



**Amnesty International UK**

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Seema Kennedy  
Parliamentary Under Secretary of State  
Home Office  
2 Marsham Street  
London

Dear Minister

**Re: Westminster Hall debate: *EU Settlement Scheme: Looked-after Children and Care Leavers*, 3 September 2019**

We write following this debate earlier in the week; and are copying our letter to all the Members of Parliament, who took part.

The Project for the Registration of Children as British Citizens (PRCBC) is the first and only project in the UK specifically dedicated to securing, and expert upon, the rights of children and young people to British citizenship. Since its foundation in 2012, PRCBC has directly secured registration of British citizenship for hundreds of children and young people – all of whom with complex needs, including many children in care and children of European Economic Area (EEA) and Swiss parents. Amnesty International UK has worked with PRCBC since 2015 to increase attention and understanding of the citizenship rights of children and the barriers they face to securing their British citizenship.

Our respective organisations have long been concerned that the rights of many thousands of children and young people to British citizenship are being misunderstood and overlooked, exposing them to immigration powers now and in later life from which they would and should be exempt as British citizens. The children and young people affected include children and young people in the care system and children and young people with EEA/Swiss national parents.

The EU Settlement Scheme, and public information presented about this scheme, adds to these concerns. It does so, because the scheme – hugely important for many EEA/Swiss nationals and their family members – makes no provision to protect and secure the British citizenship rights of many children and young people eligible under the scheme. There is a grave risk that your department is now registering with an immigration status children and young people who are either already British citizens or with rights to that citizenship.

Children and young people in the care system are especially at risk. As you acknowledged in the debate, these children and young people may well not have the documentation they need to establish their rights particularly if they are either estranged from their parents or their parents are otherwise unwilling or unable to supply the necessary documentation (*Hansard HC*, 3 September 2019 : Cols 21-22WH).

#### **Children and young people who are British by birth:**

The first consideration will be establishing whether a child or young person is already a British citizen.

Section 1(1) of the British Nationality Act 1981 provides that someone born in the UK to a parent, who is a British citizen or settled, acquires British citizenship at birth.

The difficulties that may arise for a British citizen in care include establishing her or his parentage and establishing the status of her or his parents at the time she or he was born. That may require investigation of the parents' length of residence and exercise of Treaty rights in the UK prior to the child or young person's birth to establish whether the parent was settled – whether or not holding a permanent residence document – at the time the child or young person was born.

#### **Children and young people born in the UK but not born British:**

If a child or young person is not already a British citizen, the next consideration will be establishing whether she or he is entitled to British citizenship.

Key provisions of the British Nationality Act 1981 include section 1(3) and section 1(4) of the British Nationality Act 1981. The former provides a child with a statutory entitlement to register as a British citizen if born in the UK and one of her or his parents becomes settled or British. However, this entitlement is lost if not exercised before the child reaches majority.

The latter provides a child with a statutory entitlement to register as a British citizen if born in the UK and residing here up to the age of 10 years. Some absences are permitted. This entitlement is not lost in law on reaching majority but will continue throughout the person's life.

The difficulties that may arise for a child or young person in care are, in the case of section 1(3), similar to those that may arise for the British citizen child needing to establish the citizenship she or he was born with – establishing parentage and the status of a parent at the relevant time. However, the difficulties that may arise in the case of section 1(4) are potentially even more complex because the child or young person needs to demonstrate a continuity of residence in the UK from birth to age 10 years. The longer time passes, the greater difficulty there is likely to be in securing evidence to establish this.

#### **Children without British citizenship or entitlement to that citizenship or unable to prove these:**

The third consideration will be considering what rights a child may otherwise have to British citizenship. This will be important for children in two distinct circumstances. There will be children, who are not British and without a statutory entitlement to that citizenship, but nonetheless with a right to register as British citizens at the discretion of the Home Secretary. There will also be children who are British or have a statutory entitlement to that citizenship but – perhaps for the very reasons that were touched on in the debate – are unable to prove this.

Section 3(1) of the British Nationality Act 1981 provides wide discretion to the Home Secretary to register any child as a British citizen. It is important that this only applies to children. Where a child's right to British citizenship is dependent on this provision – in either of the circumstances described – that right will be lost if the child does not apply to register before reaching majority.

Section 3(1) provides for registration of children as British citizens whose future clearly lies in the UK. Children in the care system – particularly any child under a full care order – will fulfil that criteria for the very reasons emphasised by so many speakers in the debate. The UK has taken on responsibility for their care; and thereby established their connection to this country.

### **Parliament's intentions in passing the British Nationality Act 1981**

When Parliament passed the British Nationality Act 1981, Ministers emphasised that:

*"...it is extremely important that those who grow up in this country should have as strong a sense of security as possible." (Hansard HC, Standing Committee F, 24 February 1981 : Col 177 per Timothy Raison MP, Minister of State)*

This was and is not merely a matter of the many tangible implications of remaining subject to immigration powers, to which much mention was made in the debate. It is also a matter of identity and belonging. That is a matter of critical importance to all children and young people growing up in the UK. Still, it must be recognised that it is of especial importance to children and young people for whom the care system has taken responsibility given the many personal, social and other difficulties and barriers they are likely to face to feeling and being safe and secure.

As confirmed by Ministerial statements in the 1981 debates, a critical reason for Parliament introducing the registration rights, to which we have made reference here, was to ensure that ending the application of *ius soli* – whereby anyone born in the UK would have British citizenship – did not result in children growing up in the UK regarded and treated differently to their peers. However, what Parliament sought to avoid is happening. The failure to address the British citizenship rights of children and young people of EEA/Swiss national parents risks exacerbating this further.

### **Conclusions:**

In the debate, you rightly echoed many speakers in emphasising that Government has:

*"...a special responsibility for these children and care leavers."*

That special responsibility is underpinned by, amongst other matters, the obligation upon the Home Secretary to make the best interests of children a primary consideration in exercising her nationality functions. It is plainly not in the best interests of any child to continue to be treated as if subject to immigration powers where that child either is a British citizen or has rights to that citizenship.

In this regard, we draw attention to the assurance you gave in the debate:

*"The scheme is not designed to require a lawyer or legal advice, so it is simple to use."*

We do not here propose to address whether or not that ambition is fulfilled by your department's scheme. Our concern, however, is that the scheme does not address rights to British citizenship, and it is very far from straightforward for any child or young person, or any local authority or other carer supporting them, to know, understand and exercise those rights – which are concisely explained in the leaflet included with this letter.

We would be very pleased to meet with you concerning these various matters. In any event, we urge you and Ministerial colleagues to take urgent action to:

- Exempt all children and young people in the care system from citizenship registration fees.
- Amend the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to ensure nationality and immigration advice and representation is available to these children and young people.
- Amend your department's information and guidance concerning the EU Settlement Scheme to ensure that no child or young person is led to registering with an immigration status (whether settled or pre-settled status) rather than documenting the British citizenship they hold or to which they have a right – unless there is a conscious decision by that young person and/or in that child's best interests to not do so if, for example, it may cause them to lose another nationality.
- Ensure your department's nationality functions are conducted in children's best interests; and rights to British citizenship are secured without excessive and prohibitive demands for documentation, including if necessary, by the exercise of the Home Secretary's wide discretion under section 3(1) of the British Nationality Act 1981.

Yours sincerely,



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Project for the Registration of Children as British Citizens (PRCBC)



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