



Joint Committee on Human Rights

House of Commons · 7 Millbank · London · SW1P 3JA

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From Dr Hywel Francis MP, Chair

The Rt Hon Theresa May MP,
Secretary of State for the Home Department,
Home Office,
2 Marsham Street,
London, SW1P 4DF

Wednesday 12 February 2014

Dear Theresa,

Immigration Bill clause 60: Deprivation of citizenship

Thank you for your Department's supplementary ECHR memorandum sent to my Committee on 29 January addressing the ECHR compatibility of the Government's amendment to the Immigration Bill at Commons Report Stage on 30 January, concerning deprivation of citizenship (now clause 60 of the Bill).

You will appreciate that my Committee has not yet had an opportunity to scrutinise the new provision, but it intends to do so and to report on the outcome of that scrutiny in time to inform debate on the provision in the Lords. I would therefore be grateful if you could answer the following questions.

Urgency

Q1: Please explain the urgency behind the introduction of the provision into the Bill which justifies the lack of prior consultation and its insertion at such a late stage in the Bill's passage in the Commons.

Non-retrogression

Q2: Having regard to the terms of Articles 8(3) and 13 of the 1961 Convention on the Reduction of Statelessness, is there an implied international law duty not to increase statelessness?

Applicability of the ECHR

Q3: In the Government's view, where a UK citizen is not physically present in the territory of the UK, are their rights under Article 8 ECHR engaged by a decision to deprive them of their citizenship while they are abroad (para. 13 of ECHR memo)?

- **If not, please explain the reasons for the Government's view, with reference to the case-law of the European Court of Human Rights concerning Article 1 ECHR.**

Q4: In what circumstances does the Government envisage that a person will not be within the UK's jurisdiction for the purposes of the ECHR when the power to deprive them of their citizenship is exercised (para. 16 of ECHR memo)?

Q5: What steps will the decision-maker have to take to satisfy themselves that a person deprived of their citizenship will not suffer mistreatment as a result of that deprivation?

Q6: Since it is the Home Secretary's practice not to deprive individuals of citizenship when they are not within the UK's jurisdiction for ECHR purposes if she is satisfied that doing so would expose them to a real risk of treatment in breach of Articles 2 or 3 ECHR (para. 16 of ECHR memo), is there any reason why that practice should not be enshrined in law?

Intended scope of the power

Q7: Is it intended that the new power to deprive of citizenship should only be exercised when the person is entitled to acquire citizenship of another country?

- **If so, why is the scope of the power defined so broadly?**
- **How will the decision-maker satisfy themselves that the individual concerned will be able to acquire citizenship from another State, and to what standard will they need to be satisfied?**
- **Does the Government consider it likely that another country will award citizenship to a person who has been deprived of their UK citizenship on the ground that they have acted in a way which is seriously prejudicial to the vital interests of the UK?**
- **Is it intended that the Secretary of State will reconsider their decision if citizenship of another state is not in fact acquired within a reasonable time?**

Q8: Is it intended that the new power should be capable of being exercised on the ground that deprivation is necessary in the interests of the economic well-being of the UK (para. 13 of ECHR memo)?

Q9: Is it intended that the new power will only be exercised as a last resort where the possibility of criminal prosecution for the conduct in question has been considered but it has been determined that it is not possible?

Consequences of the exercise of the power

Q10: If the power is exercised to deprive a naturalised UK citizen of their citizenship while they are in the UK, leaving them stateless, what would be their immigration status in the UK?

- **How would it be possible to deport such a person?**

Q11: If the power is exercised to deprive a naturalised UK citizen of their citizenship while they are physically present in another State, leaving them stateless, would that be compatible with the UK's international obligations to that State?

- Would the other State be entitled, in international law, to deport the individual back to the UK, and would the UK be required to re-admit them?

Impact on children and dependants

Q12: What assessment has the Government made of the likely impact of the exercise of the power on:

- the rights of children of the individual whose citizenship has been taken away, including their rights under the UN Convention on the Rights of Child, and in particular the child's right in Article 7 to acquire a nationality, the right in Article 8 to preserve the child's nationality, and the requirement that the best interests of the child shall be a primary consideration: and
- the rights of dependants whose immigration status depends on the citizenship of the individual concerned?

Differential treatment of naturalised citizens

Q13: Please specify the ways in which "the distinction between naturalised citizens and others is recognised in international law" (para. 15 of ECHR memo).

- How does the Refugee Convention recognise the distinction, and please specify the ways in which it "makes separate provision for naturalised citizens."

Legal certainty

Q14: Does the test for deprivation, that it is conducive to the public good because the person "has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the UK", satisfy the requirements of legal certainty?

- Please provide examples of the sort of conduct which it is envisaged will satisfy the test.

Adequacy of safeguards against arbitrariness

Q15: In light of the requirement in Article 8(4) of the Convention on the Reduction of Statelessness that a State shall not exercise a power to deprive of citizenship "except in accordance with law", are there sufficient safeguards against arbitrariness which apply before the power is exercised?

- Given the very serious consequences of becoming stateless, what is the justification for not providing for a system of prior judicial permission such as that which applies to TPIMs?
- What are the reasons for not providing the individual with a right to be heard before the power of deprivation is exercised?

Fair hearing

Q16: In light of the requirement in Article 8(4) of the Statelessness Convention that the law must provide for the person concerned to have “the right to a fair hearing by a court or other independent body”, where the decision to deprive is based on closed material does the Government accept that the person concerned is entitled to have disclosed to him sufficient information about the case against him to enable him to give effective instructions to his special advocate?

Effective access to a remedy

Q17: Would a person who is deprived of their UK citizenship while abroad have an effective remedy if required to conduct their appeal against the decision whilst out of the UK?

- Would the 28 day period for lodging an appeal start to run before the person concerned had been notified about the decision to deprive?
- Would such a person be eligible for legal aid to bring their appeal against the decision under the Government’s proposed residence test?

Retrospectivity

Q18: What is the justification relied on for taking the exceptional step of giving the new power retrospective effect (clause 60(2))?

Q19: Do you intend to exercise the power in relation to Mr. Al-Jedda, so as to deprive him of the benefit of the Supreme Court’s judgment in his favour?

Exercise of the previous power to deprive and render stateless

Q20: Between the UK’s ratification of the UN Convention on the Reduction of Statelessness 1961 and the restriction of the Home Secretary’s power to leave a person stateless in 2003, how many times was the previous power exercised in a way which rendered stateless the person deprived of citizenship?

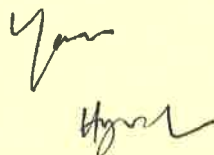
Exercise of the existing power to deprive

Q21: Of the 27 people who have been deprived of their citizenship since 2006 on the ground that it is conducive to the public good to do so:

- How many were abroad at the time the power to deprive was exercised?
- How many deprivations were based in whole or in part on closed material which could not be disclosed to the individual?
- How many had children?

In view of the tight timetable for reporting, due to the late introduction of the amendment in the Commons, I would be grateful if we could receive your reply to these questions by **Thursday 20 February 2014** in order to ensure that it can be taken into account by the Committee in its Report. I would also be grateful if your officials could provide the Committee secretariat with a copy of your response in Word format, to aid publication. I look forward to hearing from you.

I am copying this letter to the Foreign Secretary in view of the nature of some of the questions above.

A handwritten signature in black ink, appearing to read 'Hywel Francis', is centered on the page.

Dr Hywel Francis
Chair

cc: the Rt Hon William Hague MP, Secretary of State for Foreign and Commonwealth Affairs