



# Deprivation of citizenship: briefing on Committee stage amendments to the Nationality and Borders Bill

## Summary

Seven amendments have been tabled in relation to the Secretary of State's powers to deprive people of their citizenship:

- Amendments 25 and 26 would amend the grounds on which the Secretary of State could deprive someone of their citizenship without notice.
- Amendment 28 would introduce a requirement for an annual review of the Secretary of State's current powers to deprive someone of their citizenship on 'conducive to the public good' grounds.
- Amendment 29 would amend the circumstances in which, and method by which, the Secretary of State can deprive someone of their citizenship.
- Amendment 32 would remove the Secretary of State's current powers to deprive people of citizenship altogether, except in cases where citizenship was obtained by fraud, false representation or concealment of a material fact.
- Amendment 27 is similar to the above, but would also allow for people to be deprived of citizenship under certain other circumstances, including being "disloyal or disaffected towards her Majesty", assisting an enemy in times of war, or being sentenced to imprisonment for a term of twelve months or more.
- Amendment 33 would give anyone deprived of citizenship the right to appeal to a First-tier Tribunal.

A cross-party group of peers have also given notice of their intention to oppose the Question that Clause 9 stand part of the Bill (which would have the effect of removing the clause from the Bill).

**We urge peers to support amendments 28, 32 and 33, and not amendment 27, for the reasons outlined below (we have not taken a position on amendment 29). While we do not oppose amendments 25 and 26 we do not believe they go far enough and so would urge peers instead to oppose the question that clause 9 stand part. If you would like any further information, or to discuss these issues in more detail, please contact [a.mcmillan@migrantsrights.org.uk](mailto:a.mcmillan@migrantsrights.org.uk).**

## Opposing the Question that Clause 9 stand part

Lord Anderson of Ipswich, Lord Rosser, Lord Paddick and Baroness Warsi have given notice of their intention to oppose the Question that Clause 9 stand part of the Bill. This would have the effect of removing the clause from the Bill.

### Why this is important

Clause 9 would remove the requirement for the Secretary of State to notify someone when they are being deprived of their citizenship in a broad range of loosely defined circumstances, including when they do not have the information needed, when it does not appear to be in the public interest, or when it does not appear to be reasonably practicable. Depriving someone of their citizenship has monumental consequences for that individual and their family. That person is immediately deprived of all the rights associated with British citizenship and is likely to be deported from (or not allowed to return to) the UK and forced to reside in a country which they have little or no connection to and where they may be at risk of harm. In some cases, a decision to deprive someone of British citizenship may leave that person stateless.

Not being notified of such a radically life altering decision effectively removes the person's right to appeal. This undermines the fundamental principle that everyone should have the right to a fair hearing, and the opportunity to clear their name. The current notification requirements are not onerous; it can simply involve an email, or a letter to the person's last known address. Given the implications of a lack of notification, there is a good argument for notification requirements to be tightened, rather than relaxed.

Peers may wish to note the conclusions of the Constitution Committee's recent report on the Bill: "The power to remove a person's citizenship without notice is significant. It is unclear what the reach of the provision will be, how its retroactive scope might operate or how feasible it will be for affected persons to appeal a deprivation order when they have no notice of it. We have previously commented on the unacceptability of retrospective legislation other than in very exceptional circumstances and no justification has been offered in this case. The House may conclude that this clause is unacceptable and should be removed from the Bill."<sup>1</sup>

### You might want to ask the Minister:

- How they would ensure someone deprived of citizenship without notice could appeal that decision.
- How they could know enough about a person that they could be confident they should be deprived of citizenship, but not know enough about them to have any contact details for them.

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<sup>1</sup> House of Lords Select Committee on the Constitution, [Nationality and Borders Bill](#) (11th Report of Session 2021-22, HL Paper 149)

## Amendments 25 and 26

These amendments, tabled by Baroness McIntosh of Pickering, would remove from the Bill some of the proposed situations in which the Secretary of State could deprive someone of their citizenship without notice. Amendment 25 would remove the text that would allow the Secretary of State not to notify someone if they do not have the information needed to notify them, or “for any other reason” they consider it not “reasonably practicable”. Amendment 26 would remove the text that would allow the Secretary of State not to notify someone if it appears to them that issuing notification would not be “in the interests of the relationship between the United Kingdom and another country.” If both amendments passed, the effect would be that the only circumstance that the Secretary of State would not have to notify someone would be when they considered it to be in the interests of national security or “otherwise in the public interest”.

While we welcome the attempt to limit the circumstances in which the Secretary of State could deprive someone without notice, we believe that the power to do so if it “appears” to the Secretary of State to be “in the public interest” is still too broad, especially given the lack of safeguards and oversight of this extreme power. We would therefore urge peers to instead oppose the question that the clause stand part, to remove clause 9 altogether.

## Amendment 28

This amendment, tabled by Lord Anderson of Ipswich, Baroness Chakrabarti and Baroness Bennett of Manor Castle, would require the Secretary of State to arrange for an annual review of the operation of their deprivation of citizenship powers under section 40 (2) of the British Nationality Act 1981 (i.e. their power to deprive someone of citizenship when they are “satisfied that deprivation is conducive to the public good”).

### Why this is important

The Secretary of State is currently required to arrange for a review every three years, but only in relation to section 40 (4A) powers (i.e. citizenship removal resulting in statelessness). And, in fact, only one such report has ever been produced.<sup>2</sup> When asked in January last year why subsequent reviews had not been conducted, as required by the British Nationality Act 1981, the Minister replied that a suitable reviewer had not been identified.<sup>3</sup>

Given the extremely broad powers held by the Secretary of State (they are able to deprive someone of citizenship, without any oversight by a judge, Parliament, or any other body, simply on the grounds that they are “satisfied that deprivation is conducive to the public good”), it is critical that mechanisms are in place to allow that power to be scrutinised. An annual review, which the Secretary of State would be required to lay before Parliament, would be one step towards that.

Members may also wish to note that very little, if any, data is published in relation to these powers. The most up-to-date figures published by Government on the number of people

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<sup>2</sup> Independent Reviewer of Terrorism Legislation, [Citizenship Removal Resulting in Statelessness](#) (April 2016)

<sup>3</sup> [UIN 139994](#)

deprived of citizenship date back to 2018,<sup>4</sup> and parliamentary questions and FOIs to obtain more recent figures have been declined. No data at all is available to enable Parliamentarians to scrutinise the reasons why people are deprived of citizenship, or whether these powers are disproportionately affecting people with particular protected characteristics.

You might want to ask the Minister:

- Why they have not met their current legal requirements for their section 40 (4A) powers to be reviewed every three years.
- Whether they know how many people they have deprived of citizenship since 2018 and, if so, whether they will tell you.
- What consideration they have given to Parliament's ability to scrutinise their use of deprivation of citizenship powers and whether, for example, they would welcome a post-legislative scrutiny committee inquiry on the issue (even if some of the material considered by such a committee could not be made public).

## Amendment 29

This amendment, tabled by Lord Paddick and Baroness Hamwee, would substantially alter the Secretary of State's current deprivation of citizenship powers. It would remove the current, very broad, power to deprive someone on "conducive to the public good" grounds, and require instead for it to be considered necessary on national security grounds. It would also require any deprivation order to be approved by a court (rather than be left solely to the Secretary of State). It would prohibit deprivation in cases where the person holds British citizenship by birth or where deprivation would affect the best interests of a child. And it would amend the current requirement for a three-yearly review of section 40 (4A) powers (i.e. citizenship removal resulting in statelessness) so that these reviews have to be conducted annually.

We welcome the attempt to put safeguards in place to limit the Secretary of State's power to unilaterally deprive someone of citizenship, and to better define the circumstances under which someone can be deprived. If this amendment were to succeed, much would depend on how it operated in practice: how "necessary in the interests of national security" would be determined, for example, and how the court proceedings would work (if cases were considered by the Special Immigration Appeals Commission, for example, with evidence heard in secret, what safeguards would be in place to allow individuals to contest the evidence?). We have not, therefore, taken a position on this amendment, but would be very open to working with peers to explore these issues further.

## Amendment 32

This amendment, tabled by Baroness Bennett of Manor Castle and Baroness Chakrabarti, would repeal all the Secretary of State's current deprivation of citizenship powers, except in

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<sup>4</sup> HM Government, [Transparency Report: Disruptive Powers 2018/19](#) (March 2020) [more up-to-date figures are [available](#) for deprivation on the grounds of fraud, but not for those deprived on 'public good' grounds]

situations where a person's "registration or naturalisation was obtained by means of (a) fraud, (b) false representation or (c) concealment of a material fact."

## Why this is important

As outlined above, depriving someone of their citizenship has life-changing, usually devastating, consequences. It also raises fundamental questions about what it means to be a citizen: whether it is a right or a privilege that only some are entitled to; who has the right to confer it and take it away; whether some people are more British than others. Because the ability to exercise this power largely relies on the person being able to live in another country, it effectively creates two-tiers of citizenship: those whose citizenship is secure (because they have no connection to any other country) and those for whom it may be removed (because of some connection to another country, however slight or historic). The latter category disproportionately affects people of colour. Peers will note that these two-tiers of citizenship have no relationship with a person's conduct or any criminal offence they might commit: it is our heritage, rather than our behaviour, that increases our risk of being deprived of citizenship.

As noted in the joint opinion produced by Raza Husain QC and others on behalf of the Good Law Project,<sup>5</sup> the Government's current powers "were historically tightly circumscribed", but have been significantly expanded over the last 20 years. The document explains "that it is no longer necessary to demonstrate that someone is a "terrorist or a traitor" before stripping them of British citizenship; it can be simply that the Secretary of State is satisfied that deprivation is conducive to the public good. In practice, this means that the Government can deprive someone of one of their most critical and fundamental rights, in situations where a criminal offence has not, and could not, be proven. We believe that everyone has an equal right to justice: if someone has broken the law, the evidence should be gathered and presented and the person given the right to defend themselves. If found guilty, the person should serve the appropriate sentence, as set out in legislation approved democratically by Parliament. It should not be possible for a Government Minister to circumnavigate this process, and unilaterally serve an alternative (and invariably far harsher) sentence on some groups of people, through deprivation of citizenship. If the Government believes that the sentence for specific offences should be deprivation of citizenship, that should be debated in Parliament and, if democratically agreed, enacted in law, to ensure everyone who commits that particular offence is treated equally.

## You might want to ask the Minister:

- In the last five years, how many people have they deprived of citizenship on grounds that would not meet the evidential threshold for a criminal conviction?
- Does the Government believe that people who are guilty of certain criminal offences should be deprived of citizenship and, if so, what plans do they have to amend the relevant legislation to ensure that anyone who commits that particular offence receives that particular sentence, regardless of national heritage?
- Does the Government believe that some people who are not guilty of any criminal offence should still be deprived of citizenship? If so, on what grounds? If not, why does the Government not allow the courts to determine if someone is guilty of a particular criminal offence, as part of the deprivation of citizenship process? And why

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<sup>5</sup> Good Law Project, '[Nationality and Borders Bill: we asked the experts](#)'

do their guidelines allow for deprivation on the grounds of “unacceptable behaviour”<sup>6</sup> (can they provide examples of non-criminal behaviour that they have deemed unacceptable and resulted in deprivation of citizenship?)?

- Whether they will provide figures on the number of people deprived of citizenship broken down by ethnicity.
- In the last five years, how many people have been made stateless as a result of a deprivation of citizenship order? How do they ensure that those who they believe are able to become a national of another country are subsequently able to do so, and not left stateless?<sup>7</sup>

## Amendment 27

This amendment, tabled by Lord Moylan, Baroness Fox of Buckley, Baroness Mobarik and Baroness Warsi, would remove clause 9 from the Bill, and would also limit the Secretary of State’s current deprivation of citizenship powers to certain specific situations:

- where that citizenship was obtained by fraud, false representation or the concealment of any material fact;
- where the individual “has shown himself by act or speech to be disloyal or disaffected towards Her Majesty”;
- where, in times of war, the individual has assisted the enemy; or
- where the individual “has, within the period of five years from the relevant date, been sentenced in any country to imprisonment for a term of not less than twelve months.”

The amendment also stipulates that these powers cannot be used if it appears to the Secretary of State that it would result in statelessness.

## Why we oppose this amendment

While we would welcome clause 9 being removed from the Bill, and the attempt to limit the Secretary of State’s current powers, we cannot support the amendment as drafted.

Firstly, it retains the problematic, and unjust, status quo described above where those who have no citizenship other than the British are subject to one set of rules and punishments, and those who potentially could have another nationality are subject to another. This notion of two-tier citizenship is underlined by the offences listed in this clause (the wording could be seen to suggest that there is reason to suspect that those with particular national heritages are more likely to be disloyal to the monarchy or assist an enemy in war than others).

Secondly, this amendment actually expands the Secretary of State’s current powers to include anyone who has been “sentenced in any country to imprisonment for a term of not less than twelve months.” Peers may wish to consider that there are many countries in which anyone ‘convicted’ of homosexuality would receive a longer sentence than this, for example, and that there are still many countries where political interference and corruption in criminal cases is a significant concern, let alone people’s ability to access legal advice.

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<sup>6</sup> UK Visas and Immigration, [Deprivation and Nullity of British citizenship](#) (July 2017)

<sup>7</sup> The current legislation includes the provision for the Secretary of State to deprive someone of citizenship even if the person would be left stateless, “if the citizenship results from the person’s naturalisation, the Secretary of State is satisfied that the deprivation is conducive to the public good...and has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory” (British Nationality Act 1981, 40(4a)).

Given this, it follows that this amendment would potentially capture all sorts of people convicted for things that the UK does not consider a crime, and by legal systems that operate to very different standards than the UK system.

## Amendment 33

This amendment, tabled by Baroness Bennett of Manor Castle, would enable anyone deprived of citizenship to make an appeal to a First-tier Tribunal.

### Why this is important

Under the current legislation, the right to appeal to a First-tier Tribunal does not apply “if the Secretary of State certifies that it was taken wholly or partly in reliance on information which in his opinion should not be made public in the interests of national security, in the interests of the relationship between the United Kingdom and another country, or otherwise in the public interest.”<sup>8</sup> This significantly hampers an individual’s ability to appeal, and may involve the case being heard by the Special Immigration Appeals Commission without the individual or their legal representatives able to know the evidence being used against them. Peers will again note the extremely broad, loosely defined nature of the power (specifically the phrase “otherwise in the public interest”).

### You might want to ask the Minister:

- In the last five years, what percentage of people deprived of citizenship has section 40(4A)(2) of the British Nationality Act 1981 applied to?
- What is the average length of time that a person deprived of citizenship has to wait to have their appeal to SIAC (1) heard and (2) decided?<sup>9</sup>

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<sup>8</sup> British Nationality Act 1981, 40(4a)(2)

<sup>9</sup> We have heard from lawyers specialising in this work that there are significant delays in appeals being listed, with SIAC not having the resources or capacity to deal with the volume of work. This has resulted in people being left stranded abroad for years, often in desperate and dangerous situations, waiting for their case to be considered.