to citizenship by registration. Meanwhile, the Home Secretary is unlawfully maintaining both her failure to assess the best interests of children and the fee that arises from that failure.

47. At Commons' Committee, Tom Pursglove, the Minister also put forward the following arguments:

> "*Any fee level that is incurred over and above* [the administrative cost] *is actually invested into the wider nationality and borders system and helps to pay for the services that are provided… citizenship is not necessary for any individual to work, live, study of access services within the UK… for most people, nationality is a choice and is not needed specifically to live in the UK.*"[36]

48. This is rehearsal of arguments that should have no place in any discussion of registration fees. Registration (unlike naturalisation) concerns rights to citizenship provided by Parliament to a British person in recognition of their connection to the UK or British overseas territories. It is insulting to suggest that a British person does not need their citizenship and could or should be satisfied with being treated as a mere guest in their own country, their presence dependent on permission from the Home Secretary. It is deeply alienating and wholly inconsistent with the statutory purpose of the British Nationality Act 1981 to suggest this.

Unjust alienation and exclusion of British children

49. 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).[37] 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

[34] The Supreme Court heard this appeal (2021/0063) in June 2021
[35] *R (PRCBC & Ors) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin); [2021] EWCA Civ 193
[36] *Hansard* HC, Public Bill Committee, Fifth Sitting, 19 October 2021 : Cols 163-166
[37] https://prcbc.files.wordpress.com/2015/08/systemic-obstacles-on-the-registration-of-children-as-british-citizens.pdf

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.[38] 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 British citizenship. It is also – as the High Court,[39] affirmed by the Court of Appeal,[40] 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.*"[41]

50. The Home Secretary did not contest that finding in her unsuccessful appeal to the Court of Appeal.

Casestudy: ST

ST was born in the UK and has lived here all his life. His mum is a single parent with a history of mental illness. ST has two younger siblings, each of whom born in the UK with British citizenship.

ST was first told by his mother that there was something 'wrong' about his status in the UK when he was about 11. It was difficult for him to fully understand what this meant until he turned 17 and started to have plans for his studies and future career.

When ST first contacted PRCBC, he provided some personal information including that he was very depressed. He explained that he was born in the UK and lived in London all his life and that he needs his British passport.

ST now understands, following PRCBC advice, that because he was born in the UK and lived here up to the age of 10, he has an entitlement to be registered as a British citizen. However, there is a Home Office registration fee of £1,012. ST and his mum can't afford to pay that. ST, therefore, remains dispossessed for the citizenship to which he has been entitled since he was 10.

Registration: Good Character

51. PRCBC and Amnesty continue to call for the removal of the statutory good character requirement for registration of people aged 10 or older, which was first introduced by the Immigration, Asylum and Nationality Act 2006.

[38] See e.g., https://prcbc.files.wordpress.com/2019/07/commentary_-hansard-bna-1981-_registration_aug-2018-2.pdf
[39] *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin)
[40] *R (Project for the Registration of Children as British Citizens & O) v Secretary of State for the Home Department* [2021] EWCA Civ 193
[41] *Op cit*, para. 21

52. The following New Clause would not extend so far. However, it would end the exclusion of children from their citizenship rights by the application of a good character requirement, including their exclusion in adulthood by reason of their childhood offending. It would end the exclusion of people by reason of their mental disability. It would also limit the application of the good character requirement, in the cases of young adults, to conduct of the most serious nature. Some greater protection of young adults, up to the age of 25 years, would reflect psychiatric and neurological understanding that the formation of personality continues to be in transition up to that age.

To move the following New Clause –

"Registration as a British citizen: Character

(1) Section 41A of the British Nationality Act 1981 is amended as follows.

(2) In each of subsections (1) to (4) –

(a) insert the words "Subject to subsection (5)" at the beginning of the subsection; and

(b) delete the words "or young person."

(3) For subsection (5) substitute –

(5) For the purposes of this section, a person is not to be treated as "*not of good character*" by reason of –

(a) criminal offending or other conduct during a person's childhood;

(b) a mental impairment for the purposes of section 6 of the Equality Act 2010; or

(c) criminal offending or other conduct before a person reaches the age of 25 years other than conduct that is of the most serious nature.

53. When enacted, the British Nationality Act 1981 included no good character requirement 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.[42]

Registration and naturalisation distinguished

54. Unlike registration, good character was always a statutory requirement for naturalisation under the British Nationality Act 1981.[43] This reflected the critical difference between registration and naturalisation.

55. 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.

56. 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.

57. 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.[44] 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.[45]

Casestudy: SO

SO is in his late twenties. He was born and has lived in West London all his life. He does not have a British passport. His single parent mother died when SO was a teenager. SO has a history of offending during his late teens after having been groomed from age 14.

Since age 10, SO has been entitled to be registered as a British citizen under section 1(4). He was also entitled to be registered under section 1(3) of the British Nationality Act 1981 when he was 12 after his mother was granted settled status. However, neither he nor his mother were aware that he was not already a British citizen but rather had a right to registered. Although the right under section 1(3) ceased to apply when SO became an adult, the right under section 1(4) continues.

For the past four years, SO has been fully engaged – in full-time work and voluntary work – in support of his local community. However, because of his past convictions SO's recent application to be registered as a British citizen under section 1(4) has been refused. He feels deeply alienated in the country in which he was born, the only place he has ever lived and of which he otherwise feels as much a part as anyone.

[42] https://prcbc.org/research/
[43] Paragraph 1(1)(b) of the British Nationality Act 1981
[44] The relevant provision is now section 41A of the British Nationality Act 1981
[45] See briefing *op cit*: https://prcbc.files.wordpress.com/2019/10/briefing_good-character_oct-2019-1.pdf

Casestudy: AM

AM is 39, born in the UK and has lived here all his life. He was a former looked after child. He has a long history of mental illness. He has spent a significant number of years in foster homes, mental health institutions and more recently supported homes. Due to his mental health illness has several criminal convictions, which have repeatedly led to his being sectioned.

AM wants his British passport. At times he finds not having one hugely distressing.

At the time of his birth, AM's mother was not settled. His father's identity is unknown. During his childhood, AM became entitled to be registered as a British citizen under section 1(3) and section 1(4) of the British Nationality Act 1981. The latter continued after he became an adult.

Before AM was referred to PRCBC, AM had not received specialist advice on his British citizenship rights – even though he had been refused citizenship on several occasions because of the good character requirement. After three years of PRCBC gathering all supporting evidence together – to show the injustice of his exclusion from citizenship and the impact of his mental health on his offending – and after a further Home Office refusal, AM was finally registered as a British citizen this year.

Final observations

58. PRCBC and Amnesty are very grateful to the organisations and their members who have met with us, shared their experience and are supporting this briefing. We are also grateful to PRCBC clients.