



Rt Hon David Hanson MP  
House of Commons  
London  
SW1A 0AA

20 FEB 2014

Dear David,

#### IMMIGRATION BILL: DEPRIVATION OF CITIZENSHIP

I am writing following the meeting my predecessor held with you on Wednesday 6 February, where I understand he suggested it would be helpful to write to you with a summary of the discussion and to provide more general information on the intention behind clause 60.

I think it is important to be clear that we are not seeking a brand new power to deprive people of citizenship. Section 40 of the British Nationality Act 1981 sets out the two circumstances in which the Home Secretary can deprive a person of their citizenship.

- The first is where the person acquired it using fraud, false representation(s) or concealment of a material fact [*section 40(3) of the 1981 Act*]. In short: they used deception in order to gain their citizenship.
- The other is where the Secretary of State is satisfied that doing so is 'conducive to the public good' [*section 40(2) of the 1981 Act*] provided the person would not be left stateless as a result [*section 40(4) of the 1981 Act*].

Our addition of a new subsection (4A) to section 40 will relate only to a distinct sub-category of cases that currently fall within the second category listed above. It would mean that naturalised citizens who conduct themselves in a manner that is seriously prejudicial to the vital interests of the UK can be deprived of their citizenship regardless of whether or not it leaves them stateless as a result.

Statelessness does not arise as an issue in respect of those deprived on fraud grounds as the person should never have been granted British citizenship in the first place.

You also wanted to understand the practicalities of how the Home Secretary currently exercises the powers in s40(2) and what would be the practical impact of the new provisions.

Deciding whether deprivation is conducive to the public good is a case-specific exercise. The Home Secretary takes advice from her officials and those from other government departments to understand an individual's past actions, likely future action and the threat to UK and weighs these against the impact of deprivation action on their ECHR rights and on the welfare of any children etc. Currently, having reached a conclusion that deprivation would be conducive to the public good, the Home Secretary is prevented from taking that action if the individual would be left stateless – even in circumstances where they would have immediate recourse to another nationality. I have set out further down in this letter what are our obligations to individuals who are stateless.

In terms of what we mean by 'conducive to the public good' and 'conduct seriously prejudicial', as the Home Secretary said during the debate, we do not want to get into a mechanistic, check-list exercise of what does or does not come within these definitions. It is crucial that the Home Secretary can respond to individual circumstances.

However, in general, cases where deprivation is conducive to the public good would include those involving national security (including espionage); war crimes; serious and organised crime; and unacceptable behaviour such as glorification of terrorism.

Cases involving "conduct seriously prejudicial" will be a higher test and will focus predominantly on a sub-set of cases involving national security (including espionage and terrorism) and those who take up arms against British or allied forces.

To give an illustrative example of the type of case that would engage the conducive to the public good test, SIAC considered the case of Y1, an Afghan-born national who was naturalised as a British citizen on 25 August 2004. They upheld the Home Secretary's decision that to deprive him was conducive to the public good. The reason for the decision to deprive him of citizenship was that he was considered to be involved in terrorism-related activities and to have links to a number of Islamist extremists, including banned Islamist group Al Muhajiroun. He was detained by UK forces in Afghanistan in summer 2011, after visiting Pakistan's tribal areas. He was deprived of his citizenship on conducive grounds the same day. Despite adding that there may be "more options for controlling that risk if Y1 were in the UK," the Security Service advised the Home Secretary that Y1 "presented a substantial risk to UK national security".

The judge added that secret material given to the tribunal provides "absolutely conclusive evidence of the appellant's desire to engage in terrorist activity and very strong evidence of an enduring commitment to Jihadist ideas".

It also links to one of the issues touched upon in the debate during Report Stage: why we don't seek to prosecute individuals instead.

These are fundamentally different tests to satisfy. One is about proving - beyond reasonable doubt - that a person is guilty of committing a criminal offence; the other is about establishing precedent facts on which we base our assessment - on the balance of probabilities - that depriving a person of their citizenship status is conducive to the public good (and, in turn, demonstrating that a person's actions are seriously prejudicial to the vital interests of the UK).

That is not to say that the deprivation is a substitute for a criminal trial. Rather, it is to simply point out they are different assessments with different implications for the person concerned.

I understand you also discussed your concerns with Mark Harper around judicial oversight and the right of appeal a person subject to a deprivation order would have.

Section 40(5) of the 1981 Act establishes the general principles around making a decision and the ensuing right of appeal. Before issuing a deprivation order, the Home Secretary must: (i) notify the person of the decision to make a deprivation order; (ii) set out the reasons for it; and (iii) tell the person about their right of appeal.

Regulation 10 of the British Nationality (General) Regulations 2003 also sets out the procedures for notifying a person of that decision - including when that person is outside of the UK at the time. They provide that:

(a) where that person's whereabouts are known, the decision is served by delivering it to them personally or by sending it to them by post; or

(b) where that person's whereabouts are not known, the decision is served by sending it by post in a letter addressed to them at their last known address.

The appeal is then to either the Asylum and Immigration Tribunal (AIT) or, more likely in these types of cases, the Special Immigration Appeals Commission (SIAC) – where the SofS will have certified that the decision to deprive was based wholly or partly in reliance on information which they believe should not be made public.

Crucially though, the right of appeal already exists; a person can challenge the decision against them and that will not be affected by the wider changes to the appeals process in the Bill.

Given that there is an existing statutory appeal route, we are satisfied that the process is fully compatible with Article 6 of the European Convention on Human Rights.

We also discussed the potential impact on a person's family. Family members who hold British Citizenship will not be deprived under these powers unless - as a result of their own behaviour or activities - they also meet that seriously prejudicial 'test' or fall to be deprived under the other, existing deprivation powers.

Similarly, the proposed amendment will only apply to people who became British by naturalisation – which is something only possible for adults to do. Generally, children acquire citizenship via registration. Therefore, we would not be able to apply this proposed amendment to children or to adults who had acquired citizenship in this way.

For people who arrived in the UK as a child but did not naturalise until they were adults, we are not precluded from taking action. However, we would factor in their length of residence, ties to the UK and general integration into the consideration process as to whether such a decision was reasonable or proportionate.

The key point is that this is not about providing a power to deprive people of citizenship based on the activities of their family members.

Finally, we touched upon the rights of and obligations towards stateless people. As a party to both the UN Convention on the Reduction of Statelessness 1961 and the UN Convention on the Status of Stateless Persons 1954, the UK is obliged to comply with the provisions of those Conventions – which we will continue to do. If a person was recognised as a stateless person - for which there is now specific provision in the immigration rules - and the person was not excluded (for reasons similar to those that exist within the Refugee Convention) they would be recognised as such and would have:

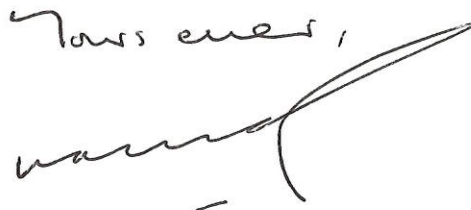
- protection against removal;
- the right to work and study;
- depending on circumstances, may be granted access to public funds;
- be able to apply for a stateless persons travel document.

A person would be excluded from a grant of leave specifically as a stateless person if there was serious reasons for considering that they:

- had committed a crime against peace, a war crime, or a crime against humanity;
- had committed a serious non-political crime outside the UK prior to their arrival in the UK; or
- have been guilty of acts contrary to the purposes and principles of the United Nations

Where a person cannot be removed to another country for legal or policy reasons we would have to consider whether a discretionary grant of leave was appropriate. An option would be for the person to be placed on limited leave, with conditions such as regular reporting restrictions or the need to notify the Home Office before taking up work or study in a particular field of work. This is consistent with persons excluded from the Refugee Convention.

I am copying this letter to Baroness Smith of Basildon, Emily Thornberry MP and have arranged for it to be made available in the Library of both Houses.

A handwritten signature in black ink, appearing to read 'James Brokenshire', with a large, sweeping flourish extending to the right.

**James Brokenshire MP**