



**Nationality and Borders Bill  
House of Lords, Committee Stage  
Day 1, 27 January 2022**

**Registration of citizenship rights  
(amendments on good character, Chagossians, fees and stateless children)**

**Introduction:**

1. The Running List of amendments tabled up to and including 20 January contains four distinct amendments relating to registration of citizenship rights. This briefing concerns these four amendments. It addresses each of them in the order in which they appear on the Running List.
2. PRCBC and Amnesty have separately prepared a briefing on the power of deprivation of citizenship, to which there are various other amendments tabled.
3. Accordingly, this briefing is divided into the following sections:

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**Clause 3: Sections 1 and 2: related to British citizenship (good character)**

4. Clause 3 is one of the measures by which the Bill is to correct the historical discriminations in British nationality law against mothers and against children born out of wedlock. It is to provide to people born without British overseas territories citizenship by reason of these discriminations an entitlement to register as British citizens. The amendment below tabled by the Lord Dubs is to remove subparagraph (4) of the clause 3, by which the entitlement to register as a British citizen that it provides is, for some beneficiaries, made subject to a good character requirement.

LORD DUBS

Clause 3, page 8, line 27, leave out subsection (4)

Member's explanatory statement

*This would give effect to the recommendation of the Joint Committee on Human Rights to remove the good character requirement for a person applying for British Overseas Territories citizenship who has previously been discriminated against where this could perpetuate that discrimination.*

5. We support this amendment. We agree with the position of the Joint Committee on Human Rights in proposing this amendment:

*“35. We consider that it is unlawful discrimination, contrary to Article 14 as read with Article 8 ECHR, to require a person to prove good character when remedying previous unlawful discrimination against that person. We therefore recommend that the clause 3(4) of the Bill be deleted.”<sup>1</sup>*

6. Moreover, we agree with the wider position expressed by the Joint Committee:<sup>2</sup>

*“31. The application of the good character requirement to those with a right to British nationality is a comparatively recent development (introduced in 2006 and 2010). It poses obvious potential difficulties and unfairness when applied to those who have suffered previous discrimination and to children whose main, or only real, connection may be with the UK.*

*“32. In previous Parliaments, the Joint Committee on Human Rights has raised concerns about the good character requirement being applied to applicants who have suffered historical discrimination, as it can lead to additional discrimination as compared with those who were not discriminated against, as well as more general concerns at the inappropriateness of requiring children who have grown up in the UK to prove good character. Similar concerns have been raised in the written evidence [to the Committee].”<sup>3</sup>*

7. That written evidence to which the Joint Committee there referred, included PRCBC and Amnesty's submission.<sup>4</sup> In our briefing for Second Reading, we proposed an amendment to the Bill to address these concerns and injustices concerning good character more fully.<sup>5</sup> We have separately published briefings on the statutory good character requirement which, as the Committee

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<sup>1</sup> Seventh Report of Session 2021-22, Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality, November 2021, HC 764, HL 90

<sup>2</sup> The Committee *ibid*, also said that it is unclear how the character requirement in registration cases can be “*in the best interests of children*” (paragraph 36). We consider it clear that the requirement is not and cannot be in the children's best interests.

<sup>3</sup> *ibid*

<sup>4</sup> That evidence is available here: <https://committees.parliament.uk/writtenevidence/39358/html/>

<sup>5</sup> See pp14-17 of the briefing that remains available here: <https://prcbc.files.wordpress.com/2021/12/nbb-briefingfinal16dec2021.pdf>

highlights, is a relatively recent development in relation to citizenship rights by registration.<sup>6</sup> As PRCBC and Amnesty have identified in these various submissions and briefings, the introduction of the good character requirement was made without adequate understanding of the rights to citizenship or the people, particularly children, to whom it was applied.

8. The position when the 1981 Act was first enacted reflected the fact that the people with rights of registration are no less British and connected to the UK (or British overseas territories where that is the relevant citizenship) than people who acquire their citizenship automatically. That position should never have been changed.
9. That some British people are required to satisfy the Home Secretary that they are 'good' for their citizenship rights to be recognised is divisive and alienating. We support the amendment tabled by Lord Dubs. We would also strongly support an amendment to correct the wider injustice and division that has been wrongly introduced into British nationality law within the last two decades by the requirement of good character for registration of citizenship.

#### **New Clause: Provision for Chagos Islanders to acquire British nationality**

10. We support this New Clause tabled in the names of Baroness Lister, Baroness Ludford, and Lord Woolley, which concerns an injustice raised by each of the noble Baronesses at Second Reading.
11. This New Clause is more restricted than that tabled and moved by Henry Smith (Con) at Report stage in the other place, with support from across that House, to address the longstanding injustice done by successive British governments to British people deprived of their nationality rights by forced eviction and exile, and defeated by the Government by 245 to 309 votes.
12. Sadly, the Minister said nothing on the Chagos injustice in her closing speech at Second Reading. That is more remarkable and deeply regrettable given the strength of feeling in the other place on this matter, the nature of the profound injustice to which it relates and the threadbare response of the Minister in the other place at Commons' Report.

BARONESS LISTER OF BURTERSETT  
BARONESS LUDFORD  
LORD WOOLLEY OF WOODFORD

After Clause 4, Insert the following new Clause—

**“Provision for Chagos Islanders to acquire British nationality**

(1) Part 2 of the British Nationality Act 1981 (British overseas territories citizenship) is amended as follows.

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<sup>6</sup> e.g. <https://prcbc.org/research/>

(2) After section 17H (as inserted by section 7), insert—

**“17J Acquisition by registration: descendants of those born in British Indian Ocean Territory**

(1) A person is entitled to be registered as a British overseas territories citizen on an application made under this section if they are a direct descendant of a person (“P”) who was a citizen of the United Kingdom and Colonies by virtue of P’s birth in the British Indian Ocean Territory or, prior to 8 November 1965, in those islands designated as the British Indian Ocean Territory on that date.

(2) An application under this section must be made before the date specified in subsection (3).

(3) The specified date means—

(a) in the case of a person aged 18 years or over on the date of coming into force of this section, five years after the date of coming into force of this section, or

(b) in the case of a person under the age of 18 years on the date of coming into force of this section, before they reach the age of 23 years.

(4) A person who is being registered as a British overseas territories citizen under this section is also entitled to be registered as a British citizen.

(5) No charge or fee may be imposed for registration under this section.””

Member’s explanatory statement

*This amendment would allow anyone who is descended from a person born before 1983 on the British Indian Ocean Territory to register as a British overseas territories citizen. They may also register as a British citizen at the same time. Both applications would be free of charge. The application must be submitted within 5 years, or in the case of a minor born before the date of coming into force, before they reach 23 years old.*

13. A significant purpose of this Bill, which we support, in its first 8 clauses is to address longstanding discrimination in British nationality law. However, this New Clause concerns an outstanding injustice. That arises from the forced eviction of the Chagos Islanders by the UK Government in the late 1960s and early 1970s to allow the US Government to build and maintain a naval base. This profoundly serious injustice has persisted and been compounded ever since, including by the ongoing enforced exile of the Chagossians from their

homeland. The Chagossians' exile has been secured and maintained by force, including force of law.<sup>7</sup>

14. One impact of the eviction has been to deprive descendants of their citizenship rights. The British Indian Ocean Territory, which contains the Chagos Islands, was and remains a British overseas territory. Had the Chagossians not been evicted from their homeland, they would have passed British overseas territories citizenship from generation to generation. They and their descendants would also, in certain circumstances, have acquired an entitlement to be registered as British citizens.<sup>8</sup> Additionally, since 21 May 2002, they would have benefitted from a general discretion for the Home Secretary to register them as British citizens.<sup>9</sup>
15. PRCBC and Amnesty strongly support inclusion in this Bill of provision to address this injustice as it relates to British nationality law. Ministers have provided no justification for not doing so. The New Clause offers a real opportunity to make substantial amends for the wrong done to the Chagossians concerning their British nationality rights.

#### Government's justification

16. At Commons' Report, the Minister, Kevin Foster, said of the amendment brought by his backbench colleague, Henry Smith:

*"I am afraid [it] would undermine a long-standing principle of British nationality law dating back to 1915, under which nationality or entitlement to nationality is not passed on to the second and subsequent generations born and settled outside the UK and its territories, creating quite a major precedent."*<sup>10</sup>

#### Injustice of the Government's position

17. The Government is relying on the very cause of the injustice – eviction and exile of British people by the UK Government – to refuse to correct that injustice. The people of the second and subsequent generations are born outside British territory precisely because of the original evictions and continued exile. Correcting the nationality law consequences of this would not, therefore, set any wider precedent.

#### Effect of New Clause

18. The New Clause would provide a right of registration as a British overseas territories citizen to those Chagossian descendants who would have been born with that citizenship had it not been for their forebears' eviction and exile. The

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<sup>7</sup> Section 9 of the British Indian Ocean Territory (Constitution) Order 2004 deprives and excludes the Chagossians from the right of abode in their homeland and prohibits any entry or presence on the islands save as authorised by or under the Order or laws made under it

<sup>8</sup> Section 4 of the British Nationality Act 1981

<sup>9</sup> Section 4A of the British Nationality Act 1981

<sup>10</sup> *Hansard* HC, Report, 7 December 2021 : Col 258

right is restricted in the New Clause in two ways. Firstly, it only applies to persons born before the date the New Clause would come into force. Secondly, it is available for a time-limited period only. For adults at the date of the New Clause being brought into force, that time limit is five years. For children at the date of its being brought into force, it provides a period of up to five years from their reaching majority.

19. We would support a small, technical amendment to the New Clause. The cut-off that limits the people to whom it applies is set as people born before the New Clause comes into force. A child born to a descendant before the New Clause takes effect would have the right of registration it provides. A child born to a descendant after that descendant has exercised her, his or their right of registration under the New Clause will acquire citizenship automatically by descent if born outside the British overseas territories. But a child born to that same descendant after the New Clause takes effect but before the descendant has registered – even where the descendant has acted as quickly as possible to exercise the right of registration – will be born without citizenship and will not have the right of registration. The small number of children who would be affected should not be left without citizenship; and the New Clause should be amended to achieve this.

20. We urge peers to support this New Clause and finally bring an end to this injustice in British nationality law. The wrong done to the Chagossians has persisted far too long and they must not be forced to stand by as another nationality bill passes without this being corrected.

### **New Clause: Registration as a British citizen or British overseas territories citizen: Fees**

21. Rights are made worthless if people do not know or are prevented, such as by prohibitive fees, from exercising the rights they have. This is of especial importance in relation to citizenship. Citizenship has been described as “*the right to have rights*.”<sup>11</sup> What is emphasised here is the vital link between possessing citizenship and being fully and equally respected by the State and among the wider community. The effect upon a person of being excluded from the citizenship of their home country, including where they have been born, and to which they are entitled is deeply alienating and fundamentally undermining of Parliament’s intention in creating rights to citizenship by registration. In some instances, this is exacerbated where the person may be left stateless or, whether stateless or not, left in limbo in this, their home country.

22. PRCBC and Amnesty supported new clauses tabled by Bell Ribeiro-Addy (Lab) and Stuart McDonald (SNP) with many others at Commons’ Report. We support the New Clause now tabled by Baroness Lister, the Bishop of

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<sup>11</sup> The term has been referred to in high judicial authority, including by the Supreme Court in *Secretary of State for the Home Department v Al-Jedda* [2013] UKSC 63, para. 12.

Durham, Lord Alton, and Baroness Stroud. It addresses two distinct barriers to citizenship rights – fees and lack of awareness.

BARONESS LISTER OF BURTERSETT  
THE LORD BISHOP OF DURHAM  
LORD ALTON OF LIVERPOOL  
BARONESS STROUD

After Clause 6, Insert the following new Clause—

**“Registration as a British citizen or British overseas territories citizen: fees**

(1) No person may be charged a fee to be registered as a British citizen or British overseas territories citizen that is higher than the cost to the Secretary of State of exercising the function of registration.

(2) No child may be charged a fee to be registered as a British citizen or British overseas territories citizen if that child is being looked after by a local authority.

(3) No child may be charged a fee to be registered as a British citizen or British overseas territories citizen that the child or the child’s parent, guardian or carer is unable to afford.

(4) The Secretary of State must take steps to raise awareness of rights under the British Nationality Act 1981 to be registered as a British citizen or British overseas territories citizen among people possessing those rights.”

Member’s explanatory statement

*This new Clause would ensure rights to citizenship by registration are no longer subject to fees that exceed administrative costs; ensure children are not excluded from their citizenship rights by the size of the fee; and require the Secretary of State to take action to raise awareness of these rights.*

Purpose of this New Clause

23. This New Clause relates to both rights to British citizenship and British overseas territories citizenship. It concerns children and adults. In summary, it would require that no fee above administrative cost be charged to register any person as a citizen; that no fee at all is charged to register a child in care as a citizen; and that no child is prevented from exercising their right to be registered as a citizen by a fee the child cannot afford.

24. It additionally requires the Home Secretary to take steps to raise awareness of rights to British citizenship and British overseas territories citizenship. That is necessary to assist people to understand and exercise these rights.

Awareness-raising

25. Awareness-raising is vital to address the current situation, in which many thousands of children grow up in the UK excluded from their citizenship rights because they do not know they are without British citizenship and need to exercise their right to be registered.
26. Many peers from across the House spoke at Second Reading about the importance of citizenship and rights to citizenship.<sup>12</sup> Ever since citizenship ceased to be acquired automatically by birth in the UK in all cases and some children, who were born and growing up here needed to exercise rights to register their citizenship, lack of awareness of these rights has been a profound problem. Too many people are left growing up in the mistaken belief that, since they are born here and have a British birth certificate, they have the citizenship of the country with which they identify, which is their home and of which their peers are citizens. It comes as a profound shock to many people in later life, sometimes well into adulthood, to discover they are not recognised by their Government and their country as belonging to it.
27. It is also vital to ensure that the correction of historical injustice and discrimination, as intended by clauses 1 to 7 of this Bill, which are very welcome, is effective. If people are not aware of these new rights, the injustice done to them will not be corrected. We emphasised these concerns in our briefing for Second Reading, including identifying concerns regarding the effectiveness of the new power in Clause 7 for the Home Secretary to register a person as a citizen to correct some legislative unfairness or other injustice that had previously excluded them from citizenship.<sup>13</sup>

### The registration fee

28. The fee for a child to register as a British citizen currently stands at £1,012.<sup>14</sup> At the time the British Nationality Act 1981 took effect, the fee was £35.<sup>15</sup> There was no intention that the fee should ever become a means for the Home Office to raise funds by charging above cost. The previous Home Secretary described this £1,012 fee – rightly – as “*a huge amount of money to ask children to pay*”, when it was put to him in an evidence session before the Home Affairs Committee.<sup>16</sup> The Home Office publishes data about fees, which

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<sup>12</sup> Many of the peers who did so drew express attention to the improper categorisation by Ministers of citizenship rights as gifts or privileges to be bestowed or taken away at the discretion of the Home Secretary.

<sup>13</sup> That briefing remains available here: <https://prcbc.files.wordpress.com/2021/12/nbb-briefingfinal16dec2021.pdf>

<sup>14</sup> The fee for an adult is £1,206. The administrative cost is also £372 (but the fee includes the £80 fee for a citizenship ceremony) and so the excess is £754.

<sup>15</sup> The rise in fees is briefly summarised by the Court of Appeal in *R (PRCBC & O) v Secretary of State for the Home Department* [2021] EWCA Civ 193, para. 30: “*The fee charged for an application for registration by children rose from £35 in 1983 to £200 in 2005. Following the changes made by the 2004 and 2007 Acts, the fee rose to £400 in 2007 and then by stages to £669 in 2014. Following the introduction of new powers by the 2014 Act, the fee rose annually to its current level of £1,012 in 2018.*”

<sup>16</sup> Q276: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/windrush-children/oral/82932.html>

confirms the cost of registration to be £372.<sup>17</sup> The remaining £640 is, therefore, money made above the delivery of the service.

29. The interventions in Committee in the other place of Robert Goodwill, the former Home Office Minister, with responsibility for these fees, suggest a profound misunderstanding on the part of Ministers. He said:

*“The principle of fees reflecting the cost of delivering the service is a good one that should be widely applied across Government... I hope that the Minister will reassure us of the principle that was certainly in effect when I was in the Home Office: that this is not an opportunity to make a profit out of these people, but merely to recover the cost.”<sup>18</sup>*

30. The former Minister, with respect, was wrong not only about the fees currently charged but also about the fees charged when he was in office. Since 2007, these fees have been set significantly above the cost to the Home Office of discharging its function of registering the citizenship of people entitled to that citizenship. The fee for children to be registered was raised to £1,012 in 2018. In 2017, Mr Goodwill, when the Minister, had raised the fee to £973 (when it was said that the administrative cost to the Home Office was £386). The implication is that Ministers are not fully aware of the fee that is charged – an implication that is also consistent with the conclusive findings of the High Court and Court of Appeal in *R (PRCBC & Ors) v Secretary of State for the Home Department* that the fee has been set with no consideration of the best interests of children.

31. It must be recalled that this function is nothing more than registering a right to citizenship bestowed by the British Nationality Act 1981 to give effect to Parliament’s will that all people connected to the UK be recognised as its citizens. As several peers emphasised at Second Reading, rights to citizenship are not mere gifts for the Home Office to bestow.<sup>19</sup> That applies as much to the statutory entitlements to acquire citizenship as it does to the possession of citizenship, however it is lawfully acquired. It is entirely improper for the Home Office to seek to use this function or registration of what is a fundamental right as a means of raising funds.

32. Ministers frequently explain that this money is used to pay towards the **‘immigration system’**. The children – and indeed adults – with rights to citizenship by registration are **British people**. Parliament determined this by enacting the British Nationality Act 1981 and providing statutory entitlements to registration to ensure all people connected to the UK or British overseas territories would have the citizenship of the country or territory to which they shared connection. These British people – thousands of children born in the UK among them – have no more to do with the immigration system than any other British citizen, with whom they share the same connection. It is improper,

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<sup>17</sup> It is a mark of disrespect of citizenship rights that this data is referred to as ‘visa fees’:

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

<sup>18</sup> *Hansard* HC, Public Bill Committee (Fifth Sitting) 19 October 2021 : Cols 150-152

<sup>19</sup> See e.g. Baroness Fox of Buckley (Non-Afl), *Hansard* HL, Second Reading, 5 January 2022 : Col 592. She was far from alone.

therefore, to exploit the Home Office function of registration to tax children's and adult's citizenship rights to raise funds to pay for a system that has no proper application to them and by a tax that no other British citizen is compelled to pay. In the case of a stateless child, it is additionally improper to exploit the means by which the Home Office is to fulfil its international obligations to reduce statelessness to raise these funds.

### Government's justification

33. At Commons' Report, Kevin Foster, the Minister, declined to say anything beyond:

*"I am grateful for the opportunity to debate children registered as British citizens under [new clauses on the registration fee]. However, I must be clear that we are still waiting for the Supreme Court to give its judgment on this issue, and we will then look to respond."*<sup>20</sup>

34. At Commons' Committee, Tom Pursglove, the Minister, also relied upon the outstanding Supreme Court judgment.<sup>21</sup>

35. As regards, Ministers' position that they are awaiting the decision of the Supreme Court in *R (PRCBC & O) v Secretary of State for the Home Department*,<sup>22</sup> this is an extraordinary position for them to take. The High Court and Court of Appeal<sup>23</sup> each ruled in that litigation that the fee is unlawful because it has been set without consideration to the best interests of children. The Home Secretary has accepted that ruling by choosing not to appeal against it to the Supreme Court. Accordingly, the Supreme Court is not considering the best interests of children and, whatever their decision, the fee remains unlawful for the reasons given by the High Court and Court of Appeal.

36. The Supreme Court is considering whether the fee is also unlawful for rendering nugatory the statutory right to citizenship by registration. Meanwhile, the Home Secretary is unlawfully maintaining both her failure to assess the best interests of children and the fee that arises from that failure.

37. At Commons' Committee, Tom Pursglove, the Minister also put forward the following arguments:

*"Any fee level that is incurred over and above [the administrative cost] is actually invested into the wider nationality and borders system and helps to pay for the services that are provided... citizenship is not necessary for any individual to work, live, study or access services within the UK... for most people, nationality is a choice and is not needed specifically to live in the UK."*<sup>24</sup>

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<sup>20</sup> Hansard HC, Report, 7 December 2021 : Col 260

<sup>21</sup> Hansard HC, Public Bill Committee, Fifth Sitting, 19 October 2021 : Col 164

<sup>22</sup> The Supreme Court heard this appeal (2021/0063) in June 2021

<sup>23</sup> *R (PRCBC & Ors) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin); [2021] EWCA Civ 193

<sup>24</sup> Hansard HC, Public Bill Committee, Fifth Sitting, 19 October 2021 : Cols 163-166

38. This is rehearsal of arguments that should have no place in any discussion of registration fees. Registration (unlike naturalisation) concerns rights to citizenship provided by Parliament to a British person in recognition of their connection to the UK or British overseas territories. It is insulting to suggest that a British person does not need their citizenship and could or should be satisfied with being treated as a mere guest in their own country, their presence dependent on permission from the Home Secretary. It is deeply alienating and inconsistent with the statutory purpose of the British Nationality Act 1981 to suggest this.

#### Unjust alienation and exclusion of British children

39. PRCBC has, since 2012, drawn attention to the harm and injustice done to thousands of British children and young adults who continue to be effectively deprived of their citizenship rights. In November 2014, PRCBC published research drawing attention to several barriers that cause this deprivation, including this fee (then £669).<sup>25</sup> PRCBC and Amnesty have drawn this injustice to the attention of Parliament repeatedly, including during the passage of legislation in 2015-2016 and subsequently. We have met Ministers and officials. The underlying error that persists at the Home Office is to fail or refuse to recognise that registration concerns rights to citizenship that Parliament established so that the connection of all British people would be secured by their shared citizenship.<sup>26</sup> The impact of depriving many British children, who are born and grow up in the UK, of their citizenship rights by an above-cost and prohibitive fee is to defeat the originating purpose of Parliament in creating British citizenship. It is also – as the High Court,<sup>27</sup> affirmed by the Court of Appeal,<sup>28</sup> has found based on “a mass of evidence” produced by PRCBC – to make these children:

*“...feel alienated, excluded, isolated, ‘second-best’, insecure and not fully assimilated into the culture and social fabric of the UK.”<sup>29</sup>*

40. The Home Secretary did not contest that finding in her unsuccessful appeal to the Court of Appeal.

#### **Casestudy: ST**

ST was born in the UK and has lived here all his life. His mum is a single parent with a history of mental illness. ST has two younger siblings, each of whom born in the UK with British citizenship.

<sup>25</sup> <https://prcbc.files.wordpress.com/2015/08/systemic-obstacles-on-the-registration-of-children-as-british-citizens.pdf>

<sup>26</sup> See e.g., [https://prcbc.files.wordpress.com/2019/07/commentary\\_hansard-bna-1981-registration\\_aug-2018-2.pdf](https://prcbc.files.wordpress.com/2019/07/commentary_hansard-bna-1981-registration_aug-2018-2.pdf)

<sup>27</sup> *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin)

<sup>28</sup> *R (Project for the Registration of Children as British Citizens & O) v Secretary of State for the Home Department* [2021] EWCA Civ 193

<sup>29</sup> *Op cit*, para. 21

ST was first told by his mother that there was something ‘wrong’ about his status in the UK when he was about 11. It was difficult for him to fully understand what this meant until he turned 17 and started to have plans for his studies and future career.

When ST first contacted PRCBC, he provided some personal information including that he was very depressed. He explained that he was born in the UK and lived in London all his life and that he needs his British passport.

ST now understands, following PRCBC advice, that because he was born in the UK and lived here up to the age of 10, he has an entitlement to be registered as a British citizen. However, there is a Home Office registration fee of £1,012. ST and his mum cannot afford to pay that. ST, therefore, remains dispossessed of the citizenship to which he has been entitled since he was 10.

### **Clause 10: Citizenship: stateless minors**

41. The right of stateless children born in the UK to be registered as British citizens was introduced by necessity when the British Nationality Act 1981 was first enacted. The necessity arose because the Act removed from British nationality law the principle by which anyone born on British territory would automatically acquire British citizenship (*jus soli*).<sup>30</sup> Because birth in the UK (or on other British territory) would no longer automatically make someone a citizen, this meant that some people would be born stateless on British territory.

42. Statelessness is the condition of being without any nationality (whether or not it may be possible to acquire a nationality of the country in which you were born or some other place). PRCBC and Amnesty oppose Clause 10, which should be removed from the Bill. Clause 10 is to withhold from some stateless children born in the UK, their existing entitlement to British citizenship by registration.<sup>31</sup> We support the intention tabled in the names of Lord Paddick and Lord Rosser to remove this clause.

LORD PADDICK  
LORD ROSSER

The above-named Lords give notice of their intention to oppose the Question that Clause 10 stand part of the Bill.

#### **Member’s explanatory statement**

*This amendment would remove Clause 10, which restricts entitlement to British citizenship for children born stateless in the UK.*

<sup>30</sup> The provision applies equally to British overseas territories citizenship; and clause 10 similarly applies to British citizenship and British overseas territories citizenship.

<sup>31</sup> Paragraph 3 of Schedule 2 of the British Nationality Act 1981

### Government's justification for Clause 10

43. At Commons' Report, the Minister, Kevin Foster stated that the amendment moved by Mr Alistair Carmichael (LD) to delete the clause, with widespread support in that place, was needed to respond to:

*"...an increasing trend of applications for children whose parents did not take the step of registering their child's birth with their embassy or high commission, leaving their child without a nationality."*<sup>32</sup>

### Injustice of clause 10

44. The right to register as a British citizen – that clause 10 proposes to delay (potentially throughout childhood in the UK) – currently arises, at the very earliest, at the age of 5 years if the child has lived here all her, his or their life. It applies only to children born in this country and only to children who were stateless at birth and have remained so ever since. It is not in these children's best interests to continue their statelessness and delay their citizenship. Doing so does not fulfil the original intention of Parliament or this country's obligations under the 1961 UN Convention on the Reduction of Statelessness. Doing so generally undermines international effort to encourage States to eliminate statelessness altogether.<sup>33</sup>
45. We are aware of the increased number of registrations of children born stateless in the UK as British citizens in recent years. PRCBC's work has been integral to that achievement by raising awareness of rights to British citizenship – something the Government has long neglected and continues to neglect.
46. PRCBC has obtained data, by Freedom of Information Act requests,<sup>34</sup> as to the number of children who have applied, been refused, and been granted registration under the existing statutory right that applies to people born stateless in the UK. This data shows that in each of the years from 2011 to 2016, less than 15 children were registered under this provision. In some of these years, the figure was very much less than 15; and in all of the years, the figure may have been significantly less.<sup>35</sup> The number of children registered under this provision for the years 2017 to 2021 (up to September 2021) is shown in the following table:

Year	Number of children registered as British citizens under the para. 3 of Sch. 2 (statelessness)
2017	127

<sup>32</sup> Hansard HC, Report, 7 December 2021 : Col 260

<sup>33</sup> In 2014, the international body responsible for the international conventions on statelessness – UNHCR – called on States to eliminate stateless within ten years: <https://www.unhcr.org/ibelong/special-report-ending-statelessness-within-10-years/>

<sup>34</sup> FOI Reference Number: 66019, 15 December 2021

<sup>35</sup> The Home Office data is presented in a way that makes unclear the precise number of children registered in specified age categories where that figure is more than zero but less than 5.

2018	2,275
2019	1,065
2020	894
2021 (to Sept)	638

47. The data indicates that prior to 2016-17, the statutory right of children born stateless in the UK to register as British citizens was largely unknown. Raising awareness and promoting this, as other registration rights, has been a critical activity for PRCBC. In 2016 and 2017, for example, with Amnesty, PRCBC disseminated specific information regarding the right to registration concerning children born stateless in the UK via media, blogs, and websites with a specialist legal audience. Around this time, there was also an important judgment from the High Court providing clarity as to the statutory right.<sup>36</sup>
48. The data indicates that a significant and growing number of stateless children with the right to register had before this time did not exercise their rights. That is consistent with the number of registrations of stateless children under the specific provision concerning statelessness having risen sharply in 2017, falling away steadily since that time. It is also consistent with it having fallen to a figure that is far below the peak in 2018 of 2,275 but nonetheless significantly above that for the years before that year.
49. By introducing Clause 10 in this Bill, the Home Office has simply responded to a rise in children exercising the rights Parliament has given them by seeking to curtail the rights in question. The department has done so with no appreciation of the injustice it has long done by effectively leaving many children born in this country stateless by failing to take steps to raise awareness of the children's rights and remove barriers to registration of citizenship, including the prohibitive fees it continues to charge. It has made no assessment of the best interests of the children and the impact of their growing up excluded and alienated by their continued deprivation of any citizenship, and in particular the citizenship of the country in which they were born and, in almost every case, will have lived every day of their lives.<sup>37</sup>
50. We agree with the primary position and preference expressed by the Joint Committee on Human Rights:

*“57. It is difficult to see how [clause 10] complies with the UK’s obligations under both the 1961 UN Stateless Convention and the UN Convention on the Rights of the Child. [Clause 10] should be amended – preferably to delete the clause altogether.”<sup>38</sup> (our underlining)*

<sup>36</sup> *R (MK) v Secretary of State for the Home Department* [2017] EWHC .... (Admin)

<sup>37</sup> *R (PRCBC & Ors) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin), affirmed [2021] EWCA Civ 193. Whereas the failure was there highlighted in connection with the setting of the fee for children, including stateless children, to be registered as British citizens, the impact of the failure is not limited to the matter of this fee.

<sup>38</sup> Seventh Report of Session 2021-22, Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality, November 2021, HC 764, HL 90

51. We must emphasise that for all the Home Office Human Rights Memorandum<sup>39</sup> states that the department has considered the best interests of the children affected, there is nothing provided in that Memorandum (nor anywhere else) to indicate any assessment of what are the best interests of the children, still less evaluate these including by reference to the history we set out above in relation to the data that shows a profound failure to promote the rights of stateless children. Including Clause 10 in this Bill is a deplorable attempt to simply remove rights given by Parliament to stateless children now that these rights are finally being exercised.

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<sup>39</sup> See: <https://publications.parliament.uk/pa/bills/cbill/58-02/0141/ECHRmemo.pdf>