



Amnesty International UK

Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-2021

House of Lords Second Reading
July 2020

The Bill is set to end the exercise of EU free movement rights in the UK. In preparation for that, the Government has introduced its EU settlement scheme to regularise, with an immigration status, people in the UK formerly exercising these rights. The scheme received considerable debate in the House of Commons during the passage of this Bill. Particular focus of discussion was the situation of children of EU nationals, especially children in care.¹

It is a matter of considerable concern to the Project for the Registration of Children as British Citizens (PRCBC) and Amnesty that this discussion largely overlooked the rights to British citizenship of the children affected.² In devising, implementing and promoting this scheme the Home Office has itself largely overlooked these rights. The scheme and its operation is doing considerable harm to the best interests of children whose British citizenship or rights to that citizenship are being widely forgotten with the very real risk that thousands of British children continue their lives in this country treated as if subject to its immigration laws rather than, as is their right, free from such laws. Worse, the Home Office, including in individual cases, is exacerbating this risk by creating prohibitive barriers to children demonstrating that they are British citizens or have rights to register as British citizens.

None of what our organisations say is to downplay the importance of the EU settlement scheme, including for children of whom it cannot be said at this time that their connection and future lies here.

As the report of the Windrush Lessons Learned Review briefly touches upon, the dreadful treatment of many members of the Windrush generation arose directly out of their having lost their rights to British citizenship in significant part because their right to register as British citizens (and thereby retain the British nationality they had possessed previously) was time limited and the Home Office failed to ensure people were made aware, encouraged or facilitated to exercise that right.³ Decades ago, the department decided it preferred not to

¹ See the debate on New Clause 2 at Report (*Hansard* HC, 30 June 2020 : Col 192) and that on New Clauses 41 and 58 at Committee (*Hansard* HC, Seventh Sitting, 18 June 2020 : Col 272).

² Debate on New Clause 13 at Committee (*Hansard* HC, Sixth Sitting, 16 June 2020 : Col 203) was an important exception.

³ Report of the Windrush Lessons Learned Review, March 2020, HC 93, p12; further information is to be found in Amnesty's response to that review:

<https://www.amnesty.org.uk/files/Resources/AIUK%20to%20Home%20Office%20Windrush%20Lessons%20Learned%20Review.pdf>

encourage wider take up of this right.⁴ Accordingly, British people became treated as migrants in their home country and wrongly subject to its immigration laws having been left with nothing more than an immigration status (albeit the status of being settled). There is a dreadful and direct correlation with what is being done to many British children and young people, who are being encouraged (whether directly or through their parents or carers) to do the same – categorise themselves as subject to immigration laws with a settled or pre-settled status rather than confirm the British citizenship they already possess or to which they are entitled.

The starting point is that rights to citizenship under British nationality law are the same for all children whether born to EU nationals or not. If a child is born in this country to a parent who is a British citizen or settled here, the child is born a British citizen.⁵ Many children of EU nationals fulfil this where either of their parents has become settled before the child's birth here. If a child is born in this country to a parent, who becomes a British citizen or settled while the child remains under the age of 18, at least for so long as the child remains under that age, the child has a statutory entitlement to register as a British citizen.⁶ A child born in this country who lives here for the first ten years of their life also has a statutory entitlement to register as a British citizen, which remains whether or not the child has since reached majority.⁷ Other children have rights to register as British citizens, even though not born here, if their future clearly lies here – for example because the state has taken responsibility for them by taking them into care or because the child has lived here from a young age and is clearly going to stay.⁸ The right of such children to register as a British citizen, however, ends at their turning 18.

Children in care are in a particularly vulnerable position. Many cannot confirm or evidence their parent's status at their birth or now. Yet, PRCBC is aware of examples where the Home Office has failed or refused to consult its own records to establish a parent's status that would confirm a child is a British citizen or entitled to register with citizenship.

Children in care are also often unable to secure evidence from their parent of their early childhood to establish their continued presence in the UK throughout their first ten years. Obtaining this evidence from schools, health records and elsewhere gets increasingly difficult as the child gets older. Other children may lose their right to register altogether if not born here and turning 18 before registering that right. All children are subject to a good character test from age ten that may exclude even children who have lived here their entire lives from registering as citizens.⁹ Delay in registration can therefore lead to circumstances in which a child is unable to exercise a right to British citizenship because the right has become lost in law or in practice. The Home Office should be encouraging and assisting local authorities to ensure the registration of British citizenship rights of children in their care.

This is compounded by the Home Office demand for a fee of £1,012 for a child to register her, his or their right to British citizenship – £640 of which is above what the Home Office says is the cost to it of registration.¹⁰ This prevents some children from registering their rights and deters others from doing so. This is in contrast to the EU settlement scheme for which there is no fee.

⁴ Report of the Windrush Lessons Learned Review, March 2020, HC 93, p59

⁵ Section 1(1), British Nationality Act 1981

⁶ Section 1(3), British Nationality Act 1981

⁷ Section 1(4), British Nationality Act 1981

⁸ Section 3(1), British Nationality Act 1981 (as the Project for the Registration of British Citizenship (PRCBC) has established through its casework and litigation over several years)

⁹ This requirement was first introduced with no consideration of its impact on citizenship rights and of children born in this country by section 58, Immigration, Asylum and Nationality Act 2006

¹⁰ See Home Office fees transparency data, Table with details of fees and unit costs – 2020, April 2020 (line 131)

In this briefing, we have emphasised the circumstances of children in care. However, the concerns we raise are not limited to these children but extend to many other children effectively deprived of their British citizenship rights. It is vital that the Home Office should promote and facilitate these citizenship rights just as it is promoting the EU settlement scheme.

The Project for the Registration of Children as British Citizens (PRCBC), Amnesty, Bristol Law Centre, Children's Law Centre (Northern Ireland), Liverpool University European Children's Rights Unit, Liverpool University Law Clinic and North East Law Centre wrote jointly to the Minister in February 2020 concerning these matters.¹¹ The Minister's reply in May 2020 repeats the fundamental error:¹²

"Citizenship is not necessary to enable individuals to live, work or study in the UK and a grant of indefinite or limited leave to remain will enable lawful residence and confer appropriate access to benefits and services."

The best interests of children whose home, connection and future are here is not limited to what is necessary to live, work or study in the UK. Their best interests are served by fulfilling Parliament's intention that they be equally recognised as British citizens along with their peers. Statutory rights to registration were given for that purpose.¹³ Failing to promote and facilitate these children's rights to citizenship and leaving their presence dependent on the license of the Home Secretary, is to maintain all the impact of alienation, exclusion and insecurity to which the High Court has drawn attention.¹⁴ No child with rights to British citizenship should be made to suffer this, least of all children for whom the state has taken responsibility and who need help and assistance to overcome the causes and effects of social exclusion not exacerbation of it.

Case Study: Angela

Angela's circumstances are not uncommon. Social services were first involved in her life shortly after her birth in the UK. She has grown up without her father, been exposed to abuse of her EEA national mother and grown up with several foster parents as well as with her mother. Nobody has addressed her right to British citizenship. Her mother cannot establish when she became settled and her father cannot be traced. Angela's British citizenship should have been secured years ago. Now she cannot obtain the evidence to show whether she was a British citizenship at her birth or became entitled to that citizenship years ago.

¹¹ See <https://prcbc.files.wordpress.com/2020/06/further-ministerial-letter-on-british-citizenship-eu-settlement-feb-2020.pdf> enclosing the earlier letter at <https://prcbc.files.wordpress.com/2019/09/joint-letter-to-the-minister-seema-kennedy-mp.pdf>

¹² See <https://prcbc.files.wordpress.com/2020/06/letter-of-reply-may-2020-1.pdf>

¹³ As discussed in greater detail in PRCBC's *Hansard* commentary here:

<https://prcbc.files.wordpress.com/2019/07/commentary-hansard-bna-1981-registration-aug-2018-2.pdf>

¹⁴ *R (PRCBC, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin), paragraph 21