



Practitioners' Note on changes to Fee Regulations on registration of children as British citizens (exemptions and waivers)

30 May 2022

1. The Immigration and Nationality (Fees) (Amendment) Regulations 2022, [SI 2022/581](#) were laid before Parliament on 26 May 2022. Regulation 2(4) amends Schedule 8 to the Immigration and Nationality (Fees) Regulations 2018, [SI 2018/330](#) concerning the fee for a child to be registered as a British citizen ("the registration fee"). This regulation is made under the power in [section 68\(10\)](#) of the Immigration Act 2014.
2. On the same day as these regulations were laid before Parliament:
 - a) The Home Office published guidance: *Affordability fee waiver: Citizenship registration for individuals under the age of 18*, version 1.0 ("[the guidance](#)")
 - b) The Home Office published [Impact Assessment HO0415: Child Citizenship Affordability Fee Waiver Impact Assessment 2022](#)
 - c) A Minister made a Written Statement [HCWS65](#) in the House of Commons (repeated in the House of Lords)
 - d) The Home Office published the [Explanatory Memorandum](#) to SI 2022/581
3. This note provides analysis of the citizenship fee changes to be made by regulation 2(4) of SI 2022/581 and their application from 16 June 2022.

Background to the citizenship fee changes:

4. The Explanatory Memorandum states (paragraph 7.2):

"...The Court of Appeal in R (Project for the Registration of Children as British Citizens and O) v. Secretary of State for the Home Department [2021] EWCA Civ 193, found that the Secretary of State had breached the duty under section 55 of the BCIA 2009 in setting this fee in the Regulations 2018 (and in previous fees regulations in 2017). Furthermore, the department has become increasingly aware of concerns regarding the impact of this fee on some children's ability to register as a British Citizen and consequential impacts on their individual rights both in childhood and later adulthood, and on their wider wellbeing. Consequently, the Secretary of State has undertaken a review of this fee in line with her duties under section 55 of the BCIA 2009."

5. The changes to the registration fee are intended to reflect the outcome of the Secretary of State's review of the fee. This is in turn intended to address the decisions

of the Court of Appeal¹ and High Court² that the registration fee was unlawful for having been set without consideration of children's best interests.

The changes to be made by the new regulations:

6. In summary, regulation 2(4) of SI 2022/581 is intended to take effect on 16 June 2022:
 - 6.1. Regulation 2(4)(b) withdraws the registration fee originally made by SI 2018/330 and substitutes a fee of £1,012.
 - 6.2. Regulation 2(4)(c) introduces various exemptions from the registration fee.
 - 6.3. Regulation 2(4)(d) introduces discretion for the Secretary of State to waive the registration fee for a child if the Secretary of State considers the fee is "*not affordable*".

New fee:

7. Regulation 2(4)(b) substitutes a new fee at the same level as the existing fee (£1,012). This is intended to make express that the new fee is set *after having considered* children's best interests, so not tainted by the previous unlawful setting of the fee by SI 2018/330.

Local authorities:

8. Regulation 2(4)(c) of SI 2022/581 is an express provision. When it takes effect, all children looked after by a local authority will be exempted from the registration fee. In England, this covers all children in local authority care and children accommodated under section 22(1) of the Children Act 1989.³ It covers similar situations under Scotland, Wales, or Northern Ireland legislation.
9. Children supported by a local authority in England under section 17 of the Children Act 1989 (or in an equivalent position in Scotland, Wales, or Northern Ireland) are not made exempt from paying the fee. However, these children will be eligible for the fee waiver introduced by regulation 2(4)(d) if the fee is "*not affordable*".
10. Regulation 2(4)(c) also exempts children outside the UK from the registration fee if they are in a similar situation to children being looked after in the UK.

Fee waiver where fee is "*not affordable*":

11. Regulation 2(4)(d) of SI 2022/581 is a discretionary provision to provide the Secretary of State with power to waive the registration fee for a child where the Secretary of

¹ *R (PRCBC & O) v SSHD* [2021] EWCA Civ 193, February 2021

² *R (PRCBC, O & A) v SSHD* [2019] EWHC 3536 (Admin), December 2019

³ See regulation 2 of SI 2018/330 for meaning of "*being looked after*".

State “considers that the fee is not affordable”. It states expressly that the assessment of whether to grant a waiver is to be made:

“...taking into account the financial circumstances of the child in respect of whom the application is being made and of any other person who (in the Secretary of State’s opinion) might otherwise reasonably be expected to bear the cost of paying all or part of the fee.”

12. Careful consideration must be given to the purpose of this provision, which is to give effect to the duty to make children’s best interests a primary consideration.⁴ The Explanatory Memorandum, Minister’s Written Statement, Impact Assessment, and the guidance each confirm this. The decisions of the Court of Appeal and High Court in *PRCBC v O v SSHD* that have led to the introduction of this power are important to considering the purpose and application of the waiver.

13. The judgment of the Court of Appeal includes:

“31. There is no issue but that the recent and current levels of the fees have had a serious adverse impact on the ability of a significant number of children to apply successfully for registration. This is not disputed by the Secretary of State. The judge noted at [20] that there was “a mass of evidence supporting the proposition that a significant number of children, and no doubt the majority growing up on low or middle incomes, could only pay the fee by those acting on their behalf being required to make unreasonable sacrifices”. I would only add that in cases such as that of O, one of three children of a single parent on state benefits, it is difficult to see how the fee could be afforded at all.

“32. Equally, it is not disputed by anyone, least of all by the Secretary of State, that British citizenship is a status of importance to those that hold it and that the entitlement to be registered as a British citizen is likewise a right of importance... [the judgment goes on to emphasise some ways in which citizenship is important including its importance to a person’s identity]”

14. The judgment of the High Court includes:

“21. ...there is an equivalent mass of evidence supporting the proposition that children born in the UK and identifying as British... feel alienated, excluded, isolated, “second-best”, insecure, and not fully assimilated into the culture and social fabric of the UK.”

15. These findings do not in themselves establish their applicability in any particular case. Witness statements (including where appropriate from the child) and/or other

⁴ This follows from her statutory duty under section 55 of the Borders, Citizenship and Immigration Act 2009 and section 71 of the Immigration Act 2014; and the judgment of the Supreme Court in *ZH (Tanzania) v SSHD* [2011] UKSC 4 that this statutory duty effectively incorporates Article 3(1) of the 1989 UN Convention on the Rights of the Child.

evidence will be needed for that.⁵ However, these findings show the importance of the right to citizenship, the impact of its denial upon a child and the unaffordability of the fee for a substantial group of children as a matter of generality. It is at least arguable that the Secretary of State is required under regulation 2(4)(d) of SI 2022/581 to interpret “*not affordable*” to mean she must grant a waiver where the evidence shows this background (as to both impact upon the child and unaffordability) applies.

16. The guidance must be read in light of the above. This guidance is undoubtedly difficult to follow, and further amendments may well be made. However, some aspects are potentially useful:
 - 16.1. The guidance is express that where the fee cannot be afforded or there is insufficient income to meet a child’s needs, “*a fee waiver must be granted*” (our underlining): see p6 & p14.
 - 16.2. If any part of the fee cannot be paid, it is to be waived in full: see p11.
 - 16.3. Where more than one child of the same household is to be registered, a single request for waivers of each child’s fee may be made. Where the Secretary of State considers one or more but not all of the children’s fees are affordable, elder children’s fees will generally be waived rather than younger: see p11.
 - 16.4. The guidance recognises the need to safeguard children from implications of turning 18 before a fee waiver request is decided (including refused) or within a short period thereafter that is necessary to make or complete the child’s registration application. It will, however, be necessary to submit or complete the registration application within fixed timescales: see pp23-24.
17. The guidance indicates a request for a fee waiver will be made by set form online or on paper: see p4. It indicates the evidence that will be expected and questions the Secretary of State will consider in assessing whether to grant a waiver: see pp12-15. The basic question will be whether the child and child’s parents (or legal guardians) have sufficient funds to pay the fee after accounting for essential living needs: see p9. Income, expenditure, savings, and assets will be considered, with financial information likely to be required for a six-month period up to the request for the fee waiver.⁶
18. The question of affordability requires consideration of children’s best interests. Expenditure may not fit what the Secretary of State regards as essential living needs. Nonetheless, it may be necessary to meet the child’s needs in a wider sense – e.g., for the child to flourish socially, educationally, or personally. The guidance on this is especially confusing, but relates to the alternative formulation of the affordability

⁵ PRCBC may be able to provide precedents for use in requesting a fee waiver.

⁶ Reference is made to the Home Office *Report on the Allowances paid to Asylum Seekers and Failed Asylum Seekers*, 2020 regarding what are essential living needs and costs associated with them.

test: “*insufficient income to meet the child’s needs*”: see p14. A child is not to be forced to forego important social, educational, or other opportunities to secure their

citizenship rights. One inadequacy is the sole focus on the child applicant rather than any minor siblings, who equally should not be expected to forego such opportunities.

Citizenship ceremonies:

19. Someone, who successfully applies to be registered but the decision is made after they have turned 18, is generally required to attend a citizenship ceremony. Regulation 2(4)(c) makes express that anyone exempted from or granted a waiver for the fee will be exempt from the fee for that ceremony.

Conclusion:

20. The new fee exemptions and waiver should assist many children currently excluded from their citizenship rights to avoid this alienation continuing. It will nonetheless be necessary to monitor their effectiveness in practice.⁷ However, for children who do not qualify for an exemption or waiver, the fee remains at far above the administrative cost of registration. Given that registration is by way of statutory right, it continues to be an unacceptable barrier to children’s registration and financial exploitation of the children affected. It can be expected to continue to exclude some children, particularly children whose circumstances of relative poverty are not readily demonstrated and in circumstances that are beyond the control or influence of the child.
21. A further profound concern remains the continued failure or inability at the Home Office to understand the distinct nature of nationality law and rights to citizenship. The reference in the guidance to material concerning asylum support is one way by which that failure is highlighted.
22. Children’s rights to British citizenship are not functions of the immigration system. Moreover, unless all British children are to have possession of their citizenship made dependent upon subsidy of the immigration system, it is arbitrary and discriminatory to require some of them to subsidise that system for the purpose of securing their citizenship. This underlying failure or refusal to understand and respect citizenship rights lies behind much else that continues to impede or prevent many children exercising their rights to be registered.

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We are grateful to Adrian Berry (Barrister, Garden Court Chambers) for reviewing this note.

⁷ PRCBC will seek to monitor the impact of the waiver and will be grateful to receive information as to others’ experience of this waiver which may be shared by email to advice@prcbc.net.