Nationality and Borders Bill

House of Lords Report Stage, 28 February 2022

Citizenship rights: stateless children
Clause 10

LORD PADDICK LORD ROSSER Leave out Clause 10

Purpose:

To remove clause 10 from the Bill and retain the existing rights to British citizenship of children born stateless in the UK, who are at least 5 years of age and have lived continuously in the UK for at least 5 years.

Briefing:

Amnesty International UK, The Project for the Registration of Children as British Citizens (PRCBC), The Immigration Law Practitioners Association (ILPA), Coram Children's Legal Centre (CCLC) and the European Children's Rights Unit (ECRU), support the removal of clause 10 from the Bill. It is important to emphasise that Clause 10 only applies to children who –

(i) are born in the UK;
(ii) were stateless at the time of their birth;
(iii) have remained stateless ever since;
(iv) are living in the UK;
(v) have lived in the UK for at least 5 consecutive years; and
(vi) are in all but what must be relatively rare cases, have neither lived nor visited anywhere else.

If implemented, the clause would delay the existing right of many children to be registered as British citizens,[1] potentially until they reach adulthood. If so, the children would in all or near all cases have spent their entire childhoods stateless in the UK despite their birth, development, schooling, and every other aspect of their lives all being in the UK. No real or reasonable justification has been advanced for such a drastic denial of these children's rights to nationality under international law[2] and rights to British citizenship under the British Nationality Act 1981.[3] Such explanations as have been offered by Ministers for this clause highlight two matters.[4]

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[1] The existing right is set out in paragraph 3 of Schedule 2 to the British Nationality Act 1981.
[2] In particular, rights under the 1961 UN Convention on the Reduction of Statelessness and the 1989 UN Convention on the Rights of the Child.
[3] *op cit*
[4] See e.g. *Hansard* HC, Report, 7 December 2021 : Col 260

Firstly, the dreadful impact upon the child that is proposed is either a penalty or an incentive relating to matters that are entirely outside the control of the child. That impact is inconsistent with the basic fact of the child's connection to the UK by birth in this country and growing up here with their peers. Many children affected will have no appreciation that the country they regard and know as theirs rejects both them and their connection – a connection made in the same way as the children's peers by their shared social, cultural, and educational interactions during their formative years.

Secondly, the motivation for what is proposed is the significant rise in registrations of stateless children with British citizenship around 2017, a rise that has since begun to fall away – though not to the miniscule levels that pre-date 2017.[5] In effect, a right to citizenship of stateless children born and connected to this country that had remained largely unused on the statute book for many years is to be made inaccessible once it has become known.

Ministers ought to have been concerned at how shockingly low the exercise of this vital right to citizenship for stateless children had been and be encouraged those children born and growing up stateless in the UK are finally exercising their citizenship rights. Instead, they propose to respond by essentially just taking these rights away. There is no reconciling this with the best interests of the children; and it is entirely unsurprising that the Human Rights Memorandum accompanying this Bill is devoid of any evidence or explanation for the claim that those interests have been assessed and given proper consideration. On that Memorandum, PRCBC and Amnesty made this assessment to the Joint Committee on Human Rights for its legislative scrutiny of this Bill:[6]

"*17. The Bill's Human Rights Memorandum merely asserts that the Home Office 'has carefully considered the best interests of the child in formulation of all the policy given effect in this Bill'; and asserts the clause is 'reasonable' and the department 'is satisfied that this is compatible with' its international obligations. Insofar as that constitutes any explanation for Ministers' conclusions, it is threadbare. It involves neither any visible assessment of what are the best interests of children nor any evaluation of those interests against any countervailing considerations that may or may not relevant. Not only is this manifestly inadequate justification for a legislative change that may leave many children in a profoundly alienating condition of statelessness in the UK – where they were born, are developing an identity and connection alongside their peers – but it is further exposure of the department's failure to properly consider or apply children's best interests in its citizenship, or indeed, other functions.*"

We note that the Joint Committee on Human Rights has made clear its primary recommendation, which we share, that Clause 10 (at that time numbered as Clause 9) should be removed from the Bill:[7]

"*57. It is difficult to see how clause 9 complies with the UK's obligations under both the 1961 UN Stateless Convention and the UN Convention on the Rights of the Child. Clause 9 should be amended – preferably to delete the clause altogether.*"

[5] The relevant data is given and explained in the PRCBC and Amnesty UK joint briefing for Committee stage, paragraphs 45-49
[6] PRCBC and Amnesty UK joint submission to the Joint Committee on Human Rights.
[7] See the Joint Committee's Seventh Report of Session 2021-2022