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Briefing for Parliamentarians on Home Office Fees for children registering as British citizens, March 2019

Recommendations

- The profit element should be removed from children's registration fee in all cases, including where their right to register continues into adulthood. Children should not be prevented from registering as British simply because they cannot afford it.
- Children who cannot afford the fee should be granted a waiver of the entire fee.
- Where a child in the care of a local authority, there should be a fee exemption. This would prevent the shifting of costs from central to local government.

Children's legal rights to British citizenship

Under the British Nationality Act 1981, a child is a British citizen by birth if born in the UK to a mother or father who is a British citizen or is settled¹ in the UK. Other children born in the UK have a right to register as British if:

- (a) either of the child's parents become British or settled, or
- (b) if the child was born and remains stateless and has completed 5 years of continuous residence, or
- (c) if the child spends the first 10 years of their life in the UK, subject to provision about absences.

The right is lost in the first of these scenarios if the child does not apply to register before turning 18. In the second scenario, turning 22 is the cut-off point. In the third scenario, no cut off point applies, and the child may register at any age. These rights to British citizenship were established by Parliament expressly to mitigate the effect of removing birthright citizenship (*jus soli*) from

¹ Settled means having indefinite leave to remain or permanent residence

British nationality law by the 1981 Act. Parliament intended to ensure this change did not lead to a situation in which some children born and connected to the UK grow up here excluded from citizenship and the security it provides. Children not born in the UK may apply to register as British at the discretion of the Secretary of State, who considers factors such as future intentions and length of residence.²

Home Office Fees and the profit element

The Home Office currently charges the considerable fee of 1,012³ for children's registration, of which £372 is said to constitute the administrative cost and £640 is profit to the Home Office.⁴ Once the child turns 18 the adult fee is £1,206 (including £80 for a citizenship ceremony). While the Home Secretary has described this amount as 'huge',⁵ he has chosen to maintain the fee at this level in making his most recent fees regulations.⁶ The Home Office claims this profit-making is justified by the 'benefit' of a successful application. In the case of children who are already entitled to register as citizens, the Home Office is, in effect, seeking to sell something to children who are already entitled to it by Act of Parliament. That these rights to register as a British citizen were entitlements given by Parliament with the role of the Home Office being merely to formally recognise and record the child's citizenship was emphasised by the original parliamentary debates and Ministerial statements when the British Nationality Act was passed in 1981.⁷

The Home Secretary has powers to provide for fee exemptions, waivers and refunds.⁸ To date neither he nor his predecessors have exercised these powers in respect of children's citizenship registration cases.⁹ His failure to exercise these powers is in complete disregard of his duty under international law¹⁰ to ensure he gives primary consideration to the best interests of the child in

² The legal rights summarised here are contained in sections 1(1), 1(3), section 36 (paragraph 3 of Schedule 2), sections 1(4) and 3(1) of the British Nationality Act 1981 respectively. From aged 10, good character is a mandatory consideration in all citizenship applications, save for registration under section 36 of the Act based on statelessness.

³ The Immigration and Nationality (Fees) Regulations 2018, SI 2018/330

⁴ See Table of Fees and Unit Cost – April 2019 at <https://www.gov.uk/government/publications/visa-fees-transparency-data>

⁵ Oral evidence to Home Affairs Committee, *Windrush Children*, 15 May 2018, HC 990, Q276

⁶ The Immigration and Nationality (Fees) (Refund, Waiver and Amendment) (EU Exit) Regulations 2019, SI 2019/475

⁷ PRCBC's research and commentary on the 1981 parliamentary debates confirms this: https://prcbc.files.wordpress.com/2018/11/commentary_hansard-bna-1981-registration_aug-2018.pdf

⁸ Section 68 Immigration Act 2014.

⁹ Home Office response to FOI request (reference 41228) 31/10/2016.

¹⁰ Articles 3, 7, 8 of 1989 UN Convention on the Rights of the Child and Article 1 of the 1961 Conventions relating to statelessness.

exercising his nationality functions. This duty is supported in domestic law by the duty to consider the need to safeguard and promote the welfare of children in the UK¹¹ and to ensure respect for the child's private and family life.¹²

Importance of British citizenship for children living in the UK

Without British citizenship, a person is subject to immigration control and their entitlement to stay is dependent on Home Office permission. This affects tens of thousands of children born in the UK and many others who have lived here from a very early age. Citizenship affects private life at every level. On a legal level, it means freedom from immigration control and is the most protected status a person, whether child or adult, can have. It means a child can travel abroad to visit a sick relative or on a school trip, and, later on, can prove their entitlements to such things as work, to rent a home, pay home fees for higher education as well as access student loans, healthcare, and social support, without anyone questioning their rights to these. Citizenship also enables full participation in the public life of both local and wider community, e.g. the right to vote and to stand in local and parliamentary elections and can be passed on to a person's child. It also forms part of a person's identity and can represent a sense of physical, psychological and social belonging, of having a home in the world. The importance of this link between identity and citizenship is recognised in Articles 7 and 8 of the UN Convention on the Rights of the Child. For children with strong ties to the UK through birth and/or long residence, registering as British provides a public confirmation of their belonging to the place they already know and facilitates further integration into the community of which they are already a part and to which they are already contributing (at school or college, in faith communities, friendship networks, etc.). Without citizenship, children may be at risk of detention, removal or exclusion, and, once they reach 18, will face innumerable obstacles to progressing their lives.

Children's right to citizenship may in some cases be derived from the status of a parent. However, their right is not dependent on their parent.

Impact on Children of Home Office profit-making fees

The fees represent an often-insuperable obstacle to a child acquiring citizenship. They are prohibitively expensive for parents on low incomes and young people on no income; many simply

¹¹ Section 55 Borders, Citizenship and Immigration Act 2009

¹² Article 8 of 1950 European Convention on Human Rights.

cannot afford the fee. Some local authorities with care of a child are unwilling to pay the fee, perhaps because of pressure on budgets.¹³ In practice, the fees prevent children acquiring the citizenship to which they are entitled purely because of lack of funds. This is clearly not in the child's best interests, whether they have a right to register or are asking for discretionary registration and has an adverse impact on children's welfare. Not only does it interfere with their personal, educational and social development, but it can also adversely affect their physical and mental health. Blocking children's development and progression into adulthood and integration into British society in this way comes at a cost – to the child personally but also ultimately to the whole of society. It is unjust that a government department is either profiting from children exercising their legal right to register or effectively withholding citizenship because of the barrier of exorbitant fees.

House of Lords Select Committee on Citizenship and Civic Engagement

The Committee considered the question: *"how can an environment be created in which everyone feels a sense of belonging to the country of which they are a citizen, with a stake in it and a responsibility towards it?"*¹⁴ While they did not generally address registration of British citizenship, they did consider the fee. They concluded there was no justification for charging above the administrative cost for a child to register; and recommended the fee be waived entirely for children in local authority care and children who had spent their entire lives in the UK.¹⁵

Case examples

E was born in the UK, has lived here all her life and is now 19. Her home, friends and future are in the UK, but she is not a British citizen because, at her birth, neither of her parents was British or settled. E has been entitled to British citizenship since she was 10 but the local authority who became responsible for her wrongly assumed she was already British. It was not until she was a young adult that her status was called into question. E cannot afford the adult fee of £1,206. The local authority still assisting her is not willing to pay the fee. As a result, E is stuck, unable to move forward with her life.

¹³ <http://www.local.gov.uk/documents/10180/5854661/Under+pressure.pdf>

¹⁴ *The Ties that Bind: Citizenship and Civic Engagement in the 21st Century*, Report of Session 2017-19, HL Paper 118, April 2018

¹⁵ Paras. 491 & 492 *op cit*

ML was born in the UK to a Polish mother and British father. He is now aged 10. At the time of his birth, his mother was married to another man, who is neither British nor settled. That other man is, therefore, under British nationality law considered to be the father. He can register by entitlement under section 1(4) of the British Nationality Act 1981 (having lived in the UK for his first 10 years). He can also be registered under section 3(1) at the discretion of the Home Secretary as a remedy for the injustice by which he did not acquire the British citizenship of his natural father at the time of his birth. He now has no contact with either his natural father or his mother's then husband. His mother cannot afford the fee to register him as a British citizen.

A comprehensive Briefing on these issues is available [here](#)

PRCBC's leaflet on 'Children and their Rights to British Citizenship' is available [here](#)

Further information on these matters is available from Solange Valdez-Symonds, Project for the Registration of Children as British Citizens (PRCBC)

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