



Amnesty International UK

Briefing for House of Lords debate on 19 November 2018:

Lord Hodgson of Astley Abbotts to move that this House takes note of the Report from the Select Committee on Citizenship and Civic Engagement *The Ties that Bind: Citizenship and Civic Engagement in the 21st Century* (HL Paper 118).

The Select Committee's report¹ opens by stating "*a primary objective*" to be that the UK is "*a country in which every one of its citizens feels secure, engaged and fulfilled... that they belong, and [to which] they can contribute.*"

Any such ambition is fundamentally undermined if the state fails or refuses to recognise the citizenship of some of its citizens or imposes barriers to their recognition. Yet this is precisely the position pursued by government, particularly the Home Office, in its treatment of the rights to British citizenship of thousands of children born and growing up in the UK.

Among the key steps that should be urged upon Ministers are:

- The removal of any fee above administrative cost for registration as a British citizen
- The exemption from any fee for registration of any child in local authority care
- The provision of a waiver of the fee for registration for any child unable to pay
- The introduction of legislation to remove the statutory good character requirement for registration
- Pending legislation, the amendment of guidance to Home Office decision-makers to ensure the statutory good character requirement is not applied in a way that makes no distinction between children and adults (thereby discounting children's best interests and specific rights to rehabilitation and reintegration)
- The need to actively promote, including by raising awareness, children's rights to British citizenship

Background

British citizenship was introduced by the British Nationality Act 1981 from its commencement on 1 January 1983. In 1981, Parliament debated at length and determined the question of who should be a British citizen and how that citizenship should be

¹ <https://publications.parliament.uk/pa/ld201719/ldselect/ldcitizen/118/118.pdf>

conferred. This followed a Labour government's Green Paper² and the then Conservative government's White Paper.³ The 1981 Act remains the primary legislative means by which citizenship of the UK is conferred. Every British citizen derives their citizenship from provisions of this Act.

More than three decades on, neither the citizenship rights then enacted nor the intention of Parliament in enacting these is respected in Home Office policy and practice. This lack of respect has especial importance in relation to the Committee's concerns, findings and recommendations. It constitutes the most basic of barriers to the realisation of any of the feelings of security, participation and belonging to which the Committee refers. Many children and young people, including many who are born in the UK and no know other place, are confronted by the sudden realisation that they are not recognised as citizens like their peers and, moreover, that the state is imposing barriers their peers do not face to that recognition of citizenship to which they are entitled. This also constitutes a profound challenge to their very identity. The Lord Alton has described this succinctly in a parliamentary debate on the Home Office fee for a child to register as a British citizen:

"...some of these children have no memory of any country other than this. Like yesterday's Windrush children, they simply assume that they are as British as their school friends. What a cruelty it is when they discover they are not and that they do not have the resources to do anything about it." (Hansard HL, 12 June 2018 : Vol 1660)

In this briefing we focus primarily on two of the key barriers imposed by the Home Office:

- The Home Office fee for registration as a British citizen
- The 'good character' requirement and its application in children's registration cases

Before addressing these two matters, it is first vital to distinguish registration and naturalisation in British nationality law. This distinction has long been and continues to be overlooked by many, including Ministers and officials, with disastrous consequences.

Registration and naturalisation are critically distinct:

Registration is the means selected by Parliament in the 1981 Act by which statutory entitlements to British citizenship are to be accessible and formally recognised. With one exception, each of the registration provisions in that Act provides for citizenship as the 'entitlement' of the person to whom the relevant provision applies.⁴

By contrast, naturalisation is the means by which an adult migrant to the UK may become a British citizen at the discretion of the Home Secretary.

The importance of this distinction was emphasised in 1981 by the then Home Secretary, the Rt Hon William Whitelaw, the then Lord Advocate, Lord Mackay of Clashfern, and then

² *British Nationality Law: Discussion of Possible Changes* (Cmnd. 6795), April 1977

³ *British Nationality Law: an Outline of Proposed Legislation* (Cmnd. 7987), July 1980

⁴ Provisions expressly relating to children born in the UK (but not British citizens by birth) are, e.g., each by statutory entitlement.

Minister of State at the Home Office, Timothy Raison. William Whitelaw expressly distinguished registration from naturalisation in emphasising the former provisions as providing for entitlements.⁵ Lord Mackay and Mr Raison each stressed the importance of 'entitlement' in this context when introducing an amendment to the bill to make clear that entitlements would obtain immediately that the conditions in the Act were met and were not dependent on the Home Secretary being satisfied of those conditions.⁶

More recently, the importance of this distinction has been lost in Home Office policy and practice; and in parliamentary scrutiny of that policy including government legislation on fees and the good character requirement. This oversight has done and continues to do real harm and injustice.

Home Office fee for registration as a British citizen:

In 1983, the fee for a child to register her, his or their entitlement to British citizenship was £35.⁷ Then, as now, this right to registration applied both to children born in the UK and to children brought to the UK at a young age; children who grow up here knowing little or nothing about any other place. This right for children to register as British citizens was especially important as the 1981 Act removed from UK law the principle whereby someone would acquire citizenship automatically by birth on the territory.

Parliament was very concerned that children with as much connection to the UK as any of their peers should not grow up without the citizenship that their peers possessed. The race relations impact if this were to result were emphasised in the debates.⁸ Registration was for these reasons considered vital. As the Minister emphasised to be a "*fundamental position*" in 1981 in explaining the purpose behind registration provisions for children:

"...it is extremely important that those who grow up in this country should have as strong a sense of security as possible." (Hansard HC, 24 February 1981: Col 177)

Yet in 2007,⁹ the nature of the fee regime was fundamentally changed with no reflection upon either the original intention of Parliament in legislating for registration rights; the vital distinction between registration and naturalisation; or the best interests of the children to be affected. From that time, the Home Office has charged above the administrative cost of registration.

⁵ Hansard HC, 2 June 1981 : Col 855

⁶ Hansard HL, 6 October 1981: Col 36; HC, 27 October 1981 : Col 728

⁷ See scale of fees in Annex D to chapter 6 of the Nationality Instructions:

<http://webarchive.nationalarchives.gov.uk/20170622005738/https://www.gov.uk/government/publications/c-hapter-6-information-about-applications-for-british-citizenship-nationality-instructions>

⁸ Hansard HC, 24 February 1981 : Col 177

⁹ 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.

Currently, the fee stands at £1,012 for a child to register as a British citizen.¹⁰ The Home Secretary correctly describes this as “*a huge amount*”¹¹ but continues to charge it despite it being an impossible barrier to many children. The injustice of this barrier is exacerbated by its inevitable discriminatory impact upon children by reason of their relative socio-economic status.

It is within the power of the Home Secretary to correct this. Registration fees should not be set at above administrative cost and children in care or unable to pay the administrative fee should benefit from exceptions or waivers to the fee. Each of these can be achieved by the making of regulations; and the Home Secretary should do so.

Home Office application of ‘good character’ requirement:

In 1983, the legislation included a good character requirement for naturalisation,¹² not for registration. The reason for this difference was implicit in the intention and purpose in providing for registration by entitlement. Parliament’s express desire was that all children born and growing up in the UK should be equally recognised as British citizens. That would not be achieved by a statutory regime allowing for two children growing up in the UK, equally connected to the UK, to be distinguished by making the citizenship of one of these children dependent on her, his or their good character.

Government legislation passed by Parliament in 2006,¹³ however, has established this very distinction between children, blocking some children born and growing up in the UK from the citizenship that was intended to be their statutory right. In introducing this legislation, Ministers described what was being done as bringing registration into line with naturalisation – thereby exposing their failure to understand or recognise how and why these were clearly distinguished by Parliament in 1981.

The statutory good character requirement now applies to registration by anyone aged 10 years or above. Children who have committed offences, including children given police cautions, are effectively deprived of their citizenship rights by the Home Office application of this requirement. The injustice of this is exacerbated by its unequal impact in disproportionately affecting black and minority ethnic children, and children in care, being those children most likely to come to the attention of the criminal justice system. This is compounded by the barrier to rehabilitation and reintegration created by denying children their rights to citizenship.¹⁴

It is within the power of the Home Secretary to mitigate some of this injustice. While Parliament should act to remove the good character requirement for registration from the

¹⁰ The Immigration and Nationality (Fees) Regulations 2018, SI 2018/330, Schedule 8, paragraph 2 (Table 19)

¹¹ Before Home Affairs Committee (Q276), 15 May 2018, transcript available at:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/homeaffairscommittee/windrush-children/oral/82932.html>

¹² British Nationality Act 1981, Schedule 1, paragraphs 1(1)(b) and 3(e)

¹³ Section 58, Immigration, Asylum and Nationality Act 2006; now replaced by section 41A, British Nationality Act 1981 as inserted by section 47(1), Borders, Citizenship and Immigration Act 2009

¹⁴ This conflicts with the UK’s international law duties under the 1989 UN Convention on the Rights of the Child, in particular Articles 3(1) and 40(1)

statute book, thereby restoring the 1981 Act to its original position, the Home Secretary is empowered to amend his department's current application of the requirement to children in the same way as it is applied to adults. As long ago as July 2017, the Home Office accepted a recommendation of the Independent Chief Inspector of Borders and Immigration to do so yet that has not been acted upon.¹⁵

Conclusions:

The Committee's concern to ensure all citizens of the UK feel secure and share in their sense of belonging and capacity to engage in civic life are fundamentally undermined by the Home Office treatment of children's citizenship rights. Children and young people are growing up deprived of the very citizenship which Parliament intended, in making British nationality law, they should have.

The two barriers we have highlighted are not the only ones the government needs urgently to address. As the Project for the Registration of Children as British Citizens (PRCBC) identified in its written evidence to the Committee,¹⁶ other barriers to the recognition of children's citizenship need to be addressed by active and effective promotion of children rights to register as British citizens; provision of legal aid to assist children and young people in exercising these rights; and a change of practice at the Home Office to ensure that unnecessary and inappropriate evidential hurdles are not placed in their way.

In highlighting the vital importance of citizenship, it is no less important that Parliament recognises and addresses the barriers to citizenship rights that affect so many children. These continue along with their consequences into children's adult lives. This is all the more urgent given the inequality inherent in the impact of these barriers; and the intergenerational consequences to children of these children, many of whom will in turn be born without the citizenship of the country precisely because their parents have been effectively and unjustly deprived of that citizenship before them.

For further information, please contact:

- Solange Valdez-Symonds, Director, Project for the Registration of Children as British Citizens (PRCBC), prcbc2013@aol.com
- Steve Valdez-Symonds, Refugee and Migrant Rights Programme Director, Amnesty International UK, steve.valdez-symonds@amnesty.org.uk

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 concise leaflet produced by the Project for the Registration of Children as British Citizens (PRCBC) on children's citizenship rights is available on request and/or online at:

https://issuu.com/prcbc/docs/british_citizenship_claims

¹⁵ <https://www.gov.uk/government/publications/home-office-response-to-the-report-a-short-inspection-of-the-home-offices-application-of-the-good-character-requirement-in-the-case-of-young-persons>

¹⁶ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/citizenship-and-civic-engagement-committee/citizenship-and-civic-engagement/written/69670.html>