Legislative Scrutiny – Immigration Bill

Government response to the Joint Committee on Human Rights (Second Report) Twelfth Report of Session 2013–14

1. The Committee's conclusions and recommendations on issues raised by Clause 60 of the Immigration Bill on the deprivation of citizenship, as inserted by Government amendment at Commons Report Stage on 30 January.

Deprivation of Citizenship

Exercise of Powers

2. The Committee asked the Government to review its position on not revealing details of:
    - the number of cases in which the power to deprive citizenship has been exercised abroad.
    - the number of decisions on deprivation taken wholly or partly in reliance on information which in the Secretary of State's view should not be made public.

Government response

3. The Government notes the Committee's view. As we explained in our previous response, for reasons of national security and operational effectiveness, we are unable to put details of the number of individuals who were abroad at the time they were deprived, or the number of deprivations that were based in whole or part on closed material into the public domain. The Government understands the Committee's need to understand how the powers are exercised in practice and we can confirm that some individuals have been deprived of their British citizenship whilst outside the UK and others whilst within the UK. Similarly, we can confirm that there have been deprivation decisions which have been based entirely on open material and others which have been based in whole or in part on closed material.

Urgency

4. The Committee accepts that there was a need for the Government to give serious consideration to the implications of the *Al-Jedda* judgment but considers that there had been time to hold a public consultation on the matter to inform Parliamentary scrutiny.

Government response

5. We disagree with the Committee's conclusion that there was time for a public consultation. The Government made a decision to legislate on this issue to address, in particular, paragraph 22 of the Supreme Court's judgment in the *Al-Jedda* case. Given the importance and complexity of the issue, the Government acted to introduce the provisions at the first opportunity, which was in the Immigration Bill before it left the House of Commons, on 30 January. There was

no obligation on the Home Secretary to hold a public consultation. A public consultation would have delayed legislation on this issue and potentially continued to leave the public at risk from a small number of very harmful individuals. The Government's first duty is to protect the public and it was right not to unnecessarily delay legislating in this case.

Compatibility with UK's international obligations on statelessness

6. The Committee accepts that enacting the power in Clause 60 to deprive a naturalised person of their citizenship, even if it renders them stateless, is not a breach of the UK's obligations under the UN Conventions on Statelessness. However it does express concern that the new power will lead to an increase in statelessness, representing a significant change of position for the UK's human rights policy.

Government response

7. The Government welcomes the Committee's acceptance that Clause 60 is not a breach of the UK's obligations under international law. It is important to reiterate that the power will be used sparingly, in limited circumstances, and in an ECHR-compliant matter. We do not agree with the Committee's view that this represents a significant change in the UK's human rights policy.

Intended scope and purpose of the power

8. The Committee is concerned that the main or sole purpose of the new power would be to use it in cases of naturalised persons while they are abroad. As a result the Committee recommends that the Bill be amended to make it a precondition of the making of an order by the Secretary of State that "in the circumstances of the particular case the deprivation of citizenship is consistent with the UK's obligations under international law".

Government response

9. The purpose of the new power is not to target naturalised people who are abroad. The Home Secretary has been clear that the power is to be used in cases, both in country and out of country, where the person's behaviour is seriously prejudicial to the vital interests of the UK even though it may render them stateless. Not all those deprived under this provision will remain stateless as some may be able to acquire or re-acquire another nationality. The Government maintains its position that Clause 60 is compatible with our international law obligations, including those set out in the UN Convention on the Reduction of Statelessness 1961 and the declaration the UK made on ratifying that Convention in 1966.

10. However we wish to clarify a point made in our letter of 20 February to the Committee that there is no general entitlement in international law for a State to deport a non- British citizen to the UK.. Under Article 1 of the Special Protocol concerning Statelessness 1930, which the UK ratified in 1932 and which came into force in 2004, there is a very limited obligation to readmit former British

nationals who become stateless after entering a foreign State. However, as this only applies in limited circumstances[1] and when the requesting State is also a party to the Protocol[2], it will rarely be applicable and will have limited practical impact.

Applicability of the ECHR

11. The Committee is not satisfied by the Government's argument that in the absence of exceptional circumstances, a decision to deprive a naturalised person of their citizenship whilst they are in another State does not engage the individual's rights under Articles 2, 3 and 8 ECHR. The Committee's view is that a deprivation decision, by virtue of being an exercise of jurisdiction over that individual, must be compatible with those ECHR Articles whether the citizen concerned is abroad or in the UK.

Government response

12. The Special Immigration Appeals Commission considered the application of the ECHR in the context of out of country deprivations in *S1 & Others v SSHD*. Considering the primarily territorial jurisdiction of the Convention and the limited exceptions to that principle outlined in ECtHR jurisprudence, SIAC rejected the idea that articles 2 or 3 would be engaged extraterritorially (paragraphs 21-30).

Impact on children and dependants

13. The Committee recommends an amendment to require the Secretary of State to ensure that the best interests of the child are treated as a primary consideration.

Government response

14. Section 55 of the Borders, Citizenship and Immigration Act 2009 places a duty on the Secretary of State to have regard to the need to safeguard and promote the welfare of children who are in the UK in relation to the exercise of immigration, asylum or nationality functions. This provision already applies to the Home Secretary's decision making in respect of deprivation decisions and the Government does not consider that an amendment is necessary.

Differential treatment of naturalised citizens

15. The Committee notes comments from the drafting group which worked on Article 8 of the 1961 Statelessness Convention, who felt that the distinction between natural-born and naturalised persons "was not a happy one", hence "the grounds mentioned for extended grounds of deprivation applied to both types of cases". The Committee confirms that it does not approve of the extension of the power to

[1] Where the individual concerned is permanently indigent or has been sentenced in the requesting State to not less than one month's imprisonment and has served his sentence or obtained remission.
[2] The other States Parties to the Protocol are listed on the UN website as: Belgium, Brazil, Burma, Australia, South Africa, India, Salvador, Fiji, Pakistan and Zimbabwe.

natural born citizens but invites the Government to consider its justification for treating naturalised citizens differently.

Government response

16. The Government agrees with the Committee's conclusion that the power should not be extended to natural born citizens. In any event this would not be compatible with the 1961 UN Convention on the Reduction of Statelessness as the power to deprive natural born citizens did not exist within domestic legislation at the time of the UK's declaration when ratifying the Convention in 1966. As regards the comments of the drafting group, the conclusion nevertheless was that States should be permitted to rely on grounds of deprivation existing in their national law at the time of ratifying the Convention.

17. The Government would also argue that there is already a distinction between British born citizens and naturalised citizens. Provisions already exist that allow the Home Secretary to take action against those who acquire British citizenship by fraud, false representation or concealment of material facts.

Adequacy of safeguards against arbitrariness

18. The Committee welcomes the Government's indication that it would adopt a proportionality approach to deciding whether or not to exercise the power in Clause 60. However the Committee recommends that this is included on the face of the Bill as conditions to be satisfied before the Secretary of State makes an order.

Government response

19. The Government welcomes the Committee's acceptance that the power is intended to be used sparingly and therefore as a proportionate response to the conduct of the person concerned. It is the Government's view that it is unnecessary to provide for this explicitly on the face of the Bill given the high threshold set by the test of conduct having to be "seriously prejudicial to the vital interests" of the UK and the careful consideration that will be given to the individual circumstances of each case.

Retrospectivity

20. The Committee does not accept the Government's position on the retrospective nature of Clause 60. The Committee recommends that it should have no retrospective effect.

Government response

21. The Government maintains its position that any element of retrospection in this power is justified and unobjectionable. It is important to remember that a person who could come within the scope of this new power would already be liable to being deprived of citizenship under the existing powers. The only thing that prevents that now is that such a decision would leave them stateless. Therefore,

we do not consider a person could have a legitimate claim that they were unaware of the potential consequences of their actions.

Fair hearing

22. The Committee maintains that it does not believe that an appeal to the Special Immigration Appeals Commission would be a fair hearing unless the *AF disclosure obligation* applied and believes this amounted to a breach of Article 8 (4) of the Statelessness Convention and recommends that the Bill be amended so that the *AF disclosure obligation* applies in all appeals against deprivation under this provision.

Government response

23. The Government does not accept the Committee's conclusion that there would not be a fair hearing unless the *AF disclosure obligation* is applied. The Government believes that deprivation appeals should benefit from the same statutory safeguards that Parliament has decided apply to other appeals before the Special Immigration Appeals Commission. In accordance with our obligations in law, the Government is committed to disclosing as much underlying information as possible in such cases, without compromising national security.

Access to a practical and effective remedy

24. The Committee welcomes the clarification that appeals to the Special Immigration Appeals Commission will not be subject to the proposed residence test for legal aid but asks for confirmation that it would not apply to appeals to the First-tier Tribunal.

25. Finally, the Committee is concerned about the point at which the 28 day period for lodging an appeal against a deprivation decision would start. The Committee recommends that any such time period should only begin once the individual has actually received the notification of the decision, or that the Home Secretary had taken all reasonable steps to bring the decision to the individual's attention.

Government response

26. Appeals that are to be heard by the Special Immigration Appeals Commission are not subject to the residency test that has been introduced for those seeking legal aid. So an individual deprived of their citizenship whilst abroad with an appeal before the Special Immigration Appeals Commission, will not be prevented from receiving legal aid because they are outside the UK. There are no plans to exempt appeals to the First-tier Tribunal from the residence test. Most, if not all, of the deprivation appeals under this new power will be heard at SIAC due to the reliance on information relating to national security matters.

27. The manner in which the Home Secretary must serve notice upon an individual under this provision is governed by regulations.. If notice has been served by the Home Secretary in accordance with the regulations and an individual claims they have not received the notification, SIAC and the First-tier Tribunal already have the power to extend the time limit for appeal, if it would be unjust not to do so.