



Kevin Foster MP
Parliamentary Under Secretary of State
Home Office
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By email: public.enquiries@homeoffice.gov.uk

Dear Minister

Fee waiver and exemption; Best interests of children to be registered as British citizens

Firstly, we wish to congratulate you on introducing an exemption for looked after children from the fee for registration of their rights to British citizenship; and a fee waiver for children who cannot afford the fee for registration of those same rights.

General

This is a significant step towards fully and properly recognising and giving effect to the statutory rights to British citizenship of children born and growing up in the UK, in keeping with their identity, connection to the UK and the intention of Parliament in creating British citizenship under the British Nationality Act 1981.

Since the introduction of British citizenship from 1 January 1983, successive governments have failed to fully and properly respect that citizenship. An underlying intention of the 1981 Act was to recognise British citizenship for all persons connected to the UK. Particularly from around the mid 2000's, governments have systematically undermined this by creating significant and impenetrable barriers for many children to register their citizenship rights. Setting fees at above cost has been and remains one of those barriers.

We would, therefore, urge you to reconsider the fee and other barriers to the full realisation of the 1981 Act's purpose in ensuring that all people identified as having rights to British citizenship are enabled to exercise those rights. The continued

charging of fees above administrative cost for people to exercise their statutory rights to British citizenship remains one barrier that impedes the purpose of the 1981 Act.

Removing barriers would further the same ambition that this government has rightly pursued to correct injustice and discrimination by sections 1 to 8 of the Nationality and Borders Act 2022 in relation to both British citizenship and British overseas territories citizenship.

Raising awareness of the fee waiver and exemption

As you will be aware, our organisations have together been actively engaged in seeking to raise awareness of children's citizenship rights (including in connection with registration fees) for many years. PRCBC has been doing so even longer, including through its direct engagement with many local authorities, lawyers, community groups and others.

We welcome the indication of steps that have been, or are being, taken to raise awareness of the waiver and exemption. We note the answer given by Baroness Williams of Trafford (HL637, 20 June 2022) that:

“Local Authorities were notified of the introduction of a fee exception in the Local Government Bulletin issued on 27 May by the Department for Levelling Up, Housing & Communities.

“The Home Office is continuing to reach out to a wide range of organisations who have an interest in the fee exception and waiver to notify them of their introduction.”

We would be grateful for more information concerning this: To which organisations has the Home Office reached out, to which is it continuing to do so and by what means?

British Nationality (General) Regulations 2003 & fee waiver

There is a need for amendment to the British Nationality (General) Regulations 2003, SI 2003/548. This arises from the implementation of the fee waiver.

The making of an application for registration is governed by the 2003 Regulations (as amended), which are made under section 41 of the British Nationality Act 1981. In particular, section 41(1)(b) provides:

“The Secretary of State may by regulations make provision generally for carrying into effect the purposes of this Act, and in particular provision for prescribing the manner in which, and the persons to and by whom, applications for registration... under any provision of this Act may or must be made...”

Accordingly, an application for registration is made when the Secretary of State receives an application that is in writing and fulfils the requirements that are specified in Schedules 1 and 2 of the 2003 Regulations.

The Home Office casework guidance *Affordability fee waiver: Citizenship registration for individuals under the age of 18* sets out circumstances where a registration application is to be treated as made on the date at which the application for a fee waiver was made. With respect, while we support the underlying purpose of ensuring that the fee waiver process does not inadvertently lead to anyone being deprived of her, his or their right to registration, we are concerned that there is a fundamental misapprehension as to the power of the Secretary of State to treat an application as made when she has made no provision in the British Nationality (General) Regulations 2003 for this.

Please, therefore, would you confirm that steps are being, or will be, taken – by amendment to the 2003 Regulations – to ensure that what is intended concerning the date of application for registration being the date of the fee waiver application is legally effective?

Best interests assessment

The best interests of children was a critical matter in the litigation brought by the Project for the Registration of Children as British Citizens (PRCBC) and individual children (*PRCBC, O & A v SSHD* [2019] EWHC 3536 (Admin); [2021] EWCA Civ 193; [2022] UKSC 3). That led to rulings by both the High Court and Court of Appeal that the fee had been set in breach of the Secretary of State's duties under section 55 of the Borders, Citizenship and Immigration Act 2009. Following these rulings, we understand that the Home Office has now made an assessment of children's best interests.

The answer given by Baroness Williams of Trafford (HL638) was that the Government:

"...has no plans to publish the assessment of the children's best interests in relation to the child registration fee."

We must respectfully ask that you reconsider that position and publish this assessment of children's best interests.

Children and those acting for them and for recognition of their citizenship rights are entitled to know what the assessment is and how it has been arrived at. That is necessary to ensure that the performance of your department's functions will, or can now, be founded upon a sufficient and accurate assessment of children's best interests.

It is also appropriate for the public to have access to the department's assessment of the best interests of children as this concerns the performance of its functions on behalf of the public, especially in connection with such a fundamental matter as recognition of British citizenship rights.

We would be pleased to meet with you to discuss these various matters if that would be helpful.

We look forward to hearing from you.

Yours faithfully



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