



Amnesty International UK

Briefing for Westminster Hall debate on 4 September 2018:

That this House has considered fees for registering children as British citizens

The debate is to be moved by Stuart C MacDonald MP and follows Early Day Motion 1262, tabled on 14 May 2018, which has 69 signatures from Members of Parliament representing every political party in the House.¹

Introduction:

The Home Secretary has, by the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330, set the fee for a child to register as a British citizen at £1,012. This “huge amount of money”, as he described it to the Home Affairs Committee in May,² excludes many children from British citizenship including many who are statutorily entitled to it.

The children affected include children born in the UK and children who come to the UK at a young age; children who grow up in this country, often with no memory of any other country and even with no idea they are not British just like their schoolfriends. They include stateless children and children growing up in local authority care. All of these children are as strongly connected to the UK as other British children; and Parliament, when passing the British Nationality Act 1981, intended that British citizenship would be theirs. The Home Office fee impedes this. In many cases, the fee prevents it.

The British Nationality Act 1981:

The Act came into force on 1 January 1983. Being born in the UK ceased to be sufficient in itself to acquire British citizenship.³ Parliament’s intention was to ensure British citizenship reflected real connection to the UK. From that date, a child born in the UK is only born British if born to a parent who themselves is a British citizen or settled in the UK at the time of the child’s birth.

In passing the Act, Parliament expressly recognised nonetheless that there would be other children with no lesser connection to the UK, for whom provision needed to be made. The

¹ <https://www.parliament.uk/edm/2017-19/1262>

² Before Home Affairs Committee (Q276), 15 May 2018, transcript available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairscommittee/windrush-children/oral/82932.html>

³ The principle of acquisition of citizenship by birth on the territory is known as *jus soli*.

Act, therefore, includes provisions to enable these children to register as British citizens. As Ministers emphasised in the debates on the Act, *“it is extremely important that those who grow up in this country should have as strong a sense of security as possible”*,⁴ taking up citizenship was to be strongly encouraged⁵ and, for these children, it was important recognition of their being *“deeply rooted”* in the UK⁶ independent of their parents’ circumstances or status.⁷

The relevant provisions are of two types:

Children born in the UK

There are provisions relating to children born in the UK – that is children who would have been born British under British nationality law prior to the Act. Parliament recognised that where children were born here and grew up here, their connection to the UK would be just like those children born British. The Act, therefore, made various provisions by which that connection would be recognised and the child would have a statutory entitlement to register as a British citizen. These provisions each expressly state that where they apply the person *“shall be entitled to be registered as a British citizen.”*

The key provisions whereby children born in the UK, but not born British, are entitled to register as British citizens arise where:

- a parent becomes British or settled while the child is under 18 years;⁸
- the child lives in the UK for the first ten years of her or his life;⁹ or
- the child, if born stateless and remaining so, lives in the UK for five continuous years.¹⁰

Other children

Parliament recognised the position of other children who have a real connection to the UK. For example, there would be children born outside the UK but living and growing up here from a young age. For these children, whose future lies in the UK, the Act retains the discretion previously found in the British Nationality Act 1948 for the Home Secretary to register the child as British.¹¹ In some cases, children who have difficulties establishing they are already British or entitled to British citizenship need to rely on this discretion. For example, this can be especially important for children who cannot establish the status of estranged or deceased parents.

The fee:

The original fee imposed on commencement of the 1981 Act on 1 January 1983 was £35. In

⁴ Hansard HC, 24 February 1981 : Col 177, per Mr Timothy Raison, Minister of State, Home Office

⁵ Hansard HL, 21 July 1981 : Col 184 & 7 October 1981 L Col 117, per Lord Belstead, Home Office Minister

⁶ Hansard HC, 24 February 1981 : Col 183, per Mr Timothy Raison, Minister of State, Home Office

⁷ Hansard HC, 26 February 1981 : Col 230, per Mr Timothy Raison, Minister of State, Home Office

⁸ Section 1(3), British Nationality Act 1981

⁹ Section 1(4), British Nationality Act 1981

¹⁰ Paragraph 3 of Schedule 2, British Nationality Act 1981

¹¹ Section 3(1), British Nationality Act 1981

2007, the Home Office began charging more than the administrative cost.¹² According to the Home Office, only £372 of the current fee represents the administrative cost. The remainder (£640) is profit over and above that cost. The Home Office makes three arguments to justify this, none of which stands up to scrutiny:

1. The Home Office says the profit reflects the benefit of citizenship to the child

When a child registers as a British citizen, she or he is not seeking some benefit from the Home Office. The child is registering the citizenship, which Parliament in passing the 1981 Act intended the child to have. This is especially so where the child registers by statutory entitlement.¹³ The Act is clear that citizenship, along with all its benefits, is the child's statutory right. There is, therefore, no benefit for the Home Office to grant, still less profit from. The Home Office is merely undertaking the process of recording an entitlement. It is not British citizenship (and the rights and entitlements that come with it), therefore, for which the fee is payable; only the process of registering that citizenship.

2. The Home Office says children do not need citizenship and can apply for leave to remain instead

Leave to remain is no substitute for citizenship. Such leave is granted on fulfilment of certain eligibility criteria, most of which are set out in immigration rules. It is not necessarily available to these children. The Project for the Registration of Children as British Citizens (PRCBC) is aware of several children entitled to British citizenship, whom the Home Office have refused leave to remain and given directions for them to be removed from the UK. But more fundamentally, where a child has the right to citizenship it is not for the Home Office to say that something else will do instead, especially when that alternative provides much less in terms of the child's future, security and sense of identity and belonging. This is not what Parliament intended when passing the 1981 Act.

3. The Home Office says it is fair to ask migrants to pay for the immigration and nationality system

It is wrong to categorize these children as migrants and subject them to the immigration system. Children born in the UK are not migrants. Parliament recognised that these children's connection to the UK was just like those children who acquire British citizenship at their birth by giving them rights to register as British citizens. Marking out this group of children by effectively taxing their citizenship rights to pay for the UK immigration system is an injustice. Moreover, it denies some children their citizenship altogether.

The justifications offered by the Home Office stem from the error of conflating adult naturalisation with children's registration as one and the same when they are distinct nationality law provisions.

¹² The Immigration and Nationality (Fees) Regulations 2007, SI 2007/1158 first introduced a registration fee (£400) with an element above the cost of administration.

The Regulations were made under section 42 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and sections 51 & 52 of the Immigration, Asylum and Nationality Act 2006.

¹³ Such as under section 1(3) or 1(4) of the British Nationality Act 1981.

1989 UN Convention on the Rights of the Child and children's best interests:

The Convention requires that children's best interests be a primary consideration in all actions concerning them, and this international law duty has been adopted in UK domestic law by section 55 of the Borders, Citizenship and Immigration Act 2009. Yet, the Home Office has undertaken no children's best interests assessment in setting these fees. The impact assessments it has done only consider economic impacts of the fees.¹⁴ They also conflate adult naturalisation and registration. These fail to distinguish between the immigration process by which adult migrants may become British citizens and the quite separate statutory registration rights of children (including where those rights extend into adulthood). In this way, the Home Office has failed to respect children's rights in either international or domestic law.

The impact on children:

The impact on children is considerable. It is also intergenerational. Children prevented from registering their British citizenship rights are, in many cases, then unable to pass on British citizenship to their children. The Project for the Registration of Children as British Citizens (PRCBC) has seen several examples where a young person who has been unable to afford to register as British has given birth to a child who is also not born British. In these cases, the parent – unless she or he has lost the right to register when turning 18 – faces a higher fee of £1,206 to register as British after which the child could then register but only on paying a fee of £1,012.

Depriving these children of British citizenship is a fundamental wrong in and of itself. It has further profound practical, legal and psychological effects. Without British citizenship, these children are made subject to a plethora of powers and exclusions arising out of the immigration system and immigration policies. The potential devastation of this has only recently been dramatically exposed by what has happened to the Windrush Generation. These children too face being refused access to healthcare, employment, education, social assistance and housing; and being detained, removed from and excluded from the country altogether.

Many of these children grow up unaware they are not already British citizens like their peers and are shocked to discover their status. This is a considerable challenge to a young person's identity. These children have the right to register as British. However, the shock of discovering that they are not already British citizens is exacerbated by the Home Office demand for £1,012 to exercise that right.

The Prime Minister has stated her commitment to social inclusion and opportunity for marginalised groups in society.¹⁵ Excluding children from citizenship by imposing a prohibitive fee is fundamentally inconsistent with this commitment. Being without citizenship, and the insecurity this causes, both jeopardizes a child's start in life and undermines their future.

¹⁴ See http://www.legislation.gov.uk/ukia/2016/33/pdfs/ukia_20160033_en.pdf

¹⁵ See <https://www.gov.uk/government/speeches/statement-from-the-new-prime-minister-theresa-may>

Conclusion:

Children's rights to British citizenship ought to be respected. These rights are not ones for the Home Office to sell, tax or deny by a prohibitive and profit-making fee, which the Home Secretary has rightly described as "huge". No child should be denied their British citizenship rights by a fee. Hence, the Project for the Registration of Children as British Citizens (PRCBC) and Amnesty International UK have called for:

- The removal of any element of the registration fee over and above the actual cost of administration
- The removal of the entire fee in the case of children in local authority care
- The introduction of a waiver of the fee in the case of any child who is unable to afford the administrative cost of registration

There is growing support for these calls:

The Mayor of London has called for the profit element of the fee to be abolished.¹⁶ Education leaders have publicly expressed their support for the calls made by PRCBC and Amnesty International UK.¹⁷ Local councils have passed motions calling for the same,¹⁸ and a similar motion has been tabled at this September's Trade Union Congress.¹⁹ There was widespread support expressed in the House of Lords in a debate on the fees in June.²⁰ The House of Lords Select Committee on Citizenship and Civic Engagement found there to be no justification for charging anything above the cost of administration and concluded that no fee at all should be charged children in local authority care or children living in the UK from birth.²¹

For further information, please contact:

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More detail is available from the joint briefing on citizenship fees:

https://prcbc.files.wordpress.com/2018/06/fees_briefing_revised_june_2018.pdf

A commentary upon the 1981 debates on the British Nationality Bill as these relate to children's registration and fees is available:

https://prcbc.files.wordpress.com/2018/08/commentary_hansard-bna-1981-registration_aug-2018.pdf

¹⁶ https://www.london.gov.uk/sites/default/files/final_social_integration_strategy.pdf

¹⁷ http://www.citizensuk.org/education_leaders_speak_out_on_huge_child_citizenship_fees

¹⁸ Harrow, Peterborough and West Sussex have each done so

¹⁹ A motion has been submitted by ACCORD

²⁰ On a regret motion moved by Baroness Lister, *Hansard* HL, 12 June 2018 : Col 791

²¹ <https://publications.parliament.uk/pa/ld201719/ldselect/ldcitizen/118/118.pdf>

Appendix – case studies

Case Study: Nat

Nat was born in the UK and has never been anywhere else. His entitlement to British citizenship arose under section 1(4) of the British Nationality Act 1981 when he reached the age of 10. His parents were able to raise £350 towards the fee (which at the time was £973). The remainder had to be paid by a supportive member of the public because Nat and his family were facing the prospect of being removed from the UK after they had been refused leave to remain and their appeal had been dismissed. At the time they were reporting every two weeks with the possibility of removal at any time.

Case Study: May & Heather

May was brought to the UK when she was two months old. She has never left the country. She was first taken into care when aged five. A full care order was made later.

May should have been registered as a British citizen under section 3(1) of the British Nationality Act 1981 during the time she was in care. She was not and lost the opportunity when she turned 18. May gave birth to Heather and was later granted indefinite leave to remain.

Heather was not born British because at her birth, her mother was neither British nor settled. Heather now has an entitlement to register as British under section 1(3) of the British Nationality Act 1981 because of the settled status her mother has acquired. But her mother cannot afford £1,012 to register her daughter.

Case Study: Fatima

Fatima was born in the UK, has never left and thought she was British. When she was 22, living with her daughter (aged one), the Local Authority said she had no right to benefits (because she had no right to be in the UK). It stopped her benefit and demanded she pay back earlier payments. She went into housing arrears and was threatened with eviction. Fatima was entitled to British citizenship under section 1(4) of the British Nationality Act 1981, but had to borrow urgently to pay the fee, then £1,121, thereby increasing her debts. She clearly felt embarrassed and wanted to resolve things as quickly as she could while revealing as little as she was able.

One remaining concern relates to her daughter. It was not possible to confirm from Fatima anything to establish whether her daughter was born British or may need to register under section 1(3) of the British Nationality Act 1981 at a further cost of £1,012.

Case Study: Nicky

Nicky was brought to the UK when aged 5 by her grandparent, who has since died. She is estranged from both parents, from whom she suffered several years of abuse and neglect. She was first taken into care when aged 9 and shortly thereafter the local authority applied for and were granted a full care order. In making the order, the Family Court ordered the local authority to apply to register Nicky under section 3(1) of the British Nationality Act 1981. Nicky will spend the remainder of her childhood in care and her future clearly lies in the UK. Yet, the local authority must pay the Home Office £1,012 to secure Nicky's future by registration of British citizenship.