



Nationality and Borders Bill
House of Lords Report Stage, 8 March 2022

Citizenship rights: registration fees

BARONESS MCINTOSH
BARONESS LISTER OF BURTERSETT
THE LORD BISHOP OF DURHAM
LORD ALTON OF LIVERPOOL

Insert the following New Clause –

(1) The Immigration Act 2014 is amended as follows.

(2) After section 68, insert –

“68A Fees: supplementary

(1) In setting the amount of any fee to which section 68 relates, the Secretary of State must –

- (a) distinguish between nationality and immigration functions;
- (b) distinguish between functions relating to statutory rights and other functions; and
- (c) ensure that fees are set having regard to the principles in subsection (2).

(2) The following principles shall apply –

- (a) the costs of exercising immigration functions are not a relevant consideration in setting any fee relating to a nationality function;
- (b) no fee shall be set that would render any statutory right nugatory;
- (c) no fee for the exercise of any function relating to a statutory right may be set above the Secretary of State’s estimation of the administrative costs of that function;
- (d) it is necessary to promote British citizenship as the nationality of all persons connected to the United Kingdom and British overseas territories citizenship as the nationality of all persons connected to the British overseas territories;

(e) no fee is to be charged for the registration of any child who is looked after by a local authority;

(f) no fee is to be charged for the registration by statutory entitlement of any person to correct any historical legislative unfairness.

(3) In this section –

“*registration*” means registration as a British citizen or as a British overseas territories citizen;

“*statutory right*” means a right that is conferred upon a person by Act of Parliament including a right to be registered as a British citizen or as a British overseas territories citizen.

PURPOSE:

To amend the statutory powers given to the Secretary of State under section 68 of the Immigration Act 2014 to set fees so that fees for registration of rights to British citizenship or British overseas territories citizenship:

(a) cannot be set at above the cost to the Secretary of State of registration;

(b) must be set having regard to the vital importance of rights to citizenship by registration in securing the shared connection of all British persons;

(c) can only be set having regard to the specified principles;

(d) must not be charged for any child, who is looked after by a local authority, to register their right to citizenship; and

(e) must not be charged for any person to register their right to citizenship under a statutory provision specifically intended to correct past legislative discrimination or injustice that had wrongly excluded that person from citizenship.

BRIEFING:

The amendment would achieve the objectives pursued by separate amendments tabled respectively by Baroness McIntosh and Baroness Lister, with support from across the House, on day one of Committee.¹

The amendment also addresses the judgment of the Supreme Court, handed down five days after day 1 of Committee.² The Court ruled that the extremely wide powers given to the Secretary of State under the Immigration Act 2014³ permit fees to be charged for registration of citizenship that are set far above the cost to the Secretary of State of registration and exclude very many people, including thousands of children⁴, from their rights to British citizenship.

Rights to British citizenship by registration under the British Nationality Act 1981:

The British Nationality Act 1981 establishes who is and who is not a British person. The Act confers citizenship by right on the people so identified. It does this automatically in the case of most British people. Where citizenship is not conferred automatically, the Act provides rights to citizenship by

¹ Hansard HL, Committee, [27 January 2022 : Cols 458ff](#)

² *R (Project for the Registration of Children as British Citizens & O) v Secretary of State for the Home Department* [2022] UKSC

[3](#)

³ [Section 68](#), Immigration Act 2014

⁴ PRCBC and Amnesty UK Joint Briefing, March 2019

https://prcbc.files.wordpress.com/2019/03/fees_briefing_revised_march_2019.pdf

registration to those British people who would otherwise be alienated from their peers and from the country to which they are connected.

These rights are vital to secure people's citizenship in various circumstances, in which Parliament anticipated that changes it was making in 1981 would otherwise wrongly exclude many British people. For example, from 1 January 1983, the 1981 Act ended the automatic acquisition of citizenship merely by being born on the territory (*jus soli*) of the UK. Parliament was, however, acutely aware of the need to ensure children thereafter born in the UK without British citizenship are, if they continue living in the UK, able to secure and share in the same citizenship as their peers with whom they grow up.⁵ This is achieved by rights of registration.

Fees that are charged:

The Secretary of State charges £1,012 for a child to be registered as a British citizen; and £1,126 for an adult to be registered as a British citizen.⁶ The Secretary of State estimates the cost to the Home Office of registration to be £372.⁷

The remaining £640 in the case of a child, and more in the case of an adult, is money raised by the Home Office from the process that these British children and adults must go through to secure their citizenship rights.

Impact of these fees (as found in court case of *PRCBC & O v SSHD*):

In December 2019, in *PRCBC & Ors v SSHD*, the High Court found on the basis of “**a mass of evidence**” that a significant number of children growing up in low and middle income families cannot afford these fees unless their parents or carers make “**unreasonable sacrifices**”.⁸ It also found, on that same evidence, that by excluding children from their citizenship rights, the fee makes them “**feel alienated, excluded, isolated, ‘second-best’, insecure and not fully assimilated into the culture and social fabric of the UK.**”⁹ In February 2021, the Court of Appeal emphasised that for many children of single parents on state benefits, “**it is difficult to see how the fee could be afforded at all.**”¹⁰

The Supreme Court has, in a judgment handed down on 2 February 2022, emphasised that these findings are not disputed. The Court has similarly emphasised the importance of citizenship to a person's identity and sense of belonging, and to their capacity to fully participate in social and political life.¹¹

Supreme Court ruling:

Nonetheless, the Supreme Court concluded that section 68 of the Immigration Act 2014, which provides a general power to charge fees for a vast array of Home Office functions (such as various visa fees and processes), permits the Secretary of State to use her statutory function of registering the citizenship of British children and adults as a money-raising exercise. The court's ruling is that

⁵ See e.g., PRCBC's [Commentary on Parliament's intention in introducing registration](#) (with *Hansard* extracts)

⁶ [Schedule 8](#), Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 (as amended)

⁷ See [Table with details of fees and unit costs – 11 October 2021](#)

⁸ *R (Project for the Registration of Children as British Citizens, A & O) v Secretary of State for the Home Department* [2019] [EWHC 3536 \(Admin\)](#), paragraph 20

⁹ *ibid*, paragraph 21

¹⁰ *R (Project for the Registration of Children as British Citizens & O) v Secretary of State for the Home Department* [2021] [EWCA Civ 193](#), paragraph 31

¹¹ *R (Project for the Registration of Children as British Citizens & O) v Secretary of State for the Home Department* [2022] [UKSC 3](#), paragraph 26

this may be done even at the expense of excluding thousands of British people from their citizenship rights altogether. In the words of the court, this is “**a question of policy which is for political determination.**”¹²

Academic and legal discussion¹³ of this ruling has highlighted the devastating effect of this upon the relationship between Government, the state, and the citizenry. This is because it effectively permits the Government to exclude large numbers of British people, as identified by Parliament in the British Nationality Act 1981, from the citizenry.

Children in care:

Among the thousands of children currently being excluded from their citizenship rights by these fees are many children in care. The marginalisation, neglect and disadvantage that may have caused a child to be taken into the care of the State is often thereby exacerbated by a fee effectively imposed by central government upon local government that may inhibit or impede a local authority taking action to secure the child’s citizenship rights.

Wider support for the aim of the amendment:

In addition to the various children’s, citizens, legal and other organisations whose names are listed at the end of this briefing, the breadth of support for what is sought by the amendment is attested, among other ways, by motions passed by local authorities,¹⁴ a motion passed at TUC¹⁵, the call made by the Mayor of London,¹⁶ recommendations of the Joint Committee on Human Rights¹⁷ and the Lords’ Committee on Citizenship and Civic Engagement,¹⁸ and the support of every party in the House of Commons bar the Conservative party for a related amendment at Report in the other place.¹⁹

Conclusion:

The amendment is modest. It seeks simply to remove the power to use the function of registering British people’s citizenship to raise money to pay for the immigration system; and to restrict any fee that is charged to cover the estimated costs of registration. It does this by amending the powers in section 68 of the Immigration Act 2014 to clearly distinguish rights to be registered as a British citizen from the many and diverse Home Office immigration functions to which those powers also apply.

The amendment also precludes registration fees being charged in two specific cases. Local authorities should neither be charged nor discouraged from acting to secure the citizenship rights of British children whom they are looking after. Where a right of registration is provided to correct an historical injustice in British nationality legislation – such as the discrimination that prevented citizenship being derived from mothers in circumstances where it would be derived from fathers – there should be no fee to put someone in the position in which she, he or they should already be.

¹² *ibid*, paragraph 51

¹³ See e.g. [Paolo Sandro](#), University of Leeds; [Donnchadh Greene](#), Doughty Street Chambers & Gabriel Tan, Wilsons; [Nicholas Reed Langen](#), Justice Gap; [Timothy Jacob-Owens](#), Global Citizenship Observatory; and [Colin Yeo](#), Freemovement.

¹⁴ See e.g., [Harrow Council](#).

¹⁵ As moved by UNISON, seconded by Accord and supported by the Public and Commercial Services Union, National Union of Rail, Maritime and Transport Workers, Chartered Society of Physiotherapy and Royal College of Midwives - motion 42, 43 and amendments at [TUC, September 2018](#)

¹⁶ As recorded in the speech by Baroness Hamwee in debate on a Regret Motion concerning this fees, see *Hansard* HL, [12 June 2018 : Col 1669](#)

¹⁷ [Legislative Scrutiny: Nationality and Borders Bill \(Part 1\) – Nationality](#), Report of Session 2021-2022, Joint Committee on Human Rights, paragraph 28

¹⁸ [The Ties that Bind](#), Report of Session 2017-2019, Citizenship and Civic Engagement Committee, paragraph 486-492

¹⁹ [New Clause 8](#) (Report, 7 December 2021) was defeated by [237 votes to 323](#).

Amnesty UK and the Project for the Registration of Children as British Citizens (PRCBC) are grateful to the following organisations for their support:

Asylum Justice, British Indian Ocean Territory Citizens, British Overseas Territories Citizens Campaign, Cardinal Hume Centre, Chagossian Voices, Citizens UK, Coram Children's Legal Centre (CLC), European Network on Statelessness (ENS), Immigration Law Practitioners' Association (ILPA), Kanlungan, Law Society of Scotland, Latin American Women's Rights Service (LAWRS), Mishcon de Reya, North East Law Centre, Praxis, RAMFEL, Surrey Square Primary School, The 3Million, West London Welcome, Windrush Lives and YouthLegal.

1 March 2022