



Joint Committee on Human Rights

Legislative scrutiny: Government Bill 262 of Session 2022-23 (entitled Illegal Migration Bill)

Rights to British citizenship April 2023

1. This submission is solely concerned with rights to British citizenship. It is specifically concerned with how the Bill interferes with and denies those rights, and the human rights implications of this. We do not, therefore, address either of the following:
 - 1.1. **Rights to other British nationalities:** The Bill does interfere with and denies such rights. It does so in much the same way as it interferes with and denies rights to British citizenship; and the human rights implications are likely to be the same or similar.
 - 1.2. **Naturalisation:** The Bill does interfere with and denies the discretion to make someone, who is not British but has made the UK their home, a British citizen. We do not doubt that this has serious implications, including concerning human rights. Nonetheless, this is not a focus of our submission.

Citizenship of the UK – British citizenship and rights to it:

2. Parliament created British citizenship by the British Nationality Act 1981. That citizenship was created to be the citizenship of British people connected to the UK. Other British nationalities were created at the same time to reflect the connection of certain British people to other British territories. This all constituted a major resettlement of British nationality. As befitted such a constitutional settlement, the Act was subject to lengthy and detailed parliamentary scrutiny and preceded by both a Green and White Paper.
3. Ultimately, Parliament identified the British people connected to the UK by various rights of acquisition.¹ Some of these rights are automatic while others require formal registration. While Parliament did not consider that birth in the UK would always be sufficient to demonstrate connection, it decided that where

¹ *Reasserting Rights to British Citizenship Through Registration*, IANL, Vol 34, No 2, 2022

someone was born here to a British citizen or could be expected to grow up here or did grow up here, this was sufficient to establish connection.² Similarly, Parliament did not consider that birth to a British citizen, particularly where that birth is overseas, would always be sufficient to demonstrate connection. Nonetheless, in certain circumstances it decided that it was and in other circumstances it would prove to be.³

4. We do not attempt a comprehensive analysis of all rights to British citizenship or of the debates that led Parliament to reach the constitutional settlement that it chose for citizenship. In summary, however, all rights of registration under the British Nationality Act 1981 reflect that settlement. Near all these rights are expressly by entitlement; and registration in British nationality law has always been a formal process restricted to people identified as British.⁴ The additional discretion for the Home Secretary to be able to register any child as British reflects Parliament's wisdom that all children who grow up connected to the UK should be equally recognised, but that it would not be possible to exhaustively enumerate all the circumstances in which that would occur.⁵

Rights to citizenship

5. Article 15 of the Universal Declaration of Human Rights states that "*everyone has the right to a nationality*" and "*no one shall be arbitrarily deprived of his nationality...*". The Declaration also clearly envisages a vital connection between a person and "*his country*", particularly in Article 21 concerning the right to political participation and public service.
6. There is a fundamental link between democracy, constitutionality and respect for citizenship rights. Failure or refusal of a State to recognise the citizenship rights of any body of its nationals undermines democratic and constitutional legitimacy. Much has been made by proponents of this Bill about parliamentary sovereignty. We do not seek here to enter the discussion as to what that sovereignty means or constitutes. However, we emphasise that any legitimacy for it must in some real sense rest on Parliament's relationship with the citizenship to whom it is accountable. Again, this is not the place for us to attempt to tease out what that relationship is. Nor do we overlook that the UK electorate is not defined by or restricted to the UK's citizenship. Nonetheless, if British people, whose citizenship rights are established in recognition of their connection to the UK, are arbitrarily deprived of their citizenship, that is an affront to any legitimate notion of citizenship and, therefore, to the legitimacy of the State and how it is governed.

² *Ibid*, pp143-145

³ *Ibid*, pp146-147

⁴ Registration of citizenship of the UK and Colonies under section 6 of the British Nationality Act 1948 was restricted to enabling British subjects, who were Commonwealth citizens but not citizens of the UK and Colonies, to become such citizens.

⁵ *Reasserting Rights to British Citizenship Through Registration*, IANL, Vol 34, No 2, 2022, pp147-148

7. These concerns relate to the famous observation of Hannah Arendt regarding citizenship as “*the right to have rights*”.⁶ Arendt’s description, however, emphasises more of the human rights implications of denying a person’s citizenship. The UK courts and the European Court of Human Rights have each recognised this through Article 8 of the 1950 European Convention on Human Rights (“the European Convention”).⁷ We would add that the 1989 UN Convention on the Rights of the Child (“the UNCRC”) provides additional authority since it expressly links the child’s rights to private life, to identity and to nationality.⁸ The tangible importance of this was expressly recognised by the High Court, in relation to fees, in its finding of a mass of evidence showing that the denial of the citizenship rights of a child identifying as British does profound emotional and psychological harm.⁹
8. In summary, the right to citizenship is a significant matter of a child’s right to identity and private life. Additionally, it is a right to a status on which depends the relationship between the child and the nation state to which the child belongs; having profound implications for the rights, including human rights, of the child. It is clearly in the best interests of children that their citizenship rights are respected. Arbitrary deprivation of these rights, even before they can be exercised, is incompatible with the child’s human rights as summarised here. As regards these rights of the child, Article 8 of the European Convention is clearly capable of giving effect to them. In the case of an adult, the UNCRC cannot directly inform the content of Article 8. Nonetheless, that the UNCRC so clearly recognises the strong link between identity, citizenship and private life is itself firm indication of the scope of Article 8 in the circumstances of an adult whose identity, citizenship and private life can be expected to co-align in much the same way.

The Bill and rights to citizenship:

9. Clauses 30 to 36 pay no regard to the nature or significance of rights to British citizenship; and ride roughshod over the constitutional settlement made by Parliament in making the British Nationality Act 1981. These clauses are, therefore, profoundly unconstitutional, undemocratic and disrespectful of human rights.
10. The people to be deprived of their citizenship rights are largely comprised of two groups, each of whom made up of people entitled to British citizenship. There is a third group, solely made up of children. We summarise the circumstances of each group of British people below, together with some examples as to the circumstances in which these people would be stripped of their citizenship rights by this Bill.

⁶ Referred to by Peter Richards LJ in *R (Y) v Secretary of State for the Home Department* [2020] EWCA Civ 1038, paragraphs 6

⁷ e.g. *R (Williams) v Secretary of State for the Home Department* [

⁸ Articles 7 & 8; and see *R (Y) v Secretary of State for the Home Department* [2020] EWCA Civ 1038, paragraphs 6-7 *per* Peter Richards LJ

⁹ *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin), paragraph 21, Jay J

People born in the United Kingdom

11. The first group of people the Bill would deprive of their entitlement to citizenship is solely made up of people who were born in the United Kingdom (on or after 7 March 2023). This group is comprised of children. Of course, currently it is solely comprised of children. However, the Bill's impact is permanent and in due course it will include adults who were born here, including people who have lived here their entire lives of several decades.¹⁰
12. The deprivation of citizenship rights of people born in the United Kingdom is intended to be done by this Bill *because* of the actions, voluntary or not, of someone else (the child's parent). The child's own identity, personhood and rights are simply ignored.
13. The deprivation of the child's citizenship right will be done by the combined effect of clauses 30(4) and 31(1)(a).¹¹ These exclude the child's statutory entitlement to be registered as a citizen. Every person caught by the joint operation of these provisions must be someone born in the United Kingdom. They must also either be someone who has lived in the United Kingdom from birth to at least the age of 10 (but potentially years or decades longer);¹² or someone who, during their childhood, has a parent who either becomes a British citizen or is permitted to stay in the United Kingdom permanently.¹³

Example:

Peter's parents come to the UK lawfully. Peter is born here after 7 March 2023. His father is violent and abusive. Not only does the family separate, but Peter's father is prosecuted, convicted, imprisoned and in due course deported. Peter's mother remains lawfully in the UK. In due course, she settles here and becomes a naturalised British citizen. However, she mistakenly believes that Peter is already British because he was born here and so doesn't take steps to register him as a British citizen. Meantime, Peter's father returns to the UK in breach of his deportation order. Peter is now caught by clause 30(4). He is entitled to be registered as a British citizen under section 1(3) of the British Nationality Act 1981 (and under section 1(4) once he has reached the age of 10) but his right to do so is blocked by clause 31(1)(a).

People born overseas to British citizen parents

14. The second group of people the Bill would deprive of their entitlement to citizenship is solely made up of people born overseas to British citizen parents. This group is solely comprised of children. Again, the deprivation of the child's citizenship rights will be done by the Bill *because* of the actions of someone else (the adult that sent or brought the child to the United Kingdom, including

¹⁰ PRCBC is familiar with the circumstances of people born without British citizenship in the UK in the year the British Nationality Act 1981 came into force and who have continued living in the UK without citizenship ever since, including now approaching their 40th birthday.

¹¹ These provisions combined relate solely to section 1(3) and (4), British Nationality Act 1981

¹² A requirement of section 1(4), British Nationality Act 1981

¹³ Alternative requirements of section 1(3), British Nationality Act 1981

when done for purposes of exploiting the child). Again, the child's identity, personhood and rights are effectively ignored.

15. The deprivation of the child's citizenship rights will be done by the combined effect of clauses 30(3) and 31(1)(b).¹⁴ Every child caught by the joint operation of these provisions must be someone who was born to a British citizen;¹⁵ and some of the children may be born to parents both of whom were British citizens.

Examples:

Jane's mother was a British citizen but not born in the UK. Although Jane's mother did grow up in the UK, she later married and moved to her husband's country where Jane was born. Jane's parents wrongly think that Jane must be born a British citizen, whereas they need to register her. However, before doing so they bring her to the UK and because they believe she's British they do not obtain permission for her to come. Jane is now caught by clause 30(3). She is entitled to be registered as a British citizen under section 3(2) of the British Nationality Act 1981 but her right to do so is blocked by clause 31(1)(b).

Sara's mother was also born a British citizen but not born in the UK. Sara's mother also grew up in the UK, later married and moved to her husband's country where Sara was born. They fall upon very hard times and, when a relative offers to take care of Sara, they decide that this would be best for their daughter. That relative brings Sara to the UK under false pretences to use her as a domestic slave. Sara is now caught by clause 30(3). Like Jane, she is entitled to be registered as a British citizen under section 3(2) of the British Nationality Act 1981 but her right to do so is blocked by clause 31(1)(b).

Children brought to the United Kingdom

16. This third group solely concerns children brought to the United Kingdom. The British Nationality Act 1981 provides the Secretary of State with an unfettered discretion to register any child as a British citizen.¹⁶ This is to ensure children who are British by identity and connection are not excluded from citizenship merely because Parliament was unable to precisely specify every situation in which that identity and connection is established.
17. As with the previous examples, the deprivation of the child's citizenship rights will be done by the Bill *because* of the actions of someone else (the adult that sent or brought the child to the United Kingdom, including when done for the purposes of exploiting the child). Again, the child's identity, personhood and rights are effectively ignored.
18. The deprivation of the child's citizenship rights will be done by the combined effect of clauses 30(3) and 31(2)(a)(i).¹⁷ The only children caught by the joint operation of these provisions are children who, but for the Bill, would have

¹⁴ These provisions combined relate solely to section 3(2) and (5), British Nationality Act 1981

¹⁵ A requirement of both section 3(2) and (5), British Nationality Act 1981

¹⁶ Section 3(1), British Nationality Act 1981

¹⁷ These provisions combined relate solely to section 3(1), British Nationality Act 1981

established that their connection is clearly to the United Kingdom, generally on the basis that the child's future clearly lies here.

Example:

Mohammed is brought to the UK at the age of 2. His early years are beset by serious physical and emotional abuse and neglect; and the local authority is ultimately compelled to take him into care. Both his mother and father, for different reasons, are deported from the UK. Mohammed has nobody else to look after him and a full care order is made. He grows up in the UK and his future clearly lies here. He is clearly eligible to be registered as a British citizen, reflecting the connection he has with the UK, under section 3(1) of the British Nationality Act 1981. But Mohammed was brought to the UK in breach of immigration laws. He is, therefore, caught by clause 30(3). His right to be registered as a British citizen is blocked by clause 31(2)(a)(i).

Conclusion

19. The inclusion of citizenship rights within the scope of this Bill is profoundly misconceived and harmful, especially to children. It is equally harmful to British citizenship and the very purpose of that citizenship.¹⁸
20. The examples we have set out but examples. There are innumerable alternatives. All have the same foundation. The wider personal circumstances of a child in any given situation (e.g. whether the child was trafficked to the UK; has experienced violence, abuse or neglect) may be more or less compelling, but the arbitrary deprivation of citizenship rights is the same. A British person with a right to be registered as a British citizen is to be deprived by this Bill of that right on the wholly arbitrary basis that either something was done to that person, when they were a child, by someone else who brought or trafficked the child to the UK; or something was done by somebody else (a parent) for which the child has and can have no responsibility (whether or not the child has any knowledge about what was done).

¹⁸ That purpose is more fully discussed in the PRBC commentary on the *Hansard* record of the parliamentary debates on the bill that became the British Nationality Act 1981, which is available here: https://prbc.files.wordpress.com/2019/07/commentary_-hansard-bna-1981- registration aug-2018-2.pdf