



The Lord Murray
Parliament Under-Secretary of State
Home Office
2 Marsham Street
SW1P 4DF

4 July 2023

Sent by e-mail: public.enquiries@homeoffice.gov.uk

Dear Lord Murray,

British nationality rights and the Illegal Migration Bill

We have paid careful attention to the explanations offered by the Government at Committee and Report for the provisions that would excluded nationality rights – we emphasise nationality *rights* – that are provided by registration under the British Nationality Act 1981.

We give particular focus in this letter to the rights of children. We are gravely concerned and profoundly regret that there are significant errors in the explanations that have been offered by the Government. Those errors are about British nationality law and the rights established under it to British nationality.

We first, however, acknowledge and welcome your express disavowal, on behalf of the Government, of any intention to treat children as culpable for being brought or sent (or even trafficked) to the UK in the circumstances prescribed by Clause 2 of this Bill. However, as Lord Moylan said at Report (*Hansard* HL, 3 July 2023 : Col 1056), this begs the question as to what purpose and justification is there then for depriving a child of their *right* to British citizenship (or other British nationality)?

Your response to that question was (*Hansard* HL, 3 July 2023 : Col 1057):

“As the Bill is currently constructed, anyone, including children, who meets the criteria of [Clause 2] also becomes subject to permanent bans on... citizenship... The application of the bans is irrespective of whether the child was complicit in the act of entering illegally. I hope that addresses the points noble Lords have raised in that regard.

“The inclusion of children is to ensure that there is no perverse incentive for parents or others to put children in harm’s way by forcing them on to small boats

or other dangerous methods in an attempt to gain entry to the UK. We want to send a clear message that children cannot be exploited and forced into making dangerous attempts to gain entry into the UK for the purpose of starting a new life here. Instead, the only way to come to the UK for protection will be through safe and legal routes. This will take the power out of the hands of criminal gangs and protect vulnerable people, including children.”

Regrettably, this response bears no relation to the rights of children to British nationality that this Bill is to exclude. We hope it assists to address in turn the specific registration rights relating to children (found in section 3 of the British Nationality Act 1981). We do so under distinct subheadings (which refer to each specific statutory right which the Bill seeks to exclude). After considering the specific rights, we also briefly address under distinct subheadings the further points relating to character and Clause 35 that you raised in your response.

We begin with sections 3(2) and (5), which we emphasise are both solely concerned with children born to British citizen parents.

Section 3(2) of the British Nationality Act 1981

As regards the right to registration under section 3(2), there can be no *“perverse incentive... to put children in harm’s way... in an attempt to gain entry to the UK”* provided by recognition of and respect for this right.

As explained by Lord Moylan (*Hansard* HL, 3 July 2023 : Cols 1055-1056), the right provided by section 3(2) is entirely independent of whether the child is in the UK or has ever been to the UK, let alone whether they spend any period of residence here. The explanation offered therefore provides no basis whatsoever for including section 3(2) among those provisions listed by Clause 31(1).

Moreover, as Lord Moylan also explained (*Hansard* HL, 3 July 2023 : Cols 1055-1056), section 3(2) of the 1981 Act applies in two distinct ways. Not only is it the case that neither of these requires any residence in the UK of the child. The first of those two ways is to protect children who would otherwise be stateless. Accordingly, the retention of section 3(2) in Clause 31(1) contradicts your statement that *“the specific routes for... stateless persons”* are not caught by the Bill (*Hansard* HL, 3 July 2023 : Col 1058) because one of the two applications of section 3(2) is specifically for stateless children.

Section 3(5) of the British Nationality Act 1981

As regards the right to registration under section 3(5), it – as again explained by Lord Moylan (*Hansard* HL, 3 July 2023 : Col 1056) – requires residence of the child in the UK *with the child’s parents* (one of whom must be a British citizen).

Accordingly, while this provision does require residence in the UK, it is plainly concerned with British citizens who come to live in the UK, bringing their children with them. We, therefore, agree with Lord Moylan’s analysis that the likely application of the Bill in respect of section 3(5) also has nothing to do with children being put *“in harm’s way... in an attempt to gain entry to the UK”*. Rather, its application will only ever be likely to exclude the citizenship rights of a child because their British parent

mistakenly thought that – like them – their child was born British and so there was no need to seek a visa or other form of permission to bring the child with them to the UK (*Hansard* HL, 3 July 2023 : Col 1056).

This is not about safeguarding the child. Indeed, it is nothing more than penalising the child for something that your explanations have made clear the Government accepts the child is not culpable; and which, at most, constitutes an innocent mistake of the child's British parent or parents.

Section 3(1) of the British Nationality Act 1981

As regards the right to registration under section 3(1), we acknowledge that in distinction to section 3(2) and (5), this provision is not by way of statutory entitlement. Rather, section 3(1) provides an unfettered discretion for the Secretary of State to register a child as a British citizen. The primary purpose of this provision is to ensure children who are British by identity and connection to the UK are not excluded from citizenship by Parliament's inability to foresee and expressly stipulate in the 1981 Act all the circumstances in which a child's connection to the UK may be established or demonstrated.

Section 3(1) includes no requirement of residence. Nonetheless, the circumstances in which the discretion is exercised do include circumstances where the child's connection to the UK is established by residence. An important example is where the child grows up in the UK's care system under a full care order by which the State (specifically a local authority) takes parental responsibility for the child.

Another important example is where the child grows up in the UK over so much of their childhood with little if any memory of, still less connection to, any other place that the child's connection, identity, and future are clearly all in this country. As Lord Moylan emphasised at Committee (*Hansard* HL, 12 June 2023 : Col 1746ff) and Report (*Hansard* HL, 3 July 2023 : Col 1056), excluding nationality rights in these circumstances is entirely unnecessary to the stated purpose of this Bill and does not truly advance that purpose.

Good character

As regards good character, since – as the Government acknowledges – the children caught by the inclusion of section 3(2) and (5) within Clause 31(1) or of section 3(1) within Clause 31(2)(a) are not culpable for what is done to them in being sent or brought to the UK. Character is therefore irrelevant and can provide no justification for excluding rights of registration under section 3.

Clause 35

As regards the residual discretion in Clause 35, for that discretion to be exercised, a child – with a right to British citizenship – would have to additionally persuade the Secretary of State that it was a violation of the European Convention on Human Rights to deprive the child of their citizenship rights. No real justification has been offered for what is, with respect, an extraordinary requirement in making the rights of British

people – as identified by Parliament in determining our British nationality laws¹ – dependent on the additional application of international human rights law.

Final observations

We have considered all that has been said for the Government concerning registration and rights to British nationality. With respect, there is nothing in any of this that provides any rational justification for excluding these rights.

We note, for example, the repeated error in treating the right to registration under section 4(2) as if it is nothing or little more than a version of naturalisation for the British people to whom it applies. That emphasises a profound error that has degraded British citizenship for several decades under successive administrations and Parliaments by conflating what are categorically distinct matters (registration and naturalisation). That is why – again contrary to what you said for the Government at Report – section 4(2) is a statutory entitlement, in respect of which there is no discretion with the Secretary of State. We also do not know why the Government think that the people to whom section 4(2) applies, who do not need visas to come to the UK because of their existing British nationality, will ever be caught by this Bill unless the Secretary of State makes some profound error as to their existing status and rights on arrival by an entirely regular journey to the UK.

Nonetheless, we have emphasised the circumstances of children in this letter – not least because it is they and their nationality rights that are most at risk from this Bill. It is all too clear that the current drafting seriously misunderstands British nationality law and these rights. We, therefore, urge you to take the opportunity before it is too late to reconsider and remove registration rights – especially those of children – from this Bill.

We have sent a copy of this letter to Lord Moylan and Baroness Lister; and to the other peers who participated in the Report debate which considered the relevant amendments tabled in their names.

Sincerely,

Carol Bohmer
Chair
Project for the Registration of Children as British Citizens (PRCBC)

Steve Valdez-Symonds
Programme Director – Refugee and Migrant Rights
Amnesty International UK

¹ The British Nationality Act 1981 was made, as the *Hansard* record confirms, following Green and White Papers, primarily to create British citizenship as the nationality of all the British people whom Parliament identified as connected to the UK; and to create what is now British overseas territories citizenship as the nationality of all the British people whom Parliament identified as connected to those territories. Rights of registration were included among the statutory rights of acquisition to fulfil these purposes.

cc: Lord Moylan
Baroness Lister of Burtersett
Baroness Brinton
Lord Coaker
Baroness Butler-Sloss