Written evidence submitted by Amnesty International UK (CPP0001)

Submission to the Northern Ireland Committee

Citizenship and Passport Processes in Northern Ireland

January 2021

Amnesty International UK is a national section of a global movement. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

Introduction:

1. Amnesty International UK (AIUK) makes this submission primarily to assist the Committee in understanding the relationship between British nationality law – specifically the law concerning British citizenship as established by the British Nationality Act 1981 ("the Act") – and Article 1(vi) of the Belfast/Good Friday Agreement ("the Agreement"); and how this may engage the 1950 European Convention on Human Rights (as incorporated in UK domestic law by the Human Rights Act 1998) ("the Convention").

2. The matters into which the Committee is inquiring concern matters of nationality and identity. These are distinct but often closely related matters within the scope of international human rights law. As regards the Convention, these matters are of especial concern to the right to respect for private life (Article 8). However, the rights to nationality and identity are more broadly recognised in international human rights law. Whereas we do not set out a thorough analysis of that in this submission, we note that – as regards the specific rights of children – the 1989 UN Convention on the Rights of the Child expressly identifies rights to nationality and to identity as both distinct and closely related matters (Articles 7 and 8).

3. This submission is divided into the following sections:

    - Section I provides a short analysis of the relevant text from the Agreement, drawing attention to problems that arise from that text concerning who are the people of Northern Ireland to whom paragraph (vi) does or is intended to apply.
    - Section II provides some brief examples of people of Northern Ireland with British and Irish citizenship whom the text does not provide for adequately or at all.
    - Section III provides some further analysis of the Act as this relates to the matters discussed in this submission and, in so doing, draws attention to relevant considerations affecting British nationality law, not only as this affects the people of Northern Ireland, to which regard is necessary in seeking to address the matters into which the Committee is inquiring.
    - Section IV provides some further analysis in relation to the Convention as it relates to the matters discussed in this submission.
    - Section V provides some final observations relating to the decision in *Secretary of State for the Home Department v De Souza* [2019] UKUT 355 (IAC).

4. In summary, there are four critical considerations we wish to bring to the Committee's attention:

    - The drafting of paragraph (vi) of Article 1 and Annex 2 to the Agreement is inadequate for the purpose of securing the rights to which paragraph (vi) applies because these provisions are based upon an inadequate understanding or recognition of British nationality law and the rights the Act provides to British citizenship.
    - Home Office policy and practice does not fully respect the rights to British citizenship provided by the Act; and this failure of respect has been

exacerbated by legislation passed since both the Act and the Agreement without any or adequate recognition of those rights.

- There are various circumstances, therefore, in which people of Northern Ireland with rights to Irish and British citizenship and identity remain deprived of their rights to British citizenship and identity contrary to the purposes of the Agreement even if not strictly contrary to the inadequate text by which the relevant purposes are to be given effect.
- The various injustices and inadequacies, with which this submission is concerned, in British nationality law and practice importantly apply to people of Northern Ireland but are not limited to such people. It is necessary that any attempt to address these injustices and inadequacies pays careful regard to all people who may be affected by any change in British nationality law, policy or practice.

I Analysis of the relevant text of the Agreement:

5. For ease of reference, we set out paragraph (vi) of Article 1 of the Agreement and Annex 2 to the Agreement below:

> Article 1
>
> "*The two Governments…*
>
> "*(vi) recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.*"
>
> Annex 2
>
> "*The British and Irish Governments declare that it is their joint understanding that the term "the people of Northern Ireland" in paragraph (vi) of Article 1 of this Agreement means, for the purposes of giving effect to this provision, all persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.*"

6. There are several difficulties with this text. In summary, key difficulties are:

   a. On its face, paragraph (vi) is intended to protect rights of identity and nationality of "*all people of Northern Ireland*", at least insofar as these rights relate to Irish and British identity and citizenship. An anomaly arises unless all people of Northern Ireland possess these rights. But the relevant nationality laws mean that it is possible to be a person of Northern Ireland, in any ordinary sense of that term, and yet not be a person possessing the rights secured by this paragraph. That potential discrepancy is not merely about people resident in Northern Ireland who do not possess British citizenship or rights to that citizenship. It is not merely about people who were not born in

Northern Ireland. British nationality law includes provisions under which a person may be born in Northern Ireland, have lived there all her, his or their life and either not have (all) the rights protected by the paragraph or have those rights yet not have the protection of the paragraph. It is, for example, difficult to read the term "*all people of Northern Ireland*" as excluding a British citizen by right, who was born in Northern Ireland and has never lived anywhere else. Yet British nationality law plainly provides for such people who would not fall within the scope of the paragraph.

b. On its face, Annex 2 is intended to resolve the anomaly within paragraph (vi). This is attempted by confining the meaning of "*the people of Northern Ireland*" to people who acquired British citizenship by their birth in Northern Ireland. While that limited group of the people of Northern Ireland do possess the rights the paragraph is intended to secure, they are not the only people of Northern Ireland who do so. While the meaning given by Annex 2 makes paragraph (vi) strictly workable, it does so in an especially unsatisfactory way which does no justice to the word "all" in that paragraph. It expressly excludes from the scope of paragraph (vi) and the security that paragraph is intended to supply, some of the people of Northern Ireland who possess the very rights (i.e, to Irish and British citizenship and identity) which the paragraph is, on its face, intended to secure.

7. These problems appear to arise from the focus on "*birthright*", which appears in paragraph (vi). This is itself problematic for the following reasons:

a. From 1 January 1983,[1] *jus soli* (the principle under which citizenship is established by birth on the relevant territory) ceased to be the guiding or leading principle for the acquisition by right of citizenship of the UK, which on that date became known as British citizenship.

b. Since that date, the principled basis for acquisition by right of British citizenship has been 'connection' as elaborated in the various provisions of the British Nationality Act 1981 for acquisition by birth, adoption and registration.[2]

c. The position with regards to Irish citizenship is different. Up until 1 January 2005, *jus soli* continued to apply in relation to all persons born on the island of Ireland. That included all persons born in Northern Ireland. From 1 January 2005, the general application of this principle was ended by section 3 of the Irish Nationality and Citizenship Act 2004. As regards people born in Northern Ireland, acquisition of Irish citizenship at birth was made dependent on whether one or other parent was either (i) an Irish citizen, (ii) entitled to that citizenship, (iii) a British citizen, (iv) entitled to reside in the Republic of Ireland with no restriction on the period of such residence or (v) entitled to reside in Northern Ireland with no restriction on the period of such residence. (One consequence of this was to broadly align Irish nationality law with that aspect of British nationality law to which Annex 2 relates.)

[1] The date of commencement of the British Nationality Act 1981

[2] This is more fully discussed in *Reasserting Rights to British Citizenship Through Registration*, IANL, Vol 34, No. 2, 2020, Solange Valdez-Symonds and Steve Valdez-Symonds, pp139-157

d. Accordingly, from 1 January 1983 until 31 December 2004 (inclusive), the matter of 'birthright' in relation to citizenship of people born in Northern Ireland was materially different as regards British citizenship and Irish citizenship.

e. There are, therefore, at least two general problems with the concept of 'birthright' as introduced in paragraph (vi). Firstly, it neither aligns the distinct citizenship rights to which that paragraph relates nor addresses the misalignment. Secondly, it is not a concept that has ever during the time of the Agreement accurately reflected British nationality law as this applies to British citizenship.

II Examples of people of Northern Ireland concerning whom the text is deficient

8. The following are examples of people of Northern Ireland, who have the rights which paragraph (vi) is intended to secure – that is they are people who hold both Irish and British citizenship by right or are entitled to do so[3] – yet fall outside the scope of the text. This is not intended as an exhaustive set of examples. The examples arise from the relevant nationality laws and are not of particular people known to AIUK. Given the timeframe and our relative capacity, AIUK has not sought to identify specific people to whom any example applies.

    a. A person of Northern Ireland who is at least 10 years of age, was born in Northern Ireland between 1 January 1983 and 31 December 2004 (inclusive), was not born to a parent who was a British citizen or settled at the person's birth and has never left Northern Ireland. Such a person will either be a British citizen after having exercised her, his or their statutory right to register as such a citizen or have that statutory right to British citizenship by registration.[4] Such a person will also be an Irish citizen.

    b. A person of Northern Ireland who was born in Northern Ireland between 1 January 1983 and 31 December 2004 (inclusive), was not born to a parent who was a British citizen or settled at the person's birth but whose parent has since become a British citizen or settled and the person has then registered as a British citizen before reaching adulthood. Such a person's registration will have been by exercise of a statutory right to British citizenship[5] and she, he or they will also be an Irish citizen.

    c. A person of Northern Ireland who was born in Northern Ireland between 1 January 1983 and 30 June 2006 (inclusive), was born to parents who were not married and where the person's mother was not a British citizen or settled at the person's birth while the person's father was a British citizen or settled at that time.[6] Such a person will have a statutory right to British citizenship by registration.[7] She, he or they will also be an Irish citizen.[8]

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[3] We emphasise that none of the examples given concern people born outside the UK who, having migrated to and settled in the UK, have been naturalised as a British citizen by exercise of the discretion of the Secretary of State under section 6 of the British Nationality Act 1981.

[4] This statutory right to British citizenship arises under section 1(4) of the British Nationality Act 1981.

[5] This statutory right to British citizenship arises under section 1(3) of the British Nationality Act 1981.

[6] This person will not have been born a British citizen because at the relevant time the British Nationality Act

d. A person of Northern Ireland born in the Republic of Ireland to a parent who at that time was a British citizen by descent[9] where the person exercised her, his or their statutory right to register as a British citizen during childhood on the basis, for example, of his, her or their and/or his, her or their parent's residence in Northern Ireland.[10] She, he or they will be both an Irish and British citizen.

III Further analysis concerning the Act

9. As the examples emphasise, there may be many people of Northern Ireland who are both Irish and British citizens by right or who are entitled to possess both citizenships yet were not born British citizens. Focusing on British citizenship and British nationality law, there are two general matters that are relevant to why that may be so:

    a. The first is that British nationality law abandoned any pure application of *jus soli* long before the time of the Agreement. The principle to which the Act operates in relation to recognition of rights to British citizenship is 'connection'.

    b. The second is that British nationality law has since the Agreement continued to require legislative amendment to address historical injustices that have excluded British people from citizenship rights (and these have not been fully resolved even now). Of especial importance in the current context is the longstanding refusal to recognise paternity in the case of parents who were not married.

10. The first of these two matters goes to the heart of the problems, which arise from the text of the Agreement and are addressed above. Whereas at the time of the Agreement, Irish nationality law applied *jus soli*, British nationality law did not. The focus of paragraph (vi) on "*birthright*" overlooks both this distinction and that the right to British citizenship was and is recognised by application of a fundamentally different principle. That principle is 'connection'.

11. From 1 January 1983, with the commencement of the Act, British citizenship has been the right of all person's connected to the UK.[11] The various provisions for acquisition of British citizenship by birth, adoption or registration establish the

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1981 did not regard a person's father who was not married to the person's mother as the father: see section 50(9A) of the Act (prior to amendment).

[7] However, this person has a statutory right to British citizenship by registration under section 4G of the British Nationality Act 1981.

[8] Section 5 of the Status of Children Act 1987 has application in Irish nationality law and protects the position of persons born to parents who are not married.

[9] A British citizen by descent is someone who has British citizenship by right – the person's citizenship may have been acquired at birth or by registration – in circumstances where that person was not born in the UK: see section 14 of the British Nationality Act 1981. The impact of this is to restrict the circumstances in which a child born outside the UK to such a person will themselves acquire British citizenship at birth.

[10] Under section 3(1), (2) or (5) of the British Nationality Act 1981

[11] The Act, as confirmed by Ministerial statements during its passage, adopted the purpose set out in the White Paper, *British Nationality Law: Outline of Proposed Legislation*, July 1980, Cmnd 7987, which stated at paragraph 37: "*British Citizenship will be the status of people closely connected to the United Kingdom.*"

fundamental circumstances by which Parliament has determined that connection to arise.

12. Importantly, Parliament considered birth on the territory to be a significant factor but neither sufficient nor necessary for that connection to arise. As regards people born in the UK, Parliament chose a forward-looking focus largely concerned with whether the person's future, particularly her, his or their childhood, would be in the UK.[12] Thus, if a person was born in the UK to a British citizen or person settled in the UK, this was treated as sufficient to establish the strong likelihood that the person would be growing up in the UK and for immediate recognition of the person as a British citizen by right. If not, the right to British citizenship would arise at the point at which it was satisfactorily established that the person's connection is to the UK – either because their parent had become a British citizen or settled during the person's childhood or because the person had indeed stayed for at least the great majority of her, his or their childhood up to the age of 10 years.[13]

13. Whereas this is far from an exhaustive summary of the various means by which the Act establishes the connection by which a right to British citizenship is acquired, it is sufficient to highlight the inadequacy of paragraph (vi) of Article 1 and Annex 2 to the Agreement. Examples (a) and (b) in paragraph 8 of this submission provide examples of people wrongly excluded from the scope of the relevant text in the Agreement despite their connection to the UK and right to British citizenship being recognised in British nationality law.

14. The second of the two matters concerns a discrete group of British people. It concerns people who would and should fall squarely within the terms of paragraph (vi) of Article 1 and Annex 2 because they would and should have been born British citizens but for the historical injustice whereby British nationality law refused to recognise paternity in the case of parents who were not married.

15. The first step towards correcting that injustice was taken on 1 July 2006, on which date the Act was amended so that from that date paternity would be recognised even where a child's mother was not married.[14] However, the position of people born before July 2006 to unmarried parents remained as it was. On 6 April 2015, the Act was further amended to address the circumstances of people born before July 2006.[15] That amendment provided these people with a right to register as British citizens.

16. There remain inadequacies with the various steps taken to remedy this particular historical injustice concerning children born to parents who are not married.[16]

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[12] During the passage of the Acts, Ministers' concerns were to distinguish between "*birds of passage*" and people born and staying, particularly to avoid the prospect that people with no other connection to the UK than being born in the UK but whose parents may take them away "*after a few weeks*" do not acquire British citizenship (or pass it on to their children): see e.g. *Hansard* HC, Standing Committee F, 24 February 1981 : Cols 177, 183; *Hansard* HC, 3 June 1981 : Col 980.

[13] Section 1(3) and (4) of the Act were included for these purposes.

[14] This was done by section 9 of the Nationality, Immigration and Asylum Act 2002.

[15] This was done by section 65 of the Immigration Act 2014, which introduced several statutory rights to register as a British citizen including section 4G of the British Nationality Act 1981.

[16] The British Nationality Act 1981 (Remedial) Order 2019, SI 2019/1164 is the most recent development, at the level of primary legislation, seeking to resolve the outstanding injustices (by removing the application of the statutory good character requirement in respect of specific registration provisions). An ongoing anomaly,

However, it is not necessary to explore these further to reveal the inadequacy of paragraph (vi) and Annex 2 in connection with this particular matter. Example (c) in paragraph 8 of this submission provides example of people wrongly excluded from the scope of the relevant text in the Agreement despite their connection to the UK and right to British citizenship being fully recognised in British nationality law.

17. So far in this section we have highlighted two discrete matters concerning people of Northern Ireland, whose rights to Irish and British citizenship and identity, are wrongly excluded from the security that paragraph (vi) of Article 1 of the Agreement is intended to provide. This exclusion arises from inadequacy in the drafting of the Agreement, which in turn arises from a failure to correctly understand and apply the principle and provisions of British nationality law by which the right to British citizenship is recognised.

18. Before closing this section, however, it is necessary to draw attention to the wrongful disenfranchisement of British people by Home Office policy and practice, and legislative amendment, since both the commencement of the Act on 1 January 1983 and the making of the Agreement on 10 April 1998. The impact of this is that some people of Northern Ireland are currently excluded from their rights to British citizenship, which in turn has a harmful impact upon their rights to British identity. We provide the following non-exhaustive examples of people currently excluded. We note that children in care (or adults who have been in care) may be disproportionately affected by these exclusions. For similar reasons to those stated above, we have not sought to identify specific people to whom any example applies:

    a. A person of Northern Ireland who is at least 10 years of age, was born in Northern Ireland, was not born to a parent who was a British citizen or settled at that time and has never left Northern Ireland but who is treated as not of good character. A good character requirement for people, including children, to register as British citizens did not exist at the commencement of the Act or at the time of the Agreement. It was introduced by legislation in the mid-2000's[17] and the impact of so doing upon statutory rights to British citizenship, particularly of people born in the UK, was neither considered nor appreciated.[18] Moreover, the requirement is generally applied by the Home Office to children in the same way as it is applied to adults.[19] Any criminal record (including a police caution) is treated as sufficient to impose an effective time-bar on the exercise of the right to register as a British citizen.[20]

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however, arises in relation to people who at their birth have mothers who are married to persons other than their fathers. The citizenship rights of people born in such circumstances are now significantly less well secured by the Act in the case of people born on or after 1 July 2006 than in the case of people born before that date.

[17] Section 58 of the Immigration, Asylum and Nationality Act 2006 first introduced a statutory good character requirement for registration of British citizenship.

[18] Some concise consideration of the relevant legislative history is provided in 'Section 3 Good character and children' of the Joint Committee on Human Rights' Twentieth Report of Session 2017-19, *Good Character Requirements: Draft British Nationality Act 1981 (Remedial) Order 2019 – Special Report*, HC 1943, HL Paper 397 and the short written submission of AIUK and the Project for the Registration of Children as British Citizens (PRCBC) a link to which is provided in the list of published written evidence on p28 of the Committee's report.

[19] This is an ongoing concern despite two reports in 2017 and 2019 by the independent Chief Inspector of Borders and Immigration concerning the application of the good character requirement in children's registration cases.

[20] The guidance provided to Home Office decision-makers states that: "*An applicant will normally be refused if*

The duration of the bar is under Home Office policy determined according to the seriousness of any criminal justice disposal (e.g. caution, order or sentence).

b. A person of Northern Ireland who is not yet an adult, was born in Northern Ireland, was not born to a parent who was a British citizen or settled at that time but whose parent has since become a British citizen or settled and who cannot afford £1,012 to exercise her, his or their right to register as a British citizen. These fees are set far above administrative cost.[21] The power to set all nationality and immigration fees at above administrative cost was introduced by legislation in the mid-2000's[22] and the impact of so doing upon statutory rights to British citizenship, including of people who were born and had lived in the UK all their lives was neither considered nor appreciated.[23] There is no waiver or reduction available to a person unable to afford to exercise her, his or their statutory right to British citizenship.

c. A person of Northern Ireland who was born in Northern Ireland but has no documentation to show their parent was a British citizen or settled at that time. Such a person is a British citizen. However, for this to be recognised, the person may need to rely upon the Home Office to confirm from its records the citizenship or settlement of the parent at the person's birth. The Home Office is often unwilling to do so.[24]

d. A person of Northern Ireland who was born in Northern Ireland, whose father was a British citizen or settled at that time but whose father does not appear on the person's birth certificate. Such a person is a British citizen. However, for this to be recognised, the person needs to establish her, his or their relationship with their father. Home Office practice is often improperly resistant to alternative means of demonstrating the relationship.[25]

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they have received… a non-custodial sentence or out-of-court disposal that is recorded on their criminal record which occurred in the 3 years prior to the date of application." There are longer time-bars of 10 years, 15 years and indefinite periods for custodial sentences according to the length of sentence.

[21] The current fee for a child to register is set at £1,012, only £372 of which comprises the administrative costs identified by the Home Office of registering (or refusing to register) a child. The lawfulness of this remains under consideration by the courts and, as at the date of this submission, a judgment from the Court of Appeal is pending against an appeal and cross-appeal heard in October 2020 against the decision of the High Court in *R (Project for the Registration of Children as British Citizens & Ors) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin).

[22] The first fee for registration of citizenship set at above administrative cost was introduced on 2 April 2007 by regulations made under powers given by section 42(1) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and sections 51(3) and 52(3) of the Immigration, Asylum and Nationality Act 2006.

[23] The High Court has, however, considered that impact upon children who cannot afford to exercise their citizenship rights as making them "*…feel alienated, excluded, isolated, 'second-best', insecure and not fully assimilated into the culture and social fabric of the UK.*" *R (Project for the Registration of Children as British Citizens & Ors) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin), paragraph 21.

[24] This is one of the matters jointly raised by the Project for the Registration of Children as British Citizens (PRCBC) and AIUK in submissions to the independent Chief Inspector of Borders and Immigration for his outstanding further inquiry into the EU Settlement Scheme (in view of that scheme's negative impact on citizenship rights). The submission is available here: https://prcbc.org/information-leaflets/

[25] *ibid*

19. We have not attempted to itemise all the ways by which Home Office policy and practice effectively deprives British people of their rights to British citizenship. More information is provided by the Project for the Registration of Children as British Citizens (PRCBC),[26] whose work AIUK has supported for some years. However, the examples given are sufficient to highlight how some people of Northern Ireland may be excluded from their rights to British citizenship with an impact on their rights to British identity. Nonetheless, we draw attention to the difficulties that many children and young people face in establishing their citizenship rights the longer time passes without these rights being secured. Such difficulties arise from various factors including changes in policy and practice, changes of fact affecting the impact of that policy and practice and the impact of passage of time upon a person's capacity to secure documentation or other evidence necessary to establish her, his or their citizenship rights. As indicated above, children in care, particularly where they no longer have contact with their parent or parents, are among those particularly vulnerable to effective loss of their citizenship rights.

IV Further short analysis concerning the Convention

20. The Convention includes the right to respect for private life (Article 8). Both the UK courts and the European Court of Human Rights have recognised that citizenship and its recognition may be a matter falling within a person's private life. For example, in *Case of Genovese v Malta* (Application no. 53124/09), the latter stated:

> "*30. The Court also reiterates that the concept of 'private life' is a broad term and not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person's physical and social identity… The provisions of Article 8 of the Convention do not, however, guarantee a right to acquire a particular nationality or citizenship. Nevertheless, the Court has previously stated that it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual…*"

21. The England and Wales High Court has held in *R (Williams) v Secretary of State for the Home Department* [2015] EWHC 1268 (Admin) that:

> "*86. …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…*"

22. In connection with the current inquiry, we would strongly suggest that the inclusion of paragraph (vi) of Article 1 of the Agreement was motivated by a similar recognition of the importance of and relationship between identity and nationality. A similar understanding may be derived from considering the close connection drawn in the 1989 UN Convention on the Rights of the Child between rights to identity and nationality (Articles 7 and 8). Whereas the importance of a person's identity and

[26] See https://prcbc.org/

nationality rights are not limited to childhood, the Committee may also wish to reflect upon the findings of the England and Wales High Court in *R (Project for the Registration of Children as British Citizens & Ors) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin). That court considered the impact upon children of being unable, by reason of a Home Office fee, to exercise their statutory rights to British citizenship:

> "*21. …there is an equivalent mass of evidence supporting the proposition that children born in the UK and identifying as British… feel alienated, excluded, isolated, 'second-best', insecure and not fully assimilated into the culture and social fabric of the UK.*"

V Final observations relating to the *De Souza* decision

23. The decision in *Secretary of State for the Home Department v De Souza* [2019] UKUT 355 (IAC) concerned Mrs De Souza – a person of Northern Ireland who held dual Irish and British citizenship but who identified herself as solely Irish – and her US citizen husband, whom she wished to live with in Northern Ireland. The Home Office had treated her as a British citizen, who had never exercised EU free movement rights, and therefore treated her husband as subject to UK immigration rules rather than free of such controls as the family member of an EEA national exercising EU free movement rights.

24. Before the Upper Tribunal, Mrs De Souza relied upon the Agreement, specifically paragraph (vi) of Article 1 and the right to choose her identity and be accepted as ether Irish or British or both as she so chose – her choice being to be accepted as Irish and not as British. She further argued that the Agreement established a constitutional right, which overrode the Act insofar as there was any conflict between the two. Section 1(1)(a) of the Act meant that Mrs De Souza was a British citizen automatically by her birth. This, Mrs De Souza argued, was overridden by her choice to identify and be accepted solely as Irish as guaranteed by the Agreement. The Upper Tribunal did not accept these arguments.

25. However, on 14 May 2020, the Secretary of State laid before Parliament changes to the immigration rules (CP 232), which included changes to her department's EU Settlement Scheme. Those changes were to make family members of people of Northern Ireland eligible for permission to enter or stay in the UK on the same basis as family members of Irish citizens in the UK (and not subject to the requirements generally applicable to the family members of British citizens).[27] It is AIUK's understanding that this change of policy was sufficient for Mrs De Souza to withdraw an appeal to the Northern Ireland Court of Appeal against the decision of the Upper Tribunal.

26. We note that in the course of argument before the Upper Tribunal it was argued that the Act could be read such that its recognition of a person as a British citizen was subject to the person's consent to that. The Upper Tribunal disagreed and warned thar such a reading would raise many problems.[28] We do not wish to elaborate on all the

[27] A concise explanation of these changes in immigration rules is provided by the Committee on the Administration of Justice: https://caj.org.uk/2020/05/14/caj-explanatory-statement-on-changes-to-uk-immigration-rules/

potential implications of such a reading. However, we must caution the Committee that there are already numerous ways – some of which we have touched on in this submission – by which British people born and grown up in Northern Ireland (also elsewhere in the UK) are effectively deprived of their citizenship rights; and the longer a person is effectively deprived and/or in ignorance of their citizenship rights, the greater the evidential, procedural and legal barriers to securing those rights. In relation to British citizens who do not wish to retain that citizenship, there is section 12 of the Act. This provides a right of renunciation of British citizenship subject to a person being of full age and capacity and the making of a declaration of renunciation in the manner prescribed by the Secretary of State. The Committee may wish to consider whether the manner that is prescribed is or is not satisfactory.

27. Our purpose in referring to the *De Souza* decision is not to offer a resolution of the concerns raised in the course of those legal proceedings. Our concern is to draw attention to the need to ensure that whatever may be proposed in relation to such concerns does not put in further jeopardy the rights to British citizenship of many people of Northern Ireland, including many children and young people and including many children who will in future be born in Northern Ireland (or indeed the rights of many other British people to British citizenship). As indicated elsewhere in this submission, our primary concern in relation to the Committee's inquiry is that it is already the case both that recognition of people's rights to British citizenship (and identity) is inadequately provided for by Home Office policy and practice and that the security, for which the Agreement is intended to provide, does not on the face of the Agreement extend to all the people of Northern Ireland who possess the rights to which it relates.

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[28] [2019] UKUT 355 (IAC), paragraphs 35-37