



Border Security, Asylum and Immigration Bill, Bill 173 Joint Submission to Public Bill Committee

INTRODUCTION:

1. This joint submission is to assist the Committee in understanding the implications for British nationality law of certain provisions of the Border Security, Asylum and Immigration Bill (“the Bill”). To that end, the submission addresses the following two matters under distinct subheadings:
 - 1.1. The repeal by Clause 38(1)(e) of provisions of the Illegal Migration Act 2023 that concern British nationality.
 - 1.2. The current effect of deportation powers, to which Clause 41 relates, upon people entitled to British citizenship by reason of their connection to the UK.
2. Although these two matters are addressed separately, an understanding of the former is an aid to understanding the latter.
3. The Project for the Registration of Children as British Citizens (“PRCBC”) has particular interest, and expertise, in matters concerning British citizenship and rights to that citizenship.¹ Amnesty International UK (“Amnesty UK”) has for some years supported PRCBC in its efforts to bring closer scrutiny to these rights and how they have been wrongly frustrated in various ways, which are generally related to immigration law and policy that has no proper relevance to these nationality rights. It is important to be clear at the outset that the submission is concerned with rights to British citizenship set out in the British Nationality Act 1981 for the purpose of securing the nationality of the UK for the body of people identified as connected to the UK.²
4. The submission is not concerned with the circumstances in which an adult migrant to the UK, with a connection elsewhere, may be permitted to become a British citizen at the discretion of the Home Secretary by naturalisation.³ Naturalisation is important in its own right. However, it is a matter directly related to immigration and fundamentally distinct from the rights to British citizenship with which this submission is concerned.

CLAUSE 38(1)(e): repeal of provisions of the Illegal Migration Act 2023 that concern British nationality

5. The Illegal Migration Act 2023 includes a series of provisions intended to bar a person from ever becoming settled in the UK or a British national. Those provisions are set out under a subheading of ‘*Entry, settlement and citizenship*’. The subheading itself suggests a misunderstanding on the part of the statutory draftsman of the nationality provisions affected by sections 30 to 37. Most of those provisions concern registration

¹ See PRCBC’s website: www.prcbc.org

² This is briefly explained in a [joint PRCBC and Amnesty UK briefing on an amendment tabled by Lord Moylan](#) at Lords Committee stage of the Nationality and Borders Bill 2021-2022 concerning rights to British citizenship.

³ Section 6, British Nationality Act 1981

of British citizenship not naturalisation as a British citizen; and most of those provisions concern registration by express statutory entitlement.⁴ Registration is a right that is generally unconcerned with entry or settlement, existing independently of these.

6. As the Conservative peer, Lord Moylan, emphasised in moving amendments to remove the effect of the Illegal Migration Act 2023 on registration of British citizenship:

“Registration is not a concession granted by the state. It is a process that was, in fact, introduced shortly after the Second World War by the Atlee Government to allow people who are already British to register that nationality... it is for the authorities to make a decision based on [] evidence, on a balance in some cases, on whether the person in question is entitled to British citizenship – not whether they may apply for it, not whether it may be given to them as a concession, but whether they are already British. It is this process that the Bill wishes to see people banned from pursuing.”⁵

7. Anticipating a response from the minister to suggest a person’s manner of arrival or entry to the country could constitute behaviour that might mean ‘we do not want’ the person as a citizen, Lord Moylan continued:

“But that goes to the heart of the principle: that time and again we find this Home Office mentality that British citizenship to which one is entitled is a reward for good behaviour. It is not.”⁶

8. As Lord Moylan succinctly explains, registration is a process for British people to secure their nationality of the UK in circumstances where that citizenship has not previously been conferred on them automatically, such as at their birth.⁷ Among the vital reasons for these rights is the decision taken in 1981 to make the nationality of the UK (i.e., British citizenship) based on connection to the UK rather than principles of *jus soli* or *jus sanguinis*, which had previously applied in British nationality law. While connection may be clear at a person’s birth, the British Nationality Act 1981 recognises that this is not always so. Sometimes, connection becomes clear later in childhood or requires some action in childhood to confirm the connection by evidence.⁸ Registration is the process by which connection is demonstrated and British citizenship formally acknowledged and recorded by statutory right.

9. It may well be that – as indeed Lord Moylan anticipated – the number of people entitled to British citizenship ever likely to be affected by these provisions of the Illegal Migration Act 2023 is very small.⁹ But, for example:

- 9.1. A British citizen, born overseas, may bring to the UK their baby, also born overseas, in the mistaken understanding that their child has no need of a visa. If so, the Illegal Migration Act 2023 provisions could create a permanent bar to any entitlement of the child to be registered as British.¹⁰

⁴ A [joint PRCBC and Amnesty UK briefing for Report stage of the Illegal Migration Act 2023](#) provides further explanation.

⁵ *Hansard* HL, Committee, 12 June 2023 : Col 1747

⁶ *Hansard* HL, Committee, 12 June 2023 : Col 1748

⁷ This may be birth in the UK to a parent who is a British citizen or settled [section 1(1), British Nationality Act 1981] or birth outside the UK to a parent who is a British citizen otherwise than by descent [section 2(1), British Nationality Act 1981].

⁸ Such as where any of sections 1(3), (3A), or (4) or 3(1), (2) or (5), British Nationality Act 1981 apply.

⁹ *Hansard* HL, Committee, 12 June 2023 : Col 1747

¹⁰ Whether under section 3(2) or (5), British Nationality Act 1981.

- 9.2. A person born in the UK, who has lived their entire life of ten or many more years in the UK but unaware of their need to be registered with British citizenship, may take a short absence from the UK. They may do so while failing to recognise and address their need to have formal permission to re-enter the country of their birth and home. If so, the provisions could create a permanent bar to the person's entitlement to be registered as British.¹¹
- 9.3. Also potentially affected are children brought or sent to the UK, whose future clearly lies in the UK when they have grown up here over several years of their childhood and/or are taken into local authority care.¹²
10. There has been some vocal criticism of the intention by this Bill to repeal these provisions.¹³ To the extent that the repeal concerns registration of British citizenship, this criticism is badly misguided.¹⁴ Sadly, it repeats a longstanding and variously harmful way in which the rights of British people to the citizenship of their country, the UK, have long been misunderstood.
11. Accordingly, PRCBC and Amnesty UK not only support the repeal of these provisions. We urge parliamentarians of all political parties to more closely attend to the rights of British people to be formally recognised as citizens. We remind the Committee that at the heart of the still recent Windrush scandal was a similar failure at the Home Office, and more widely, to understand and respect British citizenship and rights to it.¹⁵

CLAUSE 41: the impact of deportation powers on British people

12. The original power to deport someone from the UK can be found in the Immigration Act 1971.¹⁶ It is a discretionary power available to the Home Secretary on the basis that the presence of a person, who is not a British citizen, is 'not conducive to the public good'. For reasons that are not material to this submission, that power was supplemented by the UK Borders Act 2007 by a statutory duty that requires someone's deportation ('automatic deportation') on the basis of any conviction for which a minimum of 12 months' imprisonment is imposed.¹⁷ More recently, the Nationality, Immigration and Asylum Act 2002 was amended by the Immigration Act 2014 to restrict

¹¹ Under section 1(4), British Nationality Act 1981.

¹² The unfettered discretion to register a child under section 3(1), British Nationality Act 1981 is intended to ensure children connected to the UK can secure their British citizenship. Following settlement in *Ojeh v Secretary of State for the Home Department* without a hearing, guidance to Home Office decision-makers was revised to recognise the connection of children in circumstances described at paragraph 9.3 of this briefing by their registration as British citizens.

¹³ See, e.g., *Labour eases checks on illegal migrants*, The Telegraph, 1 February 2025, to which reference is made in the [joint PRCBC and Amnesty UK note on recent changes to Nationality: good character guidance](#), 11 February 2025.

¹⁴ We do not address the impact of the Illegal Migration Act 2023 on naturalisation, which is not concerned with the rights of British people to be formally recognised as citizens of their own country. Nonetheless, we recognise naturalisation and concerns regarding it to be important in their own right.

¹⁵ As is, for example, more fully explained in the Home Office-commissioned reports on the [historical roots of the Windrush scandal](#) and [lessons learned review](#), the Home Office wrongly disseminated information to deter people from exercising their rights to be registered as British citizens under section 7, British Nationality Act 1981 (a time-limited provision) on the basis that registration would make no difference to them. It is also summarised in a [2020 Amnesty UK submission to the Joint Committee on Human Rights](#) for their inquiry on Black people, racism and human rights.

¹⁶ Sections 3(5) and 5, Immigration Act 1971

¹⁷ Section 32(2), UK Borders Act 2007

the capacity of a person to whom that statutory obligation applies to resist deportation on the grounds of any private or family life in the UK.¹⁸

13. When introducing legislation for what is called ‘automatic deportation’, the government of the day failed to have regard to British people who were yet to secure the registration of their citizenship. The relevant provisions of the 2007 Act and 2014 Act provide a definition of someone as a “foreign criminal” which still fails to exclude those British people who are yet to secure their registration¹⁹ – in some cases because they are unaware they are not already British citizens by reason of their birth in the UK²⁰ or their birth to a British parent.²¹ Accordingly, deportation has been made to be a power that threatens British people with exile from the UK.
14. The original deportation power in the Immigration Act 1971 did not create such a threat:
 - 14.1. First, it was made at a time when birth in the UK was alone sufficient to make a person a citizen. That changed with the British Nationality Act 1981, which required more than that; and for some British people, of whom it was unclear where their future lay at the time of their birth, required their registration when their connection to the UK became clear later in their childhood – e.g., by their continued residence here²² or their parent becoming British or settled.²³
 - 14.2. Second, that power was and remains discretionary. The introduction of a statutory obligation created the threat. However, the government that introduced that obligation without regard to the British people it thereby exposed to exile had shortly beforehand made the same error (i.e., failing to understand and respect that registration is for British people to secure the nationality that is rightfully theirs). It did so when introducing a requirement of good character for the Home Secretary to fulfil a person’s statutory entitlement to British citizenship.²⁴
15. No British person should face exile from their own country under these powers. As PRCBC and Amnesty UK are each aware, there are people born in this country, who have lived all their lives here, against whom the Home Office exercises its powers of deportation. This includes people in their 30’s and 40’s who have not once set foot outside this country and who would have been registered as British citizens by right as long ago as their tenth birthday and sometimes much earlier – had anyone known of the need for their registration or acted to do so.²⁵ British people suffer detention and, when at liberty, exclusion from means of social engagement or self-maintenance (by prohibitions on work, study and access to public funds) while under the threat of exile.

¹⁸ Section 117D(2), Nationality, Immigration and Asylum Act 2002 (as inserted by section 19, Immigration Act 2014).

¹⁹ Sections 32 and 117D respectively

²⁰ Such as people entitled to be registered under section 1(4), British Nationality Act 1981.

²¹ Such as people entitled to be registered under section 3(2), British Nationality Act 1981.

²² Section 1(4), British Nationality Act 1981

²³ Section 1(3), British Nationality Act 1981

²⁴ First done by section 58, Immigration, Asylum and Nationality Act 2006 on 4 December 2006. The relevant history is briefly described in a [joint PRCBC and Amnesty UK submission to the Joint Committee on Human Rights](#) when considering a remedial order to the British Nationality Act in the Session 2017-2019.

²⁵ Among the reasons some British people have been unable to act on their need for registration have been very high fees, set far above the administrative cost to the Home Office of that registration.

16. This deportation of British people bears no relation to the exceptional circumstances in which consideration might be given to strip a British citizen of their citizenship.²⁶ While PRCBC and Amnesty UK have profound reservations about that power of deprivation and its use, we merely observe here that the circumstances in which a British person may be barred from registration and then exiled from the UK are far wider and would surely never be considered, from any perspective, to justify deprivation of citizenship.
17. The amendment to Clause 41 appended to this submission would provide a useful vehicle for considering these matters in Committee.

FINAL REMARKS

18. PRCBC and Amnesty UK have long been critical of the failure of many governments since the commencement of the British Nationality Act 1981²⁷ to understand and respect British citizenship and the rights of British people to it.
19. It is important, however, to recognise notable exceptions to this in the last Parliament:
- 19.1. Part 1 of the Nationality and Borders Act 2022 – save for its provisions concerning deprivation without notice²⁸ and stateless children²⁹ – constituted a significant though far from complete repair of damage done to British nationality law over the previous 40 years.³⁰
- 19.2. The British Nationality (Regularisation of Past Practice) Act 2023 was important to securing the British citizenship of many thousands of people.³¹
- 19.3. In 2022, a fee waiver was created for the purpose of ensuring that children (though not we regret adults) are not blocked from their rights to British citizenship by fees they cannot afford, which are set far above the cost to the Home Office of fulfilling their entitlement to be registered.³²
20. These were among some of the important steps taken in the last Parliament towards restoring understanding and respect for British citizenship. PRCBC and Amnesty UK were grateful for the opportunity to assist in much of this repair. We remain grateful to the ministers and officials responsible for it.
21. Notwithstanding what is said in the previous paragraph, the provisions of the Illegal Migration Act 2023 to which we refer in this submission marked a devastating return to a period of profound misunderstanding. That misunderstanding is to treat British people, whose nationality rights are intended to be secured by registration, as if they have no greater right to live in their own country than a person whose migration to the UK may be permitted or refused at the discretion of the Home Secretary. We, therefore,

²⁶ Under section 40(2), British Nationality Act 1981

²⁷ On 1 January 1983

²⁸ Section 10, Nationality and Borders Act 2022

²⁹ Section 11, Nationality and Borders Act 2022

³⁰ PRCBC and Amnesty UK briefed jointly in support of relevant provisions of this Act, including a [joint submission to the public bill committee](#).

³¹ PRCBC, Amnesty UK, ILPA and the3million [briefed jointly in support of this Act](#).

³² That waiver was introduced on 16 June 2022 by the Immigration and Nationality (Fees) (Amendment) Regulations 2022, SI 2022/581. It exempted children looked after by a local authority from the fee for their registration as a British citizen and introduced a waiver for other children who cannot afford the fee.

urge that this Bill be the vehicle for improved understanding and a return to restoring the UK's nationality (that is British citizenship) rather than further undermining it.

23 February 2025

APPENDIX

Amendment to Clause 41:

Clause 41, page 35, line 31, at end, insert –

“(17) Section 32(1) of the UK Borders Act 2007 (Automatic deportation) is amended in accordance with subsection (18).”

(18) After paragraph (a), insert –

‘(aa) who would not have a statutory entitlement to be registered as a British citizen on making an application for registration under the British Nationality Act 1981,’

(19) Section 117D(2) of the Nationality, Immigration and Asylum Act 2002 (Interpretation of this Part) is amended in accordance with subsection (20).

(20) After paragraph (a), insert –

‘(aa) who would not have a statutory entitlement to be registered as a British citizen on making an application for registration under the British Nationality Act 1981,’

Short explanation:

The Amendment is to exclude people with a statutory entitlement to British citizenship alongside people already in possession of that citizenship from the definition of “foreign criminal” in the 2002 and 2007 Acts. In doing so, this would ensure that no British person was at risk of automatic deportation (the statutory obligation to deport someone from the UK).