



Home Office

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Rt Hon Baroness Smith of Basildon
House of Lords
London
SW1A 0AA

17th April 2014

Dear Angela,

The Government is currently considering how to protect the security of its citizens following the vote on the deprivation of citizenship provisions in the Immigration Bill, on Monday 7 April. Before the House divided, you asked a number of questions that you felt were left unanswered and I told the House I would respond to them in writing.

Firstly, you asked for more detail on the process and criteria for making a deprivation order under the new power the Government is seeking. You also asked about the definition of "seriously prejudicial", which forms part of the criteria for naturalised persons to be considered for deprivation under these proposed powers.

As I have outlined to the House, the Government recognises that the act of depriving someone of their citizenship is a serious one. Any decision to deprive a naturalised person of their British citizenship, which could render them stateless, would only be taken after considerable background work and careful consideration of a range of factors. Particular considerations to be taken into account before any final decision would include: having a detailed understanding of the national security threat that an individual posed to the UK; any potential human rights issues; and the scope for the individual to acquire another nationality. As now, any decision to deprive an individual of British nationality would be taken by the Home Secretary personally, on the basis of her consideration of detailed advice on the case from officials.

The test of “seriously prejudicial to the vital interests of the UK” is a high threshold to meet, and reflects the very serious nature of the threat posed by the individuals who would be considered under this provision. It is consistent with the wording used in the UN Convention on the Reduction of Statelessness (Article 8.3 (a) ii), and the declaration that the UK made on ratifying that Convention in 1966. As I have set out in previous written responses to Peers, conduct considered “seriously prejudicial” would include cases involving national security (including espionage and terrorism) and those who take up arms against British or allied forces.

You also requested more information about the circumstances surrounding those who are in the UK at the time of their deprivation, but who cannot return to their country of origin. In particular you asked what type of leave they would have, whether we could deport them and how national security would be protected.

As I have said many times, I believe it is an important principle that those who pose a national security threat to the UK, and have betrayed the values and laws of this country, should not enjoy the privileges of British citizenship, whether they are in the UK or overseas. Under the Government’s proposals, if an individual were deprived of British citizenship whilst in the UK, we would expect them to seek to acquire or re-acquire another nationality at the earliest opportunity. Where an individual was unable to resolve nationality issues and we were unable to remove them from the UK in the short-term, the Immigration Rules include provision for those who are stateless to apply for leave to remain. However there are also exclusion provisions¹ (similar to those that exist in the Refugee Convention) which may prevent a person from being granted leave as a stateless person, and it is likely that anyone deprived of citizenship under the Government’s proposals would be made subject to those provisions. If that individual could not be removed from the UK, it is likely that we would grant them limited leave to remain outside the Immigration Rules, with certain conditions attached. This would be analogous to the “restricted leave”² to which individuals excluded from the Refugee Convention are made subject, and could include reporting requirements and restrictions on employment, residency and study. We could only consider imposing these types of restrictions on individuals who are subject to immigration control; we could not do so for British citizens.

In summary, the ultimate aim of depriving those who are in the UK at the time of the decision would be to remove them from the country. Where that may not be possible in the shorter-term, this “restricted leave” would place

¹ If there are serious reasons for considering that they have committed a war crime, a crime against humanity, a serious non-political crime or acts contrary to the purposes and principles of the United Nations. Part 4.3
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/258252/stateless-guide.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257436/restricted-leave-article-1f-pdf.pdf

additional immigration restrictions on them, and hence disrupt their activities. In addition, the threat the individual poses to the UK and its interests would be further reduced by preventing them from travelling under the protection of a British passport to participate in terrorist-related activity overseas.

You also asked about circumstances where the individual being deprived is outside the UK.

The procedure for notifying a person of a decision to make a deprivation order is set out in Regulation 10 of the British Nationality (General) Regulations 2003 –and this applies equally to people overseas, as in the UK. Where a person's whereabouts are known, the decision is served by delivering it to them personally or by sending it to them by post. Where a person's whereabouts are not known, the decision is served by sending it by post to their last known address. The Home Secretary notifies the person of the decision to make a deprivation order, the reasons for it and their right of appeal. These regulations would apply in the same way to those individuals deprived of their citizenship under the Government's proposed power.

Whilst not obliged to do so under the Regulations, where possible the Home Secretary may also decide to attempt to notify the individual via their relatives as to the deprivation decision, and their right to appeal against it. Whilst appropriate steps are taken to seek to contact individuals, often the type of individuals who may be subject to deprivation action do not wish to be found.

Again, we would expect any individual who is overseas at the time of the deprivation decision to seek to resolve their nationality issues at the earliest opportunity. In cases where this is not possible, the individual would be able to avail themselves of whatever protection that country provides. We must be clear that such individuals should not expect to benefit from British protection if they act in a manner seriously prejudicial to the vital interests of the UK.

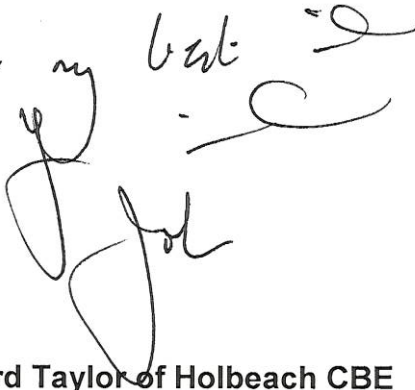
You also asked a number of questions about the UK's obligations to accept back those individuals who have been deprived and rendered stateless overseas. We set out in our response to the second report of the Joint Committee on Human Rights our understanding of the UK's international obligations in this respect arising from the "Special Protocol concerning statelessness 1930", which is restricted to 11 states and in limited circumstances. As I told the House, we will also place in the Library a full response to the paper prepared by Professor Guy Goodwin-Gill – which I hope to be able to do shortly after Easter – and our response will address this issue.

Finally, you asked about children who may be "left behind" when an individual is deprived. I have sought to reassure the House that deprivation action would only be taken against a small number of very dangerous individuals who threaten the security of the UK themselves. Family members would not be deprived on the basis of their relationship with any such individuals. Depending on the family members' status at the time of the deprivation, they would either retain that status (as a naturalised or settled person) or be eligible to apply for leave under the Immigration Rules. There are, as I

outlined earlier, a number of factors that are considered before a deprivation decision is taken, including the potential impact on any children involved.

I said at the outset of this letter that the Government is still considering what the next steps should be in pursuing this matter. I hope that my answers will prove useful if the House has to consider this matter again.

I am copying this letter to Peers who have spoken in the debates, as well as the Rt Hon David Hanson MP and Emily Thornberry MP. I will also arrange for a copy to be placed in the Library of the House.

With my best


Lord Taylor of Holbeach CBE