

The Illegal Migration Bill: A timebomb for a generation of children

Clauses 30-36

“Persons prevented from obtaining British citizenship”

A briefing for Peers | 22 May 2023

“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

Alison - a former KIND UK client²

“I was trafficked into the UK when I was in my early 20s. I was told I was coming to continue my education, but that was a lie. I eventually escaped from the people who trafficked me. Later, I was involved with a man who became abusive to me. I have 3 children who were born in the UK, and we had to live in a refuge for victims of domestic violence for a long time when they were very young. I now have leave to remain, and my children are British citizens. I work for a charity, I pay taxes, and Britain is my children’s home and the only country they know.

This Bill will be truly awful for people like me and my children - even though I was brought here against my will and my children were born here. It breaks my heart to think that someone in the same situation would have no hope of building a life for their children in Britain.”

Overview

1. 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 27 corporate law firms to deliver free legal advice and representation.
2. This briefing focuses on Clauses 30-36 of the Bill (as amended)³ relating to British citizenship and the serious risks of harm to children posed by these Clauses, in conjunction with other provisions of the Bill.
3. 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 proper Child Rights Impact Assessment.⁴
4. KIND UK frequently assists children who have grown up in the UK and only become aware they are not British citizens towards the end of school when issues of university and work arise. Many such children currently have pathways to British citizenship under the British Nationality Act (BNA) 1981 (see below for detail).
5. Under the Illegal Migration Bill in its current form, many would instead face removal to countries to which they have no connection.
6. For others, the Bill shuts down existing pathways to citizenship, risking a generation of children born and raised in the UK and/or with strong British connections with no route to regularise their status or acquire citizenship. This would condemn many children and families in the UK to a lifetime of instability and poverty.
7. Lady Hale has commented that the *“intrinsic importance of citizenship”* should never be

played down.⁵ 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. For many children, the possibilities of British citizenship will be forever lost under these proposals.

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

Pathways to British citizenship

9. Current pathways under the BNA 1981 include but are not limited to:

- **The Settled Route** (*Section 1(3)*): children born in the UK are entitled to register as British if a parent becomes settled in the UK or naturalises as British before the child's 18th birthday;
- **The 10 Year Route** (*Section 1(4)*): children born in the UK are entitled to register as British if they have lived continuously in the UK for the first 10 years of their life; and
- **The Discretionary Route** (*Section 3(1)*): children who have a connection to the UK can be registered as British at the Home Secretary's discretion if an application is made before the child's 18th birthday.
- **The Stateless Route** (*Schedule 2, Paragraph 3*): a person under age 22 who is born stateless in the UK is entitled to citizenship after 5 years of continuous residence if they are and always have been stateless and, if under the age of 18, are unable to access another nationality.

The loss of citizenship pathways under the Illegal Migration Bill

10. We welcome the Government's amendment removing original clause 30(4) of the Bill, which would have barred British citizenship for children who were born in the UK from 7/3/23 if a parent entered the UK irregularly and fell foul of Clause 2 of the Bill. We also welcome the amendment which removes bars to citizenship under the BNA (1981) (The Settled Route and the 10 Year Route).

11. However, the Government has acknowledged that the amendments so far will do little to ameliorate the Bill's very significant changes to children's citizenship acquisition under current law, stating that children affected "**will rarely qualify for citizenship**"⁶ (if they or a relevant family member is subject to Clause 2 of the Bill).

12. Clause 30(3) of the Bill (as amended), sets out those who would forever be explicitly "**prevented from obtaining British citizenship**" under certain routes - those who have ever met the conditions in Clause 2 (entry via an irregular route from 7/3/23). Children who themselves meet the Clause 2 conditions would be subject to immediate removal if with relevant family members or removal at age 18 if unaccompanied. Children who do not have leave to remain or British citizenship, who have a relevant family member who meets the conditions of Clause 2, will also be subject to removal.

13. The reality of removal arrangements will be complex. Many children - either because they arrived unaccompanied as a small child or because in practice removal has not been possible (e.g. because no country would accept them) - may be born and/or spend their entire childhood here and have a solely British identity.

14. For such children, pathways to citizenship would be blocked entirely or altered by the Bill in the following ways:

- **The “Discretionary Route” would be blocked.** Crucially, this is currently the main route to citizenship for children not born in the UK but who have strong ties to the UK, their future lies in the UK, and British citizenship would be in their best interests. If a child were brought irregularly to the UK as a baby and remained here for their entire childhood, the Bill would deem them ineligible for leave to remain or the discretionary route to citizenship.
- **The “Settled Route” would be blocked** for many children born and growing up in the UK if their parents were irregular entrants and therefore barred from acquiring leave to remain (including ‘settling’ in the UK) or naturalising as British.
- **The “10 Year Route” would be possible, in theory,** for children born in the UK and resident for 10 years as the removal of Section 30 (4) means this is now not explicitly barred by the Bill. However, if the parents were irregular entrants, they would be prohibited from obtaining leave to remain, citizenship and employment, creating protracted instability and poverty in the child’s life.
- **The “Stateless Route” is not explicitly prohibited** but the Bill does put stateless children at significant risk. If, for example, a relevant family member were an irregular entrant subject to Clause 2 of the Bill, they and the stateless child would be subject to mandatory removal (jeopardising the child’s 5 years of residency and potentially condemning the child to a lifetime without citizenship). Again, where removal proves impossible, children with parents barred from leave to remain would face protracted poverty and instability.

15. The Bill is, in various ways, incompatible with the UN Convention on the Rights of the Child, which protects the right of children to a nationality, prohibits discrimination, and requires that the child’s best interests are taken into account as a primary consideration in actions concerning them. The Bill is also incompatible with other international legal obligations (as well as current UK law such as the Children Act 1989).

Inadequate safeguards

16. Clause 35 of the Bill (as amended) offers a potential safeguard for those who would otherwise be made ineligible for British citizenship if the Secretary of State considers that ineligibility for citizenship would in their case violate the UK’s obligations under the European Convention on Human Rights (ECHR). This gives unduly wide discretionary powers to the Secretary of State and guarantees nothing to children. It is therefore inadequate as a safeguard in matters with such serious consequences for the lives and wellbeing of children in the UK.

17. Clause 35 would be significantly watered down by a proposed amendment which removes reference to *“another international agreement to which the United Kingdom is a party.”* This amendment is unjustifiable and would likely contribute to the UK breaching international law, such as the UN Convention on the Rights of the Child.

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. Name has been changed to protect privacy
3. The Illegal Migration Bill, as amended (HL Bill 133, 27 April 2023)
4. <https://www.childrenscommissioner.gov.uk/statement/statement-from-the-childrens-commissioner-on-the-illegal-migration-bill/>
5. www.supremecourt.uk/cases/docs/uksc-2010-0002-judgment.pdf
6. <https://www.gov.uk/government/publications/letter-from-minister-jenrick-about-amendments-to-the-illegal-migration-bill/letter-from-minister-jenrick-about-amendments-to-the-illegal-migration-bill-accessible>



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.

We partner with [KIND](#), a US charity supporting legal representation for children facing deportation proceedings alone.

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