



## **Regret Motion: Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2023**

**4 December 2023**

**Baroness Lister of Burtersett to move that this House regrets that the Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2023, which increases fees by above inflation for a range of immigration and nationality applications, will (1) increase financial barriers to children securing their rights to British citizenship, (2) cause other individuals to fall out of lawful immigration status and face significant debt and precarity, (3) increase the operational burden on the Home Office, and (4) damage the United Kingdom's economy; and calls on His Majesty's Government to consider and develop policies to support individuals, families, and businesses adversely affected by these changes.**

**[55<sup>th</sup> Report from the Secondary Legislation Scrutiny Committee, Session 2022-23](#)**

As the Home Office Impact Assessment for these Fees Regulations<sup>1</sup> makes clear, the department remains a long way from recognising, still less respecting, rights to British citizenship – and particularly, the children and adults who possess these rights by way of registration. This briefing is solely concerned with these citizenship rights.

### **Fee increases for exercising the right to be registered as a British citizen:**

The Regulations<sup>2</sup> have, on 4 October 2023, raised the fee for a child to exercise their right to be registered as a British citizen by £202 to £1,214. The fee for an adult to exercise their same right has been raised by £225 to £1,351. These are rises of 20%

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<sup>1</sup> See [https://www.legislation.gov.uk/ukia/2023/121/pdfs/ukia\\_20230121\\_en.pdf](https://www.legislation.gov.uk/ukia/2023/121/pdfs/ukia_20230121_en.pdf)

<sup>2</sup> See <https://www.legislation.gov.uk/uksi/2023/1004/contents/made>

The Home Office has also revised its estimated unit cost of processing registration applications.<sup>3</sup> Previously, it identified the unit cost as £416. That is now increased to £505. Even taking account of this increase, the cost to a child of exercising their right to be registered as a British citizen is now more than £700 above the anticipated cost to the Home Office of processing the application necessary to give effect to that right. In the case of an adult, the excess is now almost £850. This is both unjust and likely to exclude more people from their citizenship rights.

### **Government justification:**

The Impact Assessment provides a global explanation for the increase in fees. It states:

*“The strategic objective is to enable the legitimate movement of people and goods to support economic prosperity. The policy objective is to support the sustainable funding of the borders and migration system and simplify the fees payable by customers. The revenue generated by these changes will serve to address wider costs and pressures in the system in support of the department’s wider objective of operating a self-funded borders and migration system and reducing reliance on the UK taxpayer.”<sup>4</sup>*

As previously, there is no separate consideration of citizenship rights and the fees that relate to this. This is despite the fact that rights to British citizenship by registration are plainly not concerned with migration. Rather, these rights are concerned with ensuring that all people – whom Parliament identified as having particular connection to the UK when it passed the British Nationality Act 1981 – can be fully and equally recognised as citizens of this country.<sup>5</sup>

It is this context that renders these fees extortionate. It is not simply that the fees are both very high and very far above the administrative cost to the department. It is also that the fees for citizenship registration are expressly designed to raise money from – a tax upon – a particular group of people that our nationality laws identify as British but who must, unlike most people so identified, make a formal application for their citizenship to be registered.

### **Fee Waiver:**

In June 2022, following litigation brought by the Project for the Registration of Children as British Citizens (PRCBC) and children assisted by PRCBC, the Home Office finally introduced a power to waive the fee for children – not adults – to be registered as

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<sup>3</sup> See <https://www.gov.uk/government/publications/visa-fees-transparency-data>

<sup>4</sup> See the ‘Strategic objective’, paragraph 1 at page 3 of the Impact Assessment, *op cit*

<sup>5</sup> See Booklet on Children and their rights to British citizenship:

[https://issuu.com/prcbc2022/docs/children\\_and\\_their\\_rights\\_to\\_british\\_citizenship\\_n](https://issuu.com/prcbc2022/docs/children_and_their_rights_to_british_citizenship_n)

British citizens if satisfied that the fee was unaffordable.<sup>6</sup> At the same time, all children looked after by a local authority were made exempt from the fee.<sup>7</sup>

These developments have made their citizenship rights accessible to many children who were previously excluded by the fee. However, the waiver process has itself introduced considerable complexity, bureaucracy, and evidential demands to satisfy the Home Office that the fee is unaffordable and so to be waived. Many British children, therefore, remain excluded. This is because although they cannot afford the fee, they and/or their parents or carers are either defeated by the waiver process or their relative poverty leaves the child excluded from both waiver and registration – i.e. too poor to pay the fee, but not poor enough to satisfy the Home Office to waive the fee.

An especial concern relates to people who are in receipt of state financial assistance – such as means-tested benefits. They should simply be accepted as unable to pay the fee for children’s citizenship registration. Currently they are not. This leads to substantial and unnecessary demands being made on children (and their parents/carers). It is also a waste of Home Office resources in assessing something that another government department or agency has already assessed.

### **Best interests and the registration fee:**

It is clearly not in British children’s best interests to be excluded from their citizenship rights by a prohibitive fee. In the litigation brought by PRCBC, the High Court found on the basis of the “*mass of evidence*” before it that children so excluded were made to feel profoundly alienated.<sup>8</sup> In June 2021, the Court of Appeal dismissed the Home Office appeal against the finding that the fee had been set in breach of the duty to have regard to children’s best interests.<sup>9</sup> The waiver introduced in June 2022 was a belated response by the department to that decision, which it did not seek to appeal.

### **Impact into adulthood:**

Children who cannot exercise their right to be registered as British citizens enter adulthood facing significant disadvantages, starting with the profound alienation of being marked as different to their peers. This includes children born in the UK who have lived here all their lives. While these children’s right to be registered continues, the fee is greater in adulthood and there is no waiver. This has particular impact upon people who may remain in poverty, including for example people living with disabilities that may prevent or significantly hinder them from securing remunerated work.

#### **Case Studies**

Harriet was born in the UK and has lived here her entire life. She has also lived with significant disabilities throughout her life, which make her vulnerable to great pain, extreme distress, and general immobility. Her single mother was ultimately compelled to give up her own work during Harriet’s childhood to care full-time for

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<sup>6</sup> Further information is available from this PRCBC note: <https://prcbc.org/wp-content/uploads/2022/05/note-on-changes-to-fee-regulations-on-registration-of-children-as-british-citizens-valdez-symondss-macbook-air-valdez-symondss-macbook-air.pdf>

<sup>7</sup> See PRCBC note, *op cit*

<sup>8</sup> [2019] EWHC 3536 (Admin), see <https://www.bailii.org/ew/cases/EWHC/Admin/2019/3536.pdf>

<sup>9</sup> [2021] EWCA Civ 193, see <https://www.bailii.org/ew/cases/EWCA/Civ/2021/193.pdf>

Harriet. Harriet is and has been entitled to British citizenship since she was aged 10. However, there was no fee waiver during her childhood and the fee was not affordable for her. Now, she is an adulthood, her financial circumstances are no different; and her disabilities continue to deteriorate. She will never be able to afford the fee to secure the citizenship of the UK to which she is entitled – citizenship of the country in which she was born, has lived her whole life and to which she belongs.

Arthur was born in the UK, has lived here his entire life and is now a young adult. Although entitled to British citizenship since he was 10, he was not aware of his status or rights during childhood and his parents took no steps to address this. Arthur currently has no status in the UK at all. Moreover, he has a violent mother. Yet without any status, he cannot secure work or assistance to be self-supportive. Although Arthur remains entitled to British citizenship, he has no money to pay the fee and there is no waiver available. Instead, the country in which Arthur was born, has lived all his life and to which he belongs is effectively excluding him from its citizenship and treating him as a mere visitor who must obtain permission to stay.

### **Supreme Court and the registration fee:**

In February 2022, the Supreme Court gave its judgment on the lawfulness of the fee for children to exercise their right to be registered as British citizens.<sup>10</sup> The Court acknowledged the general importance of citizenship rights; and recognised the basis on which those rights had been established to be Parliament's identification, by the British Nationality Act 1981, of people connected to the UK.<sup>11</sup> However, having reviewed the subsequent legislation concerning fees and concluded that this authorised the Home Secretary to set fees at above administrative cost, the court concluded:

*"The appropriateness of imposing the fee on children who apply for British citizenship... is a question of policy which is for political determination."*<sup>12</sup>

The Court, thereby, clearly passed all assessment of this fee's propriety back to Parliament. Meanwhile – even with the waiver that was subsequently introduced – the treatment of British people and their citizenship rights remains profoundly unequal. By raising the citizenship registration fee even further, the Regulations will exacerbate that inequality still more. Ministers and all parliamentarians ought to take notice of the terrible injustice in this. As PRCBC, in particular, knows so well from its more than a decade of work,<sup>13</sup> the result is that hundreds, possibly thousands, of British people grow up alienated from their peers either by being excluded from the citizenship that our nationality laws intended them to share or by being confronted with the miserable realisation that their Government is far more concerned to squeeze money out of them rather than secure their equal sense of belonging in their own country.

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<sup>10</sup> [2022] UKSC 3, see <https://www.bailii.org/uk/cases/UKSC/2022/3.pdf>

<sup>11</sup> See paragraph 27 of the Supreme Court judgment, *op cit*

<sup>12</sup> See paragraph 51 of the Supreme Court judgment, *op cit*

<sup>13</sup> More on the work of PRCBC is available at its website: <https://prcbc.org/news-updates/>