Joint Briefing

Public Bill Committee

Nationality and Borders Bill
Part 1 (Nationality) – Selected Amendments

October 2021

Bambos Charalambous
Holly Lynch
Stuart C McDonald
Anne McLaughlin

29

Clause 1, page 2, line 10, leave out "parents been treated equally" and insert "mother been treated equally with P's father"

Member's explanatory statement
This amendment explains the anomaly that is being rectified in this clause, namely that the mother had not been treated equally with the father.

Stuart C McDonald
Anne McLaughlin

84

Clause 1, page 2, line 14, leave out "had P's parents been treated equally" and insert "had P's mother and P's father been treated equally"

Member's explanatory statement
This amendment would ensure that the language used here is consistent with that used in section 4C of the British Nationality Act 1981.

Briefing:

Amendments 29 and 84 provide opportunity to probe Ministers on two matters:

(1) Why is the language of Clause 1 different to the language previously adopted to address this same historical discrimination in relation to British citizenship by section 4C of the British Nationality Act 1981?

(2) Is the language "*parents been treated equally*" adequate to address the historical discrimination in relation to British overseas territories citizenship that is the purpose of Clause 1?

As regards the first of these matters, the joint submission of Project for the Registration of Children as British Citizens and Amnesty International UK to the Public Bill Committee briefly explains:

> "*The drafting of **Clause 1** does not follow the language previously adopted for British citizenship the injustice that it is to address for British overseas territories citizenship. We understand there is some concern that the earlier language may be too complex. Ministers should be invited to make clear what difficulties have arisen from that complexity and why it is not being removed from the existing provision concerning British citizenship.*"

As regards the second of these matters, that joint submission explains:

> "*…The difficulty with such wording is it tells nothing of the direction in which equality is to be achieved or indeed at what place. While we do not doubt the positive intention behind **Clause 1**, it ought to be amended to make that intention clear.*"

Stuart C McDonald
Anne McLaughlin

8

Clause 1, page 2, line 46, at end insert—

"(7) The Secretary of State must not charge a fee for the processing of applications under this section."

Member's explanatory statement
This amendment would prevent the Secretary of State from charging a fee when remedying the historical inability of mothers to transmit British overseas territories citizenship.

Briefing:

There is no application fee for registration under section 4C of the British Nationality Act 1981, which is the equivalent statutory right to remedy the same historical discrimination in relation to British citizenship that Clause 1 is intended to remedy in relation to British overseas territories citizenship.

By letter of 6 July 2021 to nationality experts with whom the Home Office has consulted, the department stated that it was proposed that the applications to which Clause 1 relates would be "*…uncharged, in line with existing arrangements for acquiring British citizenship on the same basis.*"

This is plainly appropriate; and it would be useful for the Minister to confirm that intention.

Stuart C McDonald
Anne McLaughlin

9

Clause 2, page 7, line 30, at end insert—

"(6) The Secretary of State must not charge a fee for the processing of applications under sections 17C, 17D, 17E or 17F."

Member's explanatory statement
This amendment would prevent the Secretary of State from charging a fee when remedying the historical inability of unmarried fathers to transmit British overseas territories citizenship.

Briefing:

There is no application fee for registration under sections 4G to 4I of the British Nationality Act 1981, or for registration in certain types of applications under section 4F of that Act, which are the equivalent statutory rights to remedy the same historical discrimination in relation to British citizenship that Clause 2 is intended to remedy in relation to British overseas territories citizenship.

By letter of 6 July 2021 to nationality experts with whom the Home Office has consulted, the department stated that it was proposed that the applications to which Clause 2 relates would be "*…uncharged, in line with existing arrangements for acquiring British citizenship on the same basis.*"

This is plainly appropriate; and it would be useful for the Minister to confirm that intention.

Stuart C McDonald
Anne McLaughlin

10

Clause 3, page 8, line 18, at end insert—

"(4) The Secretary of State must not charge a fee for the processing of applications under this section."

Member's explanatory statement
This amendment would prevent the Secretary of State from charging a fee for British citizenship applications by certain British overseas territories citizens.

Briefing:
On 21 May 2002, section 3 of the British Overseas Territories Citizenship Act 2002 was commenced, by which people who were British overseas territories citizens on that date were automatically made British citizens. Clause 3 relates to people who would previously have been British overseas territories citizens, including people who would have automatically become British citizens had it not been for the historical discriminations to which Clauses 1 and 2 relate.

By letter of 6 July 2021 to nationality experts with whom the Home Office has consulted, the department stated that it was proposed that the applications to which Clause 2 relates would be "*…uncharged, in line with existing arrangements for acquiring British citizenship on the same basis.*"

This is plainly appropriate; and it would be useful for the Minister to confirm that intention.

Bambos Charalambous
Holly Lynch

35

Clause 7, page 9, line 36, at end insert—

"(1A) In section 1 (acquisition by birth or adoption) subsection (5)—

(a) in paragraph (a), for "minor" substitute "person"; and
(b) after paragraph (b), for "that minor shall" substitute "that person or minor (as the case may be) shall"."

Member's explanatory statement
This amendment seeks to bring British nationality law in line with adoption law in England and Wales. In those nations, an adoption order made by a court may be made where a child has reached the age of 18 but is not yet 19. Yet such an adoption order currently only confers British citizenship automatically where the person adopted is under 18 on the day the order is made.

Briefing:

The underlying purpose of the British Nationality Act 1981 in relation to British citizenship is one of unifying all people connected to the UK by that citizenship.

Amendment 35 goes no further than ensuring that all young people adopted by order of a UK court by parents who are habitually resident in the UK and of whom at least one is a British citizen shall have British citizenship. On its face this would fulfil the underlying purpose relating to British citizenship. This would protect a child, whose confirmation of adoption by order of the court is delayed until the point the child has become an adult.

Stuart C McDonald
Anne McLaughlin

13

Clause 7, page 9, line 40, leave out "may" and insert "must"

Member's explanatory statement
This amendment would require the Secretary of State to approve applications for British citizenship by people who have previously been denied the opportunity to acquire it on account of historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances.

14

Clause 7, page 10, line 30, leave out "may" and insert "must"

Member's explanatory statement
This amendment would require the Secretary of State to approve applications for British citizenship by people who have previously been denied the opportunity to acquire it on account of historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances.

Briefing:

These amendments provide an opportunity to probe Ministers as to their intentions in relation to exercise of the discretionary powers currently provided for in Clause 7. Amendment 13 concerns registration with British citizenship and amendment 14 concerns registration with British overseas territories citizenship.

More information is provided in connection with Clause 7 in the short briefing sections (below) to Amendments 11 and 12 and to Amendments 30 and 31.

Stuart C McDonald
Anne McLaughlin

11

Clause 7, page 10, line 25, at end insert—

"(5) The Secretary of State must not charge a fee for the processing of applications under this section."

Member's explanatory statement
This amendment would prevent the Secretary of State from charging a fee on applications for British citizenship by people who have previously been denied the opportunity to acquire it on account of historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances.

12

Clause 7, page 11, line 8, at end insert—

"(5) The Secretary of State must not charge a fee for the processing of applications under this section."

Member's explanatory statement
This amendment would prevent the Secretary of State from charging a fee on applications for British overseas territories citizenship by people who have previously been denied the opportunity to acquire it on account of historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances.

Briefing:

The amendments provide an opportunity to probe Ministers as to their intentions in relation to fees for a person to make an application to which new sections 4K and 17H of the British Nationality Act 1981 (which are to be inserted by Clause 7). These concern registration with British citizenship and British overseas territories citizenship respectively.

As regards fees for applications made under the provisions to be introduced by Clause 7, the joint submission of the Project for the Registration of Children as British Citizens and Amnesty International UK to the Public Bill Committee briefly explains:

> "*It is generally inappropriate – as with registration more generally – for the Secretary of State to charge prohibitive and above-cost fees that prevent people exercising their rights to British citizenship. The fee is made even more prohibitive if it is not possible to assess in advance that an application will be successful because there are no fixed criteria by which the right to be registered will be assessed.*"

If the provisions to be introduced by Clause 7 – which are intended to empower the Home Secretary to correct historical discrimination and other injustice that has denied someone the British nationality to which that person would otherwise be entitled (or have) – are to be effective, it is vital that applications are not effectively deterred or prohibited by a registration fee, which currently stands at £1,012 for a child and £1,206 for an adult, far above even the cost (£372) to the Home Office of the registration process. At a minimum, there should be no above-cost fee for any registration right including that which is to be created by Clause 7.

Bambos Charalambous
Holly Lynch
Stuart C McDonald
Anne McLaughlin

30

Clause 7, page 10, line 25, at end insert—

*"**4M Acquisition by registration: equal treatment***
(1) Where a person (P) is registered as a British citizen under subsection 4L(1), the Secretary of State must—
(a) ensure that other persons applying to be registered are so registered where the same unfairness, act or omission or circumstances apply unless there are material factors relevant to their applications that were not relevant to P's application;
(b) amend or make policy or guidance in line with the registration of P;
(c) make that new or amended policy or guidance publicly available; and
(d) take such other steps as may be reasonably necessary to draw attention to that new or amended policy or guidance among other people affected by that same unfairness, act or omission or circumstances.
(2) In each Parliamentary session, the Secretary of State must lay before Parliament a report of any historical legislative unfairness on the basis of which any person has been registered under subsection 4L(1) and which remains to be corrected by amendment to the British Nationality Act 1981 or such other legislation as may be required.
(3) The report required by subsection (2) must both explain each case of historical legislative unfairness to which it relates and set out the period within which the Secretary of State intends to make the necessary correction to the British Nationality Act 1981 or other legislation."

Member's explanatory statement
This amendment requires that the Government publicise any change in policy or guidance in order to ensure that there is no unfairness in treatment of British citizens or those who are applying to be registered as British citizens. It also requires the Secretary of State to report and explain any historical legislative unfairness.

31

Clause 7, page 11, line 8, at end insert—

*"**17I Acquisition by registration: equal treatment***
(1) Where a person (P) is registered as a British Overseas Territories citizen under subsection 17H(1), the Secretary of State must—
(a) ensure that other persons applying to be registered are so registered where the same unfairness, act or omission or circumstances apply unless there are material factors relevant to their applications that were not relevant to P's application;
(b) amend or make policy or guidance in line with the registration of P;
(c) make that new or amended policy or guidance publicly available; and
(d) take such other steps as may be reasonably necessary to draw attention to that new or amended policy or guidance among other people affected by that same unfairness, act or omission or circumstances.
(2) In each Parliamentary session, the Secretary of State must lay before Parliament a report of any historical legislative unfairness on the basis of which

any person has been registered and which remains to be corrected by amendment to the British Nationality Act 1981 or such other legislation as may be required. (3) The report required by subsection (2) must both explain each case of historical legislative unfairness to which it relates and set out the period within which the Secretary of State intends to make the necessary correction to the British Nationality Act 1981 or other legislation."

Member's explanatory statement
This amendment requires that the Government publicise any change in policy or guidance in order to ensure that there is no unfairness in treatment of British Overseas Territories citizens or those who are applying to be registered as British citizens. It also requires the Secretary of State to report and explain any historical legislative unfairness.

Briefing:

Amendments 30 and 31 would require the Home Secretary to ensure the effectiveness and accessibility of the measures she is introducing by Clause 7 to correct historical discrimination and other injustice. The joint submission of the Project for the Registration of Children as British Citizens and Amnesty International UK to the Public Bill Committee briefly explains:

> "***Clause 7*** *introduces a new discretion to register adults as British citizens or British overseas territories citizens where this is immediately necessary or appropriate in view of some historical injustice, act or omission by a public authority or other exceptional circumstances… This is very welcome. It reflects the underlying purpose of all rights of registration under the British Nationality Act 1981 to ensure citizenship is the right of all persons connected to the UK or the British overseas territories respectively.*
>
> *However,* ***Clause 7****, particularly as it relates to "historical legislative unfairness", raises the concern that it may be relied upon by Ministers to avoid making necessary amendments to the British Nationality Act 1981 in future that may be required specifically to correct such injustice. That must not be the result. When an injustice of that nature is identified, Ministers must also take appropriate action to correct it on the face of the Act.*"

Subparagraphs (2) and (3) are designed to address these concerns for British citizenship and British overseas territories citizenship respectively. They provide the means for Parliament to oversee that correction by requiring the Home Secretary to identify any such legislative unfairness that has been identified and remains outstanding in a report to be laid before Parliament in each parliamentary session; and to explain in that report the time period within which the Home Secretary intends to bring forward legislation to correct the unfairness. The Home Secretary ought to take the earliest opportunity to amend the relevant legislation to remove the historical unfairness from the face of it.

The joint submission to the Public Bill Committee continued:

> "*Our further concern is that* ***Clause 7*** *must generally be given real practical effect. It must not become a mere token statutory provision…*"

For this to be avoided, people must be encouraged and enabled to make applications. The joint submission addressed the problem of fees (which is the subject of Amendments 11 and 12) and continued:

> "*Ministers should also be pressed to give assurance that where an individual application is successful, there will be positive action to ensure other potential applicants are made aware of their equal or similar right to register at discretion. This requires that where an example of unfairness, act or omission by a public authority or exceptional circumstances, on which it is right or necessary to exercise discretion, is identified, there should be appropriate publicity to*

this. There should also be formal updating of public-facing policy. It must be made clear that others in the same circumstances will succeed with their applications to be registered if they make them. Without this, people will continue to be excluded from citizenship in circumstances where it is clearly intended they should not be."

Subparagraphs (1) are designed to secure this for British citizenship and British overseas territories citizenship respectively.

Bambos Charalambous
Holly Lynch

34

Clause 7, page 11, line 8, at end insert—

"(4) After section 23 (Citizens of UK and Colonies who are to become British overseas territories citizens at commencement), insert—

"23A Acquisition by registration: special circumstances
(1) If an application is made for a person of full age and capacity ("P") to be registered as a British Overseas citizen, the Secretary of State may cause P to be registered as such a citizen if, in the Secretary of State's opinion, P would have been, or would have been able to become, a British Overseas citizen but for—
(a) historical legislative unfairness,
(b) an act or omission of a public authority, or
(c) exceptional circumstances relating to P.
(2) For the purposes of subsection (1)(a), "historical legislative unfairness" includes circumstances where P would have become, or would not have ceased to be, a British subject, a citizen of the United Kingdom and Colonies, or a British Overseas citizen, if an Act of Parliament or subordinate legislation (within the meaning of the Interpretation Act 1978) had, for the purposes of determining a person's nationality status—
(a) treated males and females equally,
(b) treated children of unmarried couples in the same way as children of married couples, or
(c) treated children of couples where the mother was married to someone other than the natural father in the same way as children of couples where the mother was married to the natural father.
(3) In subsection (1)(b), "public authority" means any public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal.
(4) In considering whether to grant an application under this section, the Secretary of State may take into account whether the applicant is of good character.""

Member's explanatory statement
This amendment seeks to extend the remedy in Clause 7 to those who would have been British Overseas Citizens but for historical unfairness.

Briefing:

This addition to Clause 7 essentially seeks to secure for British overseas citizenship what is to be secured for British citizenship and British overseas territories citizenship by way of correcting for

historical discrimination and other injustice that has wrongly deprived someone of their citizenship rights.

The points made in respect of Amendments 11, 12, 30 and 31 (above) apply equally well to Amendment 34 and British overseas citizenship.

Bambos Charalambous
Holly Lynch
Stuart C McDonald
Anne McLaughlin

32

Page 11, line 27, leave out Clause 9

Briefing:

The joint submission of the Project for the Registration of Children as British Citizens and Amnesty International UK to the Public Bill Committee briefly explains:

> **"*Clause 9*** *is intended to disentitle many stateless children born and growing up in the UK from their existing statutory right to British citizenship. We oppose this clause, which should be removed from the Bill.*
>
> *The clause creates an additional and unjustified hurdle to stateless children's registration as British citizens of satisfying the Secretary of State that they cannot secure some other nationality. This is in addition to a child having to show that they were born stateless in the UK, have remained stateless throughout their life and have lived for at least five continuous years in the UK at the point of exercising their statutory entitlement to be registered as a British citizen. For many years these requirements have together proved to be an extremely high barrier to stateless children securing the citizenship of the UK in which they were born, live and are connected to. Clarification of the relevant law by the High Court in 2017, and awareness raising work by PRCBC, European Statelessness Network and others, have enabled several children to make applications to be registered under the statutory provisions that are expressly intended to reduce statelessness. However, prior to this, applications were so few as to be negligible indicating both the profound inadequacy of previous Home Office operation of the present provision and the strong likelihood that there have been a growing number of children living stateless in the UK in contravention of the original parliamentary purpose, pursuant to the UK's international commitments, to reduce statelessness.*
>
> *The purported justification for this draconian measure bears no relation to any matter over which the child has any control or influence or bears any responsibility for. [24] It is suggested that there are some parents who may choose not to exercise a right to register their child with a nationality of another country and so leave their child stateless for the purpose of securing British citizenship. There is no evidence presented for this assertion. In any event, an application for registration of a stateless child's entitlement to British citizenship is a complex matter, which itself has long been an effective and unjust deterrent to the exercise of the right.*
>
> *The Human Rights Memorandum prepared for the Bill does nothing more than assert that the Home Office "has carefully considered the best interests of the child throughout the formulation of all the policy given effect in this Bill"; [25] and asserts that the clause is "reasonable" and that the department "is satisfied that this is compatible with" its international law obligations. Nowhere in any of this is there even an attempt to set out what are the best interests of the affected children, let alone how these are addressed by the clause*

or how these may be considered to be outweighed by what would have to be very substantial considerations.

It is readily apparent that children and their rights are again being overlooked or ignored by the Home Office. This is especially cruel given the impact will be to leave a child stateless – possibly throughout childhood – in circumstances where the child will have been born in the UK and grown up here, developing their identity and connection here alongside their peers, only to discover at some point that, however connected they may be in every sense of that word to this country, this country, in the most profound sense, rejects them.

This clause is an affront to domestic and international law concerning children's rights and statelessness. It is also, more basically, an affront to children. It will impose the most profound of exclusions upon children – denial of any citizenship and particularly citizenship of the place where they were born and live and the only place they know. The exclusion and alienation that will be inflicted on a child through their formative years will be highly damaging to their personal development and any feelings of security and belonging. This clause should be deleted."