

Protecting Child Citizenship Rights

Clauses 30-36, Illegal Migration Bill *“Persons prevented from obtaining British citizenship”*

A briefing for MPs | 24 March 2023

Under these clauses, a child born in the UK on or after 7 March 2023 who has lived in the UK their entire life would generally be denied citizenship rights and even face removal if an unconnected family member (e.g. a father they have never met) later arrives via an irregular route.

“Becoming a British citizen is a significant life event... British citizenship gives you the opportunity to participate more fully in the life of your local community.”

Home Office Citizenship Guidance¹

Overview

1. These clauses have wide-ranging detrimental effects on the citizenship rights of children and adults. Many children would lose vital citizenship rights on the basis of circumstances occurring before their birth and far beyond their control. Coram Children’s Legal Centre has called this punishing of future generations *“an unheard of change to the way our nationality law works.”*²
2. KIND UK (Kids in Need of Defense UK) assists children in the UK with immigration and citizenship matters on a pro bono basis. We partner with 22 corporate law firms to deliver free legal advice and representation.
3. Many of KIND UK’s clients are children whom the Bill would ban for life from accessing routes to British citizenship currently open to them under the British Nationality Act 1981 (e.g for children born and resident in the UK for the first ten years of their life, children whose parents have settled in the UK, and other children with long-term connections to the UK).
4. Under Clauses 30-36 of the Illegal Migration Bill, children entering/arriving in the UK on or after 7 March 2023 and falling foul of Clause 2 of the Bill would be barred from ever acquiring British citizenship; and children born in the UK on or after 7 March 2023 would be barred from ever acquiring British citizenship if a parent has ever fallen foul of Clause 2, i.e.:
 - *arrives in the UK irregularly on or after 7 March 2023; and*
 - *were not coming directly from a country where their life or freedom was threatened for certain specified reasons; and*
 - *require leave to enter or remain in the UK but do not have it.*
5. Those affected would include children born in the UK, child trafficking victims, the children of trafficking victims, unaccompanied asylum-seeking children, children of refugees, and others. **Even a child growing up in the UK care system would be punished due to the actions of a parent they may never have met.**
6. We join the Children’s Commissioner Dame Rachel de Souza in emphasising that the Bill must not undermine children’s rights as set out in the Children Act 1989 (England) and in her concern that there has been no published Child Rights Impact Assessment.³
7. These clauses are incompatible with the Children Act 1989 (England), the Borders, Citizenship,

and Immigration Act 2009, the UN Convention on the Rights of the Child, and other relevant law.

8. They are incompatible principles seen across UK law and existing Home Office guidance, that the best interests and welfare of the child must be a primary consideration in decisions affecting them,⁴ and that we should not punish a child for the actions of a parent.⁵

9. Clauses 30-36 should be removed from the Bill.

Impact on child citizenship rights

10. The Bill defines “family” (Clause 8) in a broad way, which widens the range of people whose actions can result in punishment for a child.
11. These clauses threaten the citizenship rights of children in very real and likely circumstances that grow further and further beyond their control, for example:
 - A child trafficked to the UK on or after 7 March 2023 to whom Clause 2 applies would generally be denied citizenship rights and face removal.
 - A child who arrived in Britain on or after 7 March 2023 as an unaccompanied asylum-seeking child to whom Clause 2 applies would generally be prevented for life from acquiring British citizenship.
 - A child born in Britain on or after 7 March 2023 who has grown up in the UK care system and has never known their biological parents would generally be denied citizenship rights and face removal if either parent subsequently entered the UK via an irregular route and falls within Clause 2.
 - A stateless child born in the UK on or after 7 Mar 2023 whose parent falls within Clause 2 of the Bill would generally be subject to removal from the UK with that parent. If that child is removed before she reaches age 5 (when she could become entitled to British citizenship as a stateless child), this would negate her eligibility for citizenship of the UK.
12. We echo concerns raised by the Refugee and Migrant Children’s Consortium that this bill risks undoing over a decade’s worth of progress, for example in the protection of child victims of trafficking and ending of child detention⁶ and amplify concerns raised by many others regarding the impact on children’s rights, including citizenship rights.⁷
13. Lady Hale has commented that the “*intrinsic importance of citizenship*” should never be played down.⁷ British citizenship enables a person to live and work in the UK permanently, to vote, to hold public office, to participate fully in British life in a way that no other type of status allows.

Explanation of Clauses 30 - 36

14. Clause 30 sets out those who would be “prevented from obtaining British citizenship”, including:
 - “A person falls within this subsection if the person has ever met the four conditions in section 2 (conditions relating to removal from the United Kingdom).”
 - “A person (“P”) falls within this subsection if P was born in the United Kingdom on or after 7 March 2023, and either of P’s parents has ever (whether before or after P’s birth) met the four conditions in section 2.”
15. Clause 31 sets out specific provisions of the British Nationality Act under which children affected by this Bill will no longer be able to register as British citizens, which include Sections 1(3), 1(4), 3(1), 3(2), and 3(5) (and others) (encompassing the main provisions under which most children currently are able to register as British citizens). Once such children

become adults, they may not be naturalised as British citizens.

16. Clause 2 sets out criteria for the “*Duty to make arrangements for removal.*” These Clauses intertwine with the citizenship clauses (30-36) and together mean that citizenship would be denied to any person to whom Clause 2 applies, and to children born in the UK on or after 7 March 2023 to a parent to whom Clause 2 applies, i.e.:
 - *Arrived or entered UK on or after 7 March 2023 without leave to enter, entry clearance, or an electronic travel authorisation, where such was required; or had leave to enter that was obtained through deception by any person; or entered in breach of a deportation order; and*
 - *Did not come directly from a country where their life or freedom was threatened for a Refugee Convention reason (the Bill defines ‘directly’ as no travel through or stops anywhere along the way, which differs from how this term has previously been defined in UK jurisprudence and international norms); and*
 - *Require leave to enter or remain but do not have it.*
17. Clauses 32 - 34 similarly bar registration as British Overseas Territories Citizens, British Overseas Citizens, and British Subjects.
18. Clause 35 Sets out “*Disapplications to sections 31 to 34.*” Clause 35 gives the Secretary of State the power to decide that a person is not banned from British citizenship under Clauses 31-34, if necessary to comply with international legal obligations.
19. This, and other potential safeguards in the bill give wide discretionary powers to the Secretary of State. The President of the Law Society of England and Wales Lubna Shuja has highlighted the concerns that the “*bill would also give the Home Secretary broad powers, drastically reduce oversight by British courts and diminish access to justice,*” as well as specific concerns over due process, fair hearings and access to legal advice.⁸
20. Clause 36 sets out amendments required to the British Nationality Act 1981 relating to sections 31 to 35, which should be removed or amended if sections 31-35 are removed or amended, as they are linked.
21. The provisions listed in Clause 31 do not include provisions of the British Nationality Act 1981 which entitle children born stateless in the UK to acquire British nationality. However, significant numbers of stateless children may be adversely affected by the Bill. For example, under current law, a person under age 22 who is born stateless in the UK is entitled to British citizenship after 5 years of continuous residence in the UK, if they are and always have been stateless and, if under the age of 18, they are unable to access another nationality (within certain specified parameters). The Bill will affect them if a parent is subject to Clause 2: they could face lengthy detention, removal from the UK, and a lifetime without any nationality.^{9 10}

For more information, please contact:

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Notes

1. www.gov.uk/government/publications/form-bos-guidance/form-bos-guidance-accessible-version
2. www.childrenslegalcentre.com/illegal-migration-bill-runs-roughshod-over-childrens-rights/
3. S. 55, Borders, Citizenship, and Immigration Act 2009 <https://www.legislation.gov.uk/ukpga/2009/11/section/55>
4. For example, P.66 Home Office Family Policy, published August 2022: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1097761/Family_life__as_a_partner_or_parent__and_exceptional_circumstances.pdf
5. <https://refugeechildrenconsortium.org.uk/wp-content/uploads/2023/03/RMCC-Briefing-Illegal-Migration-Bill-2023-Second-Reading-Final.pdf>
6. [Refugee and Migrant Children's Consortium \(RMCC\)](#), the [Immigration Law Practitioners' Association \(ILPA\)](#), [Coram Children's Legal Centre](#), the [Project for the Registration of Children as British Citizens](#), The Children's Society, UNICEF, and others.
7. www.supremecourt.uk/cases/docs/uksc-2010-0002-judgment.pdf
8. www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/migration-bill-could-threaten-protections-from-torture-and-slavery
9. BNA 1981, Schedule 2, Para 3, as amended by the NBA 2022, 11(3)
10. For more information, see Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness (UNHCR, 2012); InVisible Kids: Childhood Statelessness in the UK (European Network on Statelessness, 2021); and Children's Right to a Nationality (European Network on Statelessness, Stateless Journeys, 2022).



KIND UK is KIND UK (Kids in Need of Defense UK) provides free legal help to children, young people and families as they navigate the UK's immigration and nationality procedures.

In the last year, we partnered with 22 corporate law firms, 3 in-house legal departments and 662 lawyers across the country to ensure the best quality legal advice and representation. In total, we had 781 cases active across the year.

KIND UK is a collaboration between five award-winning, UK based organisations that specialise in children's immigration, asylum, and citizenship law: Central England Law Centre, Coram Children's Legal Centre, Greater Manchester Immigration Aid Unit, JustRight Scotland, and the Migrant and Refugee Children's Legal Unit at Islington Law Centre

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