



Amnesty International UK



## **Briefing: Children's rights to British citizenship blocked by good character requirement**

17 January 2019 <sup>1</sup>

### **Summary**

This briefing concerns the good character requirement that is applied to people from the age of 10 years for the registration of statutory rights to British citizenship. The requirement has wrongly blocked hundreds of British children from affirming their rights to British citizenship, and the security and sense of belonging that comes with it.<sup>2</sup> Black and minority ethnic children and children in care are significantly more likely to be denied their British citizenship rights by this requirement, which was introduced into British nationality law by the Immigration, Asylum and Nationality Act 2006 without examination of the impact it would have on children or the imperative reasons why it was not included when Parliament passed the British Nationality Act 1981.

**The good character requirement for registration should be removed from the legislation. British children should not be denied their citizenship by this provision. Parliament's original intentions in 1981 should be fulfilled.**

### **What is the issue?**

Children as young as 10, born in the UK or brought to the UK at a young age, are blocked from affirming their rights to British citizenship because the Home Office considers them not to be of good character.

### **Who are the children affected?**

The children affected are:

- born and grown up in the UK, but who did not acquire British citizenship at the time of their birth because neither of their parents was British or settled in the UK (i.e. had indefinite leave to remain or permanent residence); or
- brought to the UK at a young age and grown up here.

From the taking effect of the British Nationality Act 1981 on 1 January 1983, British citizenship is acquired by birth in the UK only if at birth one of the parents is a British citizen or settled in the UK.<sup>3</sup> Other children born in the UK are entitled to register as British citizens in prescribed circumstances – including where one of their parents later becomes settled or British<sup>4</sup> or where they live in the UK

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<sup>1</sup> The first version of this briefing was issued on 19 November 2018

<sup>2</sup> FOI reference 48471, 24 July 2018 and FOI reference 41876, 6 December 2016 establish that 517 children have been refused citizenship on good character grounds since its introduction up to July 2018.

<sup>3</sup> Section 1(1), British Nationality Act 1981

<sup>4</sup> Section 1(3), British Nationality Act 1981

for the first ten years of their lives.<sup>5</sup> Children who grow up in the UK having been brought here at a young age can also be registered as British citizens.<sup>6 7</sup>

Increasing evidence from lawyers dealing with the registration of British children together with the experience of the Project for the Registration of Children as British Citizens (PRCBC) suggests that black and minority ethnic children, and children in care, are significantly more likely to be affected by the good character requirement.<sup>8</sup> This reflects Parliament's original concern that ensuring these children's British citizenship was necessary for good race relations;<sup>9</sup> and is consistent with other findings about the disproportionate impact of the criminal justice system on these children.<sup>10</sup>

### **What is the good character requirement?**

There is no statutory definition of good character, which is left to the Home Secretary to assess. When the British Nationality Act 1981 was first passed, it only applied the requirement to adult migrants seeking to naturalise. As explained in this briefing, the requirement has much later become unjustly introduced to the registration of children born and growing up in the UK. It wrongly prevents British children, who come to the attention of the criminal justice system, from registering their rights to British citizenship.

The injustice is compounded because the guidance document, on which the Home Secretary continues to rely in applying the good character requirement, is guidance prepared for claims by adult migrants seeking to naturalise. This is despite the Independent Chief Inspector of Borders and Immigration recommendation that guidance be produced specific to children exercising rights to register as British citizens.<sup>11</sup> That recommendation was accepted by the Home Office in July 2017<sup>12</sup>, but no action was taken until revised guidance was published in January 2019.<sup>13</sup>

Even after such a long delay, the revision is superficial and of little, if any, value to the children affected.<sup>14</sup> It also fails to recognise the specific statutory rights to registration possessed by these children and their distinction from naturalisation. Separate guidance ought to be provided on registration of British citizenship with particular attention to how to give effect to the best interests

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<sup>5</sup> Section 1(4), British Nationality Act 1981

<sup>6</sup> Section 3(1), British Nationality Act 1981

<sup>7</sup> Children's rights to British citizenship are more fully explained in this PRCBC leaflet:

[https://issuu.com/prcbc/docs/british\\_citizenship\\_claims](https://issuu.com/prcbc/docs/british_citizenship_claims)

<sup>8</sup> This was reported in *The Guardian* in October 2018: <https://www.theguardian.com/uk-news/2018/oct/18/mps-urged-to-scrap-child-citizenship-good-character-test>

<sup>9</sup> *Hansard* HC, 24 February 1981: Col 177 *per* Mr Timothy Raison, Minister of State, Home Office

<sup>10</sup> See, e.g., the report of the Lammy Review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/643001/lammy-review-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf)

<sup>11</sup> ICIBI report "A short inspection of the Home Office's application of the good character requirement in the case of young persons who apply for registration as British citizens", published in July 2017:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/631625/A-short-inspection-of-the-Home-Office---s-application-of-the-good-character-requirement1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631625/A-short-inspection-of-the-Home-Office---s-application-of-the-good-character-requirement1.pdf)

<sup>12</sup> Home Office response to the Independent Chief Inspector's report, July 2017:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/628102/HO\\_Response\\_-\\_Good\\_Character\\_Requirement\\_-\\_July\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/628102/HO_Response_-_Good_Character_Requirement_-_July_2017.pdf)

<sup>13</sup> Home Office 'Nationality: good character requirement' guidance, 14 January 2019:

<https://www.gov.uk/government/publications/good-character-nationality-policy-guidance>

<sup>14</sup> Reported in *The Guardian* on 15 January 2019: <https://www.theguardian.com/uk-news/2019/jan/15/updated-uk-child-citizenship-good-character-test-still-poor-say-campaigners>

of children when deciding registration claims. However, this would still be insufficient to meet the original and imperative intention of Parliament that British children should not be denied their citizenship on any character grounds.

### **The distinction between registration and naturalisation**

Parliament selected registration as the means to ensure recognition of the citizenship of all British children, equally or similarly connected to the UK.<sup>15</sup> Naturalisation is the means by which an adult migrant to the UK may, at the discretion of the Home Secretary, be made a British citizen.

As the then Home Secretary, William Whitelaw, expressly emphasised in 1981, these provisions are not equivalent.<sup>16</sup> The one (registration) provides for the formal recognition of established connection to the UK to meet parliament's original intention that everyone with such connection should have the security of their country's citizenship. The other (naturalisation) provides discretion to the Home Office whereby adults with prior connection to other countries may be given citizenship following their migration to the UK.

### **When and why was the good character requirement introduced for children?**<sup>17</sup>

When the British Nationality Act 1981 first took effect, it did not make the rights of children to register as British citizens subject to any good character requirement. The requirement was extended to registration of British citizenship, by children and adults, in December 2006 by section 58 of the Immigration, Asylum and Nationality Act 2006.<sup>18</sup> The primary reason given was to bring registration into line with naturalisation. In doing this, Ministers and Parliament neglected the original intention behind the 1981 Act and the important distinction between registration and naturalisation, which Parliament recognised when passing that Act.

### **What was Parliament's intention in passing the British Nationality Act 1981?**<sup>19</sup>

The British Nationality Act 1981 was made to remove, among other things, from UK law the principle whereby nationality was acquired automatically by being born on the territory.<sup>20</sup> Parliament intended to replace this with a principle whereby citizenship would be acquired on the basis of close connection to the UK. From the commencement of the Act on 1 January 1983, a child born in the UK is only born a British citizen if one of her or his parents is a British citizen or settled in the UK (i.e. has indefinite leave to remain or permanent residence).

Parliament expressly intended, however, to ensure that children born and growing up in the UK should be recognised as British citizens along with their peers.<sup>21</sup> Parliament, therefore, enacted provisions for these children to register as British citizens by entitlement. Parliament also retained

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<sup>15</sup> Other entitlements to British citizenship are secured by registration such as provisions in British nationality law intended to mitigate or correct historical injustice and discrimination that has previously denied people citizenship (e.g. in circumstances where mothers have been prevented from passing on their citizenship to their children in circumstances where fathers could do so).

<sup>16</sup> *Hansard* HC, 2 June 1981 : Col 855

<sup>17</sup> For more information about the good character requirement, see:

<https://prcbc.files.wordpress.com/2018/11/legal-opinion-good-character-rt-for-public.pdf>

<sup>18</sup> It has since been consolidated as section 41A, British Nationality Act 1981 by section 47(1), Borders, Citizenship and Immigration Act 2009.

<sup>19</sup> For more information on Parliament's intention in passing the 1981 Act, see:

<https://prcbc.files.wordpress.com/2018/09/commentary-hansard-bna-1981-registration-aug-2018.pdf>

<sup>20</sup> This principle is known as *jus soli* and was the key principle in British nationality law prior to the taking effect of the British Nationality Act 1981.

<sup>21</sup> *Hansard* HC, 26 February 1981: Col 221; 24 February 1981: Col 186 *per* Mr Timothy Raison, Minister of State, Home Office

the general discretion for the Home Secretary to register a child as British so that children living in the UK from a young age would not be excluded from the country of their home.

### **What are the consequences to these children of their citizenship being blocked?**

Blocking statutory rights to citizenship of children who grow up in this country deprives them of the very security, sense of belonging and respect that parliament intended should be ensured for them by registration rights in the British Nationality Act 1981. Children, who are as British as their peers, are thus denied formal recognition by the state, and thereby society at large, of their connection to the UK, their home country.

The practical consequences are potentially dramatic and severe. Being barred from citizenship makes these children subject to Home Office immigration powers. They are put at risk of all the things that have happened to the Windrush generation, including being expelled from their home country to places they do not know. This could happen to them at any time of their lives. They may also be excluded from various services and opportunities such as to work, rent accommodation, receive healthcare or social welfare, or access higher education.

### **What of the best interests of children?**

Excluding children from the citizenship of the country of their home, and the only country they know, is not in the best interests of any child. It impedes the rehabilitation and reintegration of children caught up in the criminal justice system. Depriving them of their citizenship rights also imposes a double punishment upon them, one not imposed on their peers.

It is significant that at the time the good character requirement was extended to children's registration, the UK still maintained a nationality reservation to the 1989 UN Convention on the Rights of the Child. That reservation was not withdrawn until November 2008; and the following year Parliament legislated by the Borders, Citizenship and Immigration Act 2009 to impose a duty on the Home Secretary to ensure children's welfare.

### **What should be done?**

The application of the good character requirement to rights to register British citizenship should be removed from the legislation. The position that no such requirement be applied to registration, established when the British Nationality Act 1981 was passed, was a just one. It enabled all children closely connected to the UK to share the security and sense of belonging provided by British citizenship. It should be restored in the interests of the fair and equal treatment of these children and to uphold adult society's duties to children in domestic and international law.

### **Casestudies**

**J (aged 15):** He was born in the UK. He has learning difficulties and hearing problems. He was brought by his mother; and has had no contact with his father. He has no status in the UK, although he became entitled to register as a British citizen on his tenth birthday. He has two referral orders (for theft and robbery). He cannot afford the fee to register as a British citizen and, even were the fee to be paid, he is at risk of being refused his citizenship rights on good character grounds.

**V (Aged 15):** He was born in the UK. He has been a looked after child from aged 1, and is living with foster parents. His father became settled after his birth. At that time, he became entitled to register as a British citizen. He also has an entitlement to register after living in the UK for the first ten years of his life. His registration of British citizenship was refused because he had a caution. Following that refusal, he has been given a referral order.

**N (Aged 14):** N was born in the UK. He suffers from attention deficit hyper-activity disorder (ADHD). He became entitled to register as a British citizen on his tenth birthday. He was brought up by his mother, though with some contact with his father who has recently become settled. His father's becoming settled also provides N with an entitlement to register. He was refused registration of British citizenship because he had a referral order following a school fight.