



Amnesty International UK

Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-2021

House of Lords Report Stage Report on rights to British Citizenship 28 September 2020

The Project for the Registration of Children as British Citizens (PRCBC) and Amnesty International UK support Amendment 16 tabled in the names of Baroness Lister of Burtersett, Lord Alton of Liverpool, Baroness Hamwee and Baroness Altmann. That Amendment is set out in full as Appendix A to this Briefing. Appendix B provides some casestudies.

Purpose of the Amendment:

The Amendment seeks no more than to require the Secretary of State to investigate and report to the House upon awareness and exercise of rights to British citizenship. It is concerned solely with rights to British citizenship. It is motivated by a particular concern to ensure that those British people – especially children and young people – who must register their rights to British citizenship are equally recognised and secure with the citizenship of the country to which they belong. It is not concerned with any immigration matter; nor with naturalisation. The Amendment is focused on the situation of British people of EEA parentage but the learning that it would require would benefit all British people, particularly those who must register their rights to British citizenship or take other steps to secure confirmation of the British citizenship they already possess. As such it would be a valuable step towards correction of a woeful misunderstanding and disrespect at the Home Office of (1) British citizenship, (2) rights to that citizenship; and (3) the will of Parliament in providing for those rights

The need for the Amendment:

Parliament's intention is currently being frustrated. Many people are effectively deprived of the citizenship that Parliament has determined should be theirs.¹ The reasons for this are various. Some people born in this country, who have lived here all

¹ PRCBC's commentary on the *Hansard* record of the 1981 debates on the British Nationality Bill provides an analysis with Ministerial statements of that original intention:
https://prcbc.files.wordpress.com/2019/07/commentary_hansard-bna-1981_registration_aug-2018-2.pdf

their lives, are simply unaware that they do not have British citizenship. Some people are unaware of the rights Parliament has given them to that citizenship. And some people know of their rights but cannot exercise them because of various barriers in the policy and practice of the Home Office, including its fees and lack of legal aid.

Consideration of British citizenship rights at Committee Stage:

Rights to British citizenship were debated in consideration of two separate groups of amendments at Committee Stage:

- On 9 September 2020, the House considered the fees for registration as a British citizen;² and
- On 16 September 2020, the House considered the role and responsibilities of the Home Office in ensuring people were aware and able to exercise their rights to British citizenship.³

On each occasion, the Minister's response confirmed the continuing failure at the Home Office to understand and respect a fundamental distinction. That is the distinction between:

- The department's obligation to give effect to Parliament's determination of whom, by reason of their connection to the UK, is to be recognised as a British citizen;⁴ and
- The department's role in determining policy under which other persons may be permitted to enter or stay in the UK.⁵

Origins of British citizenship rights:

Rights to British citizenship are established under Part 1 of the British Nationality Act 1981. When Parliament passed that legislation it introduced British citizenship as a new category of British nationality. British citizenship was introduced as the nationality to be held by all persons connected to the UK whereby, they would enjoy the right of abode in this country.

Parliament created, in that Act, rights of acquisition of British citizenship by birth, adoption, registration and commencement. Acquisition by birth, adoption and commencement are automatic. This is because in each case, Parliament determined that the connection of the persons to whom these rights apply is immediately knowable or foreseeable at the point of acquisition. However, Parliament recognised that without more, many people equally connected to the UK would be wrongly deprived of British citizenship. Thus, it created rights of registration – statutory rights to British citizenship on application by the person to whom the right belongs.

The then Lord Advocate, Lord Mackay of Clashfern, introduced Government amendments in this House intended to emphasise that the right of registration was not

² <https://bit.ly/33QH79K>

³ <https://bit.ly/32B6mxg>

⁴ The central role of connection in the determination of British citizenship rights was emphasised in the 1981 debates, including at *Hansard* HC, 3 June 1981 : Cols 979-980 *per* Mr Timothy Raison MP

⁵ Unlike statutory rights to British citizenship, immigration policy is delegated to the Secretary of State under sections 1(4) and 3(2) of the Immigration Act 1971

to be dependent on the Secretary of State.⁶ Whereas it is for her to recognise and formally register the right, its existence arises from the Act and is not a matter for her beyond that role of recognition and registration. The then Home Secretary, William Whitelaw, speaking in the other place, emphasised that registration concerned recognition of people's rights to this country's citizenship⁷ when distinguishing the provisions for registration from the provisions for naturalisation of adults who had come to the UK, connected to other places, and who wished to make their connection here.

The first test of the Home Office's understanding and commitment to fulfil Parliament's will in passing the British Nationality Act 1981 – particularly Part 1 of that Act – came in the years that followed its commencement on 1 January 1983. As Wendy Williams' *Windrush Lessons Learned Review* report confirms, the Home Office failed that test. Rather than doing all it could to ensure that members of the Windrush Generation knew of and were encouraged and assisted to exercise their right to register as British citizens before the expiry of the time by which they were required to do so, the Home Office expressly and intentionally discouraged people from registering.⁸ People, thereby, lost the British nationality they had formally held and became subject to the immigration system. The end results of that injustice should now be familiar to all.

Home Office failure to recognise and respect British citizenship rights today:

The Home Office continues to fail in this regard. It continues to tell British people – including thousands of children and young people, born in this country without British citizenship but entitled to register as British citizens – that an immigration status is appropriate and sufficient for them.⁹ Despite the best and repeated efforts of the Project for the Registration of Children as British Citizens (PRCBC) with others, including Amnesty International UK, in dialogue and correspondence with the Home Office, it is again doing so by its operation of its EU settlement scheme.¹⁰ People – particularly children and young people – who may already be British citizens or who have rights to that citizenship are not being assisted to know and exercise their rights to British citizenship while being encouraged to register under the EU settlement scheme themselves with an immigration status (precisely the status with which the Windrush Generation were left).

How or why this is happening:

When the Home Office actively discouraged members of the Windrush Generation from registering their right to British citizenship, it did so for its convenience. It preferred to avoid the responsibility of receiving and acting on a large number of registration

⁶ *Hansard* HL, 6 October 1981: Col 36

⁷ *Hansard* HC, 2 June 1981: Col 855

⁸ See Wendy Williams' report at p59:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874022/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf

⁹ See, for example, the letter from the Minister to PRCBC & others of 7 May 2020 containing the wholly inadequate and inappropriate statement, in relation to people entitled to British citizenship, that: "*Citizenship is not necessary to enable individuals to live, work or study in the UK and a grant of indefinite or limited leave to remain will enable lawful residence and confer appropriate access to benefits and services.*":

<https://prcbc.files.wordpress.com/2020/06/letter-of-reply-may-2020-1.pdf>

¹⁰ For example, the correspondence that led to the 7 May 2020 letter, *op cit*

applications. Today, it continues to deprive people of their citizenship rights for its convenience. It charges people, including children, a fee, which is set far above the administrative cost of registration. A former Home Secretary (Sajid Javid) described this fee as “huge”.¹¹ It charges this fee, as the Minister again explained at Committee Stage,¹² to raise money to subsidise its immigration functions. The Home Office seeks to justify this by suggesting that the fee, in part, reflects the benefit provided by the Home Office to applicants.¹³ But recognition of a British person’s citizenship cannot properly be understood to bestow a benefit upon that person. It merely accords to the person the citizenship that Parliament has determined is that person’s right – and, as was made clear in 1981, which Parliament intended and wished that person to exercise.¹⁴

The fee is far from the only barrier to people exercising their rights to British citizenship. Other barriers include:

- Widespread lack of awareness that British citizenship is not automatically acquired merely by birth in the UK;
- Widespread lack of awareness of rights to British citizenship by registration;
- Requirements that children born in the UK prove themselves of ‘good character’ if aged 10 or older in order to exercise their right to register as a British citizen¹⁵ (a requirement introduced in 2006 without proper consideration of the circumstances of people born in the UK);¹⁶
- Demands for evidence to confirm facts already known to the Home Office and which are necessary to establish a right to British citizenship;
- The practice and policy of the Home Office which fails to understand and give effect to its duty to fulfilling Parliament’s intention that all British people are able to exercise their rights to British citizenship.

Summary of the Amendment:

Subparagraph (1) requires the Secretary of State to lay a report. The people that report concerns are the people defined as ‘relevant persons’ in subparagraph (6) – that is, in summary, people with rights to British citizenship who are losing EU free movement rights in the UK.

Subparagraph (2) sets out what that report must contain. It must contain an assessment of the Secretary of State of two matters – what is the level of awareness

¹¹ Before Home Affairs Committee (Q276), transcript available at:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairscommittee/windrush-children/oral/82932.html>

¹² *Hansard* HL, 9 September 2020 : Cols 863-864 *per* Baroness Williams of Trafford

¹³ Each of Baroness Lister and Baroness Altmann addressed this at Committee Stage, see *Hansard* HL, 9 September 2020 : Cols 852 & 853 respectively

¹⁴ See PRCBC commentary *op cit*

¹⁵ See joint PRCBC and Amnesty UK short briefing on ‘good character’:

https://prcbc.files.wordpress.com/2019/10/joint_summary-on-good-character-requirement-in-childrens-citizenship-rights.pdf

¹⁶ See paragraph 25 of the report of the Twentieth Report of Session 2017-2019 of the Joint Committee on Human Rights: <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1943/1943.pdf> and paragraphs 459-460 of the report of the House of Lords Citizenship and Civic Engagement Committee 2017-2018: <https://publications.parliament.uk/pa/ld201719/ldselect/ldcitizen/118/118.pdf>

among people of their rights to British citizenship; and what is the level of exercise of these rights. In making these assessments, the Secretary of State must have regard to several factors identified within subparagraph (2)(c), each of which concern barriers to people being able to exercise their statutory rights to British citizenship.

Subparagraph (3) requires the Secretary of State to pay particular regard to her equalities duties in producing this report; and to make some comparison of the situation of two groups of people with rights to British citizenship – the group of people with rights to British citizenship who are losing EU free movement rights in the UK (this group are the focus of the report required by the Amendment) and the group of people with rights to British citizenship who do not have EU free movement rights.

Subparagraph (4) requires the Secretary of State to undertake consultation in the preparation of her report.

Subparagraph (5) requires the Secretary of State to give particular attention to the situation of various groups of particularly marginalised children and young people (Appendix B provides some casestudies relating to these groups of children and young people). Subparagraph (6), which contains definitions, defines children and young people as people under the age of 25.

APPENDIX A

Amendment 16

Baroness Lister of Burtersett
Lord Alton of Liverpool
Baroness Hamwee
Baroness Altmann

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After Clause 4, insert the following new Clause—

“Report on awareness and exercise of rights to British citizenship

(1) Within six months of the passing of this Act, the Secretary of State must lay before Parliament a report on the rights to British citizenship of relevant persons.

(2) The report under subsection (1) must provide—

(a) an assessment of the level of awareness among relevant persons of their rights to British citizenship (“the level of awareness”) including the reasons for any lack of awareness among such persons;

(b) an assessment of the level of exercise by relevant persons of their rights to British citizenship (“the level of exercise”) including the reasons for any failure to exercise these rights by such persons;

(c) *an assessment of the impact upon either the level of awareness or the level of exercise of each of the following—*

- (i) any fee imposed by the Secretary of State in relation to the exercise of rights to British citizenship;*
- (ii) the requirement of good character under section 41A of the British Nationality Act 1981 for registration as a British citizen;*
- (iii) any guidance or policy of the Secretary of State in relation to the exercise of rights to British citizenship;*
- (iv) the practice of the Secretary of State in relation to data held by or accessible to the Secretary of State that may confirm a person's rights to British citizenship;*
- (v) the availability of legal aid in relation to rights to British citizenship;*
- (vi) the capacity or willingness of parents to assist relevant persons to exercise their rights to British citizenship;*
- (vii) the practice of local authorities in relation to rights to British citizenship; and*
- (viii) the practice of the family courts in relation to rights to British citizenship.*

(3) *The assessments required by subsection (2) must include—*

- (a) consideration of the circumstances of relevant persons who share a relevant protected characteristic for the purposes of section 149 of the Equality Act 2010; and*
- (b) comparison of the circumstances of relevant persons with other persons having the same rights to British citizenship.*

(4) *In making the assessments required under subsection (2), the Secretary of State must consult such persons as the Secretary of State considers appropriate, which shall include children and young persons with rights to British citizenship and organisations with expertise and experience in assisting and representing those children and young persons in connection with those rights.*

(5) *The report under subsection (1) shall include specific consideration of each of the following groups of relevant persons—*

- (a) children and young persons who are or have been a looked after child;*
- (b) children and young persons who are or have been in the criminal justice system;*
- (c) children and young people who are or have been the subject of a mental health assessment or mental health order;*

- (d) *children who are not living in a household with two parents;*
- (e) *children and young persons in poverty; and*
- (f) *children and young persons who are victims of domestic abuse.*

(6) *For the purposes of this section—*

“children and young persons” includes any person under the age of 25 years;

“domestic abuse” has the same meaning as in the Domestic Abuse Act 2020;

“in poverty” means living in a household whose income is less than 60 per cent of the median United Kingdom household income;

“in the criminal justice system” means having received a conviction or caution for the purposes of the Rehabilitation of Offenders Act 1974 (whether or not that conviction or caution has been or can be spent);

“mental health assessment” means an assessment of the person’s mental health that was required by a court order or under legislation;

“mental health order” means an order of a court requiring a person’s admission to a hospital or other institution for the purpose of treatment or care on account of that person’s mental health;

“relevant persons” means persons who—

(i) immediately before the repeal of section 7 of the Immigration Act 1988 (exemption from requirement for leave to enter or remain for persons exercising EU rights etc.) under paragraph 1 of Schedule 1 to this Act, were entitled by virtue of that section to enter or remain in the United Kingdom without leave; and

(ii) have at any time up to the passing of this Act had rights to British citizenship; “rights to British citizenship” means rights of acquisition of British citizenship by birth, adoption or registration under the British Nationality Act 1981.”

Member’s explanatory statement

The amendment would require the Secretary of State to provide a report on factors affecting the awareness of and exercise of rights to British citizenship under the British Nationality Act 1981 by those affected by the repeal of section 7 of the Immigration Act 1988 (exemption from requirement for leave to enter or remain for persons exercising EU rights etc.).

APPENDIX B

Casestudies: marginalised groups of children and young people

Looked after children

Amanda's Italian mother came to the UK to work more than two decades ago. A few years later, Amanda was born here. She lived with her mother for many years. However, when she first contacted PRCBC she had been in local authority care for about five years. She was nearly 18. At this time, Amanda was without British citizenship (or not recognised as having British citizenship). She also remained undocumented: she had no evidence of a right to reside and was without leave to remain. Amanda did not have access to any residence card or document for her mother. Ultimately, she was able to register under section 1(4) of the British Nationality Act 1981 on the basis of having lived in the UK from the time of her birth up to her tenth birthday. The status of her mother was not relevant to registration under that particular provision. However, Amanda's registration required hours of work in collecting evidence to prove she had lived continuously in the UK over those ten years. Her birth certificate, baby book, medical records, and letters from schools, hospital and social services were all key to evidencing her residence and securing her citizenship. It also required payment of the registration fee (now £1,012). However, had it been possible to confirm her mother's status in the UK at the time of Amanda's birth or since, it may have been either that Amanda was born a British citizen or could register without the need to establish more than her birth in the UK.

Lilya and Lucas are siblings with an Estonian mother. They were taken into care under a full care order shortly after PRCBC had been instructed to assist them to register as British citizens. The fact of the full care order was in itself demonstrative of the generally critical factor in the registration of any child under section 3(1) of the British Nationality Act 1981: being where the child's future clearly lies. Lilya and Lucas' futures were now clearly in the UK. However, despite PRCBC agreeing to represent the children for free, the local authority had been poorly advised that the children should apply for leave to remain and was generally unwilling to pay the children's registration fees of £1,012 each. PRCBC spent months advising the local authority and seeking to persuade it to act on the children's rights; and was forced to make complaints. In the end, the local authority did pay the fees and each child is now a British citizen.

Children in the criminal justice system

Marcus was born in the UK and has lived here all his life. He was born to a German mother. Shortly after his birth, Marcus became known to social services because of domestic abuse in Marcus' home. Marcus has spent years in and out of care. He has had several short-term foster placements; and at times there has been intensive social services support for him and for his mother. His father abandoned the family when Marcus was very young. Later, Marcus' mother lived with another man who was abusive. Marcus' life has been extremely distressing and he has many times run away from home. Nobody has considered Marcus' citizenship rights until very recently. Marcus is now a young man with a criminal record from his later teenage years. His father cannot be traced and it is difficult to establish his mother's status at the time of his birth. Marcus may be a British citizen but this cannot be proved. Marcus certainly has the right to register as a British citizen. At the latest, he acquired this right (under section 1(4) of the British Nationality Act 1981) when he was ten. However, Marcus

now faces the prospect that he may be refused British citizenship because his citizenship was not registered before his offending.

Children of single parents

Aminata applied for a British passport on the basis that her estranged father was a British citizen at the time of her birth. She included with her application a DNA report that had been commissioned by the Child Support Agency that demonstrated he was her father. She also submitted evidence of her father being on the electoral role and her mother provided a sworn statement that she had seen Aminata's father's British passport before he had become estranged. The Passport Office refused the passport stating both that the DNA report did not establish parentage and that Aminata must prove her father's British citizenship. PRCBC assisted Aminata with a letter before claim (that is a warning letter before issuing a claim for judicial review in the High Court) to which the Passport Office responded that it had now confirmed from its records that he was a British citizen but that it required the evidence held by the Child Support Agency on the basis of which the DNA report had been issued. Aminata had no access to that. This was explained to the Passport Office who maintained its position. Only after PRCBC had issued another letter before claim and then issued legal proceedings in the High Court for judicial review did the Passport Office relent and issue the passport.

Teo (now 17) was born in the UK to an unmarried Spanish mother and British father. His mother has since died and her settled status in the UK at the time of Teo's birth cannot be proved. Because Teo's father was not married to his mother, Teo could only be British at birth if his mother was then settled. Teo's father lost his job during the March lockdown. The Passport Agency had refused a British Passport for Teo; and his father had sought advice from several places before he came across PRCBC. With the benefit of PRCBC's advice, he was able to understand Teo's right to register as a British citizen and the steps to follow.