



Motion to Regret
Immigration and Nationality (Fees) (Amendment) Regulations 2022
6 July 2022

Baroness Lister of Burtersett

1. The Immigration and Nationality (Fees) (Amendment) Regulations 2022, SI 2022/581 were made on 25 May 2022. Regulation 2(4) concerns the fees for children to be registered as British citizens. It took effect on 16 June 2022. Its main effects are to:
 - (i) reaffirm the Home Office fee of £1,012 for children to be registered as British citizens;
 - (ii) introduce an exemption from that fee for children who are looked after by a local authority to be registered as British citizens; and
 - (iii) introduce a waiver of that fee for a child to be registered as a British citizen, if the Home Office is satisfied that the fee is not affordable.
2. The Explanatory Notes state that this action has been taken:

“...in the light of the judgment of 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. The Secretary of State was found to have breached the duty [regarding the best interests of children] under section 55 of the Borders, Citizenship and Immigration Act 2009 (c. 11) in relation to setting these fees. Having complied with that duty, the Secretary of State has made these Regulations to substitute these fees and make related provision.”

The exemption for looked after children

3. The Project for the Registration of Children as British Citizens (PRCBC) and Amnesty International UK (AIUK) welcome the decision to exempt all looked after children from the citizenship registration fee. This is long overdue. Ministers have said steps are being taken to ensure local authorities are aware of the exemption and encouraged to act on the citizenship rights of children in their care.¹ This is an opportunity to encourage a comprehensive change of practice across all local authorities to ensure children’s services identify the citizenship rights of children in their care and take prompt action to ensure children’s British citizenship is confirmed or registered. For years, people have grown up in the UK care system without proof or registration of their citizenship rights. PRCBC continues to assist people born in the UK and now in their 20’s and 30’s who, despite years in care, remain without their British

¹ <https://questions-statements.parliament.uk/written-questions/detail/2022-06-06/hl638#>

citizenship, experiencing alienation and exclusion in the UK and even the active threat of being expelled from the country. This must stop.

The fee waiver

4. PRCBC and AIUK also welcome the introduction of discretion for the Home Office to waive the registration fee. However, we are concerned about the accessibility of this waiver. The Home Office has introduced a complex 56 pages paper form for applying for this waiver as an alternative to an online process.² It has also issued complex guidance to officials who will decide waiver applications.³
5. In principle, discretion to waive the fee enables an official to have regard to the best interests of the child in assessing whether the £1,012 fee is so high as to be unaffordable. It is yet to be seen whether that is followed in practice; or the waiver is made inaccessible by excessive evidential demands or expectations of what a child or family might forgo in order to pay this fee. Ministers should give clear direction to officials to avoid excessive demands, require the form be made more accessible and confirm the underlying purpose that children are enabled to exercise their citizenship rights.

The decision to maintain the fee at £1,012

6. PRCBC and AIUK remain concerned by the decision to maintain the fee at £1,012 and to continue using this fee to raise funds to pay for the immigration system. Registration of citizenship is a statutory right. It was Parliament's express intention when making the 1981 Act that registration would, for example, secure the British citizenship of thousands of young people born in the UK, who grow up here. This was vital to the interests of both the young people affected and society at large.
7. The Home Office estimates its administrative costs of registration are £416.⁴ The fee is set at £586 above those costs. British children's citizenship rights continue to be used to subsidise the immigration system. This is deeply alienating for two reasons. First, children will continue to be excluded from their citizenship rights by this large and profit-making fee. Second, the State's message to a child is that it does not fully and unconditionally respect their belonging in the UK but rather regards their citizenship as something from which it can financially profit to support an immigration system that has nothing properly to do with the child. This is done even though the child is born and has grown up in the UK, is and identifies as British, and may already be suffering the shock of discovering she, he or they are not already recognised as a British citizen like their peers despite living here all their life and knowing nowhere else.

The Home Office internal review fee

8. A looked after children or a child granted a fee waiver will nonetheless be required to pay £372 for an internal review if their registration as a British citizenship is refused. While this is

² <https://www.gov.uk/government/publications/child-citizenship-fee-waiver-request-form>

³ <https://www.gov.uk/government/publications/citizenship-fee-waiver-for-individuals-under-18-caseworker-guidance>

⁴ <https://www.gov.uk/government/publications/visa-fees-transparency-data>

reimbursed if the review is successful, this fee may continue to be prohibitive for some children and exclude them from their citizenship rights. There is no provision for this fee to be waived.

Best interests assessment

9. The fee exemption and waiver are introduced in response to the Court of Appeal (and before this, the High Court) decision that the Home Office had failed to have proper regard to the best interests of children. However, the Home Office has still not published the best interests assessment it has now made; and Ministers have indicated they have no plans to do so.⁵ It is impossible, therefore, to assess whether the Home Office have or have not even now properly understood children's best interests; and this will similarly throw doubt on whether decisions on fee waiver applications are properly made in light of children's best interests.

Conclusion

10. PRCBC and AIUK invite peers to call on the Government to⁶:
 - (i) Publish the Home Office assessment of children's best interests
 - (ii) Provide confirmation and more detailed explanation of the steps being taken to ensure the citizenship rights of all looked after children are being secured by their local authority
 - (iii) Review the application form and guidance to decision-makers on the fee waiver to ensure the waiver is accessible
 - (iv) End the charging of citizenship registration fees at above estimated administrative costs and the subsidising of the immigration system from statutory citizenship rights
 - (v) Remove the review fee for looked after children and children for whom a waiver of the registration fee has been granted.

⁵ <https://questions-statements.parliament.uk/written-questions/detail/2022-06-06/hl638#>

⁶ Joint PRCBC and Amnesty UK letter to Kevin Foster, Fee waiver and exemption, 28 June 2022: <https://prcbc.files.wordpress.com/2022/06/kevin-foster-citizenship-feesjune-2022.pdf>