House of Commons
House of Lords

Joint Committee on Human Rights

Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality

Seventh Report of Session 2021–22

Report, together with formal minutes relating to the report

Ordered by the House of Commons to be printed 3 November 2021

Ordered by the House of Lords to be printed 3 November 2021

HC 764
HL 90
Published on 9 November 2021
by authority of the House of Commons and the House of Lords

Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

Current membership

House of Commons

Harriet Harman QC MP (*Labour, Camberwell and Peckham*) (Chair)

Joanna Cherry QC MP (*Scottish National Party, Edinburgh South West*)

Florence Eshalomi MP (*Labour, Vauxhall*)

Angela Richardson MP (*Conservative, Guildford*)

Dean Russell MP (*Conservative, Watford*)

David Simmonds MP (*Conservative, Ruislip, Northwood and Pinner*)

House of Lords

Lord Brabazon of Tara (*Conservative*)

Lord Dubs (*Labour*)

Lord Henley (*Conservative*)

Baroness Ludford (*Liberal Democrat*)

Baroness Massey of Darwen (*Labour*)

Lord Singh of Wimbledon (*Crossbench*)

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publication

© Parliamentary Copyright House of Commons 2021. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/site-information/copyright-parliament.

Committee reports are published on the Committee's website by Order of the two Houses.

Committee staff

The current staff of the Committee are Chloe Cockett (Senior Specialist), Olivia Crabtree (Lords Clerk), Busayo Esan (Inquiry Manager), Liam Evans (Committee Specialist), Thiago Froio Simoes (Committee Specialist), Alexander Gask (Deputy Counsel), Samantha Granger (Deputy Counsel), Eleanor Hourigan (Counsel), Natalia Janiec-Janicki (Committee Operations Manager), Lucinda Maer (Commons Clerk), George Perry (Media Officer) and Nicholas Taylor (Second Commons Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 4710; the Committee's email address is jchr@parliament.uk.

You can follow the Committee on Twitter using @HumanRightsCtte

Contents

Summary 3

1 Introduction 5

2 Changes to correct historical discrimination in British nationality law 10

Addressing historical discrimination in British nationality law 10

Drafting for equal treatment (clause 1) 12

Acting in the best interests of people lacking full capacity (clause 7) 13

Guidance concerning discretion (clause 7) 13

3 Fees 14

4 The good character requirement 15

The good character requirement 15

The good character requirement in Part 1 of the NBB 16

5 Changes making it more difficult for stateless children to acquire British nationality (clause 9) 18

Children born in the UK who are stateless 18

Human rights implications of clause 9 19

Amendments 22

Conclusions and recommendations 23

Declaration of interests 25

Formal minutes 26

Written evidence 27

List of Reports from the Committee during the current Parliament 28

Summary

The Committee has been undertaking legislative scrutiny of the Nationality and Borders Bill. This Report focusses solely on Part 1 (Nationality) of the Bill, focussing, in particular, on (i) addressing historic discrimination in British nationality law; (ii) the approach taken to people lacking full capacity; (iii) the exercise of discretion in special cases; (iv) fees; (v) the good character requirement; and (vi) the rights of stateless children. Work scrutinising the other parts of the Bill is ongoing.

Part 1 (Nationality) of the Bill amends the British Nationality Act 1981 (BNA). The majority of the provisions in this part of the Bill are positive from a human rights and anti-discrimination perspective, in that they remove pre-existing discrimination in nationality law that can also affect the right to family life (Article 14 as read with Article 8 of the European Convention on Human Rights (ECHR)). There are some elements that would benefit from further clarification or amendment which we outline below, for example where they may have a negative impact on the rights of the child and in particular on children born in the UK who are stateless. We also acknowledge that the clauses in this part of the Bill have provoked significant interest in particular from people interested in acquiring British citizenship/British overseas territories citizenship by descent, including those whose ancestors had links to the British Indian Ocean Territory.

Clauses 1–7 aim to address or remove historical discrimination in British nationality law, as identified in the Committee's previous work in 2018 and 2019. These clauses are broadly positive from a human rights perspective.

The Committee has previously expressed its concern about good character being required in cases resolving previous discrimination and in cases concerning children. Requiring good character in cases resolving prior discrimination can risk perpetuating the effects of discrimination for those previously discriminated against. Further, it is difficult to see how the good character requirement is in the best interests of the child. This is relevant both as a broader point, but also to some of the new clauses which would require good character and risk perpetuating discrimination in doing so.

It is unclear whether any fees might be charged for an application for British nationality under some of the new clauses. Fees (especially if they are set at unaffordable or excessive rates) can be a barrier to people accessing their right to British nationality. This is especially problematic where such fees are being charged to correct historical discrimination or for children to access their right to nationality.

It is not clear why the provision in section 44A BNA (relevant to clause 7) that the Secretary of State "may" waive the requirement for an applicant to be of full capacity if she thinks it in the applicant's best interest is discretionary. Surely if it is in the best interests of an applicant who is not of full capacity, then the Secretary of State "should" waive that requirement if she thinks it is in the applicant's best interests, so as not to unfairly disadvantage those lacking full capacity.

It is unclear how the discretion in clause 7 (new sections 4L and 4H BNA) for the Secretary of State to register a person as a British citizen in special circumstances, will

be exercised. That information will be crucial to help inform potential applicants of their options and chances of success. We recommend that the Home Secretary should issue guidance to clarify how she will exercise her discretion.

More significantly, we have concerns that clause 9, which is about stateless children, is not in the best interests of the child and therefore it is doubtful whether it complies with Article 3 of the UN Convention on the Rights of the Child. It is also difficult to see how it complies with the obligation to grant stateless children born in the UK British nationality, in line with Article 1 of the 1961 UN Statelessness Convention. We consider that an amendment to this clause is necessary—preferably to delete clause 9. Alternatively, at a minimum, the clause would need amendment firstly to ensure that it complies with the rights of the child so that the best interests of the child are central to the decision-making and secondly to ensure that British citizenship is only withheld where the nationality of a parent is available to the child immediately, without any legal or administrative obstacles, in compliance with the UK's obligations under the UN Statelessness Convention.

1 Introduction

1. The Nationality and Borders Bill ("NBB") covers wide-ranging matters including (i) nationality (Part 1); (ii) treatment of refugees and asylum seekers (Part 2); (iii) enforcement of immigration law (Part 3); (iv) modern slavery (Part 4); and miscellaneous provisions (Part 5) such as age assessments for children, many of which were initially introduced only as holding provisions. This Report focusses solely on the nationality provisions in Part 1 of the Bill. Our scrutiny of other aspects of the Bill is ongoing.

2. The nationality provisions amend the British Nationality Act 1981 (hereafter "BNA") and include:

a) Changes to correct historical discrimination preventing mothers transmitting British overseas territories citizenship to their children (clause 1).

b) Changes to correct historical discrimination preventing unmarried fathers from transmitting British overseas territories citizenship to their children (clause 2).

c) Changes to allow those now able to obtain British overseas territories citizenship to obtain related British citizenship (clause 3).

d) Changes to allow for a child to be registered as a British overseas territories citizen (by descent) whilst that child is a minor (rather than solely within 12 months of birth) (clause 4).

e) Changes to disapply the historical requirement to register a child's birth at the local consulate when deciding British nationality applications for people who had not at that time been able to acquire British nationality due to discrimination either due to their mother being British or their father being unmarried (clause 5).

f) Changes to allow a natural father to pass on British citizenship to his child where the mother was married to someone else (clause 6).

g) Changes to allow the Secretary of State the discretion to grant British citizenship/ British overseas territories citizenship to adults where they would have had that citizenship but for historical unfairness, an act or omission of a public authority, or other exceptional circumstances (clause 7).

h) Provision allowing the Home Secretary the discretion to waive requirements for a person to be present in the territory for a nationalisation application (clause 8).

i) Changes preventing stateless children born in the UK from acquiring British nationality unless the Home Secretary is satisfied that the child is unable to acquire another nationality (clause 9).

3. Nationality law can engage a number of human rights, including:

a) The right to family life (Article 8 ECHR).[1]

1 See for example the High Court judgment in R (Williams) v Secretary of State for the Home Department [2015] EWHC 1268 (Admin), where the court held: "I consider there is now overwhelming force in the proposition that nationality is a vital element of an individual's fundamental identity, attracting the protection of article 8. Nationality has an intrinsic importance. I am not talking here about having citizenship of some country rather than being stateless… I am talking of the nationality of a particular country…" [at paragraph 86]. See also, Genovese v Malta, ECHR, 2011 (Application No. 53124/09) which related to a person who was refused nationality by descent due to his illegitimate status; and Suolita Keita v Hungary, ECHR, 2018 (Application No. 42321/15), which related to the regularisation of status of a stateless person

b) Freedom from discrimination in the enjoyment of other human rights (Article 14 ECHR).[2]

c) The obligation upon the State to make the best interests of the child a primary consideration (Article 3, UN Convention on the Rights of the Child (UNCRC)).[3]

d) The right of a child to nationality and identity (Articles 7 and 8, UNCRC).[4]

e) Obligations to reduce statelessness, including the obligation on a State to grant its nationality to a person born in its territory who would otherwise be stateless (Article 1, UN Convention on the Reduction of Statelessness 1961 (UN Statelessness Convention)).[5]

4. Part 1 (Nationality) of the Bill generally contains provisions that are positive from a human rights and anti-discrimination perspective, as well as some elements that would benefit from further clarification or potentially amendment, for example to ensure that the best interests of the child and the UK's obligations under the UN Statelessness Convention are borne in mind when dealing with nationality applications from stateless children born in the UK.

5. On 26 July 2021, we published a call for written evidence for individuals and organisations to respond to the questions in the Terms of Reference, to which we received 61 submissions. Alongside this, we also published an online survey, promoted on our website and through our social media account, so we could hear a wider range of views on the human rights implications of the Bill. Our survey closed on 17 September 2021 and we received 84 responses to the survey. We have also heard oral evidence on the Bill. We are grateful to all those who have contributed in this way to our understanding of the Bill and the wider context in which it will operate.

6. We asked, in our call for evidence, whether there were any other human rights concerns in British nationality law that were not adequately addressed in the Nationality and Borders Bill. Evidence and information we received highlighted the following:

a) The Bill does little to address issues relating to the British citizenship rights of

---

2 See, for example, K (A Child) v Secretary of State for the Home Department [2018] EWHC 1834 (Admin), or Advocate General for Scotland v Romein [2018] UKSC 6. See also, Genovese v Malta, ECHR, 2011 (Application No. 53124/09).

3 Article 3(1) UNCRC provides: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

4 Article 7 UNCRC provides: "(1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents. (2) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless".
Article 8 UNCRC provides: "(1) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. (2) Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity".

5 Article 1(1) of the UN Statelessness Convention provides: "A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted: (a) at birth, by operation of law, or (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected."

children born in the UK and growing up here.[6]

b) There are practical challenges to children acquiring nationality where (some) fathers are unwilling to provide evidence, which can be a barrier to children realising their right to British nationality in practice.

c) Concerns that the policy and practice of the Home Secretary in recognising British nationality do not adequately recognise the importance of citizenship rights, including concerns that the Home Secretary will refuse or fail "to confirm people's citizenship rights from information known or available to her (including where she is the source of that information, such as confirming that she has naturalised or registered a child applicant's parent)".[7]

d) The absence of legal aid for children seeking to have their nationality status determined can also be a barrier to children accessing their rights, such as a right to British nationality.[8] This can be a particular problem for looked after children or other children who would need support in making their British nationality claim. In previous Parliaments, the Joint Committee on Human Rights has raised concerns about the level of support provided to looked after children in accessing British nationality.[9] A lack of access to legal support and legal aid can additionally be a barrier for people trying to correct historical discrimination in their access to British nationality.

e) Suggestions were made to introduce reforms to allow for broader discretion so that people with a strong connection to the UK can qualify for naturalisation, in particular to allow care leavers who have grown up in the UK to naturalise.[10]

f) There continue to be concerns at the disproportionate levels of some fees for applications for entitlements to British nationality, as the Committee has raised

6 See Refugee and Migrant Children's Consortium (NBB0047): "These reforms do not adequately address other anomalies affecting children. They do not address children born to European parents in the UK between 2000 and 2006, who lost out on becoming British automatically due to the definition of 'settled' at this time."; and Joint Committee on Human Rights, Twentieth Report of Session 2017–19, Good Character Requirements: Draft British Nationality Act 1981 (Remedial) Order 2019 - Second Report, HC 1943 / HL Paper 397, para 21–30 where the Committee expressed concerns at the application of the good character requirement to children born in the UK and who had lived their whole lives in the UK

7 Project for the Registration of Children as British Citizens and Amnesty International (NBB0039)

8 Project for the Registration of Children as British Citizens and Amnesty International (NBB0039)

9 See Joint Committee on Human Rights, Twentieth Report of Session 2017–19, Good Character Requirements: Draft British Nationality Act 1981 (Remedial) Order 2019 - Second Report, HC 1943 / HL Paper 397, para 41–43, and in particular the recommendation at paragraph 42: "Local authorities should ensure that children in their care with an entitlement to British citizenship (whether or not they have another citizenship) should be registered as British to ensure they maintain their status and rights upon leaving care." See also paragraph 56 of that Report in relation to EU national children in care post-Brexit: "…local authorities should actively take steps to ensure that applications are submitted for all looked after children in their care with a right to British nationality—including those who are EU nationals and who may face bureaucratic hurdles post-Brexit if steps are not taken now to clarify their status and their right to British nationality."

10 See, for example, Refugee and Migrant Children's Consortium (NBB0047): "The reforms could also be improved by giving a wider discretion in adult naturalisation cases, to allow for a range of circumstances. There should be a broader discretion that allows people with a strong connection to the UK to qualify for naturalisation. For example, it should allow a care leaver who has grown up in the UK and has obtained settled status under the EU settlement scheme to naturalise even if they do not meet all the requirements". See also We Belong (NBB0057): "We Belong recommends that there is a shorter, five-year route to permanent status, in the Nationality and Borders Bill, for young people and children who have lived in the UK for more than half their lives ensuring stability for all children and young people with strong ties to the UK."

in its previous work.[11]

g) Concerns were raised about the situation of people with 'residual' British nationality, who do not have a right of abode in the UK, with accompanying calls for the UK to grant "citizenship and the right of abode in the UK to all British nationals, which would allow the UK to withdraw its reservation to Article 12(4) of the ICCPR and to ratify ECHR Protocol 4".[12]

h) A number of those submitting evidence in relation to this Part of the Bill supported the campaign for people of Chaggosian descent to be treated as a special category for the purposes of obtaining British nationality by descent, so that 2nd, 3rd or 4th generation people with a connection to the British Indian Ocean Territory (BIOT) could access British overseas territories citizenship (and therefore also British citizenship).[13]

i) Some raised the situation of East African Asians whose parents had British Protected Person passports and who may have faced discrimination in (not) obtaining that nationality by descent.[14]

j) Concerns have also been raised in relation to the children of British Overseas Citizens otherwise than by descent, where those children were born between 1 January 1983 and 31 December 1987, specifically those of Somali ethnicity with links to the former Colony of Aden.[15]

k) Some have suggested the need for ongoing review and scrutiny to ensure no further areas of discrimination remain in British nationality law.[16]

l) Some have raised concerns about the practical difficulties of applying for citizenship, including procedural requirements concerning biometrics and ceremonies which can be excessively expensive or difficult to attend, especially when people may live far from the local Embassy.[17] Alternative options (where possible) would help to mitigate some of these difficulties, for example, conducting ceremonies via zoom.

m) Some submissions mentioned the importance of Home Office staff treating people with respect and humanity, and, given the passage of time before resolving such

11 See Chapter 3 of this report and, for example, Refugee and Migrant Children's Consortium (NBB0047)

12 GlobalBritons (NBB0026): "It is estimated that there are currently more than 1,000 de facto stateless British nationals stuck in limbo in the UK, unable to live and work legally in the UK and unable to be deported anywhere else.... we are disappointed that no specific provisions have been included in the published Bill that deal with historical discrimination faced by residual British nationals and the de facto statelessness suffered by some."

13 See, for example, British Overseas Territories Citizenship Campaign (NBB0014); Rosy Leveque (NBB0015); David Louis Victoire (NBB0018); and Francois Pascal (NBB0032), who set out the call clearly for those of Chagossian descent to be British overseas territories citizens as well as British citizens.

14 See, for example, Koosh Gadhvi (NBB0010), in relation to East African Asians and those with British Protected Person passports.

15 Aden and Co Solicitors (NBB0031): "In order to correct this historical injustice it is suggested that amendments are made to the Nationality and Borders Bill to allow for the discretionary registration of the children of BOCs otherwise than by descent, where those children were born between 1 January 1983 and 31 December 1987"

16 British Overseas Territories Citizenship Campaign (NBB0014); Similar recommendations were also made in Joint Committee on Human Rights, Fifth Report of Session 2017–19, Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018, HC 926 / HL Paper 146, para 80–87

17 British Overseas Territories Citizenship Campaign (NBB0014); and Project for the Registration of Children as British Citizens and Amnesty International (NBB0039)

discrimination, assistance with locating previous documentation.[18]

n) Some call for wider reforms to British nationality law to enable people to obtain British citizenship (or British overseas territories citizenship) by descent from a grandparent (and not only from a parent) – as at present, citizenship by descent can only pass down one generation, rather than two (or more).[19]

o) Some have called for the UK's Ancestry visa programme to be extended to apply to those whose grandparents were born in a UK overseas territory (and not only the UK itself), as they feel this discriminates against them unfairly.[20]

7. The Committee in previous Parliaments has considered some of these issues in its work and we acknowledge the issues raised in the course of scrutiny of the Nationality and Borders Bill. Whilst we do not have time to undertake full and detailed scrutiny of all the points raised in evidence whilst scrutinising this Bill for human rights compatibility, we recognise the impact that many of these issues continue to have for those affected.

18 See also the Committee's previous work on the Windrush Generation: Joint Committee on Human Rights, Sixth Report of Session 2017–19, Windrush generation detention, HC 1034 / HL Paper 160; and the recommendations in Home Office, Windrush Lessons Learned Review (March 2020)

19 British Overseas Territories Citizenship Campaign (NBB0014); and Shelly Omarie Duberry (NBB0017). The Committee raised related concerns where a parent had died before discrimination was addressed, thus preventing a person from acquiring British nationality in Joint Committee on Human Rights, Fifth Report of Session 2017–19, Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018, HC 926 / HL Paper 146, para 70–72

20 Shelly Omarie Duberry (NBB0017)

2 Changes to correct historical discrimination in British nationality law

Addressing historical discrimination in British nationality law

8. This chapter considers clauses 1–7 which address historical discrimination in British nationality law.

9. Clause 1 addresses pre-existing discrimination in British nationality law that prevents mothers from passing on British overseas territories citizenship to their children. In 1983 this discrimination was corrected in relation to passing on British citizenship and this amendment would make similar changes in relation to passing on British overseas territories citizenship. We are aware that this sort of discrimination continues to affect people.[21]

10. Clause 2 addresses pre-existing discrimination in British nationality law preventing unmarried fathers from transmitting British overseas territories citizenship to their children. Before 2006, British unmarried fathers could not pass on their citizenship to their children. Since 2006, this discrimination has been corrected in relation to passing on British citizenship and this clause that amends the BNA would make similar changes in relation to passing on British overseas territories citizenship.

11. Clause 3 introduces changes to allow those now able to obtain British overseas territories citizenship to obtain related British citizenship. This is a welcome amendment following on from the above amendments to address pre-existing discrimination in nationality law.

12. The Joint Committee on Human Rights ("JCHR") made calls for the changes reflected in clauses 1, 2 and 3 to be made in order to remove the discrimination identified in its Reports "Good Character Requirements: Draft British Nationality Act 1981 (Remedial) Order 2019 – Second Report"[22] and "Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018" where we said:

> We consider that it is unacceptable that discrimination in acquiring British nationality persists (including for British Overseas Territories citizenship), depending on whether a person's father or mother was a British Overseas Territories Citizen, or whether or not their parents were married. This type of discrimination in the BNA should be remedied for all types of British nationality and we recommend that the Home Secretary take urgent steps to bring forward legislation to do so. We welcome the Immigration

21 See, for example, Shelley Joubert (NBB0013)

22 See Joint Committee on Human Rights, Twentieth Report of Session 2017–19, Good Character Requirements: Draft British Nationality Act 1981 (Remedial) Order 2019 - Second Report HC 1943 / HL Paper 397, paragraphs 44–47 and especially the recommendation at paragraph 47: "It is clear that the provisions of the British Nationality Act 1981 relating to British Overseas Territories Citizenship contain the same discrimination that is the object of the British Nationality Act 1981 (Remedial) Order 2019 and therefore that these provisions are not compatible with Convention rights. The Home Office and the Foreign and Commonwealth Office … should take action to consult and actively seek to remedy this human rights violation as swiftly as possible…"

> Minister's undertaking, in response to our letter, to pursue work to remove this discrimination with regard to British Overseas Territories Citizenship and we look forward to receiving updates on the progress of that work to eliminate this discrimination.[23]

13. Clause 4 introduces changes to allow for a child to be registered as a British overseas territories citizen (by descent) whilst that child is a minor (rather than solely within 12 months of birth). We consider this clause to be a sensible amendment aligning the rules for registering British overseas territories citizenship of a child by descent, with those for British citizenship.

14. Clause 5 introduces changes to disapply the historical requirement to register a child's birth at the local consulate when deciding British nationality applications for people who had not at that time been able to acquire British nationality due to discrimination either due to their mother being British or their father being unmarried. This amendment addresses anomalies in British nationality law which meant that even though pre-existing discrimination in nationality law had been addressed in theory, the impossibility of registering one's birth in the past meant that the person was still unable to acquire nationality and so was still feeling the effects of that discrimination. Clause 5 therefore addresses the judgment in the case *Advocate General for Scotland v Romein*,[24] which found the requirement for registration at a consulate in the past to perpetuate this discrimination in British nationality law. The JCHR made calls for these changes to be made in its Report "Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018", therefore we welcome this clause.[25]

15. Clause 6 introduces changes to allow a natural father to pass on British citizenship to his child where the mother was married to someone else, by:

a) Removing a cut-off date of being born before 2006 in order to access certain remedial registration routes for children who were the victims of discrimination due to their mother being married to someone other than their father (clause 6(2));

b) Creating a registration route for a child whose father was a member of the British Armed Forces but was not the man that the child's mother was married to (Clause 6(3) and (4)).

16. There is a complicated history to attempts to remedy the discrimination at issue in clause 6.[26] In 2006 the BNA was amended so that a child could have its father's nationality also where the father was not married to the mother. These 2006 amendments also provided for "remedial registration routes" (section 4F-4I BNA) so that children who were the victims of this discrimination prior to 2006 could register for British citizenship.

23 See Joint Committee on Human Rights, Fifth Report of Session 2017–19, Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018, HC 926 / HL Paper 146, para 73–79 and especially the recommendation at paragraph 79

24 Advocate General for Scotland v Romein [2018] UKSC 6

25 See Joint Committee on Human Rights, Fifth Report of Session 2017–19, Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018, HC 926 / HL Paper 146, para 65–69, and in particular the recommendation at para 69: "We recommend that the Home Secretary take steps to address and remove examples of apparent discrimination that continue on the face of British nationality legislation, such as that identified in the case of The Advocate General for Scotland v Romein [2018] UKSC 6."

26 See Home Office, European Convention on Human Rights Memorandum, para 41–47

However, this did not apply where the mother was married to someone else—so children who fell into this category could seek to apply for discretionary nationality but had no entitlement to nationality. This led to the declaration of incompatibility made in the case *K (A Child) v Secretary of State for the Home Department* [2018][27] in which the Court found that that the definition of "father" in British nationality law (which did not include an entitlement for a child to have the nationality of its natural father if the mother was married to another man, instead relying on discretion) was discriminatory and contrary to Article 14 (principle of non-discrimination) as read with Article 8 (right to family life) ECHR. We therefore welcome that clause 6 addresses this discrimination.

17. Clause 7 introduces changes to allow the Secretary of State the discretion to grant British citizenship/British overseas territories citizenship to adults where they would have had that citizenship but for historical legislative unfairness (which is defined non-exhaustively), an act or omission of a public authority, or other exceptional circumstances. The existence of this clause can therefore help to address unforeseen issues with discrimination in British nationality law. It could also help to soften harsh cut-off deadlines for applications, which can otherwise lead to unfair results, especially for children whose parents (or carers if they are in care) may not have supported the child in making an application in respect of an entitlement to British nationality in time. It is therefore a helpful amendment from an anti-discrimination perspective. However, we note concerns raised by some that it may not be wide enough to assist all groups who have suffered from exceptional or historic discrimination;[28] concerns at the impact of the potential imposition of fees in respect of applications under clause 7;[29] and concerns that a discretionary power is an inappropriate remedy for rectifying identified historical unfairness.[30]

18. **We welcome the changes introduced by clauses 1, 2, 3, 4, 5, 6 and 7 to remove areas of historical discrimination in British nationality law.**

Drafting for equal treatment (clause 1)

19. Clause 1 addresses pre-existing discrimination in British nationality law that prevents mothers from passing on British overseas territories citizenship to their children. Clause 1 provides for the parents in such cases to be "treated equally" in terms of their ability to pass on British overseas territories citizenship to their children, which could mean equally

27 K (A Child) v Secretary of State for the Home Department [2018] EWHC 1834 (Admin)

28 GlobalBritons (NBB0026): "While we welcome the new discretion of the Secretary of State (inserted by clause 7) to register persons of full age as British citizens, we do not feel that it is wide enough to assist residual British nationals except in exceptional individual circumstances."

29 Project for the Registration of Children as British Citizens and Amnesty International (NBB0039): "there are concerns about the accessibility of this new remedy, including by reason of fees. This is especially so because the clause cannot spell out in advance to what historical legislative unfairness, act or omission or exceptional circumstances it will apply. An applicant is far more likely to be deterred by a large and above-cost (possibly any) fee, for example, if the applicant cannot know in advance that the application will be successful. Yet, for the clause to be effective, it is necessary that persons, who have suffered or do suffer relevant historical legislative unfairness, acts or omissions by public authorities or exceptional circumstances, are encouraged to come forward and apply to be registered. It will equally be important that the basis of successful applications are clearly and publicly identified so that others may then be encouraged to apply to be registered."

30 Project for the Registration of Children as British Citizens and Amnesty International (NBB0039): "the appropriate remedy for historical legislative unfairness is not a discretion lying with the Secretary of State. Clause 7 is welcome for providing an immediate opportunity of remedy for an applicant who identifies such unfairness. However, where that unfairness has become identified, it is insufficient for its remedy to be left to Clause 7. Historical legislative unfairness must be corrected on the face of the legislation. Anything less will be likely to exclude victims of the unfairness from the remedy because the unfairness will remain on the face of the legislation".

well or equally badly. The way that clause 1 is drafted is not the same as for section 4C (3A) and (3B) BNA (which addressed the same discrimination in respect of British citizenship). Section 4C (3A) and (3B) BNA talks about reading the provision that discriminated against a parent as if it provided for acquiring citizenship by descent "in the same terms as" the provision relating to the parent that wasn't discriminated against. We understand that the change in drafting to the formulation used in clause 1 was intended to simplify the drafting. However, concerns have been raised that the term "had P's parents been treated equally" is "on its face unclear".[31] It therefore seems prudent for the drafting in clause 1 to make clear that the intention is to treat those who have been subject to historical discrimination due to their mothers being unable to transmit British overseas territories citizenship, in the same way as those who were not subject to such discrimination having had British overseas territories citizenship transmitted by their fathers.

20. ***We recommend that the Home Office consider how best to ensure that the intention to treat those previously discriminated against equally well as those not previously discriminated against, is made clear in the drafting of clause 1.***

Acting in the best interests of people lacking full capacity (clause 7)

21. Clause 7 introduces changes to allow the Secretary of State the discretion to grant British citizenship/British overseas territories citizenship to adults where they would have had that citizenship but for historical unfairness or other exceptional circumstances. Clause 7 specifies that it applies to adults "of full age and capacity".[32] Requiring a person to be "of full capacity" in order to benefit from these provisions would seem potentially to discriminate against people who do not have full capacity. However, this needs to be read with section 44A BNA,[33] which provides that where full capacity is required, this may be waived if that is in the applicant's best interests. This is obviously welcome. However, it is not immediately obvious why those lacking full capacity should not always have the requirement for full capacity waived if it is in their best interests.

22. **Those lacking full capacity should always have the requirement for full capacity waived if it is in their best interests to do so.** ***We propose an amendment to section 44A BNA so that the Secretary of State "should" waive the requirement for a person to have full capacity if it is in the applicant's best interests, so as not to unfairly disadvantage those lacking full capacity.***

Guidance concerning discretion (clause 7)

23. It is not clear how the Home Secretary might exercise her discretion in clause 7 to grant British citizenship/British overseas territories citizenship to adults where they would have had that citizenship but for historical unfairness or other exceptional circumstances. There are concerns that this lack of clarity as to how she might exercise her discretion could deter some people from making an application (particularly if applications are likely to be costly).[34]

24. ***The Home Secretary should make clear how the discretion in clause 7 (new sections 4L and 4H BNA) will be exercised, for example by issuing guidance.***

31 Project for the Registration of Children as British Citizens and Amnesty International (NBB0039)

32 Clause 7(2) (new section 4L(1) BNA) and clause 7(3) (new section 4H(1) BNA).

33 Section 44A BNA specifies: "Where a provision of this Act requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests."

34 Project for the Registration of Children as British Citizens and Amnesty International (NBB0039)

3 Fees

25. It is well known that fees, and especially large fees, can discourage—and indeed exclude—certain categories of people from accessing their nationality entitlements.[35] The Committee has previously raised concerns in relation to the unfairness of charging a fee for rectifying previous discrimination:

> People who have been refused British nationality because of discrimination should not have to pay an application fee a second time to reapply once that discrimination is removed. We recommend that the Home Office take steps to ensure that those previously discriminated against do not have to pay the application fee when reapplying under section 4F.[36]

26. In previous Parliaments the Committee has also raised concerns that significant fees could exclude children from more vulnerable socio-economic backgrounds from accessing their right to British nationality:

> Home Office fees for children who have a right to be British should be proportionate to the service being offered and should be priced at a rate that is accessible for children accessing their rights. This is not the case at the moment since fees for children are three times more than the cost of the service—four-figure fees merely to register an existing right to be British are unacceptable. Disproportionately high fees should not exclude children from more vulnerable socio-economic backgrounds from accessing their rights.[37]

27. We are aware that fees in the nationality context tend to be covered in Regulations and not the BNA itself. However, we think it important that the Home Office should not charge a fee for applications under this Part of the Bill from people seeking to rectify historical discrimination.[38]

28. ***The Home Office must make clear whether or not any fees will be charged for an application under Part 1 of the NBB and, in particular, clauses 1, 2, 3 or 7. We urge the Home Secretary not to charge a fee for applications under this Part of the Bill as it would be wrong to charge people for rectifying historical discrimination against them. If any fees are charged, they must be set at affordable rates that do not effectively prevent certain categories of people, especially children, from accessing their right to nationality.***

35 See, for example, British Overseas Territories Citizenship Campaign (NBB0014); Refugee and Migrant Children's Consortium (NBB0026); and Project for the Registration of Children as British Citizens and Amnesty International (NBB0039), which express concerns about fees for those previously subject to discrimination and about the impact of excessive fees more generally.

36 See Joint Committee on Human Rights, Fifth Report of Session 2017–19, Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018, HC 926 / HL Paper 146, para 61 – 64, and in particular the recommendation at paragraph 64. See also, Joint Committee on Human Rights, Twentieth Report of Session 2017–19, Good Character Requirements: Draft British Nationality Act 1981 (Remedial) Order 2019 - Second Report, HC 1943 / HL Paper 397, para 39–43, and in particular the recommendations at para 40: "In our First Report we recommended that people who had been refused British nationality because of discrimination should not have to pay an application fee a second time to reapply once that discrimination was removed. The Committee welcomes the decision taken by the Immigration Minister to amend the Fees Regulations at the next opportunity to ensure that people previously discriminated against do not have to pay an application fee a second time. The Committee looks forward to receiving an update on progress to address this issue."

37 See Joint Committee on Human Rights, Fifth Report of Session 2017–19, Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018, HC 926 / HL Paper 146, para 39–43, and in particular para 43

38 A similar approach of not charging a fee is taken with regard to applications under section 4C BNA in relation to unmarried fathers

4 The good character requirement

The good character requirement

29. Good character is not defined in the BNA, but rather in a Home Office policy document, "Nationality: Good Character Requirement", which explains that:

> "The BNA 1981 does not define good character. However, this guidance sets out the types of conduct which must be taken into account when assessing whether a person has satisfied the requirement to be of good character. Consideration must be given to all aspects of a person's character, including both negative factors, for example criminality, immigration law breaches and deception, and positive factors, for example contributions a person has made to society. The list of factors is not exhaustive. Each application must be carefully considered on an individual basis on its own merits. You must be satisfied that an applicant is of good character on the balance of probabilities."[39]

30. The Courts have ruled that Home Office decision-makers, when undertaking a good character assessment, should make an overall assessment as to the character of the applicant, including taking into account evidence of positive good character. However, despite the introductory part of the guidance, the thrust of the guidance principally focuses the minds of Home Office decision-makers on when to refuse on grounds of bad character. Therefore, whilst good character should not necessarily be the same as not of bad character, it can be inflexible in practice. It can be difficult to get a proper individualised assessment and there can be little flexibility in the way this is applied.

31. The application of the good character requirement to those with a right to British nationality is a comparatively recent development (introduced in 2006 and 2010).[40] It poses obvious potential difficulties and unfairness when applied to those who have suffered previous discrimination and to children whose main, or only real, connection may be with the UK.

39 Home Office, Nationality: Good Character Requirement, 30 September 2020

40 Home Office, Nationality: Good Character Requirement, 30 September 2020: "The good character requirement previously only existed for naturalisation as a British citizen. It was subsequently introduced by section 58 of the Immigration, Asylum and Nationality Act 2006 as a requirement for specific routes to registration as a British citizen. Section 47 of the Borders, Citizenship and Immigration Act 2009 inserted section 41A into the British Nationality Act 1981 ('the BNA 1981') on 13 January 2010, extending the good character requirement to other registration routes including to a person registering as a British Overseas Territories Citizen, British Overseas Citizen or British Subject."

32. In previous Parliaments, the Joint Committee on Human Rights has raised concerns about the good character requirement being applied to applicants who have suffered historical discrimination, as it can lead to additional discrimination as compared with those who were not discriminated against, as well as more general concerns at the inappropriateness of requiring children who have grown up in the UK to prove good character.[41] Similar concerns have been raised in written evidence.[42]

The good character requirement in Part 1 of the NBB

33. Clause 2 addresses pre-existing discrimination in British nationality law preventing unmarried fathers from transmitting British overseas territories citizenship to their children. Clause 2(4) (inserting a new (2A) into section 41A BNA) does require good character in respect of applications under the new section 17C BNA (but not the other new sections being inserted into the BNA by clause 2). This approach follows the approach taken previously in rectifying similar discrimination in relation to British citizenship.

34. Clause 3 (inserting new section 4K into the BNA) introduces changes to allow those now able to obtain British overseas territories citizenship under the changes being introduced by clauses 1 and 2 to obtain related British citizenship. Clause 3(4) (inserting into section 41A BNA a new (2B) and (2C)) requires good character in respect of applications under the new section 4K BNA, following the approach taken when originally allowing British overseas territories citizens to obtain British citizenship in 2002. At first glance, it might therefore seem unlikely that the good character requirement here would lead to discrimination as compared to British overseas territories citizens who could obtain British citizenship since 2002 under the equivalent provision. However, if those individuals had not been discriminated against in obtaining British overseas territories citizenship and therefore had become British citizens in 2002, any subsequent conduct would not have affected their British nationality. However, due to the discrimination, any conduct subsequent to 2002 would now risk being a bar to obtaining British citizenship. At this point, the effect of the good character requirement combined with previous discrimination becomes clear and results in further discrimination, contrary to Article 14 as read with Article 8 ECHR.

41 See Joint Committee on Human Rights, Fifth Report of Session 2017–19, Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018, HC 926 / HL Paper 146, para 41–60, and in particular the recommendation at para 53: "Had children been allowed to apply for citizenship when they were under the age of 10, they would not have needed to prove good character. We do not consider it justified or proportionate to require children who have been discriminated against, additionally to have to prove good character when they are now finally entitled to apply following the removal of that discrimination. In our view, there is a risk that this constitutes unjustified discrimination contrary to Article 14 of the ECHR, as read with Article 8 of the ECHR. We would therefore recommend that the Home Secretary consider taking the necessary steps to eliminate such discrimination."

See also Joint Committee on Human Rights, Twentieth Report of Session 2017–19, Good Character Requirements: Draft British Nationality Act 1981 (Remedial) Order 2019 - Second Report, HC 1943 / HL Paper 397, para 31–34, and in particular the recommendation at para 34: "We consider that the Home Office is leaving itself open to successful legal challenge by requiring from children against whom it has previously discriminated additional requirements (good character) that would not have applied had they been able to apply as young children. We recommend that the Home Office reconsider its position in respect of children which it has previously discriminated against so that they can obtain British nationality without discrimination or superfluous requirements."

42 See, for example, British Overseas Territories Citizenship Campaign (NBB0014) which calls for the good character requirement to be "done away with" and Project for the Registration of Children as British Citizens and Amnesty International (NBB0039) which raises concerns at the application of good character requirement to children.

35. ***We consider that it is unlawful discrimination, contrary to Article 14 as read with Article 8 ECHR, to require a person to prove good character when remedying previous unlawful discrimination against that person. We therefore recommend that the clause 3(4) of the Bill be deleted.***

36. It is unclear how requiring good character in respect of a child can be in the "best interests of the child" (Article 3 UN Convention on the Rights of the Child).[43]

37. Clause 4 introduces changes to allow for a child to be registered as a British overseas territories citizen (by descent) whilst that child is a minor (rather than solely within 12 months of birth). Clause 4(2) requires children to be of good character, and seems to follow the approach taken in relation to the equivalent provisions relating to British citizenship. This nonetheless raises questions of the appropriateness of applying a good character requirement to children.

38. Clause 6 introduces changes to allow a natural father to pass on British citizenship to his child where the mother was married to someone else. Clause 6(4) requires good character for some applications within clause 6 which could have the effect of unfairly requiring good character from those who had faced prior discrimination. It also raises concerns about applying good character requirements to children. However we note that where the amendments require good character, this seems to be in line with the existing requirement under section 41A(1) BNA for children born overseas to a member of the Armed Forces to prove good character.

39. Clause 7 (introducing a new sections 17H and 17L into the BNA) allows the Secretary of State the discretion to grant British citizenship/British overseas territories citizenship to adults where they would have had that citizenship but for historical legislative unfairness (which is defined non-exhaustively), an act or omission of a public authority, or other exceptional circumstances. Clause 7 allows the Home Secretary to take into account whether an applicant is of good character, but makes this discretionary rather than mandatory (see new section 4L(4) and section 17H(4) BNA).

40. ***The Secretary of State should clarify how she will exercise the discretion in clause 7 to take into account whether an applicant is of good character.***

41. **We reiterate concerns made by this Committee in previous Parliaments that requiring good character when considering applications resolving prior discrimination risks perpetuating the effects of discrimination for those previously discriminated against. Moreover, we also share the concerns raised by the JCHR in 2019 about the appropriateness of the good character requirements being applied to children, particularly children whose main or only real connection may be with the UK. It is difficult to align this requirement with the obligation to have the best interests of the child as a primary consideration. *The Home Secretary should review the application of the good character requirement in Part 1 of the Bill and the BNA to ensure that it does not risk being applied in a way that risks perpetuating discrimination or in a way that would be contrary to the best interests of a child in an individual case.***

43 See, for example, Joint Committee on Human Rights, Twentieth Report of Session 2017–19, Good Character Requirements: Draft British Nationality Act 1981 (Remedial) Order 2019 - Second Report, HC 1943 / HL Paper 397, para 21–30, where the Committee expressed concerns at the application of the good character requirement to children born in the UK and who had lived their whole lives in the UK

5 Changes making it more difficult for stateless children to acquire British nationality (clause 9)

Children born in the UK who are stateless

42. The 1961 UN Convention on the Reduction of Statelessness ("the Statelessness Convention") provides, at its Article 1:

> A contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:
>
> (a) at birth, by operation of law; or
>
> (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned….

43. Prior to the entry into force of the British Nationality Act 1981 all children born in the UK were British citizens (a rule often known as 'jus soli'). The BNA dispensed with this rule which meant that specific provision was needed in the BNA to ensure that children born in the UK who would otherwise be stateless would be granted British citizenship. As the evidence from the Project for the Registration of Children as British Citizens and Amnesty International explains:

> Previously, the UK met its obligations by conferring British nationality at birth on all persons born on its soil. Paragraph 3 of Schedule 2 to the British Nationality Act 1981 was introduced expressly to continue to fulfil the UK's obligations once British nationality law no longer applied jus soli.[44]

44. Clause 9 amends Schedule 2 to the BNA to introduce new requirements for the registration of a stateless child (aged 5–17). In effect it could make it more difficult for stateless children to acquire British nationality, by specifying that stateless children (i.e. children with no nationality) born in the UK are not entitled to British nationality unless the Home Secretary is satisfied that the child is unable to acquire another nationality (new paragraphs 3A(1) and (2) of Schedule 2 BNA).[45] Importantly, this only applies where a child has a right (as opposed to a discretionary access) to another nationality (see new paragraph 3A(3) of Schedule 2 BNA).

45. It goes without saying that this clause has the potential to impact negatively on children, and in particular stateless children. This provision will effectively mean that a child born in the UK will have to prove that it (or more realistically its parents, or carers in the case of a looked after child) could not reasonably have acquired another nationality for that child. This may be particularly difficult for children who do not have significant support or do not have access to the relevant documents (for example, if they are the children of refugees and the documents are lost or the Home Office holds the parents'

44 Project for the Registration of Children as British Citizens and Amnesty International (NBB0039)

45 For the purposes of new paragraph 3A(2) of Schedule 2 BNA, that other nationality is the nationality of one of their parents, that the child has been entitled to acquire since birth, and in all the circumstances, it is reasonable to expect the child to take steps which would enable the child to acquire that other nationality

passports, it may not be possible for them to apply for nationality).

46. Importantly the entitlement provisions for stateless children remain the same for 18–22 year olds, which is the minimum requirement possible under the UN Statelessness Convention 1961.[46] This means that children in the UK who remain stateless throughout childhood and into early adulthood can seek to apply for British nationality under Schedule 2 BNA (para 3) upon becoming adults. This provides some sort of comfort that once stateless children reach adulthood, they may cease to be stateless, although it is difficult to understand why a child born in the UK should remain stateless until adulthood—or how that would be in the best interests of that child.

47. For context, it is also worth being aware that children born in the UK and who have lived in the UK for 10 years have an entitlement to British nationality under section 1(4) BNA, which would indicate that most stateless children born in the UK can use this route instead of needing to rely on the amended statelessness provisions in Schedule 2 BNA to acquire a nationality.

Human rights implications of clause 9

48. Clause 9 raises a number of concerns from a human rights perspective:

49. First, there are concerns that there is little to no evidence that parents are wilfully causing their children's statelessness, which seems to be the policy rationale for this provision.[47]

50. Secondly, Article 3(1) UNCRC provides: "In all actions concerning children …the best interests of the child shall be a primary consideration." It is difficult to see how the new requirements in clause 9, not to grant British citizenship to a stateless child born in the UK unless the child can prove it (or more realistically its parent or carer) could not reasonably have acquired another nationality, comply with the best interests of the child test in Article 3 UNCRC.

51. Clause 9 effectively risks punishing the child for a perceived failure on the part of its carer/parent and therefore risks perpetuating a child's statelessness, often through no fault of its own but rather due to the actions of parents or carers or due to difficulty in obtaining another nationality. As PRCBC and Amnesty International said in their evidence:

> it is not in the best interests of children (Article 3, 1989 UN Convention on the Rights of the Child) growing up in this country to be left stateless. The provisions of Article 7 and 8 of the 1989 Convention emphasise the especial importance of nationality to children and their identity. The children are all born here. They have neither responsibility for nor influence over their condition of statelessness. However, the impact of growing up without the citizenship shared by their peers in this country will be alienating and profound.[48]

46 Article 1(2)(a) Statelessness Convention 1961. See also Home Office, European Convention on Human Rights Memorandum, para 79–81 which briefly explain that the HO considers this provision to be compatible with the Statelessness Conventions

47 See Home Office, European Convention on Human Rights Memorandum, para 137. However, no data on this is provided in the Explanatory Notes.

48 Project for the Registration of Children as British Citizens and Amnesty International (NBB0039)

52. We doubt that the best interests of child (Article 3 UNCRC) have been adequately borne in mind in developing this clause. Whilst section 55 of the Borders Citizenship and Immigration Act 2009 Act provides that the functions of the Secretary of State in relation to nationality, must be discharged having regard to the need to safeguard and promote the welfare of children in the UK, it is not clear how clause 9 itself reflects the best interests of the child – nor how the Secretary of State can ensure the best interests of the child in giving effect to clause 9.

53. Thirdly, Article 7 UNCRC provides: "1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless." It is difficult to see how Article 7 UNCRC is given full effect through clause 9 to the extent that it would, in some cases, risk substantially delaying when a child might acquire a nationality.

54. Fourthly, Article 1(1) UN Statelessness Convention 1961 provides "A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless". It does not make any further requirements that the person's parent did not exhaust all avenues to seek to apply for citizenship of another State. This clause risks moving away from the intention behind the 1961 UN Statelessness Convention to require a State to grant nationality to children born in that State who are otherwise stateless. As the European Network on Statelessness said in their evidence:

> "The 1961 Convention requires only that the applicant is stateless and not that they cannot reasonably acquire another nationality. The only circumstances where conferral of British citizenship could be withheld under the 1961 Convention is where the nationality of a parent was available to the child immediately, without any legal or administrative hurdles, and could not be refused by the State concerned. The 1961 Convention therefore removes the temptation for decision-makers to form their own judgments about how easy it would be for a stateless child to acquire the nationality of one of their parents under the law of their (foreign) country. According to international law, it is for each State to determine under its own law who are its nationals, and any question as to whether a person possesses the nationality of a particular State must be determined in accordance with the law of that State. It is therefore not for the Secretary of State to determine where a child can acquire the nationality of another country, and providing such powers risks leaving many stateless children in limbo and unable to acquire a nationality throughout their entire childhood."[49]

55. Finally, there is uncertainty as to what will meet the threshold of "in all the circumstances, it is reasonable to expect the person (or someone acting on their behalf) to take the steps which would enable the person to acquire the nationality in question".[50]

56. ***The Government should clarify what steps it considers it is reasonable to expect a stateless child to take to acquire another nationality and whether there will be guidance***

49 European Network on Statelessness (NBB0050)

50 See clause 9, which relates to section 3A(2)(c) BNA

making this clear.

57. **It is difficult to see how clause 9 complies with the UK's obligations under both the 1961 UN Stateless Convention and the UN Convention on the Rights of the Child.** ***Clause 9 should be amended—preferably to delete the clause altogether.***

58. ***At a minimum two amendments should be made to clause 9(4). Firstly, to ensure that the best interests of the child are more central to decision-making, by adding into new paragraph 3A, sub-paragraph (2) of Schedule 2 BNA "(d) in all the circumstances, it would be in the best interests of the child for it to acquire the nationality in question". Secondly, to ensure that, in line with the 1961 UN Statelessness Convention, British citizenship is only withheld where the nationality of a parent is available to the child immediately, without any legal or administrative hurdles, by inserting into new paragraph 3A, sub-paragraph (2)(b) of Schedule 2 BNA, after "birth", "without any legal or administrative obstacles".***

Amendments

Amendment 1

Omit clause 3(4)

Explanation: This would remove the good character requirement for a person applying for British overseas territories citizenship who has previously been discriminated against where this could perpetuate that discrimination.

Amendment 2

Insert a new clause (7A):

"In section 44A of the British Nationality Act, delete "may" and insert "should".

Explanation: This would require the Secretary of State to waive the requirement for a person to have full capacity if it is in that person's best interests to do so.

Amendment 3

Delete clause 9

Explanation: This would remove clause 9 which adds additional barriers to a child born in the UK who is stateless from obtaining British citizenship.

Amendment 4

In clause 9(4), add in new paragraph 3A, sub-paragraph (2) of Schedule 2 BNA:

"(d) in all the circumstances, it would be in the best interests of the child for it to acquire the nationality in question".

Explanation: This ensures that the best interest of the child are central to decision-making in deciding whether to grant or decline an application for British citizenship by a stateless child who was born in the UK.

Amendment 5

In clause 9(4), in new paragraph 3A, sub-paragraph (2) (b) of Schedule 2 BNA, after "birth" add:

"without any legal or administrative barriers".

Explanation: This ensures that, in compliance with Article 1 of the 1961 UN Statelessness Convention, British citizenship is only withheld from a stateless child born in the UK where the nationality of a parent is available to the child immediately, without any legal or administrative hurdles.

Conclusions and recommendations

1. We welcome the changes introduced by clauses 1, 2, 3, 4, 5, 6 and 7 to remove areas of historical discrimination in British nationality law. (Paragraph 18)

2. *We recommend that the Home Office consider how best to ensure that the intention to treat those previously discriminated against equally well as those not previously discriminated against, is made clear in the drafting of clause 1.* (Paragraph 20)

3. Those lacking full capacity should always have the requirement for full capacity waived if it is in their best interests to do so. *We propose an amendment to section 44A BNA so that the Secretary of State "should" waive the requirement for a person to have full capacity if it is in the applicant's best interests, so as not to unfairly disadvantage those lacking full capacity.* (Paragraph 22)

4. *The Home Secretary should make clear how the discretion in clause 7 (new sections 4L and 4H BNA) will be exercised, for example by issuing guidance.* (Paragraph 24)

5. *The Home Office must make clear whether or not any fees will be charged for an application under Part 1 of the NBB and, in particular, clauses 1, 2, 3 or 7. We urge the Home Secretary not to charge a fee for applications under this Part of the Bill as it would be wrong to charge people for rectifying historical discrimination against them. If any fees are charged, they must be set at affordable rates that do not effectively prevent certain categories of people, especially children, from accessing their right to nationality.* (Paragraph 28)

6. *We consider that it is unlawful discrimination, contrary to Article 14 as read with Article 8 ECHR, to require a person to prove good character when remedying previous unlawful discrimination against that person. We therefore recommend that the clause 3(4) of the Bill be deleted.* (Paragraph 35)

7. *The Secretary of State should clarify how she will exercise this discretion in clause 7 to take into account whether an applicant is of good character.* (Paragraph 40)

8. We reiterate concerns made by this Committee in previous Parliaments that requiring good character when considering applications resolving prior discrimination risks perpetuating the effects of discrimination for those previously discriminated against. Moreover, we also share the concerns raised by the JCHR in 2019 about the appropriateness of the good character requirements being applied to children, particularly children whose main or only real connection may be with the UK. It is difficult to align this requirement with the obligation to have the best interests of the child as a primary consideration. *The Home Secretary should review the application of the good character requirement in Part 1 of the Bill and the BNA to ensure that it does not risk being applied in a way that risks perpetuating discrimination or in a way that would be contrary to the best interests of a child in an individual case.* (Paragraph 41)

9. *The Government should clarify what steps it considers it is reasonable to expect a stateless child to take to acquire another nationality and whether there will be guidance making this clear.* (Paragraph 56)

10. It is difficult to see how clause 9 complies with the UK's obligations under both the 1961 Stateless Convention and the UN Convention on the Rights of the Child. *Clause 9 should be amended—preferably to delete the clause altogether.* (Paragraph 57)

11. *At a minimum two amendments should be made to clause 9(4). Firstly, to ensure that the best interests of the child are more central to decision-making, by adding into new paragraph 3A, sub-paragraph (2) of Schedule 2 BNA "(d) in all the circumstances, it would be in the best interests of the child for it to acquire the nationality in question". Secondly, to ensure that, in line with the 1961 Statelessness Convention, British citizenship is only withheld where the nationality of a parent is available to the child immediately, without any legal or administrative hurdles, by inserting into new paragraph 3A, sub-paragraph (2)(b) of Schedule 2 BNA, after "birth", "without any legal or administrative obstacles".* (Paragraph 58)

Declaration of interests

Lord Brabazon of Tara

- No relevant interests to declare

Lord Dubs

- Former Chief Executive of the Refugee Council

Lord Henley

- No relevant interests to declare

Baroness Ludford

- No relevant interests to declare

Baroness Massey of Darwen

- No relevant interests to declare

Lord Singh of Wimbledon

- No relevant interests to declare

Formal minutes

Wednesday 3 November 2021

Hybrid Meeting

Members present:

In the absence of the Chair, Joanna Cherry MP was called to the chair.

Lord Brabazon of Tara	Baroness Massey of Darwen
Lord Dubs	Angela Richardson MP
Lord Henley	David Simmonds MP
Baroness Ludford	Lord Singh of Wimbledon

Draft Report Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality, proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 58 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Seventh Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till 3 November at 4.00pm.

Written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

1 Aden and Co Solicitors (NBB0031)

2 Anonymous (NBB0018)

3 British Overseas Territories Citizenship Campaign (NBB0014)

4 Duberry, Shelly Omarie (NBB0017)

5 European Network on Statelessness (NBB0050)

6 Gadhvi, Koosh (NBB0010)

7 GlobalBritons (NBB0026)

8 Joubert, Shelley (NBB0013)

9 Leveque, Rosy (NBB0015)

10 Pascal, Francois (NBB0032)

11 Project for the Registration of Children as British Citizens and Amnesty International (NBB0039)

12 Refugee and Migrant Children's Consortium (NBB0047)

13 We Belong (NBB0057)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2021–22

Number	Title	Reference
1st	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill	HC 90 HL 5
2nd	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)	HC 331 HL 23
3rd	The Government's Independent Review of the Human Rights Act	HC 89 HL 31
4th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Part 4): The criminalisation of unauthorised encampments	HC 478 HL 37
5th	Legislative Scrutiny: Elections Bill	HC 233 HL 58
6th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People	HC 451 HL 73
1st Special Report	The Government response to covid-19: fixed penalty notices: Government Response to the Committee's Fourteenth Report of Session 2019–21	HC 545
2nd Special Report	Care homes: Visiting restrictions during the covid-19 pandemic: Government Response to the Committee's Fifteenth Report of Session 2019–21	HC 553
3rd Special Report	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill: Government Response to the Committee's First Report	HC 585
4th Special Report	The Government response to covid-19: freedom of assembly and the right to protest: Government Response to the Committee's Thirteenth Report of Session 2019–21	HC 586
5th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order): Government Response to the Committee's Second Report	HC 724
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765

Session 2019–21

Number	Title	Reference
1st	Draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019: Second Report	HC 146 HL 37

Number	Title	Reference
2nd	Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report	HC 148 HL 41
3rd	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing	HC 343 HL 59
4th	Draft Fatal Accidents Act 1976 (Remedial) Order 2020: Second Report	HC 256 HL 62
5th	Human Rights and the Government's response to COVID-19: the detention of young people who are autistic and/or have learning disabilities	HC 395 (CP 309) HL 72
6th	Human Rights and the Government's response to COVID-19: children whose mothers are in prison	HC 518 (HC 518) HL 90
7th	The Government's response to COVID-19: human rights implications	HC 265 (CP 335) HL 125
8th	Legislative Scrutiny: The United Kingdom Internal Market Bill	HC 901 (HC 901) HL 154
9th	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill	HC 665 (HC 1120) HL 155
10th	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill	HC 847 (HC 1127) HL 164
11th	Black people, racism and human rights	HC 559 (HC 1210) HL 165
12th	Appointment of the Chair of the Equality and Human Rights Commission	HC 1022 HL 180
13th	The Government response to covid-19: freedom of assembly and the right to protest	HC 1328 HL 252
14th	The Government response to covid-19: fixed penalty notices	HC 1364 HL 272
15th	Care homes: Visiting restrictions during the covid-19 pandemic	HC 1375 HL 278
1st Special Report	The Right to Privacy (Article 8) and the Digital Revolution: Government Response to the Committee's Third Report of Session 2019	HC 313
2nd Special Report	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill: Government Response to the Committee's Tenth Report of Session 2019–21	HC 1127
3rd Special Report	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill: Government Response to the Committee's Ninth Report of Session 2019–21	HC 1120
4th Special Report	Black people, racism and human rights: Government Response to the Committee's Eleventh Report of Session 2019–21	HC 1210

Number	Title	Reference
5th Special Report	Democracy, freedom of expression and freedom of association: Threats to MPs: Government Response to the Committee's Third Report of Session 2019	HC 1317