

Palais des Nations
1211 Geneva 10
Switzerland

21 January 2022



To:

- **Mandate of the Special Rapporteur on trafficking in persons, especially women and children;**
- **Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;**
- **Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions;**
- **Mandate of the Special Rapporteur on the human rights of migrants;**
- **Mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;**
- **Mandate of the Special Rapporteur on freedom of religion or belief;**
- **Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;**
- **Working Group on Arbitrary Detention**

Re: UK Nationality and Borders Bill

Dear esteemed colleagues:

Further to your letter of 5 November 2021¹ addressed to the UK Permanent Representative to the UN (ref. OL GBR 11/2021), we write to bring your attention to additional concerns about the United Kingdom's Nationality and Borders Bill² and its compliance with the UK's obligations under international law to reduce statelessness, prevent arbitrary or discriminatory deprivation of citizenship, and ensure the rights to a fair trial, effective remedy and reparation.

We respectfully ask that you consider writing to the UK government to raise the concerns we describe below and offer a reminder of the UK's need to comply with its international obligations.

This letter is prompted by the UK Government's introduction of a new provision, Clause 9, in the Nationality and Borders Bill at a late stage of its consideration in Parliament. As a preliminary point, we are concerned about the reduced level of parliamentary and public scrutiny that Clause 9 has received as a result of being introduced at this late stage.

Clause 9 would empower the Secretary of State for the Home Department to deprive a person of their British nationality without notice under a range of circumstances. It would also leave in place a power allowing the Home Secretary to remove an individual's British nationality if she is satisfied that deprivation is 'conducive to the public good' – a very broad standard.

We note at the outset that the 1961 Convention on the Reduction of Statelessness³, ratified by the UK on 29 March 1966, prohibits the deprivation of nationality where such deprivation would render a person stateless (Article 8 (1)) or is based on racial, ethnic, religious or political grounds (Article 9). The 1961 Convention also requires that a person deprived of nationality be afforded the right to a fair hearing by a court or other independent body (Article 8 (4)).

¹ Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, [OL GBR 11/2021](#), 5 November 2021.

² [Nationality and Borders Bill 2021-2022](#).

³ 1961 [Convention on the Reduction of Statelessness](#).

Furthermore, we note that the International Covenant on Civil and Political Rights (ICCPR)⁴, ratified by the UK in 1976, entitles everyone to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of his or her rights and obligations (Article 14) and to an effective remedy where it is determined that his or her rights or freedoms have been violated (Article 2).

We are concerned that the UK's practice of depriving people of citizenship under the existing broad standard, including on alleged national security grounds, under Section 40 (2) of the British Nationality Act 1981 is in violation of the above-mentioned provisions of the 1961 Convention and the ICCPR. We are also concerned that Clause 9 of the Nationality and Borders Bill further entrenches these violations of international law by foreseeably rendering it more difficult for a person deprived of their British nationality to challenge that decision by way of a fair and public hearing, thus creating a greater risk that deprivations of citizenship resulting in statelessness, or based on discriminatory grounds, will go unchallenged and unremedied.

Stated plainly, if Clause 9 is adopted, British citizens who are already at risk of losing their citizenship for a potentially vast range of reasons will also be at risk of having their citizenship revoked with little or no notice by the UK government – a life-altering event that could have a profound impact on their other human rights. Even if the UK government strictly adheres to its obligation not to render an individual stateless, media reporting indicates that as many as six million people in England and Wales alone could be vulnerable to losing their citizenship in this manner. The potential for discriminatory harms is also clear, with up to 41 percent of people belonging to Black, Asian and other non-white minority groups at risk – compared to only five percent of people the government classifies as white⁵.

Deprivation of citizenship on grounds of national security in the UK

At present, the Secretary of State has the power under Section 40 (2) of the British Nationality Act 1981 to deprive a person of citizenship where 'the Secretary of State is satisfied that deprivation is conducive to the public good'.

We are concerned that the wording of Section 40 (2) gives the Secretary of State a strikingly broad, vague and subjective discretion to determine whether, when and why to deprive a person of citizenship⁶. We are particularly concerned by the fact that a decision to deprive someone of citizenship does not have to be ordered or reviewed by a court, nor is any prior criminal conviction – let alone a proportionately serious one – required before the Secretary of State may make a deprivation order. Indeed, many people deprived of citizenship by the UK government in recent years have never been convicted in UK courts of, or even charged with, any crime⁷.

We are concerned that the UK's practice of depriving people of citizenship under this legislation may violate international law in at least three ways.

1. The right to a fair hearing

Section 40A of the British Nationality Act 1981 provides for a right to appeal against a decision to deprive a person of their British nationality. However, we are concerned that, in practice, this right is often not enforceable. This is because in many cases it has proven difficult, and in some cases impossible, for people to challenge the Secretary of State's decision to deprive them of citizenship. This problem arises for two reasons.

⁴ [International Covenant on Civil and Political Rights](#).

⁵ Ben van der Merwe, '[Exclusive: British citizenship of six million people could be jeopardised by Home Office plans](#)' *New Statesman* (01 December 2021).

⁶ See also, Ben van der Merwe, '[New: Priti Patel's powers to revoke citizenship are the broadest in the G20](#)' *New Statesman* (29 December 2021).

⁷ See for example, the case of E3: Mark Townsend, '[British man made stateless by Home Office has citizenship reinstated](#)' *The Guardian* (16 January 2022).

First, in many cases, the Secretary of State has deprived people of citizenship whilst they were outside of the UK⁸. Once outside the UK, it can be much more difficult for a person to access legal representation and provide the evidence necessary to challenge a deprivation of citizenship before UK courts. In addition, in 2021, the UK Supreme Court found in the case of *R (Begum) v. Special Immigration Appeals Commission and Secretary of State for the Home Department*⁹ that a person deprived of their British citizenship does not have a right to return to the UK to challenge the deprivation. The court held that the right to a fair hearing can be outweighed by the interests of national security (though what is in the interests of ‘national security’ is often exclusively determined by the Secretary State). This situation renders the right to appeal a deprivation of citizenship purely illusory in many cases. It is even more concerning in light of the broad, vague and subjective discretion already given to the Secretary of State to make the deprivation order. It ultimately removes any meaningful safeguards on the Secretary of State’s discretion in many cases.

In many cases, the fact that a person is not able to return to the UK to challenge their deprivation of citizenship also leads to potential violations of other rights, such as:

- The right to respect for family life – for example, if the person’s family members remain in the UK¹⁰;
- The prohibition on torture or other cruel, inhuman or degrading treatment – for example, if the person deprived of citizenship is left in a dangerous situation, as in the case of many formerly British women stripped of their citizenship whilst detained in camps in northeast Syria¹¹; and
- The right to life – for example, if the person deprived of citizenship is left stranded in a country where they might face a rights-violating application of the death penalty, or where an armed conflict creates a foreseeable risk of death for non-combatants¹².

Second, even if a person deprived of their British citizenship manages to bring an appeal against the decision to deprive him or her of citizenship, cases are often heard by the Special Immigration Appeals Commission in a closed hearing¹³. This means that the person appealing the decision and his or her legal representatives are barred from seeing at least some – if not most – of the evidence against him or her¹⁴. Legal experts indicate that in practice, this secrecy makes it very difficult to litigate the case¹⁵.

As a result, we are concerned that the UK’s existing practice of depriving people of their citizenship on alleged national security grounds under Section 40 (2) of the British Nationality Act 1981 – in particular the broad discretion left to the Secretary of State compounded by the absence of consistent, independent judicial safeguards *ex ante* and *ex post* – may violate the UK’s obligations under Article 8 (4) of the 1961 Convention and Articles 2 and 14 of the ICCPR.

2. Statelessness

Under Section 40 (4) of the British Nationality Act 1981, the Secretary of State is prohibited from depriving a person of citizenship under Section 40 (2) if she is satisfied that the order would make a person stateless. However, we are concerned that the UK has, in practice, rendered people stateless by depriving them of citizenship.

⁸ Ibid; Alice Ross, Patrick Galey, ‘[Rise in citizenship-stripping as government cracks down on UK fighters in Syria](#)’ *Bureau of Investigative Journalism* (23 December 2013): of the 37 deprivation orders issued between 2010 and 2013, all but two were issued whilst the individual was abroad.

⁹ *R (Begum) v. Special Immigration Appeals Commission and Secretary of State for the Home Department* [2021] UKSC 7 [94].

¹⁰ Ibid.

¹¹ See Rights & Security International, [Abandoned to Torture: Dehumanising rights violations against children and women in northeast Syria](#) (October 2021); see also CAGE, [Joint Letter by Exiled Britons: Law allows Government to be judge, jury and executioner](#) (12 January 2022).

¹² Mattha Busby, ‘[Shamima Begum would face death penalty in Bangladesh, says minister](#)’ *The Guardian* (04 May 2019); CAGE, [Joint Letter by Exiled Britons: Law allows Government to be judge, jury and executioner](#) (12 January 2022).

¹³ Deprivation of citizenship appeals are generally heard by the First-tier Tribunal. However, if the Secretary of State certifies that the decision was taken wholly or partly in reliance on information which in her opinion should not be made public in the interests of national security, the appeal will be heard by the Special Immigration Appeals Commission (SIAC) so that there can be a closed material procedure, see Section 40A British Nationality Act 1981.

¹⁴ Review of the Justice and Security Act 2013 pursuant to section 13, [Special Advocates’ Submission](#), 8 June 2021.

¹⁵ Ibid; CAGE, [Joint Letter by Exiled Britons: Law allows Government to be judge, jury and executioner](#) (12 January 2022).

In recent years, UK courts have overturned several of the Secretary of State's orders to deprive people of citizenship on the basis that they made the person in question stateless¹⁶. These conclusions underscore the importance of ensuring that people deprived of their citizenship can challenge that decision through fair proceedings. Had the individuals in those cases not been able to access an effective appeal, the Secretary of State's unlawful decision may never have come to light or been remedied.

We also note that, even where a deprivation decision does not literally leave a person stateless, the loss of UK citizenship 'may nevertheless have a profound effect upon her life, especially where her alternative nationality is one with which she has little real connection'¹⁷. As a result, deprivation of citizenship under Section 40 (2) of the British Nationality Act 1981 may leave people *de facto* stateless. We are further concerned about cases such as *Begum*, in which the UK government claims that a person could establish another nationality even when the State concerned – in that case, Bangladesh – has said it will not grant or recognise citizenship. We do not regard government attempts at shuttlecocking human beings from one nationality to another as consistent with the spirit of the 1961 Convention or the ICCPR¹⁸.

On this point, we refer to the numerous recent statements in UK media publications by people in Britain, especially people identifying as Black or Asian, who are descended from recent immigrants and who now voice fears that their heritage has become a legal vulnerability – that they are 'second-class citizens', never fully assured of their place in the UK¹⁹.

In sum, we are concerned that the UK's existing practice of depriving people of citizenship on alleged national security grounds under Section 40 (2) of the British Nationality Act 1981 may violate the UK's obligations under Article 8 (1) of the 1961 Convention as well as other international legal obligations.

3. Discrimination

We recognise that, on its face, Section 40 (2) of the British Nationality Act 1981 applies equally to persons of all ethnicities. However, we are concerned that the UK's practice of depriving people of citizenship has or may have a disproportionate impact on people from non-white racial and ethnic backgrounds, and especially people from Muslim and migrant communities. This is because they are more likely to have or be eligible for another nationality.

A statistical analysis of data from the Office for National Statistics conducted by the *New Statesman*, has found that two in every five people from non-white backgrounds are likely to be eligible for the deprivation of their British nationality under Section 40 (2), compared with just one in 20 people categorised as white²⁰. The *New Statesman* estimates that almost half of all Asian British people in England and Wales are likely to be eligible, along with two in five Black Britons²¹.

We are further concerned that the citizenship deprivation powers in the UK may be used disproportionately against people from Muslim communities. It is of potential legal significance that the UK did not use

¹⁶ *C3, C4, C7 v. Secretary of State for the Home Department*, appeals nos. SC/167/2020, SC/168/2020, SC/171/2020, 18 March 2021; see also Ministry of Justice, [Tribunal Statistics Quarterly: April to June 2021](#) (09 September 2021): in the past six years, 40% of appeals against deprivation of nationality have been allowed by the First-tier Tribunal, and 46% in 2020/21.

¹⁷ *R (Begum) v. Special Immigration Appeals Commission and Secretary of State for the Home Department* [2021] UKSC 7 [94].

¹⁸ Cf. *East African Asians v. the United Kingdom* [1973] ECHR 2.

¹⁹ Malia Bouattia, 'It's not just 'undesirables': Why Priti Patel's citizenship bill endangers the rights of all UK citizens' *The New Arab* (25 November 2021); Alba Kapoor, 'Citizenship is not a 'privilege' – the Borders Bill clause is a threat to ethnic minority Britons' *The Big Issue* (25 November 2021); Basit Mahmood, 'Britain's Borders Bill Will Institutionalize Second-Class Citizenship for Immigrants' *Jacobin* (17 December 2021); Nadine White, 'The most racist legislation in my lifetime': Protest at Nationality and Borders Bill reaches Downing Street' *Independent* (19 December 2021); 'Over 100 groups sign open letter objecting to 'two tier' UK nationality bill' *Middle East Monitor* (5 January 2022); Ramya Jaidev, 'The Nationality and Borders Bill is a slap in the face of the Windrush generation' *The Big Issue* (5 January 2022); Nalini Sivathasan, 'Nationality and Borders Bill: Why is it causing protests?' *BBC News* (7 January 2022); Josh Kaplan, 'Are you comfortable letting the government shred your citizenship?' *Jewish Chronicle* (12 January 2022).

²⁰ Ben van der Merwe, 'Exclusive: British citizenship of six million people could be jeopardised by Home Office plans' *New Statesman* (01 December 2021).

²¹ *Ibid.*

citizenship stripping as a national security measure in the context of the serious and deadly conflict in Northern Ireland, even at the height of the ‘Troubles’, but has increasingly used it as a counter-terrorism measure since 9/11²² – particularly regarding British nationals seeking to return from Syria²³. This difference in treatment prompts fears that the deprivation of citizenship from British Muslims is motivated by political and/or discriminatory factors.

Our organisation has filed a freedom of information request seeking the UK government’s disclosure of information about how many people the Secretary of State has deprived of their citizenship under Section 40 (2) since the end of 2018 (as well as their genders), but the government has refused to reveal these figures²⁴. Several written questions asking for these figures and breakdowns have also been put to the Home Office by members of the UK Parliament, but none have received a substantive answer²⁵. This ongoing refusal to comply with the Home Office’s duties of transparency makes it difficult to accurately assess the full impact of citizenship deprivation powers in the UK.

As a result, we are concerned that the UK’s existing practice of depriving people of citizenship on alleged national security or other grounds under Section 40 (2) of the British Nationality Act 1981 may amount to indirect discrimination, in violation of the UK’s obligations under Article 9 of the 1961 Convention and potentially in violation of the ICCPR.

Clause 9 of the Nationality and Borders Bill

We are deeply concerned that Clause 9 of the Nationality and Borders Bill would exacerbate the potential rights violations discussed above.

Section 40 (5) of the British Nationality Act 1981 currently requires the Secretary of State to give written notice to a person before depriving them of citizenship. However, if passed into law, Clause 9 would empower the Secretary of State to deprive a person of their British nationality without giving the person notice, as long as ‘it appears to the Secretary of State’ that –

- (a) *the Secretary of States does not have the information needed to be able to give notice,*
- (b) *it would for any other reason not be reasonably practicable to give notice, or*
- (c) *notice under that subsection should not be given - -*
 - (i) *in the interests of national security,*
 - (ii) *in the interests of the relationship between the United Kingdom and another country, or*
 - (iii) *otherwise in the public interest.*

As with the existing provisions under Section 40 (2) allowing citizenship stripping on vague grounds, we are concerned about the striking breadth, vagueness and subjectivity of the exemptions listed in Clause 9. In particular, the ‘otherwise in the public interest’ ground has an almost limitless reach. The clause ‘in the interests of the relationship between the United Kingdom and another country’ also makes individual rights subordinate to the UK’s foreign relations priorities – an approach that is inconsistent with the entirety of the international human rights legal framework.

Although the UK Government has made statements to the effect that it will only decline to give notice of citizenship deprivation in ‘exceptional circumstances’, there is no indication to this effect in Clause 9 or the rest of the statutory framework, and the exemptions listed above point in a different direction. Furthermore, even ‘exceptional’ decisions must comply with rights, and international human rights case law about the

²² Tufyal Choudhury, ‘[The Radicalisation of Citizenship Deprivation](#)’ (2017) 37(2) Critical Social Policy 225.

²³ Simon Hooper, ‘[The UK and Citizenship-Stripping Powers](#)’ *Middle East Eye* (03 April 2019); CJ McKinney, ‘[How many people have been stripped of their British citizenship?](#)’ *FreeMovement* (10 January 2022).

²⁴ Dan Sabbagh, ‘[Watchdog steps in over secrecy about UK women in Syria stripped of citizenship](#)’ *The Guardian* (29 March 2021).

²⁵ Lord Anderson, [British Nationality, Question for Home Office](#), UIN HL5076, tabled 5 January 2022; Lord Anderson, [British Nationality: Females, Question for Home Office](#), UIN HL5081, tabled 5 January 2022; Naz Shah, [British Nationality, Question for Home Office](#), UIN 102655, tabled 12 January 2022; Naz Shah, [British Nationality, Question for the Home Office](#), UIN 84382, tabled 30 November 2021; ‘[How many people have been stripped of their British citizenship?](#)’ *FreeMovement* (10 January 2022).

right to respect for private and family life indicates that they must be based on clear, publicly available laws that allow foreseeability.

In addition, as the UK Government has not disclosed information about how many people it has deprived of citizenship under Section 40 (2) since the end of 2018, it is difficult to assess whether the power has indeed only been used in ‘exceptional’ circumstances.

Practical implications for the right to appeal

We are concerned that dispensing with the requirement to give notice may make it even harder for people to access their right to a fair hearing and to challenge the Secretary of State’s decision to deprive them of citizenship.

People cannot appeal against decisions they do not realise exist. By the time they find out about a UK citizenship deprivation decision, it may be far more difficult for them to appeal, for example because crucial evidence has been lost due to the passage of time²⁶ or because the person is in a more precarious or dangerous situation. With respect to the latter situation, this is exactly the case for women deprived of their British citizenship whilst detained in camps in northeast Syria.

The consequences of being deprived of an effective right to appeal are serious. We reiterate that UK courts have overturned several of the Secretary of State’s orders to deprive people of citizenship on the basis that those deprivation orders made the person in question stateless²⁷. This fact underscores the importance of ensuring that people deprived of their citizenship can challenge that decision through fair proceedings. All human decision-making is fallible, and citizenship deprivation decisions by the UK government are no different.

We are therefore concerned that Clause 9 of the Nationality and Borders Bill will exacerbate the risk that the UK will be in breach of its obligations under Article 8 (4) of the 1961 Convention and Article 14 of the ICCPR when depriving people of citizenship on alleged national security or other grounds under Section 40 (2) of the British Nationality Act 1981.

UK government narratives on the right to citizenship

As a final point, we are concerned by statements made by members of the UK government to the effect that ‘citizenship is a privilege, not a right’²⁸. Such sweeping statements are misleading and potentially harmful. The Universal Declaration of Human Rights²⁹ recognises that ‘everyone has the right to a nationality’ (Article 15). Whilst this does not mean that everyone has the right to *acquire* any *specific* nationality, once nationality has been granted or otherwise obtained, it is protected against arbitrary deprivation by the international law provisions described throughout this submission.

The significance of the right to nationality – and the harmful impacts of losing it – cannot be overstated. Without citizenship, it can be difficult – and in some cases impossible – to access the rights, entitlements and sense of identity and belonging that come with being a national of a particular State. For example, people stripped of citizenship may lose access to healthcare, education or employment opportunities, and the right to live in and travel freely into and within the State – including the ability to live with their families. In some cases, depriving a person of citizenship may leave them stateless in law or in practice, a position that is internationally acknowledged to be one of extreme vulnerability.

²⁶ Ibid, [27].

²⁷ *C3, C4, C7 v. Secretary of State for the Home Department*, appeals nos. SC/167/2020, SC/168/2020, SC/171/2020, 18 March 2021; see also Ministry of Justice, [Tribunal Statistics Quarterly: April to June 2021](#) (09 September 2021): in the past six year, 40% of appeals against deprivation of nationality have been allowed by the First-tier Tribunal, and 46% in 2020/21.

²⁸ Haroon Siddique, ‘[New bill quietly gives powers to remove British citizenship without notice](#)’ *The Guardian* (17 November 2021).

²⁹ [Universal Declaration of Human Rights](#); see also Article 24, ICCPR; Article 5, [Convention on the Elimination of All Forms of Racial Discrimination](#); Article 9, [Convention on the Elimination of All Forms of Discrimination against Women](#); Articles 2 and 7, [Convention on the Rights of the Child](#).

We believe His Excellency the UN Secretary General António Guterres was correct in asserting in 2021 that that 'having nationality is not a privilege – it's a human right'³⁰. It is a right one that is protected by international legal provisions that the UK Government is obliged to respect.

Recommendations

In light of the information detailed above, we respectfully ask that you consider writing to the UK government to highlight the concerns raised above and ask:

1. How the UK government intends to proceed with Clause 9 of the Nationality and Borders Bill, including how the government intends to ensure that the legislation complies with its international law obligations to reduce statelessness, prevent discrimination and ensure the right to fair proceedings;
2. How the UK government intends to ensure that its existing practice of depriving people of their British nationality complies with international law, including in relation to the reduction of statelessness, prevention of discrimination and right to fair proceedings; and
3. For information on the number of people deprived of citizenship under Section 40 (2) of the British Nationality Act 1981 since 2018, in order that proper public and parliamentary scrutiny can take place to question and shed light on the operation of the UK government's citizenship deprivation practices. We believe it would be helpful to a human rights assessment if the government would also provide information about the genders, races/ethnicities and alternative nationalities of these individuals whose British nationality has been revoked.

We are happy to provide any further details and analysis to support your mandates going forward.

Sincerely,

Sarah St Vincent
Executive Director
Rights & Security International

Emily Ramsden
Senior Officer, Migration and Citizenship
Rights & Security International

³⁰ Antonio Guterres, '[Having nationality is not a privilege – it's a human right](#)' *Twitter* (18 November 2021).