



European
Network on
Statelessness



PRCBC
Project for the Registration
of Children as British Citizens



Nationality & Borders Bill (Part 1, Clause 9 'stateless minors') Joint submission to the House of Commons Public Bill Committee

September 2021

Introduction

This joint submission by the European Network on Statelessness (ENS), the Project for the Registration of Children as British Citizens (PRCBC), and Amnesty International UK concerns Clause 9 (Stateless Minors) of Part 1 (Nationality) of the Nationality & Borders Bill (NBB).

Our organisations are leading experts on statelessness, human rights, British citizenship rights of children and young people, and UK immigration and nationality law.

We have serious concerns that the changes proposed in Clause 9 of the NBB will lead to an increase in childhood statelessness in the UK, unnecessarily leaving *more* children in limbo, exposed to the detrimental impacts of growing up without a nationality.

Existing law

Section 36 of the British Nationality Act 1981 (BNA) gives effect to Schedule 2 expressly "*for the purpose of reducing statelessness*". Paragraph 3 of Schedule 2, in particular, is to prevent children born in the UK from growing up without a nationality. As Ministers made clear during the passage of the British Nationality Act 1981, this provision was needed to ensure continued compliance "*with our international obligations under the United Nations Convention on the Reduction of Statelessness*".¹ In accordance with that Convention, the provision entitles someone, under the age of 22, born stateless in the UK, who has lived in the UK for five continuous years at the point of application, and who has always been stateless, to register as a British citizen.²

The change proposed in Clause 9

Clause 9 of the NBB, inserts a new Paragraph 3A into Schedule 2 of the BNA for stateless children aged 5-17, requiring that the Secretary of State be "satisfied" that the child is unable to acquire another nationality before they may be permitted to register as a British citizen. It considers that a child is able to acquire a nationality where (i) that nationality is the same as one of the parents; (ii) the person has been entitled to acquire that nationality since birth; and (iii) *in all the circumstances, it is reasonable to expect them (or someone acting on their behalf) to take steps to acquire that nationality.*

¹ Hansard HC, Standing Committee F, 6 May 1981 : Col 1730; see also Standing Committee F, 6 May 1981 : Col 1726 & Report, 3 June 1981 : Col 986.

² For more information about which children are stateless or at risk of statelessness in the UK and why, see: ENS (2021) *Invisible Kids: childhood statelessness in the UK*, <https://www.statelessness.eu/updates/publications/invisible-kids-childhood-statelessness-uk>

What is wrong with Clause 9?

It is unethical and puts children's rights in jeopardy

Clause 9 unnecessarily restricts what is a vital safeguard intended to protect the rights and best interests of a small group of marginalised children born in the UK. For those affected, statelessness can mean problems accessing rights and services, denied opportunities, unfulfilled potential and a sense of never quite belonging. As worded, the new provision would effectively give the Secretary of State wide discretion to prevent a stateless child born in the UK from acquiring British citizenship, perpetuating their statelessness.

The UK Government has provided no evidence to justify restricting children's rights in this way. In fact, our organisations have evidenced how stateless children and young people born in the UK *already face significant barriers* to acquiring British citizenship under existing law, with significant detrimental impact on their wellbeing.³ Children and young people we work with have described how their inability to acquire British citizenship leaves them feeling alienated and excluded.

"When I had just become a teenager, or possibly just before, I recall feeling very left out. The school was organising a day trip to France. I couldn't go because of my status in the UK. I didn't really understand what this status was and why I should be different. All I knew was that my friends were going on a trip and I had to stay behind. This came up more than once. At school and with friends I would make up excuses as to why I couldn't go. I felt like I had to navigate all this on my own as I was trying to fit in, but I couldn't do everything my friends and peers could do. It did not seem fair. I could change my hair or my accent and do so much else to fit in or not as I wanted, but my status was something I had no control over. I felt alienated."

(young person represented by PRCBC)

"The UK was my home and yet it wasn't for me the safe and secure place that it was for others. I belonged here but that belonging wasn't safe and secure like it was for others. I grew up with these feelings and it affected my confidence. I questioned my identity because I understood I was British but that was in some way not accepted or acknowledged. I wondered where I did belong if not in the UK. I didn't know anywhere else. I felt lost. My struggles with these feelings continued throughout the rest of my childhood. I became more cautious with friends and other people. I worried that I might not be accepted by them and I shied away because I did not want to risk being shunned or ridiculed or rejected."

(young person represented by PRCBC)

If adopted, Clause 9 will exacerbate already existing challenges, leading to further exclusion, alienation, and marginalisation of children and young people in the UK.

³ ENS (2021) *Invisible Kids: childhood statelessness in the UK*,
<https://www.statelessness.eu/updates/publications/invisible-kids-childhood-statelessness-uk>



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It is not in line with international law

The UK is bound by the 1961 UN Convention on the Reduction of Statelessness (1961 Convention) and the 1989 UN Convention on the Rights of the Child (CRC). The 1961 Convention seeks to prevent childhood statelessness by obliging the State of birth to provide access to its nationality where a child would otherwise be stateless. It is child protection-focused and should be interpreted in light of the CRC.⁴ In transposing the 1961 Convention into domestic law, State parties must draft laws that are consistent with the requirement to have children's best interests as a primary consideration and to respect the child's right to acquire a nationality enshrined in the CRC.⁵

The 1961 Convention requires only that the applicant is stateless and *not that they cannot reasonably acquire another nationality*. For many children, the change proposed by Clause 9 will perpetuate their statelessness as they will have no immediate entitlement to a parent's nationality, but the Secretary of State's judgement will shut them out from British citizenship. Where the Secretary of State refuses an application using the impermissible latitude which Clause 9 provides, the UK will be in breach of its international treaty commitments.

What is the solution?

Clause 9 must be omitted from the NBB

The 1961 Convention focuses on protecting the stateless child and preventing childhood statelessness, and the UK Government has provided no evidence of any problem that needs addressing through Clause 9 that would justify departing from the safeguards established by the convention. The UK Parliament must not legislate to enable breaches of that commitment and the principle of the best interests of the child in UK domestic law.

For further information, please contact:

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⁴ UNHCR (2012), 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, paras. 9-12, available at: <https://www.refworld.org/docid/50d460c72.html>

⁵ Articles 3 & 7 of the Convention on the Rights of the Child.