Submission to British Future Citizenship Inquiry

October 2019

Our organisations:

1. The Project for the Registration of Children as British Citizens (PRCBC) is the UK's first and only organisation focused on the rights of children and young people to British citizenship.[1] PRCBC was founded in 2012 in recognition that these rights were little understood and receiving little attention with devastating consequences to children and young people born and growing up in the UK wrongly deprived of their citizenship rights and hence treated as subject to immigration powers.

2. Amnesty International UK (Amnesty UK) is the UK national section of a global movement of over seven million people who campaign for every person to enjoy all rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Amnesty UK represents more than 670,000 supporters in the UK.

3. PRCBC and Amnesty UK have particular experience and expertise in relation to law and practice concerning British citizenship.[2] This has been developed over several years between them of research, legal analysis and, in the case of PRCBC, direct legal advice and representation of children and young people in relation to British citizenship law including litigation in the higher courts. That research and legal analysis has included returning to the *Hansard* record of the parliamentary scrutiny of the British Nationality Act 1981 and discrete provisions of later legislation that have amended that Act or affected its application in

[1] More information about PRCBC, its purposes and work, is available on its website here: https://prcbc.org/
[2] That experience and expertise has informed the organisations' individual and joint briefings of parliament, delivery of training to practitioners (legal and others) and findings and recommendations of parliamentary committees and the independent chief inspector of borders and immigration (among many others).

relation to rights to British citizenship. The children and young people directly assisted by PRCBC are overwhelmingly of black and minority ethnic backgrounds; and living in deprived households, in separated families or in care.

Background:

4. We have found there to be a widespread misunderstanding of this area of law on the part of many people – including many lawyers, policy advocates, campaigners and parliamentarians. That misunderstanding has done and continues to do considerable harm to people born and growing up in this country. That harm is done in several ways. Many people are poorly advised and assisted, or otherwise misled, into losing their citizenship rights. Moreover, the practice of, particularly, the Home Office in introducing and maintaining significant barriers that obstruct and deny the citizenship rights of many people has frequently gone unchallenged. It is even wrongly given support in much advocacy relating to citizenship rights.[3] Parliament has acceded to Home Office legislation establishing barriers to citizenship rights without proper scrutiny of the flawed analysis presented by Ministers in seeking to explain or justify that legislation.[4]

5. Each of these harms has resulted from ignorance – whether misunderstanding British nationality law or overlooking critical aspects of that law. One such example that has been particularly harmful has been the conflation of statutory rights of registration with discretionary powers of naturalisation. This error occurs both when registration rights are simply overlooked and when registration rights have been expressly treated as part of or akin to naturalisation powers.

6. We have witnessed the harm done by this misunderstanding and its perpetuation – most directly through our work with people affected. We cannot list all the children and adults

[3] Government policy – including in setting fees – wrongly treats the right to register as a British citizen as if an aspect of or akin to the discretionary power to naturalise an adult migrant; and this false conflation is repeatedly relied upon in Ministerial statements seeking to justify above-cost fees charged, including to children born in the UK with statutory entitlements to British citizenship. Yet, many advocates and campaigners similarly conflate these distinct provisions giving false credibility to a policy that does considerable harm to many children deprived of their citizenship rights by a fee of £1,012.

[4] For example, it did so in relation to the introduction of the statutory requirement of good character for registration by the Immigration, Asylum and Nationality Act 2006 as briefly described in our joint submissions to the Joint Committee on Human Rights for its consideration of the British Nationality Act 1981 (Remedial) Order 2019, see: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/draft-british-nationality-act-1981-remedial-order-2019/written/102809.pdf

whom we know to have been harmed nor comprehensively describe all the consequential harms they have suffered; and, of course, we know that we are aware of only a small fraction of the people affected. However, we note that we are aware of people who have lived in this country all their lives from birth who remain without its citizenship well into adulthood – including people as old as is the British Nationality Act 1981. We are aware of young people who have lost rights to citizenship on turning 18, leaving them subject to immigration powers and restrictions from which they should be exempt. We are aware of children and adults who have been detained, removed or deported, or facing removal or deportation, to places they do not know and have never been – including children and adults who are British citizens but cannot prove this and others who are entitled to that citizenship.

7. The harms and injustice of which we are aware is also cross-generational. We are aware of children born in the UK without British citizenship because their parent, also born in the UK, has been prevented from exercising her or his own citizenship rights. Had the parent been able to exercise her or his right to British citizenship by registration before the birth of the child, the child would have been a British citizen at birth. However, because the parent could not do so and was not settled, the child was also born without British citizenship and subsequently needing, like the parent, to register as a British citizen.

8. We are also aware of children born stateless in the UK but have seen much misunderstanding here too. Some campaigners have wrongly conflated statelessness with the state of being without British citizenship – recognising neither that rights to British citizenship are generally not dependent on statelessness, that in specified circumstances statelessness provides an entitlement to British citizenship[5] and that in other circumstances it may fortify a right to that citizenship.[6] These are vital considerations for the children and young people affected, yet misinformation and confusion as elsewhere is a barrier to understanding and exercise of these nationality law rights.

9. There remain several discrete and profound injustices in British nationality law. Some, not all, of these relate to British citizenship.[7] These injustices are not widely understood or

[5] Paragraph 3 of Schedule 2 to the British Nationality Act 1981

[6] Statelessness ought to be a highly relevant factor in any consideration of a child's application for registration under section 3(1) of the British Nationality Act 1981.

[7] This is one of the reasons that, in our written submissions of April 2018 to the Joint Committee on Human Rights for its consideration of the Draft British Nationality Act 1981 (Remedial) Order 2018, we included the following caution (paragraph 2): "*While in this submission it is necessary, in order to understand the incompatibility, to address aspects of historical injustice relating to the relevant registration provisions, this*

discussed. There are also profoundly important rights – including statutory entitlements – in British nationality law, in respect of which injustice lies in the lack of recognition or respect given them by government and others. It is important to distinguish between residual injustice in British nationality law and injustice arising out of how that law is applied.

10. It is vital that this inquiry does not proceed on the basis of the same misunderstandings that have bedevilled British nationality law over the years since the British Nationality Act 1981 entered into force on 1 January 1983. Those misunderstandings have, if anything, become more widely held or given voice over recent years. However, we see these misunderstandings reflected in the call for evidence sent through to us.[8] We have, therefore, concluded it would be remiss for our organisations to fail to offer some caution to the inquiry in the hope that this may assist it to avoid perpetuating these same misunderstandings.

11. Accordingly, we offer the following observations.

Distinguishing registration and naturalisation:

12. British nationality law importantly distinguishes between registration and naturalisation.[9] The British Nationality Act 1981 makes distinct provision for the acquisition of British citizenship by registration and by naturalisation. Not only are the provisions distinct. The statutory language adopted is distinct,[10] their explanation by Ministers in the parliamentary debates on what became the British Nationality Act 1981 is expressly distinct and their content and underlying purpose is distinct.[11]

13. The distinction can be summarised in the following way. Naturalisation is the culmination of an immigration process by which an adult migrant to the UK may seek and be permitted to

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submission is not concerned directly with the matter of historical injustice in British nationality law – that being a complex matter stretching far beyond the present incompatibility and remedial order."

[8] We are grateful to Jill Rutter for her email of 18 September 2019 with the call for evidence appended.

[9] This is a matter, we have addressed, for example, in a briefing on fees for the registration of children as British citizens, first issued in September 2016 and last updated in March 2019, see: https://prcbc.files.wordpress.com/2019/03/fees_briefing_revised_march_2019.pdf

[10] It is most particularly distinct as between registration by entitlement; but even in relation to section 3(1) of the British Nationality Act 1981 it is significant that, unlike naturalisation, Parliament made registration under that provision subject to no formal constraint save that the power in that provision may only be exercised to register a person as a British citizen if that person is under 18.

[11] Ministers expressly distinguished naturalisation and registration by entitlement during the passage of the British Nationality Act 1981: see *Hansard* HC, 2 June 1981 : Col 855.

make her, his or their connection to the UK.[12] All other acquisition – including by registration – under the Act is concerned with recognition of the connection to the UK a person *already has*.[13] That explains why, for the most part, registration under the Act is by statutory entitlement. It is the means by which the connection a person has to the UK is confirmed by the recognition of her, his or their British citizenship. It is not – crucially was never intended to be – a matter for the Secretary of State to do other than ensure that, where Parliament has determined the relevant connection to be demonstrated, a person is registered as a British citizen on his, her or their making the relevant application.

14. Registration is not a matter of immigration policy. The people – including many children and young people – whom the Act provides with rights to register are in many cases not migrants, and in no cases are properly treated for citizenship purposes as migrants. A primary motivation for Parliament's adoption of several of the rights to registration was expressly to address the consequences of removing *ius soli* from British nationality law.[14] Parliament intended to substitute real connection to the UK for *ius soli* as the founding principle of British citizenship.[15] It recognised that merely removing *ius soli* would cause many people born in the UK to grow up excluded from the citizenship of the country to which they were as connected as any of their peers. Parliament was concerned to avoid that.[16]

The call for evidence:

15. The call for evidence, however, overlooks this distinction between registration and naturalisation. It treats registration and naturalisation together; and treats these as both concerned with "*the process of becoming a British citizen* [that can or does] *promote integration* [and] *a stronger sense of 'belonging' among migrants who have settled in the UK.*"[17] We note that this same error of conflation is found in the '*putting citizenship on the*

[12] The previous *Nationality Instructions, volume 1, chapter 18* emphasised this at paragraph 18.1.7 of the introduction in stating the need for decision-makers to be satisfied that an applicant for naturalisation had "*genuinely thrown in their lot with this country*".
[13] We have reviewed the Green Paper and White Paper that preceded the British Nationality Act 1981, including the *Hansard* record of parliamentary scrutiny of the Act when it passed through Parliament prior to enactment.
[14] *Hansard* HL, 7 July 1981 : Col 662 *per* Lord Belstead, Minister of State
[15] *Hansard* HC, 3 June 1981 : Cols 979-980 *per* Timothy Raison MP, Minister of State
[16] *Hansard* HC, Standing Committee F, 24 February 1981 : Col 177 *per* Timothy Raison MP, Minister of State
[17] See first paragraph of the open call for evidence

agenda' chapter of British Future's *Immigration after May* report of earlier this year. That chapter begins:

> "*Over 123,000 people became British citizens in 2017 – people who migrated to the UK and now call this country their home.*"

16. The assertion there is incorrect. In 2017, 87,315 people acquired British citizenship by naturalisation.[18] These were people who migrated to the UK; and under paragraphs 1(2)(c) or 3(c) of Schedule 1 to the British Nationality Act 1981 must have been settled in the UK at the time of their application to naturalise.[19] However, 35,898 people were registered as British citizens.[20] Many of the people who registered as British citizens were born in the UK. Data secured by PRCBC indicates that the majority of people registered as British citizens were people born in the UK.[21] Moreover, as explained above, the basis for all of these people's registration was *not* a matter of immigration policy or their being migrants, still less there being any requirement that they were settled within the meaning of the immigration Acts.

17. We are, therefore, very concerned at the prospect that this inquiry may be profoundly misled upon vital matters of British nationality law. This is important. The same errors that we have highlighted in relation to the call for evidence lie at the heart of some of the most damaging developments in law, policy and practice that continue to frustrate the intention of Parliament in passing the British Nationality Act 1981. These errors deprive thousands of people of the British citizenship, which is theirs by right. These errors can, for example, be seen in the parliamentary debates leading to the adoption of a statutory requirement of good character for the registration, under several of the statutory provisions, of any person

[18] Home Office immigration statistics quarterly release for year ending June 2019, August 2019; citizenship statistics: Table cz 02

[19] The requirement that an adult applying for naturalisation (whether under section 6(1) or (2)) must be settled at the time of the application cannot be waived: see paragraphs 2(2)(c) and 4(c) of Schedule 1 to the British Nationality Act 1981 respectively.

[20] See Home Office citizenship statistics table cz 02 *op cit*

[21] The very great majority of children registered by entitlement will be children born in the UK; and some of the children registered by discretion may be born in the UK. Responses to FOI requests by PRCBC confirm that the majority of registration applications are made under provisions for statutory entitlements provided to children born in the UK.

of age 10 or older;[22] and in many Ministerial statements and Home Office publications produced in support or explanation of registration fees set far above administrative cost.[23]

18. We must also caution that there are several other injustices in British nationality law and its application by the Home Office – some of which concerning British citizenship and some concerning other distinct British nationalities.[24]

19. Accordingly, we are concerned that the questions, upon which evidence is called for, are unsuited for any inquiry save into naturalisation. Most of the questions have no relevance to any other matter. There is, for example, much focus on citizenship policy.[25] However, British nationality law – unlike immigration law (and unlike naturalisation provisions of the British Nationality Act 1981) – does not, for example, delegate to the executive the decision of whom is or is not a British citizen, or whom is entitled or not to that citizenship. These are ultimately matters of law not policy.

20. We do not propose to dissect each of the relevant questions. However, we also note that the reference to "*residual categories of British citizenship*" is itself obscure.[26] There is but one category of British citizenship.[27] There are different circumstances in which it may be acquired; and in the case of citizenship by descent, these may have consequences for the acquisition or not of citizenship by future generations. There are categories of British nationality other than British citizenship. It may be the question in the call for evidence is intended to open up inquiry into these other categories. As we have indicated there are injustices remaining in British nationality law concerning these distinct categories.

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[22] We have reviewed the *Hansard* record of parliamentary scrutiny of the legislation that introduced this requirement; and drew attention to this error in our submission of June 2019 to the Joint Committee on Human Rights for its consideration of the Draft British Nationality Act 1981 (Remedial) Order 2019.

[23] The error has been consistently repeated and we do not set out every instance here. We draw attention to the discussion of this error and its repetition by the Minister in the debate on fees in the House of Lords in June 2018: *Hansard HL*, 12 June 2018 : Col 1655 *et seq*

[24] As highlighted earlier in this submission, there are continuing injustices arising in British nationality law concerning British nationalities other than British citizenship, which we are not in a position to address here (see fn. 7).

[25] The introductory paragraphs of the call for evidence provide this focus, which is expressly repeated in Questions 1 and 6.

[26] See Question 2 of the call for evidence

[27] British citizenship was introduced by the British Nationality Act 1981. Its especial significance in British nationality law includes that it provides the holder with the right of abode in the United Kingdom, thereby providing the holder of British citizenship with the right to live in and come and go to and from the United Kingdom free from immigration controls. See sections 1 and 2 of the Immigration Act 1971, as amended by section 39 of the British Nationality Act 1981.

Addressing these would require careful consideration of the specific nationality category or categories affected; and would not be assisted by any confusion of these with the distinct category of British citizenship.

Conclusion:

21. In the circumstances, we are particularly concerned at the question concerning "*scope for simplifying nationality law*"[28] because the call for evidence does not evince a sound basis for concluding the technical support currently available to the inquiry, or the evidence it is likely to receive (or that which it will not receive) in response to the questions it has asked, will sufficiently equip the inquiry for such a potentially momentous task. The risks of undertaking such a task, without adequate foundation, are considerable. Our organisations have faced considerable obstacles over recent years in seeking to raise awareness of rights to register as a British citizen, to removing barriers to the exercise of these rights and to ensuring, in particular, that children and young people with these rights can and do exercise them. As briefly touched on in this submission, among the most significant hurdles we continue to face is the high degree of misunderstanding and misinformation about these rights. The ultimate consequences remain the effective deprivation of tens of thousands of children and young people of their rights to British citizenship; and in turn the same deprivation of many of the children born to them. Similar injustice may be done in respect of other British nationality rights if recommendations are made on the basis of inadequate understanding of British nationality law.

22. We also note the increased attention given by various commentators and campaigners to the question of *ius soli*, and calls by several of them for a return to that principle in British nationality law. We would support that. However, we must stress that this would not in itself address the significance of the registration rights to which we have referred in this submission. This is so for at least two reasons. Firstly, a return to *ius soli* would not (unless what is contemplated is a retroactive application) address the rights of people born in the UK without British citizenship between 1 January 1983 and the date of any return to *ius soli*.[29] Secondly, it would not address the circumstances of children brought to the UK at a young age who grow up in this country as connected to the UK as their peers and with rights to register under section 3(1) of the British Nationality Act 1981.

[28] See Question 6 of the call for evidence

[29] However, retroactive application raises further considerations as to the consequences of any particular means adopted to achieve that, which consequences themselves would need careful consideration.

23. Having regard to the call for evidence sent to us, we must respectfully request that any report of the inquiry does not list our organisations as having provided evidence to it unless we have first had opportunity to see final drafts of the report to approve the context in which our organisations would otherwise be cited. We intend, however, to make this submission available on PRCBC's website.