

## Written evidence from Reprieve (NBB0076)

*“I think it’s demeaning to the British state to be washing its hands of its own citizens...where we have a justice system that is generally reckoned to be as robust as any in the world and something we have always taken pride in...Have we lost so much confidence in ourselves?”<sup>1</sup>*

### **Lord (Ken) Macdonald, former Director of Public Prosecutions for England and Wales**

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In Clause 9 of the Nationality and Borders Bill, the Government aims to grant itself the draconian power of depriving UK nationals of citizenship without telling them.<sup>2</sup> This is an unprecedented loosening of the rules on citizenship deprivations, exacerbating an already dangerous power by removing the checks and balances on its exercise.

Through Clause 9, the Government seeks to amend the longstanding position under the British Nationality Act 1981 that an individual must be notified if they are to be deprived of their nationality. The Clause allows such secret deprivations solely on the basis that the Home Office deems it in the “public interest” or because it would damage foreign relations.<sup>3</sup> Effectively, the Home Secretary could fail to tell someone that their citizenship was being stripped because it would be internationally embarrassing for her to do so.

There is no practical reason for this change; the present rules governing notice allow for citizenship deprivation letters to be delivered to the individual’s last known address, vitiating the arguments of the Home Office that the amendment is practically necessary.<sup>4</sup> The only possible reason the Government would relieve itself of this minimal obligation is that it effectively removes the right to appeal deprivation orders – by keeping affected individuals in the dark about their status. This is a radical change, introduced at Committee stage of the Bill, with zero consultation and almost no debate.

Serious national security concerns have been raised about the Government’s use of already wide-ranging powers of citizenship deprivation.<sup>5</sup> Clause 9 makes this scheme even more dangerous, increasing the concerns of senior counterterrorism experts who warn the UK should “think twice about stripping their nationals of citizenship” since the use of this power “will make all of us less safe”.<sup>6</sup>

The Government has also made the power retroactive to render previously unlawful attempts to deprive UK nationals of citizenship lawful.<sup>7</sup> Over the past decade, the Government has ignored the obligation to provide notice on many occasions, with the result that its attempts at citizenship-stripping were invalid. Rather than simply reissuing the invalid deprivation orders, the Government instead attempts to decree all unlawful deprivation orders were in fact lawful and always have been – a truly Orwellian move that presents a profound threat to the rule of law, and the principle that the Government only has the powers Parliament affords it.

Clause 9 is unnecessary, undermines the rule of law, harms national security, and targets some of society’s most vulnerable people. As one of the most respected former members of the UK’s senior judiciary, Lord Steyn, put it, “surprise is the enemy of justice”; the idea that individuals could be bound by uncommunicated decisions is an “astonishing proposition”.<sup>8</sup>

On 22 November 2021, the Rt Hon David Davis MP tabled an amendment to remove Clause 9 from the Bill, which appears as amendment 12 in the current amendment paper.<sup>9</sup> Reprieve asks Parliamentarians to support amendment 12, to uphold the rule of law and safeguard access to the courts.

### **CLAUSE 9 EFFECTIVELY REMOVES THE RIGHT TO APPEAL CITIZENSHIP DEPRIVATIONS**

The Government's claims that the changes to the legislation are necessary for practical reasons are without merit. The current rules for citizenship deprivation allow for notice to be provided by sending a letter to the person's last known address<sup>10</sup> – a minimal hurdle to clear when depriving someone of a right as fundamental as citizenship.

Because it allows for secret citizenship deprivations, Clause 9 practically removes the right to appeal for affected British nationals. Individuals will not be able to challenge their deprivation of nationality, as they will not be aware they are no longer British citizens. Absurdly, the time limit for appeal may run out before the individual becomes aware they have been stripped.<sup>11</sup>

As former Director of Public Prosecutions Lord Macdonald has stated, "Normally, even if you're going to be fined £5, in our system, you're entitled to a full trial, to see the evidence against you, to cross examine witnesses, to be represented and to have the public observant of what's happening to you". By contrast, citizenship stripping "seems to carry fewer protections than a case of minor theft and I think that speaks for itself."<sup>12</sup>

Under Clause 9, not only are you not entitled to see the evidence against you or contest that evidence in a fair process – you are not even notified of the punishment inflicted.

### **CLAUSE 9 IS DANGEROUS AND WILL HARM NATIONAL SECURITY**

Security experts attest that citizenship deprivations undermine national security. By making deprivations vastly easier to carry out, Clause 9 gives the Government every incentive to use the power more often and without democratic or judicial scrutiny – to the cost of the British public's safety.

In October 2021, Chris Harnisch, ex-Deputy Co-ordinator of the Counterterrorism Bureau of the US Department of State, stated the use of citizenship deprivations on individuals in North East Syria "is of great concern" and "makes us less safe".<sup>13</sup> Mr Harnisch lamented that the use of deprivations "plays right into the hands of the terrorists", as it renders women and children vulnerable to re-trafficking by terror groups.<sup>14</sup> In removing scrutiny of the citizenship deprivation power, Clause 9 ignores the warnings of these security experts, and risks emboldening armed groups that pose a threat to the United Kingdom.

There is no national security justification for the introduction of the Clause. As former Director of Public Prosecutions Lord Macdonald has argued, citizenship-stripping is "demeaning" to the British justice system, and that "a nation that has any confidence in itself...would never go down this path".<sup>15</sup> Indeed, it is absurd for the UK Government to argue that it cannot handle sending a letter providing notice of deprivation to the individual's last known address.

By removing any semblance of checks and balances on their use, Clause 9 ignores the emerging security consensus on citizenship deprivations as a threat to national and global security. It encourages rights violations without redress and makes the British people less safe.

## **CLAUSE 9 TRAMPLES ON THE RULE OF LAW AND THE SEPARATION OF POWERS**

Since the British Nationality Act of 1981, Parliament has required the Government provide notice to people it is seeking to deprive of citizenship.<sup>16</sup> In recent years, the Government has unlawfully failed to satisfy this simple obligation, having been found to have unlawfully stripped people of citizenship without telling them.<sup>17</sup> In order cover for its own legal error, the Government now seeks, through Clause 9, to undo its mistake and render lawful actions which were unlawful when they were taken.<sup>18</sup>

The Government aims to do this by making Clause 9 retroactive – meaning that where a citizenship deprivation order breached the requirements laid down by Parliament, it will now be made lawful after the fact.

The Government already has the power to simply remake citizenship deprivation orders where they have been found unlawful. Instead of taking this simple step, it is asking Parliament to pretend an unlawful decision was lawful all along. This makes a mockery of the rule of law, and is a brazen attempt to subvert the separation of powers.

## **RECOMMENDATION**

Reprieve therefore urges Parliamentarians to vote in support of amendment 12, to remove Clause 9 from the Bill and to uphold the rule of law.<sup>19</sup>

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<sup>1</sup> <https://appgtraffickedbritons.org/?p=76>

<sup>2</sup> Nationality and Borders Bill, Clause 9, available at <https://publications.parliament.uk/pa/bills/cbill/58-02/0187/210187v1.pdf>.

<sup>3</sup> Nationality and Borders Bill, Clause 9(2)(c)(ii) and (iii), available at <https://publications.parliament.uk/pa/bills/cbill/58-02/0187/210187v1.pdf>

<sup>4</sup> The British Nationality (General) Regulations 2003, rule 10(3), (SI 2003/548) <https://www.legislation.gov.uk/ukxi/2003/548/regulation/10>

<sup>5</sup> APPG on Trafficked Britons in Syria, Second Evidence Session, 25 October 2021. Press release available at: <https://appgtraffickedbritons.org/?p=76>.

<sup>6</sup> <https://appgtraffickedbritons.org/?p=76>

<sup>7</sup> *R(on the application of D4) v Secretary of State for the Home Department*, [2021] EWHC 2179.

<sup>8</sup> *R (Anufrijeva) v Secretary of State for the Home Department* [2003] UKHL 36, [30].

<sup>9</sup> Amendment 12, Nationality and Borders Bill (amendment paper), 22 November 2021, available at: [https://publications.parliament.uk/pa/bills/cbill/58-02/0187/amend/natbord\\_rm\\_rep\\_1122.pdf](https://publications.parliament.uk/pa/bills/cbill/58-02/0187/amend/natbord_rm_rep_1122.pdf)

<sup>10</sup> The British Nationality (General) Regulations 2003, rule 10(3), (SI 2003/548) <https://www.legislation.gov.uk/ukxi/2003/548/regulation/10>

<sup>11</sup> See The Special Immigration Appeals Commission (Procedure) Rules 2003, Rule 8(1), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/421503/Consolidated\\_text\\_of\\_SIAC\\_Rules\\_2003.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421503/Consolidated_text_of_SIAC_Rules_2003.pdf).

<sup>12</sup> APPG on Trafficked Britons in Syria, Second Evidence Session, 25 October 2021. Press release available at: <https://appgtraffickedbritons.org/?p=76>.

<sup>13</sup> APPG on Trafficked Britons in Syria, Second Evidence Session, 25 October 2021. Press release available at: <https://appgtraffickedbritons.org/?p=76>.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> British Nationality Act 1981, s.40(5).

<sup>17</sup> *R(on the application of D4) v Secretary of State for the Home Department*, [2021] EWHC 2179.

<sup>18</sup> *R(on the application of D4) v Secretary of State for the Home Department*, [2021] EWHC 2179.

<sup>19</sup> Amendment 12, Nationality and Borders Bill (amendment paper), 22 November 2021, available at: [https://publications.parliament.uk/pa/bills/cbill/58-02/0187/amend/natbord\\_rm\\_rep\\_1122.pdf](https://publications.parliament.uk/pa/bills/cbill/58-02/0187/amend/natbord_rm_rep_1122.pdf).

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