



## Government Immigration Bill, Session 2022-23 (HL Bill 133) House of Lords Committee (June 2023)

### British citizenship

The Project for the Registration of Children as British Citizens (PRCBC) is the UK's only organisation to specifically and exclusively focus on rights to British citizenship. It has directly assisted and represented hundreds of people with these rights in legal processes with the Home Office and in litigation before the higher courts over a period of more [than a decade](#); and indirectly assisted many thousands more. Amnesty International is a proud supporter of PRCBC because it recognises the vital importance of respect for nationality rights in any principled consideration of the actions and duties of nation States.

LORD MOYLAN  
BARONESS LISTER OF BURTERSETT

**98B**

Clause 31, page 37, line 16, leave out subsection (1)

Member's explanatory statement

*This amendment, along with the amendment to Clause 31, page 37, line 29, in the name of Lord Moylan, removes the Bill's effect on registration as a British citizen.*

**98C**

Clause 31, page 37, line 29, leave out paragraph (a)

Member's explanatory statement

*This amendment, along with the amendment to Clause 31, page 37, line 16, in the name of Lord Moylan, removes the Bill's effect on registration as a British citizen.*

This briefing concerns rights to British citizenship by registration. We support Lord Moylan and Baroness Lister of Burtersett, and the amendments tabled in their names, in seeking to remove the effect of this Bill on those rights. The primary means to achieve this are the amendments identified above (**98B** and **98C**). Additional amendments in the names of Lord Moylan and Baroness Lister are consequential upon these.<sup>1</sup>

<sup>1</sup> Their amendments also seek to protect rights to other British nationality: see **98A** to **98H**, and the notice of opposition to Clauses 33 and 34 standing part (also in the name of Baroness Ludford).

Nothing said (or not said) in this briefing should be read as support for any provision of this Bill. We provide this briefing solely on rights to British citizenship because these rights and this Bill's treatment of these rights is of particular concern to PRCBC and Amnesty International UK.

### **Rights to British citizenship: Registration**

Registration concerns rights to British citizenship. This was a matter emphasised at Second Reading.<sup>2</sup> Registration is a vital means by which the citizenship of British people – identified as British by connection to the United Kingdom – can be secured in circumstances where the person is not automatically made a British citizen at birth or by adoption.<sup>3</sup> Automatic acquisition of British citizenship at birth applies to the great majority of British citizens born on or after 1 January 1983 when the British Nationality Act 1981 took effect.<sup>4</sup> However, the Act includes several rights to British citizenship by registration. The purpose of these rights is to ensure that no person whose connection to the United Kingdom identifies them as British, is formally excluded from this country's citizenship.<sup>5</sup>

It is fundamentally wrong to prevent people exercising their rights to British citizenship by registration as this Bill seeks to do. Below are practical considerations which emphasise the profound injustice of this.

### **Wrongful conflation of nationality rights with immigration policy:**

A primary objection to the inclusion of registration rights within the scope of this Bill arises from its wrongful conflation of registration with naturalisation.<sup>6</sup> Underpinning this

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<sup>2</sup> *Hansard* HL, 10 May 2023 : Col 1908, *per* Lord Moylan

<sup>3</sup> Under any of section 1(1), (1A), (2) or (5) and section 2 of the British Nationality Act 1981.

<sup>4</sup> A person is a British citizen at birth under section 1(1) of the British Nationality Act 1981 the person is born in the United Kingdom to a British citizen or settled parent ('settled' essentially meaning the person has permission to reside here permanently). A person is a British citizen at birth under section 2(1) of the British Nationality Act 1981 if the person is born overseas to a British citizen who is not British by descent ('by descent' meaning that the person has acquired their citizenship in various specified circumstances in which they were also born overseas to a British citizen).

<sup>5</sup> Connection to the United Kingdom is the founding principle underpinning British citizenship which was created by the British Nationality Act 1981 as the citizenship of the United Kingdom. Parliament ended the application of *ius soli* (the principle that citizenship is derived from birth on the territory) on the basis that people born in the United Kingdom would only have that connection if born to British citizens or if they grew up in here. This explains why section 1(1)(b) provides that children born in the United Kingdom to settled parents are automatically born British citizens; and explains why registration rights under section 1(3) and (4) were necessary to ensure that children who did or whom it became clear would grow up here were not deprived of citizenship of the country to which they were equally connected. Parliament also chose not to adopt *ius sanguinis* (the principle that citizenship is derived from parentage) on the basis that connection to the United Kingdom would be lost by successive generations who were born and did not maintain some close connection. This explains why registration rights under section 3(2) and (5) were necessary to ensure that children born to British citizens, who were themselves born overseas but had maintained a connection to the United Kingdom by significant periods of residence.

<sup>6</sup> Lord Moylan summarised the distinction at Second Reading: "*Naturalisation is a concession whereby the British Government gives citizenship to people of foreign nationality. Registration, introduced by the post-war Labour Government, is a process whereby the British state acknowledges an existing right to British citizenship...*" (*Hansard* HL, 10 May 2023 : Col 1908).

is a profound misunderstanding of British nationality law and a wrongful degradation of British people's citizenship rights to matters of immigration policy.<sup>7</sup>

It is starkly wrong to exclude British people's citizenship rights in a Bill, which is solely and expressly concerned with immigration purposes.<sup>8</sup> Parliament settled the matter of citizenship of the United Kingdom more than 40 years ago by creating British citizenship and rights to it. Parliament did so by making the British Nationality Act 1981. Since then a repeated failure of successor Governments and Parliaments to understand and respect the determination of British nationality made by that Act has significantly degraded British citizenship.<sup>9</sup> This Bill, as currently drafted, is the latest iteration of this error.

Parliament should not allow the citizenship rights of any British person to be excluded in real or imagined service of any immigration policy aim.

### **The people who will be caught and how:**

If the point of principle that citizenship rights are not an immigration matter and not properly mixed with immigration policy needs any bolstering, then Parliament should reflect upon who is to have their rights taken from them and in what circumstances.<sup>10</sup>

Clause 31(1) and (2) lists the registration rights that are to be excluded by the Bill. PRCBC's experience confirms that the registration rights that are, by far, most likely to be affected in practice are those under section 3(1), (2) and (5) of the British Nationality Act 1981. Home Office citizenship statistics are not finely disaggregated. Nonetheless, these statistics are highly consistent with PRCBC's experience.<sup>11</sup>

Accordingly, it is children who are overwhelmingly the target of the exclusions in Clause 31 of citizenship rights by registration. This is because section 3(1), (2) and (5) of the 1981 Act solely provide for registration of the British citizenship of children. No adult can be registered under any of these provisions unless that person applied for registration as a child, and the application remained pending on their turning 18.

Moreover, the circumstances in which these children are most likely to be affected by the exclusions in Clause 31 of citizenship rights by registration are ones in which no culpability can properly be attributed to the child. The relevant circumstances are identified by the following examples. As these examples show, the effect of exclusion

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<sup>7</sup> Naturalisation is concerned with immigration. It is how an adult migrant to the United Kingdom who has been permitted to become settled (reside her permanently) may be made a British citizen.

<sup>8</sup> Clause 1(1) and (3) state a unitary purpose to govern then entirety of this Bill and that purpose is expressly concerned with specified types of immigration.

<sup>9</sup> Lords' Committee stage of what is now the Nationality and Borders Act 2022 included a valuable debate on citizenship in which Lord Moylan, Baroness Lister of Burtersett and others drew attention to the degradation of British citizenship over this time: *Hansard* HL, 10 February 2022 : Col 1986ff.

<sup>10</sup> Among the consequences of ministers' general failure to make timely and effective impact assessments, is the absence of information as to what of this and how Government has made any evaluation – even assuming that it has.

<sup>11</sup> The data broadly shows there to be far greater number of people naturalising than being registered each year, and that the great majority of people being registered are children. The data is available from among other data here: <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2023/how-many-people-continue-their-stay-in-the-uk-or-apply-to-stay-permanently#citizenship>

is to punish children by depriving them of their British citizenship by acts wholly outside of their control. Those acts may be done by parents or others acting out of innocent mistake. They may also be done in ways that are harmful and may even constitute criminal exploitation of the child (such as where a child is trafficked to the United Kingdom for the purpose of labour, sex, benefits or organ exploitation). As regards section 3(2) and (5), it is important to understand that these only apply to children born overseas to a British citizen parent.<sup>12</sup>

**First example concerning section 3(2) of the 1981 Act:**

Maya is born outside the UK to a British citizen who herself was born overseas causing Maya to not be born a British citizen. Maya's British parent(s) may not understand that Maya is not born a British citizen. Nonetheless, if Maya's British parent has lived in the UK for a continuous period of at least three years before Maya was born, Maya is entitled to be registered as a British citizen under section 3(2) on an application made at any time during her childhood. However, if Maya is brought to the UK in the mistaken belief that she does not need permission to come, she will be permanently excluded from her citizenship rights by Clause 31(1).

**Second example concerning section 3(2) of the 1981 Act:**

Jonathan is born outside the UK to a British citizen in the same circumstances as Maya. Like Maya's parents, Jonathan's parents may not understand that he does not have the citizenship of his British parent. Jonathan is born stateless. Jonathan is, therefore, entitled to be registered as a British citizen under section 3(2) on an application made at any time during his childhood. However, if Jonathan is brought to the UK in the mistaken belief that he does not need permission to come, Jonathan will be permanently excluded from his citizenship rights by Clause 31(1).

**Third example concerning section 3(5) of the 1981 Act:**

Ahmed is born outside the UK to a British citizen in the same circumstances as Maya and Jonathan. However, Ahmed's parents may, like Maya's and Jonathan's parents, not understand that he does not have the citizenship of his British parent. His British parent(s) are free to come to the UK; and he will be entitled to be registered as a British citizen under section 3(5) if living with them in the UK for a continuous period of at least three years. But, if he is brought by his parents to the UK, even though they may be free to come, in the mistaken belief that he does not need permission to come, he will be permanently excluded from his citizenship rights by Clause 31(1).

**Fourth example concerning section 3(1) of the 1981 Act:**

Maria is brought to the UK at a young age, long before her teenage years. She grows up in the UK, has all her schooling here, makes all her friends here, develops her social and cultural identity here and knows only this place. Having grown up here for at least 10 continuous years during her childhood, Maria may be registered as a British citizen under section 3(1) in recognition of the strong connection she has made to this country. However, if her entry to the UK – at a time before which she may barely, or even not, have any memories – was without permission, she will be permanently excluded from her citizenship rights by Clause 31(2).

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<sup>12</sup> Someone born overseas to a British citizen is born a British citizen unless that British parent was themselves born overseas (and even then there are circumstances in which the child may be born a British citizen). See fns.3 & 4 (above).

**Fifth example concerning section 3(1) of the 1981 Act:**

Thomas is brought to the UK as a child. He is so neglected or abused by his parents that the local authority is compelled to apply for, and is granted a full care order. He is now growing up in the care of the UK State and his future properly now lies here, meaning he may be registered as a British citizen under section 3(1). However, if his entry to the UK was without permission, he will be permanently excluded from his citizenship rights by Clause 31(2).

**Clause 35:**

We take note of Clause 35. As regards citizenship rights, this Clause would merely empower the Home Secretary to remove the exclusion of a British person's right to citizenship if, and only if, not to do so would:

*"...contravene the United Kingdom's obligations under the [European Convention on Human Rights]."*

The effect of this upon rights to citizenship by registration is to make the proper application of British nationality law dependent on the European Convention. With the greatest possible respect, that is not just entirely inappropriate, but also extremely odd. Parliament, after long and careful consideration, and following Green and White Papers from successive Governments, settled British nationality rights by the British Nationality Act 1981. Clause 35 is not a true means to protect British nationality, including British citizenship, from the excesses of this Bill. Rather, the inclusion of Clause 35 as it applies to rights by registration serves to emphasise the profoundly muddled – or in the words of Lord Garnier at Second Reading *"lazy"*<sup>13</sup> – thinking on the part of ministers; and the miserable consequences of this.

**Conclusion:**

The inclusion of citizenship rights within the scope of this Bill is profoundly misconceived and harmful. It is especially harmful to children. However, it is equally harmful to British citizenship and the very purpose of that citizenship.<sup>14</sup> The relevant provisions in this Bill ought to be swiftly abandoned. Moreover, the fact of their ever having been included ought to emphasise the urgent need for Parliament and Government to radically review and revise their understanding and treatment of rights to British citizenship more generally – for the good not only of individual people but for the legitimacy and purpose of the citizenship of this country.

While this briefing does not directly address other British nationalities, for reasons of principle, it is equally wrong that this Bill seeks, primarily by Clauses 32, 33 and 34, to exclude rights to British overseas territories citizenship, British overseas citizenship and the status of British subject.

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<sup>13</sup> *Hansard* HL, 10 May 2023 : Col 1842

<sup>14</sup> That purpose is more fully discussed in the PRCBC commentary on the *Hansard* record of the parliamentary debates on the bill that became the British Nationality Act 1981, which is available here: [https://prcbc.files.wordpress.com/2019/07/commentary\\_-hansard-bna-1981- registration aug-2018-2.pdf](https://prcbc.files.wordpress.com/2019/07/commentary_-hansard-bna-1981- registration aug-2018-2.pdf)