



Nationality and Borders Bill

House of Lords Report

28 February 2022

Citizenship rights: registration fees

After Clause 6, insert the following New Clause –

- (1) Section 68 of the Immigration Act 2014 is amended as follows.
- (2) After subsection (9), insert –
 - (9A) Notwithstanding subsection (9), in setting the amount of any fee in relation to registration of British citizenship the Secretary of State –
 - (a) must not set that amount at a level beyond the Secretary of State's estimation of the administrative costs of the function to which the fee relates;
 - (b) must have regard to the need 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; and
 - (c) may have regard only to –
 - (i) the costs of exercising the function;
 - (ii) fees charged by or on behalf of governments of other countries in respect of comparable functions; or
 - (iii) any international agreement.
 - (3) After subsection (10), insert –
 - (10A) Fees regulations must provide that no fee is to be charged for –
 - (a) the registration of any child who is looked after by a local authority; or
 - (b) the registration by statutory entitlement of any person to correct any historical legislative unfairness.

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 factors;
- (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 1 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 children, from their rights to British citizenship.

Rights to citizenship by registration:

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 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. This includes children, who from 1 January 1983, are no longer made British citizens merely by birth in the UK. Parliament was acutely aware that ending *jus soli* in British nationality law required it to ensure that children who were henceforth born in the UK without British citizenship would, if they continued living in the UK, be able to secure and share in the same citizenship as their peers with whom they grow up.⁴

Fees that are charged:

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

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.⁵ The Secretary of State estimates the cost to the Home Office of registration to be £372.⁶

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:

In December 2019, 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*”.⁷ 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*.⁸ 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*.⁹”

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.¹⁰

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 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*.¹¹”

Academic and legal discussion¹² 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.

⁵ [Schedule 8](#), Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 (as amended)

⁶ See [‘Table with details of fees and unit costs – 11 October 2021’](#)

⁷ *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

⁸ *ibid*, paragraph 21

⁹ *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

¹⁰ *R (Project for the Registration of Children as British Citizens & O) v Secretary of State for the Home Department [2022] UKSC 3*, paragraph 26

¹¹ *ibid*, paragraph 51

¹² See e.g. [here](#), [here](#), [here](#) and [here](#).

Wider support for the aim of the amendment:

In addition to the various children's, citizens, legal and other organisations whose logos are attached to this briefing, the breadth of support for it is attested, among other ways, by motions passed by local authorities,¹³ a motion passed at TUC¹⁴, the call made by the Mayor of London,¹⁵ recommendations of the Joint Committee on Human Rights¹⁶ and the Lords' Committee on Citizenship and Civic Engagement,¹⁷ 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.¹⁸

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 so as 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.

¹³ See e.g. [here](#).

¹⁴ 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](#)

¹⁵ 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](#)

¹⁶ [Legislative Scrutiny: Nationality and Borders Bill \(Part 1\) – Nationality](#), Report of Session 2021-2022, Joint Committee on Human Rights, paragraph 28

¹⁷ [The Ties that Bind](#), Report of Session 2017-2019, Citizenship and Civic Engagement Committee, paragraph 486-492

¹⁸ [New Clause 8](#) (Report, 7 December 2021) was defeated by [237 votes to 323](#).