



The Lord Moylan  
House of Lords  
London  
SW1A 0PW

15 April 2023 (date corrected to June 2023)

Dear Lord Moylan,

### **British nationality rights and the Illegal Migration Bill**

May we please thank you and all peers who participated in the debate on nationality rights on the fourth day of Committee. We have taken the liberty of copying this letter to each of them; and intend also to share the letter with the Home Office.

We are particularly grateful to you and Baroness Lister of Burtersett for making clear the important distinction between naturalisation and registration. As you indicated, the latter – which concerns the recognition of a British person's connection through registration of British nationality – is a significant constitutional matter. Registration, as you have consistently made clear, is a formal process established to ensure that British people, who may otherwise be without citizenship of the UK or British territory to which they are connected, are fully and equally recognised along with other citizens.

None of this is to question the importance of citizenship and the value of promoting and facilitating it, including in relation to naturalisation by which an adult migrant to the UK may be permitted to become a British citizen. Rather, it is to acknowledge a vital categorical distinction between, on the one hand, the formal process of registration of a British person's nationality rights; and, on the other, the discretion permitted to the Home Secretary to, in certain circumstances, permit someone who is not British to become British by naturalisation.

### **Errors and inconsistencies in the Government analysis:**

It is in this context that we have chosen to write to address what the Minister had to say in response to the debate. There were, with respect, a number of errors and inconsistencies in that response. We address four key points.

**First, the central plank of the Government's position, as stated by the Minister, is that the registration rights included in the Bill are based in some way on**

**residence; and the inclusion of these rights is intended to prevent any such residence being established by an arrival or entry to the UK of a type it is said this Bill is to deter or prevent (*Hansard* HL, 12 June 2023 : Col 1755-6).**

With respect, many of the registration rights that are included have nothing to do with residence at all. For example, sections 5, 10(1) and 13(1) of the British Nationality Act 1981 are each included among the entitlements that are caught by Clause 31(1). None of these provisions has anything to do with residence. None of the registration provisions caught by Clause 31(2) include any requirement of residence.

Moreover, section 3(2) of the British Nationality Act 1981 – to which the Minister made particular reference (*Hansard* HL, 12 June 2023 : Col 1756) – applies to children born outside the UK to a British citizen by descent in two distinct circumstances. The first, is where the child is stateless. In this instance, there is no requirement concerning residence of anyone. The second, is where the child is not stateless. In this instance, there is a requirement of previous residence of the British citizen parent (someone with a clear right of entry and residence in the UK) and no requirement of residence upon the child. There is simply nothing of the explanation offered by the Minister concerning residence that could apply to either of the circumstances in which section 3(2) entitles a child to British citizenship.

Section 3(5) of the British Nationality Act 1981 – to which the Minister also made particular reference (*Hansard* HL, 12 June 2023 : Col 1756) – equally concerns children born outside the UK to British citizens by descent. This section does require some period of residence of the child *with their parents* in the UK. To fall foul of this Bill, the child would be brought by their parents – at least one of whom a British citizen – to the UK. As we explained in our joint briefing for Committee stage, the most likely circumstances in which this entitlement – or indeed that under section 3(2) – might ever come to be barred by this Bill would be if the British parent of a child *mistakenly* thought that, like them, their child was already a British citizen by birth or, in any case, not in need of permission to come with them to the UK.

**Second, the Minister expressly disavowed, in response to the question of Baroness Chakrabarti, any implication that the intended exclusion of a child's citizenship rights was based upon any notion of a child's 'culpability' (*Hansard* HL, 12 June 2023 : Col 1757).**

We are pleased the Government does not intend to treat children brought, sent or even trafficked to the UK as culpable for what is done to them. Nonetheless, this entirely proper disavowal of culpability raises a more profound question as to the motivation for barring the child's citizenship rights. This is because what is left for explaining the exclusion of an innocent child's citizenship rights appears to be little if anything more than a vindictive penalising of the child for someone else's culpability. How did Ministers ever arrive at such a position if giving any serious consideration to either British citizenship (and rights to it) or to children's best interests? This is, as you put it, treating citizenship as of such little importance as "*a library ticket or a voucher for sweets*" (*Hansard* HL, 12 June 2023 : Col 1748) to be taken away at the whim of Ministers for purposes that have no application to, still less respect for, the child.

If this were not bad enough, in relation to section 3(2) and (5) of the British Nationality Act 1981 the only culpability involved will, in all likelihood, be the *mistake* of a British citizen parent in thinking that, like them, their child was born with British citizenship or otherwise thinking their child does not need permission to be brought with them to the UK. The vindictiveness here seems to be directed at both the child and the British citizen parent.

As regards section 3(1) of the British Nationality Act 1981, this applies only to children. Its inclusion in that Act was expressly to ensure that children connected to the UK were not deprived of citizenship rights merely because Parliament had been unable to foresee and make specific provision for all circumstances in which that connection would arise. Section 3(1) is vital, therefore, to allow the Home Secretary to fulfil Parliament's intention that all British children should share in the security and sense of belonging instilled by citizenship. It is especially significant that the children most likely affected by including section 3(1) in the Bill are children brought or sent to the UK long before their teenage years, and in many instances before they will have formed any memories of the place from which they were brought or sent, or even trafficked. Baroness Lister highlighted the circumstances of a child, for whom the UK had assumed full responsibility by the making of a Full Care Order by the Family Court due to the abuse or neglect of the child's parents in the UK (*Hansard* HL, 12 June 2023 : Col 1751). Although the example was hypothetical, it is an example of which PRCBC has direct experience.

In any event, as you stated, British citizenship by right is not a "*reward for [anyone's] good behaviour*" (*Hansard* HL, 12 June 2023 : Col 1748). Certainly, that was not Parliament's intention in creating this citizenship and it is not properly treated this way. Rather, citizenship is to be acquired by right where the person is within the body of people connected to the UK, Parliament having identified the circumstances that constitute such connection when creating British citizenship through the enactment of the British Nationality Act 1981.

**Third, the longstanding categorical error at the Home Office of treating registration as no different to naturalisation is repeated.**

For example, the Minister was categorically wrong in his comparison of the entitlement to registration under section 4(2) of the British Nationality Act 1981 to naturalisation (*Hansard* HL, 12 June 2023 : Col 1756). The distinction between the two does not lie in the mere absence of a requirement for knowledge of English and life in the UK under that section. The distinction – reflecting the fact that the people with the right of registration are British and with established connection to the United Kingdom – is that section 4(2) provides an entitlement to be registered. There is no discretion for the Secretary of State to refuse to register the person if the relevant conditions are met. Precisely as you said, the process is one of formally confirming the evidence establishes the relevant British person's entitlement under the Act (*Hansard* HL, 12 June 2023 : Col 1747) by reference to conditions that establish that British person is connected to the UK.

**Fourth, the Government does not appear to have thought through the implications of what the Minister acknowledged may be "*probably an***

***exceptional state of affairs” in which the Bill’s bar upon citizenship rights by registration may have effect (Hansard HL, 12 June 2023 : Col 1758).***

With respect, the Government is, for a number of reasons, likely correct in its appraisal that the exclusions of registration of citizenship rights are likely to apply to only a small number of people. These reasons include that many of the relevant registration provisions only apply to people who already are permitted to travel to the UK, albeit only as visitors, without permission. That is, for example, the case for all the people caught by the inclusion of section 4(2) of the British Nationality Act 1981. That was the first of the few provisions to which the Minister gave any express consideration in his response (*Hansard* HL, 12 June 2023 : Col 1756). All the people to whom that section applies already hold British nationality (but not British citizenship). They are all, therefore, non-visa nationals and entitled to come to the UK without permission unless intending to come for a period in excess of 6 months or for a purpose other than visiting (e.g. to work).

Indeed, the most likely circumstances in which such a person might ever be caught by the Bill is if they make a mistake as to what their British passport already permits them to do in coming to the UK; or perhaps the Secretary of State’s mistake in thinking there are not a British national.

This emphasises the point we made in our joint briefing and which you also made. The relatively few people who are ever likely to be caught by the Bill’s exclusion of registration of citizenship rights are likely to be children - as the Minister expressly acknowledged, ‘innocent’ children; and, as we identified in our joint briefing, highly likely to be children of young or very young age at the time of their being brought, sent or even trafficked here.

We strongly agree that the Bill’s treatment of registration is based upon a profound misconception about citizenship and rights to it; and that this misconception has persisted and degraded British citizenship over many years and successive administrations. But even putting that aside for one moment, on the Government’s own analysis, as presented by the Minister, what is sought to be done by the exclusion of specified registration rights is plainly incapable of making any or any serious or significant contribution to the purported aim of this Bill. Nonetheless, the impact for every single one of the relatively few people, most of whom children, who are ever likely to be deprived of their citizenship rights by the Bill’s exclusion of registration rights will be profound. Notwithstanding their connection to the UK, their British identity and their nationality rights, these British people will be excluded from the citizenship that is rightfully theirs and is intended to guarantee their equal membership and participation in it.

### **Conclusion:**

Our concern here is solely with registration. Nothing said or not said in this letter should be taken to imply any position on anything else to be done by this Bill, including exclusion of naturalisation.

We share your profound concern for the importance of British citizenship and respect for it, which is indeed a significant constitutional matter for the UK in identifying the

people of this country. We have not touched on the other British nationalities that are affected by this Bill, but it seems to us a natural implication of what we have addressed here that registration of none of these nationalities should be caught by this Bill.

The inclusion of registration rights in this Bill is, as Baroness Lister said, “*profoundly misconceived and harmful*” (*Hansard* HL, 12 June 2023 : Col 1750). Their inclusion in the Bill reflects a longstanding and deep misconception of British citizenship and rights to it – one that has licensed, even encouraged, the treatment of registration as a mere concession granted by the state. We join you in deploring that. It is wholly contrary to British nationality law and British citizenship, as created by the British Nationality Act 1981.

We are, therefore, very grateful to you for your continued effort to correct this misconception and the injustices that spring from it. We hope you may be willing to return to this matter at Report. It is entirely clear that, whatever else there may be to say on this Bill, registration of British citizenship has no place within it.

Sincerely,

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Amnesty International UK

Solange Valdez-Symonds  
CEO and Senior Solicitor  
Project for the Registration of Children as British Citizens (PRCBC)

cc: Baroness Lister of Burtersett  
Baroness Ludford  
Baroness Brinton  
The Lord Bishop of Durham  
Baroness Kennedy of the Shaws  
Baroness Janke  
Lord Paddick  
Lord Ponsonby of Shulbrede  
Baroness Chakrabarti