



Amnesty International UK

Briefing on Fees for the Registration of Children as British Citizens 25 March 2019¹

On 7 March 2019, the Home Secretary laid before Parliament the Immigration and Nationality (Fees) (Refund, Waiver and Amendment) (EU Exit) Regulations 2019, SI 2019/475. The Home Secretary could have taken the opportunity to address the concerns set out in this briefing, and his own expressed concern that the fee for children to register their right to British citizenship is “*huge*.”² However, he chose not to do so and from 29 March 2019 the fee is set to remain at £1,012. The many children whose rights to citizenship will continue to be blocked or impeded by this excessive fee include the children of EU citizens.³

Children’s rights to British citizenship are summarised in the Project for the Registration of Children as British Citizens (PRCBC)’s leaflet, last updated March 2019.⁴

This Briefing concerns the charging of fees for children to register as British citizens.⁵ It concerns cases of children:

- registering their entitlement to British citizenship under the British Nationality Act 1981; or
- seeking registration as British citizens by discretion of the Secretary of State under section 3(1) of that Act.

These matters were debated in 2016 in the House of Lords at Committee and Report stages of the passage of the Immigration Act 2016.⁶ The Project for the Registration of Children as British Citizens (PRCBC) and Amnesty International UK supported the Lord Alton of Liverpool and the Baroness Lister of Burtersett in leading these debates. So far as PRCBC and Amnesty

¹ The first version of this briefing was issued on 28 September 2016, with revisions on 1 January 2017, 8 April 2017, 30 March 2018 and 4 June 2018

² Oral evidence of Rt Hon Sajid Javid to Home Affairs Committee, 15 May 2018, HC 990, Q276

³ That is children of parents who are citizens of European Economic Area countries or Switzerland or their family members in the UK.

⁴ <https://prcbc.files.wordpress.com/2019/03/children-and-their-rights-to-british-citizenship-march-2019.pdf>

⁵ For a basic introduction to children’s British citizenship claims, see

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

⁶ <http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160203-0002.htm#16020378000169>

and <http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160321-0004.htm#16032216000138>

UK are aware, this constituted the first time parliament had given significant consideration to the fee applying to children's registration since the British Nationality Act 1981 came into effect on 1 January 1983,⁷ at which time the fee was £35.⁸ It was last raised on 6 April 2018 and is currently £1,012.⁹

This Briefing closes with recommendations in respect of the charging of this fee. In short:

- the profit-making aspect of the fee should be removed;
- a power to waive the fee should be adopted; and
- no fee should be charged in the case of a child assisted by a local authority.

Introduction

An estimated 120,000 children are in the UK, many of whom were born here, with neither British citizenship nor immigration leave to enter or remain.¹⁰ Many of these children are entitled to British citizenship, and others may apply to be registered as British by discretion. Some of these children may be stateless.¹¹ Several other children with immigration leave – including many granted periods of leave for 30 months at a time – are also entitled to British citizenship or entitled to apply for to be registered as British citizens by discretion. There are also many children of EU citizens who are either entitled to British citizenship or have the right to apply to be registered by discretion.

These rights are of importance to children as British citizenship provides a certainty concerning their future that immigration leave, whether temporary or indefinite, cannot provide; including rights to a British passport, freedom from immigration control and intangible rights concerning identity and security.¹² This includes the provision of a status which – while it may in some cases (far from all) be derived from that of a parent – is independent of the parent's status.¹³ As the guide to completing application form MN1 (a form by which a child may seek to register) states:

British citizenship gives them the opportunity to participate more fully in the life of their local community as they grow up.

⁷ The matter was raised by Keir Starmer MP in the House of Commons in debate on the Immigration and Nationality (Fees) Order 2016 (*Hansard* HC, 2 Feb 2016: Column 5), but the Minister's response referred neither to the specific fee nor to children. The debate is available at:

[http://hansard.parliament.uk/Commons/2016-02-02/debates/67ae94df-8d31-41cd-aa6d-0161d7a02b35/ImmigrationAndNationality\(Fees\)Order2016?highlight=immigration%20nationality%20fees%20order#contribution-16020337000005](http://hansard.parliament.uk/Commons/2016-02-02/debates/67ae94df-8d31-41cd-aa6d-0161d7a02b35/ImmigrationAndNationality(Fees)Order2016?highlight=immigration%20nationality%20fees%20order#contribution-16020337000005)

⁸ 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/chapter-6-information-about-applications-for-british-citizenship-nationality-instructions>

⁹ The fee for an adult to register their entitlement to citizenship is £1,206.

¹⁰ http://www.compas.ox.ac.uk/media/PR-2012-Undocumented_Migrant_Children.pdf

¹¹ Distinct provision for the registration of a stateless child as a British citizen is provided by section 36 and Schedule 2 of the British Nationality Act 1981 (though in individual cases it is important to recall that a stateless child may have an alternative entitlement to register under other provisions of the Act).

¹² See <https://prcbc.wordpress.com/what-we-do/>

¹³ This may be a significant matter where a parent is subject to a deportation order as a consequence of which a non-British child may also be subject to deportation under section 3(5)(b) of the Immigration Act 1971.

However, particularly over recent years, the charging of fees has become one of the chief impediments preventing children exercising their entitlement. Research conducted by PRCBC found such impediments to be systemic.¹⁴ Four case studies are appended to this Briefing.

The application and escalation of the fees charged to children have proceeded without consideration of substantial distinctions, in particular those between:

- nationality and immigration law and policy;
- adults and children; and
- registration by entitlement and registration by discretion.

In failing to consider or apply these distinctions, the Secretary of State has essentially assumed the power and propriety of charging children fees that have become exorbitantly and prohibitively high. From 29 March 2019, the registration charge for children remains £1,012¹⁵, of which £372 is said to constitute the cost of administration and £640 is profit to the Home Office.¹⁶ The escalation in the fee over the years has largely and inappropriately mirrored the escalation in fees for adult naturalisation and for settlement application.¹⁷ Prior to 2007, fees were set by regulations specific to nationality applications – British Nationality (Fees) Regulations. From 2007, the regulations concerning charges for immigration and nationality applications were combined – Immigration and Nationality (Fees) Regulations.¹⁸ It was these regulations that first introduced a fee which included a profit element over and above the administrative cost.¹⁹ Over the seven years up to and including 2016/17, in only one year was the total income from all British citizenship fees (that is children’s registration, adult’s registration and naturalisation) below £100 million. For the year 2016/17, the total income was £136.6 million.²⁰

Such high fees are incompatible with parliament’s intention in legislating to preserve both:²¹

- the entitlement to British citizenship of certain groups of children born in the UK; and
- the means whereby other children whose future clearly lies in the UK may become British citizens even though not born here.

¹⁴ See PRCBC report, *Systemic obstacles to children’s registration as British citizens, November 2014*, at <https://prcbc.files.wordpress.com/2015/08/systemic-obstacles-on-the-registration-of-children-as-british-citizens.pdf>

¹⁵ The Immigration and Nationality (Fees) Regulations 2018, SI 2018/330, as amended by the Immigration and Nationality (Fees) (Refund, Waiver and Amendment) (EU Exit) Regulations 2019, SI 2019/475

¹⁶ See transparency data at <https://www.gov.uk/government/publications/visa-fees-transparency-data>

¹⁷ *op cit*

¹⁸ See 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>

¹⁹ The Immigration and Nationality (Fees) Regulations 2007, SI 2007/1158 introduced a fee of £400 for the registration of a child as British.

²⁰ Information on citizenship fees income was disclosed in a November 2017 response to a freedom of information request (ref. 43119) made by George Greenwood, BBC reporter and investigations producer

²¹ Parliament’s intention is revealed by the Ministerial statements given during the passage of the British Nationality Act in 1981, on which see PRCBC’s commentary: https://prcbc.files.wordpress.com/2018/11/commentary_-hansard-bna-1981-_registration_aug-2018.pdf

Nor are these fees compatible with the domestic and international duties by which the Secretary of State is bound to give primary consideration to children's best interests and ensure their safety and promote their wellbeing.

As discussed in this briefing, the impact of these fees on children and their citizenship rights has not been assessed. Yet the fees are explicitly used to cross-subsidise immigration applications. The Minister, Baroness Manzoor, confirmed this in responding to a question about the children's registration fee in October 2018 where she sought to justify the high fee as necessary for contributing to the subsidising of visitors' visas and applications of EU citizens under the Home Office settled status scheme.²² At the time, the fee for the latter applications had been set at £65 but it has since been confirmed that these will be free and anyone who has already paid the fee will be reimbursed. This is expressly stated as intended to ensure there is no financial barrier to EU citizens securing indefinite leave to remain.²³ Many of the children born in the UK to EU citizens will have statutory entitlements to British citizenship. A financial barrier is, therefore, maintained for children, who are charged far above the administrative cost of registering their statutory entitlement, to subsidise immigration applications.

The following sections address these various matters further under discrete subheadings:

- Fee charging powers
- Nationality law: distinct from immigration law and policy
- Children's entitlement to British citizenship
- Children's registration as British citizens at discretion
- Secretary of State's duties to children
- Conclusions
- Recommendations

Fee charging powers²⁴

Section 68 of the Immigration Act 2014 provides the power to charge a fee.²⁵ The section sets out additional powers permitting fee waiver, exemption and reduction, and bases for charging above the cost of administration. On the face of the section, the various powers relate equally to immigration and nationality functions.

Nonetheless, section 68 does not require the Secretary of State to impose a fee, to set it at a particular level or to make no provision for a waiver or exemption. The distinctions highlighted in this Briefing still fall to be considered by the Secretary of State in exercising his fee making powers. There is nothing in the Immigration Act 2014 to indicate parliament intended or permitted the Secretary of State to disregard such matters – including distinctions

²² *Hansard* HC, 23 October 2018 : Columns 764-765

²³ *Hansard* HC, 21 January 2019 : Column 28, *per* Rt Hon Theresa May, Prime Minister

²⁴ Fee charging powers are now contained in the Immigration Act 2014 as discussed in this section. Previously, they were to be found in section 42 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (as amended by section 20 of the UK Borders Act 2007) and sections 51 & 52 of the Immigration, Asylum and Nationality Act 2006.

²⁵ Section 68 provides powers for the Secretary of State to specify maximum (and minimum) amounts for immigration and nationality fees by order and to set fees by regulations. Section 74(2)(j) provides that an order must be approved by Parliament, whereas section 74(4) provides that regulations are subject to the possibility of annulment by resolution of either House of Parliament.

in primary legislation (see below), and international and statutory duties to children – in setting fees. Indeed, section 71 of that Act expressly states that the statutory duty to safeguard and promote the welfare of children²⁶ is in no way limited by anything in the Act. The High Court has confirmed the need for the Secretary of State to consider his duties to children in registration cases.²⁷

Section 68(10) empowers the Secretary of State to make provision for exemptions, waivers, reductions and refunds. In respect of children’s registration cases, he has thus far exercised none of these powers.

Nationality law: distinct from immigration law and policy

A longstanding problem is the failure of the Secretary of State and others to properly distinguish between nationality and immigration law.

The British Nationality Act 1981 took effect on 1 January 1983. It sets out the various bases on which a person shall be or may become a British citizen. The essential role of the Secretary of State is not to devise the criteria or circumstances in which British citizenship is to be afforded to a person. The Act does this. The Secretary of State’s role is to provide the administration to support the determination made by parliament of when such citizenship is to be recognised.

This differs fundamentally from the Immigration Act 1971, under which the Secretary of State is given power to both determine and apply the criteria and circumstances under which non-British citizens are to be permitted entry or stay in the UK.²⁸ This power is exercised primarily by the making of immigration rules.

Home Office statements in relation to these matters consistently reveal the department neither applies nor understands this distinction. For example, the November 2015 Impact Assessment for the Immigration and Nationality (Fees) Order 2016²⁹ stated (having referred to the costs of border and immigration operations):³⁰

*To ensure that the system is fair and sustainable, the government believes it is right that **those who use and benefit directly from the UK migration system** make an appropriate contribution to the meeting of its costs, thereby reducing the call on UK tax payers. (emphasis in bold added)*

The document continues in identifying the “groups affected”:

²⁶ Section 71 reads: “For the avoidance of doubt, this Act does not limit any duty imposed on the Secretary of State or any other person by section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding the welfare of children).”

²⁷ *FI v Secretary of State for the Home Department* [2014] EWHC 2287 (Admin)

²⁸ Section 3(2) of the Immigration Act 1971

²⁹ A more recent impact assessment (IA No: HO0310, of 21 February 2018) adopts the same approach:

https://www.legislation.gov.uk/ukia/2018/59/pdfs/ukia_20180059_en.pdf

³⁰ <http://www.legislation.gov.uk/uksi/2016/177/impacts/2016/33>

All migrants wishing to come to or remain in the UK, for the purpose of visit, work, study, family, settlement, marriage or other reasons are required to pay the appropriate fee associated with their application... (emphasis in bold added)

These extracts refer to immigration and nationality fees. There is generally no disaggregation or separate consideration of immigration and nationality in the document. Moreover, where nationality is expressly referred to, it is solely naturalisation³¹ that is being considered. This is made clear by the repeated assertion that applicants will “*necessarily already have indefinite leave to remain*”, which accurately reflects the situation applying in naturalisation cases. Having indefinite leave to remain is a mandatory requirement for making a naturalisation application (an application that can only be made by an adult), but not for registration of children (or adults seeking to register an entitlement to British citizenship).

These extracts and other references – such as repeated references to “*working migrants*”, “*migrant income*” and “*volume of migrants*” – in this impact assessment make transparent the Home Office treatment of the nationality applications to which the order applies as merely part of the immigration system. This is confirmed where the impact assessment deals with “*settlement and nationality – supply of labour*” by the assumptions made concerning residence, having indefinite leave to remain and earnings. This approach may have relevance to naturalisation by adult migrants under section 6(1) of the British Nationality Act 1981, but it is of no relevance and pays no regard to the situation of children entitled to register as British citizens – especially those born in the UK (who are not migrants).

The impact assessment also refers to the “*benefit*” of a successful application as justification for a fee above the cost of administration. So did the Minister, the Lord Bates, when responding to debates during the passage of the Immigration Act 2016.³² The explanatory memorandum³³ to the Immigration and Nationality (Fees) Order 2016 makes a similar reference, without adding to the detail in the impact assessment.

The February 2019 Impact Assessment for Immigration and Nationality (Fees) Regulations 2019³⁴ is in similar terms. The overall policy objective is expressed as being “*on visa and immigration fees*” and to ensure that people “*who use and benefit from the system (migrants, employers and educational institutions) contribute towards its costs, reducing the contribution of the taxpayer.*”³⁵ The assessment further emphasises the aim “*to achieve a self-funded immigration system*” (the reference to border, immigration and citizenship operations is expressly in connection with that ‘immigration system’) and to ensure that migrants contribute to the funding of that system.³⁶ Generally, as with its predecessors, the assessment “*considers the overall impact of immigration and nationality fee changes*” by reference to the “*overall costs and benefits to the UK economy.*”³⁷ This repeats all the errors of previous impact

³¹ Naturalisation is the process by which an adult migrant may become a British citizen. It must be distinguished from the right to register as a British citizen as was made express in the parliamentary debates when the British Nationality Act 1981 was passed.

³² <http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160321-0004.htm#16032216000129>

³³ http://www.legislation.gov.uk/ukxi/2016/226/pdfs/ukxiem_20160226_en.pdf

³⁴ IA No: HO0334, 6 March 2019

³⁵ Page 1, IA No: HO0334, *op cit*

³⁶ Page 3, IA No: HO0334, *op cit*

³⁷ Page 3, IA No: HO0334, *op cit*

assessments and policy decisions on fees in wrongly treating children born in the UK as migrants and statutory entitlements to citizenship by registration as immigration matters.³⁸

But the concept of *benefit* is equally of no relevance in the case of a child (or adult) entitled to citizenship. In the case of such a child, there is no discretion on the part of the Secretary of State to refuse an application because all he is being required to do is register the entitlement parliament has decreed the child to have. The child is not seeking any benefit from the Secretary of State, but rather recognition of the child's pre-existing right at the time of his or her registration application. Thus, it is inappropriate for the Secretary of State to be charging on the basis of providing a benefit to which the child is already entitled, and the Secretary of State has no discretion to refuse.

This mischaracterisation of registration by entitlement as providing a benefit is expressly relied upon by the Secretary of State in seeking to justify why a fee exemption is not provided for a child being provided with local authority assistance if the child applies to register her or his right to British citizenship even though a fee exemption is provided for that child if applying for leave to remain.³⁹

The general approach in impact assessments derives from a January 2012 report of the Migration Advisory Committee (MAC), *Analysis of the Impacts of Migration*.⁴⁰ That report was not particularly concerned with fees. However, it is clear the MAC understood its task as advising on how best to assess impact in relation to immigration and migrants, not persons born in the UK or with statutory rights to British citizenship. Moreover, the report emphasised in relation to the critical measure (the 'Net Present Value' calculation) that its usefulness is contingent on the 'robustness' of underlying assumptions.⁴¹ In relation to the fees regime the Home Office has implemented, and particularly how children's citizenship registration fees are set within that regime, it is apparent that the underlying assumptions are anything but robust. Neither registration rights, the nature of those rights nor duties to children with those rights have been considered in devising and maintaining this regime.

Children's entitlement to British citizenship

There are several provisions of the British Nationality Act 1981 under which a child is entitled to be registered as British⁴², chief among which are:

- **Section 1(3):** applies to children born in the UK, who are entitled to be registered as British if during their childhood either parent becomes a British citizen or settled

³⁸ At page 5, the assessment (IA No: HO0334, *op cit*), in relation to the definition of the 'resident population' for the purposes of calculating the Net Present Value (NPV), fails to recognise the body of children and adults with rights to British citizenship by registration. This is consistent with the general failure to recognise and respect the significantly different nature of registration and naturalisation under the British Nationality Act 1981.

³⁹ This explanation was given in an October 2014 response to a freedom of information request (ref. T13683/14) made by Carol Bohmer, co-founder of PRCBC.

⁴⁰ <https://www.gov.uk/government/publications/analysis-of-the-impacts-of-migration>

⁴¹ MAC report, page 56, *op cit*

⁴² Save for the cases of registration under provisions of the British Nationality Act 1981 relating to statelessness, there is a good character requirement for all those aged 10 or above (section 41A commenced on 13 January 2010).

- **Section 1(4):** applies to children born in the UK, who are entitled to be registered as British if they have spent the first ten years of their lives in the UK⁴³ (with absences of no greater than 90 days in any of those years unless there are special circumstances⁴⁴)

Prior to the commencement of the 1981 Act on 1 January 1983, any child born in the UK was British by birth.⁴⁵ The green and white papers, which preceded the Bill that became the 1981 Act, and Ministerial statements during its passage, make clear the intention that changes to this rule of *jus soli* were to ensure British citizenship was the right of those with sufficiently close personal connection to the UK.⁴⁶ In Standing Committee F, the Minister, Mr Timothy Raison MP, referred to the concerns regarding the previous position:

*The Green Paper noted that the jus soli method conferred citizenship indiscriminately on all who happened to have been born here, even if the mother was en route somewhere else. It also confers citizenship on children who, though born here, may be brought up and live their lives abroad. The Green Paper even took note of children whose parents, though entirely unconnected with the United Kingdom, have arranged for the child to be born here to acquire citizenship for its possible usefulness later.*⁴⁷

Sections 1(3) and 1(4) of the Act concern the circumstances in which those, who prior to the Act would have been British at and by birth, shall have that entitlement preserved by the opportunity to register where it is subsequently demonstrated that *their* connection is to the UK (even though at the time of their birth in the UK this was not so or insufficiently clear because neither parent was British or settled).

A distinct group of children also entitled to register as British citizens are stateless children born in the UK, who are entitled to do so after any five years' period of continuous residence in the UK provided they seek to register before their twenty-second birthday and have remained stateless since birth.⁴⁸

Children's registration as British citizens at discretion

The British Nationality Act 1981 includes provision whereby children not born in the UK may apply to be registered as British:

⁴³ Unlike in the case under section 1(3), a child entitled to register as a British citizen under section 1(4) retains this entitlement into adulthood.

⁴⁴ See section 1(7) of the British Nationality Act 1981

⁴⁵ An exception to this related to children born to diplomats in the UK.

⁴⁶ Relevant statements from *Hansard* and the green and white papers are available in the PRCBC report, *Systemic obstacles to children's registration as British citizens* at <https://prcbc.files.wordpress.com/2015/08/systemic-obstacles-on-the-registration-of-children-as-british-citizens.pdf>

⁴⁷ *Hansard* HC, Standing Committee F, 12 February 1981 : Col 40

⁴⁸ Section 36 and Schedule 2 to the British Nationality Act 1981 include further provisions for the reduction of statelessness.

- **Section 3(1):** applies to any child, who may be registered at the discretion of the Secretary of State⁴⁹

A group of children, for whom this provision is of especial importance and application, is children in local authority care whose future clearly lies in the UK even though they were not born here.

Secretary of State's duties to children

In November 2008, the Secretary of State withdrew the UK's reservation to the 1989 UN Convention on the Rights of the Child concerning immigration and citizenship. At least from that time, the Secretary of State has been bound under Article 3 to ensure primary consideration is given to the best interests of the child in exercising his nationality functions. (Articles 7 and 8 of the Convention expressly require State Parties to ensure and respect children's nationality rights.)

In November 2009, the Secretary of State became subject to the duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children in the UK.⁵⁰ This duty requires the Secretary of State to ensure, in carrying out any of his nationality functions, primary consideration is given to the best interests of children. This includes the exercise of his statutory powers, such as in setting fees.⁵¹

The Secretary of State must also ensure that in exercising his nationality functions he does not disproportionately interfere with the right to respect for the private and family life of a child under Article 8 of the 1950 European Convention on Human Rights.⁵²

The impact assessments (*op cit*) make no reference to children's registration cases, indicating that no regard was had to any of these duties when it was done. Whereas these impact assessments were business and economic assessments, these remain the only impact assessments done on the relevant fees. A policy equality statement was promised to be produced.⁵³ In October 2016, PRCBC requested and received disclosure of an October 2016 revised copy of this statement. The initial and revised statements appear not to be in the public domain. The revised policy equality statement makes no mention of children seeking to register their entitlement to British citizenship.⁵⁴ In a further Freedom of Information request, confirmation was received that there has been no Impact Assessment carried out on

⁴⁹ This preserved the discretion under section 7(2) of the British Nationality Act 1948 permitting the Secretary of State to register a child as British.

⁵⁰ This duty is supported by statutory guidance:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change-for-children.pdf

⁵¹ See *MM (Lebanon) v SSHD* [2017] 1 WLR 771, 22 February 2017, Supreme Court

⁵² See *Genovese v Malta* [2012] 1 F.L.R. 10, ECtHR; *Williams v SSHD* [2015] EWHC 1268 (Admin); *SA v SSHD* [2015] EWHC 1611 (Admin); and *Johnson v SSHD* [2016] UKSC 56

Paragraph 6 of The Explanatory Memorandum to the Immigration and Nationality (Fees) (Amendment) Order 2018 contains a statement that the provisions in the Fees Order 2018 is compatible with the Convention rights http://www.legislation.gov.uk/ukxi/2018/329/pdfs/ukxiem_20180329_en.pdf

⁵³ Section L, page 17

⁵⁴ FOI 41226, 4 October 2016

the fee charge scheme in relation to children's registration as British citizens.⁵⁵ A further policy equality statement was produced in 2018. It is in essentially no different terms to that in 2016.

R (Williams) v Secretary of State for the Home Department [2017] EWCA Civ 98

In *R (Williams)*, the Court of Appeal dismissed the appellant's submissions that the failure to provide for a fee waiver where a child was unable to afford the registration fee was unlawful. The judgment makes only brief reference to the 1989 UN Convention on the Rights of the Child. No express consideration is given to the Secretary of State's statutory duty under section 55 of the 2009 Act, nor the express priority given to that duty in section 71 of the Immigration Act 2014 over the other, including fee, provisions in the 2014 Act. This latter is unsurprising since the court was there considering fee provisions that are now superseded by section 68 of the 2014 Act.

Nonetheless, it was expressly conceded in argument that no fee should be charged if to do so would result in a breach of a child's Article 8 right to private and family life. This concession was made in the course of argument by the Secretary of State that fee exemptions "*generally only exist to ensure compliance with international obligations*". However, as highlighted by the absence of any impact assessment specific to children of the registration fee, let alone regarding children's best interests and welfare, it is clear that the Secretary of State has simply not considered his international (or domestic) duties to children.

The judgment in *R (Williams)* also reflects the continued failure to appropriately distinguish immigration and nationality law, including in the assumption of the court (also made below by the High Court) that children wishing to exercise their entitlement to register would first have become entitled to leave to remain under the immigration rules. Citizenship is not merely an alternative means by which a child may lawfully stay in the UK; and, as PRCBC's experience confirms, by law and in practice, delay in registration of a child's citizenship may result in the loss of her or his entitlement.

These matters have come before the High Court, subsequent to *R (Williams)*, in *R (VF) v Secretary of State for the Home Department [2017] EWHC 3138 (Admin)*. In *R (VF)*, permission to apply for judicial review was granted. However, by the time this came before the court for substantive hearing, the claimant had been registered as a British citizen after the full fee, which she had been unable to afford, was paid following the donation of funds by a member of the public. The court ruled the proceedings had, therefore, become academic and dismissed the claim without determining its merits. *VF* has since been granted permission to appeal to the Court of Appeal against the decision to treat her application as academic. PRCBC has also been granted permission to apply for judicial review of the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330;⁵⁶ and another child assisted by PRCBC has been granted permission⁵⁷ and her claim has been linked with that of PRCBC.⁵⁸

⁵⁵ FOI 41228, 31 October 2016

⁵⁶ CO/2663/2018

⁵⁷ CO/4832/2018

⁵⁸ PRCBC is represented *pro bono* by Mishcon de Reya solicitors and Amanda Weston QC, Garden Court chambers.

Conclusions

Taken together, these various distinctions and duties require specific consideration in the treatment of applications made by children for registration as British citizens. Yet, no such consideration has been given in respect of the fee for registration. The failure here is multifaceted.

- The Secretary of State has not considered the distinction between nationality law and immigration law and policy as this affects children. He has specifically not considered the distinction between the entitlement to citizenship conferred by parliament upon children under e.g. section 1(3) and (4) of the British Nationality Act 1981, as distinct from the conferment of power upon him to determine the criteria and circumstances in which a person (including a child) may be granted entry or stay in the UK.
- The Secretary of State has not considered the distinction within nationality law between entitlement and discretion – as, for example, between a child’s entitlement to citizenship and the Secretary of State’s power to naturalise an adult migrant under section 6(1) of the British Nationality Act 1981.
- The Secretary of State has not considered the distinction within nationality law as regards the exercise of discretion in relation to section 3(1) of the British Nationality Act 1981 (concerning children) and his power to naturalise an adult under section 6(1), including the specific duties he owes to children in this regard.
- In failing to consider or apply these distinctions, the Secretary of State has generally failed to consider the impact on children and their best interests.

Recommendations

A charge of £1,012 for a child to register as British is exorbitant and prohibitive. Even assuming the Home Office assessment of £372 is a reasonable assessment of the cost of administering such an application, the following should be done:

The profit element of the fee in children’s registration cases should be removed altogether:

- In the case of registration by entitlement – e.g. under section 1(3) and (4); paragraph 3 of Schedule 2 – the child is entitled to British citizenship, the Secretary of State has no discretion about registering that entitlement and is not being asked to bestow any benefit on the child other than recognition of the right bestowed on the child by parliament.
- In the case of all registration cases by children – including by discretion under section 3(1) – ensuring primary consideration to the child’s best interests is not compatible with the Secretary of State demanding a profit to register the child’s citizenship.

There should be a waiver for children whose carers are unable to afford the fee to register:

- A child should not be excluded from his or her entitlement to British citizenship on the basis of impecuniousness of a parent or other carer.
- In the case of all registration cases by children – including by discretion under section 3(1) – ensuring primary consideration to the child’s best interests is not compatible

with the Secretary of State demanding a fee to register the child's citizenship in circumstances where that fee is unaffordable.

There should be no fee charged for a child for whom a local authority is exercising responsibilities under the Children Act 1989 to register:

- The application of a fee in the case of a child for whom a local authority is exercising responsibilities under the Children Act 1989 constitutes in effect a mere transfer of public funds from local to central government; in respect of a matter the cost of which central government controls. It is of no benefit to the public and serves no purpose other than to impede a local authority in pursuing a registration application for a child.
- In the case of all registration cases by children – including by discretion under section 3(1) – ensuring primary consideration to the child's best interests is not compatible with the Secretary of State requiring a fee that would fall upon a local authority in circumstances where this may act as a barrier to that authority securing the child's citizenship.

Since this briefing was first issued:

- The Mayor of London has called on the government to reduce the fee for young people to register as British citizens, specifically by removing the profit element of the fee. This call is included in the Mayor's Strategy for Social Integration, *All of Us*, which states: *"It is wrong that the cost of citizenship – more than half of which is profit – is at least ten times higher than in many other European countries. This is preventing too many young Londoners from accessing the rights they are fully entitled to by law."*⁵⁹
- The House of Lords Select Committee on Citizenship and Civic Engagement considered registration and concluded: *"...we see no ground for the Home Office charging more than the costs they incur. Moreover, we believe there is a case for waiving the fee altogether in the case of children in care, and those who have spent their entire lives in the UK and are not migrants."*⁶⁰
- Early Day Motion 1262, tabled on 14 May 2018, has attracted cross-party support from MPs of every party that has taken seats in the 2017 Parliament.⁶¹
- The fee has been considered and debated on several occasions in both Houses.⁶²

*This Briefing is co-authored by Solange Valdez-Symonds, Project for the Registration of Children as British Citizens (PRCBC), and Steve Valdez-Symonds, Amnesty International UK.*⁶³

⁵⁹ Greater London Authority, March 2018, available at <https://www.london.gov.uk/what-we-do/communities/all-us-mayors-strategy-social-integration>

⁶⁰ *The Ties that Bind: Citizenship and Civic Engagement in the 21st Century*, Report of Session 2017-19, 18 April 2018, HL Paper 118 (paragraph 491), available at <https://publications.parliament.uk/pa/ld201719/ldselect/ldcitizen/118/118.pdf>

⁶¹ <https://www.parliament.uk/edm/2017-19/1262>

⁶² *Hansard* HL, 12 June 2018 : Cols 1655 *et seq* (motion moved by Baroness Lister of Burtersett); *Hansard* HC, 4 September 2018 : Cols 1WH *et seq* (motion moved by Stuart McDonald MP); *Hansard* HL, 23 October 2018 : Cols 763 *et seq* (question by Baroness Lister of Burtersett); *Hansard* HL, 19 November 2018 : Cols 67 *et seq* (in debate on report of the House of Lords Committee on Citizenship and Civic Engagement); and *Hansard* HC (public bill committee), 5 March 2019 : Cols 378 *et seq* (amendment moved by Stuart McDonald MP).

⁶³ The authors have been published on various matters concerning children's registration, including that of the fee, in *LegalVoice*; see <http://www.legalvoice.org.uk/author/solange-valdez-and-steve-symonds/> and <http://www.legalvoice.org.uk/author/solange-valdez-symonds-and-steve-valdez-symonds/>

For further information, please contact:

Solange Valdez-Symonds, Solicitor and Director of the Project for the Registration of Children as British Citizens (PRCBC), prcbc2013@aol.com

Case examples:

JS was born in the UK to a Portuguese mother and taken into care aged 10. She is the subject of a full care order. She is now 17 years old but has no clear status in the UK. Her father is unknown, and she is estranged from her mother. She has an entitlement to register as a British citizen under section 1(4) of the British Nationality Act 1981, having lived in the UK for the first ten years of her life. She is three months pregnant. If she is not registered as a British citizen (or settled) before her child is born, her child will also be born without British citizenship (and she would face a further fee if later seeking to register the British citizenship of her child).

J was born in the UK. His mother referred him to PRCBC when he was six years old. By that time, his parents had separated due to the father's domestic violence. His mother was aware the father had recently been granted indefinite leave to remain in the UK. Her church contributed a small donation towards the fee for her son to be registered. Over a period of nine months, she would lodge small sums of money with PRCBC until there was enough to pay the fee. This – along with the challenges of securing evidence of the father's status and violence – made J's a complicated case, which PRCBC dealt with exceptionally by keeping his file open requiring it to be periodically reviewed and supporting statements updated over an indefinite and extended period. (There is no legal aid for these cases; and PRCBC is not able to keep files open waiting to see whether sufficient funds will be available to pay a fee.) *The delays in this case were discouraging to J's mother, and in other cases delays including those caused by the need to raise funds to pay the fee have ultimately led to a parent not pursuing a child's registration.*

D, who was three years old when he was brought to the UK, was in receipt of assistance from social services. He had been offered a place at drama school. He had no leave to remain. He was referred to PRCBC as he was approaching his eighteenth birthday. PRCBC were able to assist him to apply to register as a British citizen. However, he could not afford the fee and the local authority refused to pay it. Had someone not donated to cover the fee, D would have lost his opportunity to be registered on turning 18.

E was born in the UK. She was taken into care aged five, at which time she was wrongly assumed to be British. She was a young adult when referred to PRCBC because her status had then been called into question by the Department of Work and Pensions. Social services, from whom she continues to receive assistance, initially offered to pay the fee for her to register as a British citizen, but while her application was being prepared decided not to do that. E has still not been registered. In addition to the fee, she faces other hurdles to securing the citizenship to which she is entitled – particularly in securing evidence to show she was living in the UK for the first ten years of her life. Seeking to piece together the evidence is made more difficult by personal complications, some of which have led to

her being sectioned on several occasions during her childhood. E's will to address these other hurdles is undermined by the fact that she still does not have the necessary fee to register her British citizenship – from April 2018, £1,206 because she has turned 18.