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Seminar: Children's Citizenship Fee: Best interests, fee waiver and exemption

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(The following notes are only to be used for delivery of this seminar and not as reference material)

Legal Authority and related material

1. The following sources of law and policy are the main relevant sources concerning the fee waiver for children's registration as a British citizen.

Legislation:

2. Acts of Parliament:

- (i) British Nationality Act 1981 (particularly Parts I & V)
- (ii) Borders, Citizenship and Immigration Act 2009 (section 55)
- (iii) Immigration Act 2014 (sections 68-71)

3. Regulations and Orders:

- (i) Immigration and Nationality (Fees) Order 2016, SI 2016/177 (as amended)
- (ii) Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 (as amended)
- (iii) British Nationality (General) Regulations 2003, SI 2003/548 (as amended)
- (iv) British Nationality (Proof of Paternity) Regulations 2006, SI 2006/1496 (as amended)

Relevant international law obligations:

4. The following international law obligations are relevant:

- (i) 1950 European Convention on Human Rights as incorporated by the Human Rights Act 1998 (particularly as regards Article 8)

- (ii) 1961 UN Convention on the Reduction of Stateless (particularly insofar as incorporated by section 36 of the British Nationality Act 1981)
- (iii) 1989 UN Convention on the Rights of the Child (particularly to the degree incorporated by the section 55 of the Borders, Citizenship, and Immigration Act 2009)

Relevant caselaw:

5. The following judgments are relevant:

- (i) *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department* [2019] EWCA Civ 3536 (Admin)
- (ii) *R (Project for the Registration of Children as British Citizens & O) v Secretary of State for the Home Department* [2021] EWCA Civ 193

Relevant UKVI guidance:

6. The following Home Office policy guidance is relevant:

- (i) *Affordability fee waiver: Citizenship registration for individuals under the age of 18*, version 1.0, 26 May 2022
- (ii) *Registration as a British citizen: children*, version 9.0, 18 July 2022

Overview of children’s registration by entitlement and discretion

7. It is necessary to consider whether a child is entitled to, or may be eligible for, British citizenship before applying for a waiver of the fee. On the one hand, where a child has a right to British citizenship, it is no good obtaining a fee waiver if it is not going to be possible to make or complete the registration application before the waiver expires. On the other hand, a fee waiver application for a child has no purpose if there is no prospect of the child being registered or if the child is already a British citizen.
8. This section provides a short summary of the main citizenship rights that apply to children. This is not a comprehensive description of all relevant citizenship rights.

Automatic acquisition of citizenship at birth:

9. A child born in the UK to a parent, who is a British citizen or settled in the UK (or a member of HM Armed Forces), is born with British citizenship.¹ There are some complications for some children whose British or settled father is not married to their mother (if the mother is neither British nor settled nor a member of HM Armed Forces).²
10. A child born outside the UK to a parent, who is a British citizen, is born with British citizenship (unless the parent is British by descent).³ There are some complications for some children whose British father is not married to their mother (if the mother is not British).⁴

Registration: good character requirement:

11. There is a statutory ‘good character’ requirement for the registration of anyone who is 10 years or older. This requirement only applies for registration under specific provisions identified in section 41A of the British Nationality Act 1981:

“(1) An application for registration of an adult or young person as a British citizen under section 1(3), (3A) or (4), 3(1), (2) or (5), 4(2) or (5), 4A, 4D, 5, 10(1) or (2) or 13(1) or (3) must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.”

¹ Section 1(1) & (1A), British Nationality Act 1981

² Arising from the definition of “father” for the purposes of the British Nationality Act 1981: see section 50(9A)-(9C), British Nationality Act 1981

³ Section 2(1), British Nationality Act 1981; the meaning of “by descent” is to be found in section 14, British Nationality Act 1981

⁴ See footnote 2

“(2) An application for registration of an adult or young person as a British citizen under section 4F, so far as the relevant registration provision (as defined in section 4F(2) is section 1(3), 3(2), 3(4) or 4D, must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.

“... ”

“(5) In this section, “adult or young person” means a person who has attained the age of 10 years at the time when the application is made.”

12. The main registration entitlements where this good character requirement does not apply concern registration for the specific purpose of reducing statelessness and registration for the specific purpose of correcting historical discrimination.

Registration entitlements of children born in the UK:

13. The main entitlements that apply to children born in the UK are:

- a. A child born in the UK is entitled to be registered as a British citizen if one of her, his or their parents becomes a British citizen or settled (or joins HM Armed Forces).⁵ This entitlement is only available during childhood.
- b. A person born in the UK is entitled to be registered as a British citizen if she, he, or they lived in the UK for their first 10 years (with no more than 90 days absence in any of those years).⁶ This entitlement is not time limited. Absences of more than 90 days may be waived in certain circumstances.⁷
- c. A child born stateless in the UK is entitled to be registered as a British citizen if she, he, or they have been living in the UK for the last 5 years at the date of application (with some allowance for absences) and is and has always been stateless.⁸ This entitlement is available only up to the age of 22. However, there is some restriction on a child exercising this entitlement if the

⁵ Section 1(3) & (3A), British Nationality Act 1981

⁶ Section 1(4), British Nationality Act 1981

⁷ Section 1(7), British Nationality Act 1981

⁸ Paragraphs 3 & 3A of Schedule 2, British Nationality Act 1981

Secretary of State thinks the child is entitled to acquire another nationality.⁹
Note that this entitlement is not subject to a requirement of good character.

Registration entitlements of children born outside the UK:

14. The main entitlements of children born outside the UK are:

- a. A child born outside the UK to a parent who is a British citizen by descent is entitled to be registered as a British citizen if that parent had lived for a period of three years (with some allowance for absences) in the UK before the child was born; and one of that parent's parents was a British citizen (other than by descent).¹⁰ This entitlement is only available during childhood.
- b. A child born stateless outside the UK to a parent who is a British citizen by descent is entitled to be registered as a British citizen if the child remains stateless and one of that parent's parents was a British citizen (other than by descent).¹¹ This entitlement is only available during childhood.
- c. A child born outside the UK to a parent who is a British citizen by descent is entitled to be registered as a British citizen if, at the date of application, the child is in and been living in the UK with her, his or their parents for a period of three years (with some allowance for absences).¹² This entitlement is only available during childhood.

Entitlements of children who would have been British citizens had their parents been married:

15. A child is entitled to be registered as a British citizen if the only reason the child is not a British citizen is because the father was not married to the mother at the time of the child's birth. Note that these entitlements are almost all free of the requirement of good character.

⁹ Paragraph 3A(1)(d) of Schedule 2, British Nationality Act 1981

¹⁰ Section 3(2), British Nationality Act 1981

¹¹ Section 3(2), British Nationality Act 1981

¹² Section 3(5), British Nationality Act 1981

Discretion to register a child as a British citizen:

16. There is a general discretion to register a child as a British citizen.¹³ This is particularly significant for children whose futures lie in the UK such as:

- a. Children who are in the UK, were brought here at a young age and whose connection to the UK has been established over years growing up here (i.e., children who have completed 10 years).¹⁴
- b. Children who are in the UK, one of whose parents are British and the other is either British or settled.
- c. Children who were brought to the UK and have been taken into local authority care.

¹³ Section 3(1), British Nationality Act 1981

¹⁴ See PRCBC note on section 3(1) new Home Office policy guidance:

https://prcbc.files.wordpress.com/2022/07/note_discretion_section-3-1-bna-1981-1.pdf

Citizenship registration fees

17. Fees are set under powers given by sections 68 to 70 of the Immigration Act 2014. The Secretary of State has exercised those powers by making the Immigration and Nationality (Fees) Order 2016, SI 2016/177 and the Immigration and Nationality (Fees) Regulations 2018, SI 2018/300, each of which have been amended on various occasions. The Order sets the maximum level at which the fee may be set; and the Regulations set the fee.
18. Paragraph 1 of Schedule 8 to the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 includes the following definition:

“‘application for registration as a British citizen under the 1981 Act’ means an application for registration as a British citizen under sections 1(3), (3A) or (4), 3(1), (2) or (5), 4(2) or (5), 4A, 4B, 4D, 4F, 10(1) or (2), or 13(1) or (3) of, or paragraph 3, 3A, 4 or 5 of Schedule 2, to the 1981 Act;”

19. Importantly, there are some entitlements under the British Nationality Act 1981 to registration as a British citizenship that are not included in that definition. The fees set by Schedule 8 for registration do not apply to entitlements that are not included in the definition. Of particular importance are fees for registration as a British citizen of a child, who would have been born a British citizen had the child’s father and mother been married at the date of the child’s birth.

Citizenship Fee exemption for looked after children

20. From 16 June 2022, Table 20A of Schedule 8 of the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 includes (at 20A.3.1):

“No fee is payable in respect of an application for registration as a British citizen under the 1981 Act... where, at the time the application is made, the person in respect of whom it is made is a child and –

- (a) is being looked after by a local authority, or*
- (b) is being looked after outside the United Kingdom under an arrangement similar to any of those referred to in the provisions mention in the definition of “being looked after by a local authority in regulation 2.”*

21. Regulation 2 of SI 2018/330 provides the following definition:

“‘being looked after by a local authority’ means being looked after by a local authority (or in Northern Ireland, an authority) under –

- (a) section 22(1) of the Children Act 1989;*

- (b) section 17(6) of the Children (Scotland) Act 1995;
- (c) section 25(1) of the Children (Northern Ireland) Order 1995; or
- (d) section 74(1) of the Social Services and Well-being (Wales) Act 2014;”

22. Accordingly, any child who is looked after by a local authority (as defined) is exempt from the fee for registration as a British citizen. There is no formal application necessary for securing the exemption. The child will simply need the local authority to provide confirmation with the child’s application for registration as a British citizen that the local authority is looking after her, him, or them.
23. It is important to remember that a child, who is supported but not looked after by a local authority, may nonetheless be eligible for a fee waiver. Confirmation by the local authority that it is providing that support and the reasons it is doing so will be needed if this is relied upon to apply for a fee waiver (see further below).

Citizenship fee waiver

24. From 16 June 2022, paragraph 8 of Schedule 8 to the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 provides:

“The Secretary of State may waive the fee specified in 19.3.1... in a case where the Secretary of State considers that the fee is not affordable, taking into account the financial circumstances of the child in respect of whom the application is being made and or 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.”

25. The fee specified in 19.3.1 is the fee for:

“Application for registration as a British citizen under the 1981 Act, where the person in respect of whom the application is made is a child at the time the application is made.

26. The fee waiver – together with the other changes made by the Immigration and Nationality (Fees) (Amendment) Regulations 2022, SI 2022/581 – has been introduced for reasons explained in the Explanatory Note to SI 2022/581:

“Regulation 2(4)(b) substitutes fees specified in 19.3.1... in Table 19 in Schedule 8 to the 2018 Regulations. These are fees for applications to register a child as a British citizen. There is no change in the fee descriptions, or the amounts specified for these fees. These fees have been substituted 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 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.”

27. In summary, therefore the fee waiver has been introduced to correct the unlawful failure of the Secretary of State to have regard to the best interests of children in setting the fee for a child to be registered as a British citizen. This is in response to the judgments of the High Court and Court of Appeal respectively in *R (PRCBC & Ors) v Secretary of State for the Home Department [2019] EWHC 3536 (Admin); [2021] EWCA Civ 193*. That the fee waiver has been introduced to give effect to children’s best interests, emphasises the need for the waiver to be accessible to the children who are eligible for it. As expressly stated in the Regulations, the power is to waive the fee:

“...where the Secretary of State considers that the fee is not affordable...”

28. In making that assessment, the Regulations expressly invite the Secretary of State to consider the financial circumstances of the child and of any other person who *“might reasonably be expected to bear the cost of paying all or part of the fee.”*

29. These questions of unaffordability and of who might reasonably be expected to pay towards the fee are matters that will need to be evidenced; and may need to be explained in supporting representations and/or witness statements.

30. The Secretary of State has issued guidance.¹⁵ This makes clear that if the whole of the fee cannot be afforded, it is irrelevant that some part of it is affordable. A waiver of the whole fee must be granted or no waiver at all. However, there may be more than one child for whom fees are payable. It may be that one or more, but not all, of the children will have the fee waived. The Secretary of State’s guidance states (page 11):

“Fees for individual applicants must either be waived or paid in full – there is no option for individual fees to be reduced or only partially paid.”

Later, the guidance confirms (page 24):

¹⁵ *Affordability fee waiver: Citizenship registration for individuals under the age of 18*, version 1.0

“A fee waiver request will be decided in relation to the whole of the fee for the individual making the request. Thus, it is possible within a family application for some individual requests to be granted and others not. But it is not possible in respect of any one individual applicant for part of the fee to be waived.”

31. This is consistent with the discretion to waive the fee as introduced in the Regulations since these do not provide for anything but a waiver of the fee. The Secretary of State has not exercised any discretion to reduce the fee.

32. However, the guidance (which is no more than that) is long and complex. The following is taken from the summary (page 6):

“A fee waiver must be granted if the applicant and parent(s) are assessed and found:

- *to credibly demonstrate they cannot afford the fee*
- *that their income is not sufficient to meet the child’s needs*

*“The primary consideration on whether someone is eligible for a fee waiver is an **affordability test** to assess whether the applicant and parent(s) have credibly demonstrated that they cannot afford the fee. This applies when the applicant and parent(s) do not have sufficient funds at their disposal, after meeting their essential living needs, to pay the fee.*

“Fee waivers should be granted if the applicant and parent(s) have credibly demonstrated that they meet the affordability test.

*“The need to **safeguard and promote the welfare of a child** in the UK should be a primary consideration in deciding any claim. This means careful consideration needs to be given to whether the applicant’s needs are being met and whether being required to pay the fee would deprive a child or having those needs met. The same approach should be applied to children not in the UK but who may be affected by the payment of the fee...”*

33. This guidance is far from clear. However, it does indicate the need to have regard to the best interests of the child. That will ordinarily be for the child to be registered as a British citizen (if she, he, or they are entitled to that or otherwise eligible for it by reason of their connection to the UK). If the fee will prevent this because the child cannot afford it, that is a strong indication that the waiver should be granted. The focus on the parents as if their circumstances fall to be considered together whether the child as one is misconceived; and it may lead to error. However, as ever, it will be necessary to address how the Secretary of State can be expected to approach a fee waiver request – either to satisfy what is expected from that approach or to demonstrate why it is the wrong approach for any particular child.

Requesting a fee waiver: form and procedure

34. The power to charge a fee for registration of British citizenship and to provide for that fee to be waived is found in section 68 of the Immigration Act 2014:

“(1) The Secretary of State may provide, in accordance with this section, for fees to be charged in respect of the exercise of functions in connection with immigration or nationality.

(2) The functions in respect of which fees are to be charged are to be specified by the Secretary of State by order (“a fees order”).

...

(5) Where a fees order provides for a fee (or part of a fee) to be a fixed amount, it –
(a) must specify a maximum amount for the fee (or part), and
(b) may specify a minimum amount.

...

(7) For any specified fee, the following are to be set by the Secretary of State by regulations (“fees regulations”) –
(a) if the fee (or any part of it) is to be a fixed amount, that amount;...

...

(9) In setting the amount of any fee... the Secretary of State may have regard only to...

(10) In respect of any fee provided for under this section, fees regulations may –
(a) provide for exceptions;
(b) provide for the reduction, waiver or refund of part or all of a fee (whether by conferring a discretion of otherwise);
(c) make provision about –
(i) the consequences of failure to pay the fee;
(ii) enforcement;
(iii) when a fee may or must be paid.

...

35. The Immigration Act 2014 does not establish any procedure by which a fee is to be paid or a fee waiver, where applicable, is to be requested.

36. The Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 provide for consequences of failure to pay a fee. Regulation 16(1)(a) empowers the Secretary of State to reject as invalid any application for which the fee has not been paid. Regulation 16(1)(b) alternatively empowers the Secretary of State to request payment of any outstanding amount. Regulation 16(2) and (3) require that payment must be made within 10 working days of that day that the request is sent (if it is made in writing) or made (if it is made by telephone or in person). However, SI 2018/330 makes no provision for any process or form by which any request for a fee waiver must be made.

37. The Secretary of State's guidance, nonetheless, states (page 4):

“Requests for a fee waiver must be made through either the online waiver request form or the paper waiver request form.”

38. The Home Office (gov.uk) website states:

“Apply for a fee waiver

“You can either apply online or by post.

“ ...

“If you apply for a fee waiver online and you are successful, you must then apply for citizenship online. If you cannot apply for both online, you must apply by post instead.

“Apply by post

“Fill in a Child citizenship fee waiver request form and sent it to the address on the form.

“Apply online

“You'll be able to save your form and return to it later.

“Before you start

“You’ll be asked to prove your identity by uploading your identity document online, for example your:

- *passport*
- *national identity card*
- *biometric residence permit (BRP)*

“You’ll also need to provide information about your financial situation, for example:

- *bank statements*
- *letters from local authorities or family members showing you get financial support*
- *evidence to show you get public funds*
- *evidence of your household earnings, for example payslips*
- *evidence of your household expenses, for example how much rent you pay*

“After you apply

“You’ll get a confirmation email from the Home Office once you’ve applied.

“If your application is approved, you’ll get an email or letter with a personalised code (called a ‘token’). Use this code in your citizenship application.”

39. The above process is not mandated by law. On the other hand, the legal test (in the Regulations) is whether *“the Secretary of State considers that the fee is not affordable”*. The Secretary of State must be satisfied that this test is met. It is a relatively loose test; and the Secretary of State must operate a procedure that reasonably enables children who cannot afford the fee to satisfy her of this. Otherwise, she would defeat the purpose of the Regulations (and fail to meet her obligations regarding children’s best interests).

40. The paper form is exceptionally long. It is difficult to understand how this is thought to be justified or reasonable. Moreover, if you are requesting the fee waiver by post, the Home Office (gov.uk) website states:

“Use this form to request a citizenship affordability-based fee waiver if you are under the age of 18. You must submit a paper citizenship application alongside this form, or you can apply online.”

41. On the other hand, the online process is also relatively long. Moreover, it requires answers to questions that are likely to be both irrelevant and difficult to answer for

many people requesting the fee waiver. This concern is compounded by the need for declarations concerning the accuracy and completeness of the information provided. The online process generally anticipates that all information demanded can and should be provided; and does not generally allow for explanation as to why information cannot or is not being provided.

42. On balance, therefore, it may be better to apply by post. It may be reasonable to explain the basis on which the fee waiver is being requested by covering letter, including spelling out the financial circumstances of the child and her, his or their parent(s) or carer(s). If so, it may be advisable to include a copy of the paper fee waiver request form, but to mark relevant pages of the form with “see representations in covering letter” to indicate that the relevant information is set out in the covering letter. Since you will have to make the citizenship registration application by post with the fee waiver request, you may wish to address in the same covering letter both the child’s eligibility for a fee waiver and the child’s entitlement (or eligibility if applying under section 3(1) of the British Nationality Act 1981) to be registered as a British citizen.
43. However, whatever decision is made about the format in which to make the fee request, it will be essential to present the request and supporting evidence (see below) clearly. If the request is not made in precisely the format the Home Office is expecting (i.e., via the online process or full completion of the paper form), it will be essential to present the request in a way that makes it as easy as possible for the decision-maker to understand:
- (i) why the online or paper form is not being used or fully relied upon;
 - (ii) why any information, which the guidance and set forms indicate the Home Office is expecting, is not being provided;
 - (iii) how the information that is provided otherwise addresses the questions that the guidance and set forms indicate the Home Office is expecting to have answered (several such questions are, for example, set out in the guidance at pages 13 & 15); and
 - (iv) how the information shows that the fee is unaffordable.
44. Whether by accident or design, the Home Office has devised a process for requesting a fee waiver that is liable to inhibit or prevent some, possibly many, children from securing their British citizenship because they both cannot afford the fee and cannot successfully complete the process for securing a waiver of the fee. The challenge for anyone assisting a child to secure a fee waiver is how to effectively navigate this process without compromising the child’s citizenship rights (or any other interest of the child).

Request a fee waiver: evidence

45. The Secretary of State's guidance states the following in the summary (page 6):

“In completing the fee waiver request form, the applicant and parent(s) must provide details and supporting evidence for both their own financial circumstances and those of any individual on whom the applicant is dependent for financial support. It is the responsibility of the applicant and parent(s) to provide a full account as to their financial circumstances, and to demonstrate that those who are supporting them are reasonably unable to provide funding to support payment of the fee. It is ultimately at the caseworker's discretion as to whether these considerations have been adequately demonstrated.”

46. This guidance is **not law**, but it does indicate how the Home Office can be expected to deal with requests for a fee waiver. Nonetheless, it is important to note that the discretion to grant a fee waiver is expressly where the child cannot afford the fee, having regard to anyone who can reasonably be expected to assist with that.

The guidance wrongly treats the child and parents as one rather than considering the financial circumstances of the child and separately considering whether it is reasonable to expect the parent(s) to assist the child to pay the fee and, if so, whether they are able to do so. Essentially, the assumption is being made that it will always be reasonable to expect this of a parent. That assumption must be wrong as a generality, though it may be correct in any individual case.

47. The guidance continues in the summary (page 7):

“The fee waiver can be rejected for a range of reasons, including if the applicant, their parent(s), or a spouse/partner of the applicant or parent(s) have:

- *not providing reliable information about their circumstances*
- *intentionally disposed of funds*
- *been purchasing items within their income but outside of what is essential or spending excessively*
- *sufficient savings to pay the fee and income in excess of their essential needs (whether being spent or not) which shows they can afford the fee*
- *not taken reasonable steps to ensure they have sufficient funds to pay a foreseeable fee*

“When applying for a fee waiver the applicant and parent(s) will be asked to provide details of their financial circumstances. This will typically be in the form of statements covering the 6-month period prior to the date of the application for all bank or building society accounts they hold, and a full breakdown of their monthly income and expenditure at the time of application.

“Evidence should be provided where a charity or local authority is providing support, particularly if it is claimed that such support cannot continue.”

48. Home Office forms (online and paper) similarly indicate that the Secretary of State wishes to assess household income, savings, and expenses over the last six months. Note that as regards any receipt of public funds, the Secretary of State wishes to see information for the past 12 months.
49. A starting point will, therefore, be all bank and other current and/or savings accounts over that period. Evidence of income (e.g., payslips etc) and various expenses (e.g., bills, rent book etc) will be needed. It should be possible to crosscheck some of this with the bank and other statements. It can be expected that the Home Office will do that, so it is necessary to ensure this is done and all income and expenditure is accounted for before requesting the fee waiver. The Home Office may also undertake credit and other financial checks. It is necessary to ensure that all bank and other financial information is disclosed.
50. However, it will be necessary to consider carefully whose financial circumstances need to be addressed. Certainly, the circumstances of the child must be addressed to show that the child cannot afford the fee. The parents/carers or parent/carer will likely need to be addressed but there are two questions to consider – firstly, is it reasonable to expect the parent or carer to pay towards the fee; and secondly, if so, is the parent or carer able to afford the fee (or some part of it).
51. It will be necessary to consider and address various circumstances that will arise. These circumstances may include where a child is of an age where it may be unreasonable to expect them to rely on their parent or parents to find the fee, where a parent may in any event be unwilling to do so and where an estranged parent is either a danger, hostile or unsupportive to the child. These circumstances may also include where the child or the family receives some financial support from family or friends, but it may be inappropriate to ask that family member or friend; or they may be unable or unwilling to provide financial assistance for paying the fee.
52. Note that although the ultimate question is whether the **whole fee is unaffordable** – that is a different question to whether any particular person, who can reasonably be expected to pay towards it, can pay some part of it. If there are sufficient sources

of funds from people who can be reasonably expected to make a contribution, then the fee is affordable— even though no one of them could afford the fee alone.

Fee request on paper

53. Must be made with registration application on paper at same time.

- If granted, then 45 days to submit biometrics
- If refused, then 10 days to pay fee OTHERWISE can make new registration application (in which can date of application will be date new application is made)

Fee request online

54. Cannot make registration application at same time

- If granted, the 28 days to make the application online (using token); and 45 days to submit biometrics
- If refused, then 10 days to make application with the fee OTHERWISE can make new registration application (in which can date of application will be date new application is made)

Further considerations

55. There are several further matters of which to take note.

Refusal of a fee waiver

56. If a request for a fee waiver is refused, there is no impediment to making a new request. If doing so, it will be necessary to consider why the original request was refused. It will also be necessary to pay careful attention to that original request to ensure that the child's citizenship rights are not compromised by any apparent or unexplained inconsistency between the new and the original request for a fee waiver.

Refusal of registration

57. If the Home Office refuse an application for registration of a child as a British citizen, it is possible to request a review of that decision. The Home Office charges a fee of

£372 for the review. If successful (i.e., the decision on the review is to register the child), the fee is refunded. However, there is no waiver of this fee for a child who cannot afford it.

Citizenship ceremonies

58. Children are not required to attend citizenship ceremonies. However, where a child applies to be registered as a British citizen but the decision to register the child is after she, he or they have reached adulthood, a ceremony is generally required. If this is required of someone who was granted a fee waiver, the fee for the ceremony is automatically waived.¹⁶

Passporting benefits etc.

59. It is deeply regrettable that the Home Office has not adopted a system whereby a child can demonstrate particular financial circumstances that will be a 'passport' to the fee waiver. Such circumstances might reasonably have included:

- (i) receipt of means-tested benefits (by the child/parent)
- (ii) receipt of legal aid
- (iii) receipt of local authority support because of the child/parent's financial needs

60. Nonetheless, it will be significant that another Government department or local authority has assessed the financial circumstances of the child and/or parent(s) and determined that they are so insufficient that these forms of State support should be provided. The particular significance of this, however, will need to be explained rather than assumed. Otherwise, it can be expected that the Home Office will either ignore this or dismiss its relevance on the basis that the test of 'unaffordability' for the fee waiver is different to the tests that apply for each of these forms of State support.

¹⁶ 20A.4.1 & 20A.4.2 of Table 20 in Schedule 8 to the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 (as amended)

Home Office application form and procedure

61. Generally, under paragraph 1 of Schedule 1 to the British Nationality (General) Regulations 2003, SI 2003/548, there is no prescribed form in citizenship applications. Similarly, online applications are not mandatory. Given the complexity of applications for registration where issues of character arise, it is generally advisable to use postal application form. This may help to ensure that all relevant information is included and make clear to the Secretary of State the basis upon which the application is being made.

62. Given the use of the relevant Home Office form is not mandatory, it may be useful to consider whether mark the form as “see material provided with this application” and include an up-to-date ACRO subject access request rather than seeking to itemise all offences on the form.

Remedy for refusal

63. As with all refusals of registration, the remedies available are by way of:

- an application to the Secretary of State for her to review the decision (**internal review**);
- an application to the High Court for **judicial review** of the decision.

64. **Internal review:** Inviting the Home Office to review its decision will require a Home Office fee of £372. The review process is not prescribed for by the British Nationality Act 1981; and there is no deadline by which a request for review must be submitted. Any such request should be submitted with Home Office NR form and representations as to why the Home Office should review its decision not to register the minor. If a review is successful, the Home Office review fee will be reimbursed.

65. **Judicial review:** If after a negative decision of an initial decision and after a review the Home Office maintains its decision to refuse, the only remedy left is an application for judicial review to the High Court. This must be issued as soon as reasonably possible and certainly within three months from the date of the review decision.

Legal Aid

66. Other than controlled work being available for separated children¹⁷, citizenship applications is not in scope of legal aid. However, in PRCBC’s experience, ECF is often granted by the LAA in good character and other complex cases. Legal aid is also available for pre-action work under controlled work and judicial review applications under licensed work.¹⁸

17 LASPO Schedule 1, Part 1, par 31A. These cases are remunerated at hourly rates (par 8.84 (n) of the Immigration Specification)

18 Paragraph 19, schedule 1, Legal Aid, Sentencing and Punishment of Offenders Act 2012

CASESTUDIES

Case study 1: Nic (aged 10)



Nic was born in another country and brought to the UK aged five by his parents. He has leave to remain. He is under a full care order with no prospect of ever returning to his biological parents. His parents had no lawful status in the UK.

His father was extradited to his country of birth to serve a heavy sentence. His mother followed her partner to their country of birth.

The local authority wants you to advise on the best way to protect Nic.

- 1) What registration (if any) would you suggest Nic to make?
- 2) What are the requirements for Nic to be registered?
- 3) What evidence would you submit with his application?
- 4) What fee might apply and under what regulation?
- 5) What registration procedure will you follow if you decide to make an online application?

Case study 2: Andrea (aged 6)



Andrea was born in the UK. Her mother has leave to remain. At the time of Andrea's birth, her mother was married to someone, who had leave to remain. Andrea's natural father had settled status at the time of her birth. Andrea's birth certificate includes her natural father. Andrea's mum is in receipt of universal credit.

- 1) What registration if any would you suggest Andrea to make?
- 2) What are the requirements for Andrea to be registered?
- 3) What evidence would you submit with her application?
- 4) What fee might apply and under what regulations?
- 5) What registration procedure will you follow if you decide to make a postal application?

Case study 3 (Danny, aged 17)



Danny was born in the UK. He will turn eighteen in two months' time. He and his mother have leave to remain. He was taken to his parents' country of birth on two lengthy occasions (each over four months duration) during his early childhood for him to receive medical treatment.

Danny has just been given a referral order for assault.

- 1) What registration if any would you suggest Danny to make?
- 2) What are the requirements for Danny to be registered?
- 3) What evidence would you submit with his application?
- 4) What fee might apply and under what regulations?
- 5) What registration procedure will you follow if you decide to make an online application?

Case study 4 (Susan, aged 17)



Susan was born in the UK. Her parents had no lawful status at the time of birth. Her father returned to his country of birth when she was a baby. Susan and her mum were granted settled status when Susan was eleven. Susan wants a British passport. She is having problems with her mum and wants to move out.

- 1) What registration if any would you suggest Susan to make?
- 2) What are the requirements for Susan to be registered?
- 3) What evidence would you submit with her application?
- 4) What fee might apply and under what regulations?
- 5) What registration procedure will you follow if you decide to make a postal application?