



Home Office

Baroness Williams

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BY EMAIL ONLY
All Peers
House of Lords
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25 January 2022

My Lords,

SECOND READING OF THE NATIONALITY AND BORDERS BILL

I am writing following the debate during second reading of the Nationality and Borders Bill on 5 January. I am grateful to noble peers for their valuable contributions to the debate. This letter addresses issues raised, and questions asked in relation to Clause 9, which will disapply the requirement to give notice of a decision to deprive a person of British citizenship in limited specified circumstances. This Bill's provisions relate only to the process of notification of a decision to deprive and does not alter the reasons for which a person could be deprived on their citizenship.

Deprivation of citizenship is used against those who obtained citizenship by fraud and where it is conducive to the public good. In order for deprivation on conducive grounds to be a consideration, the starting point is that the individual is considered to be a terrorist or an extremist, or to have been involved in espionage, war crimes, serious organised crime or similarly dangerous activities. Deprivation on conducive grounds is used sparingly and decisions are made following careful consideration of advice from officials and lawyers and in accordance with international law, including the UN Convention on the Reduction of Statelessness. All deprivation decisions come with a right of appeal.

Necessity of Clause 9

I was asked why such a power was needed at all. While existing legislation allows subjects to be notified by post or email at their last known address, at home or abroad, the provisions in this Bill are vital to protect the UK from those who would wish to do us harm. Using a last known address (if we hold one) risks challenge by an appellant on the ground that notice was not properly given (for example because it is a very old address) and, if that challenge is successful, would mean that the

person could have their British citizenship reinstated and then return to the UK and potentially cause harm. The implications of this are significant, particularly in cases where a decision to deprive a person of their citizenship has been made on the basis that the person poses a threat to national security.

It cannot be right that the Home Secretary must send notice to a last known address for service to be effective, when it is already known that the individual no longer lives there and perhaps has not lived there for many years. I have detailed below further examples of where the Home Office considers that it would be appropriate to use the power to disapply the requirement to give notice.

I was asked why the circumstances in which notice may be dispensed with are so broad. This is necessary to ensure existing deprivation powers can be used effectively in all circumstances, including where it is not reasonably practicable to give notice, for example because there is no way of communicating with the person, or where to do so would reveal sensitive intelligence sources. An inability to deprive an individual of citizenship could expose the UK to national security risk should it not prove possible to deprive an individual involved in for example, terrorism or espionage, due to an issue in communicating the deprivation decision to them. However as the types of conduct which the Government has stated would warrant deprivation on conducive grounds, as listed above, go wider than just matters of national security, and as deprivation action is also possible in response to individuals who have fraudulently acquired British citizenship, the circumstances where it might prove necessary to dispense with notice are similarly broader than just on grounds of national security.

Requirement to give notice

Questions were raised on where the requirement was to give notice after the event. There is no such requirement in statute, given the challenges raised in the above paragraphs. The Home Office will always work to provide an individual with copies of the relevant paperwork at such time as that individual establishes contact.

Time limits to appeals

I was also asked when the time limit to appeal would begin to run. The Home Office will always try to serve any deprivation notice at the point of decision; this notice includes information about the person's statutory appeal rights. Where it is not possible to give notice and the person later makes contact with the Home Office, as stated above they will be issued with a copy of the decision notice and an explanation of appeal rights so they can then seek to exercise their statutory right of appeal against the decision.

The time limits for appeals differ, depending on where the person is and who is responsible for processing the appeal. Appeals to the Immigration and Asylum Tribunal where the person is in the UK must be received within 14 days after notice is sent to the person, while a person outside the UK has 28 days from when they receive the notice. Appeals to the Special Immigration Appeals Commission (SIAC) where the person is in the UK must be made within 10 days of the notice being served (5 days if they receive notice while in detention), or 28 days if the person is outside the UK.

The Courts have the discretion to allow out of time appeals to be admitted where there are exceptional circumstances to justify this and SIAC may extend the time limits in these rules if satisfied that by reason of special circumstances it would be unjust not to do so. It is current policy in such cases for the Home Office not to challenge an out of time appeal in a case where the delay is due to notice not being given and we would continue that policy going forwards. The Bill does not therefore affect the ability of a person to exercise their statutory right of appeal against the deprivation decision.

Previous deprivation orders

I was further asked why the courts are restrained from treating previous deprivation orders as invalid for failure to comply with notification requirements. The Bill seeks to reaffirm our robust and effective system especially as this often relates to decisions taken to protect the national security of the UK, and ensures that deprivation orders made in accordance with relevant legislation at the time continue to remain valid and effective in protecting the UK from those who would wish to do us harm.

I was asked why the permission of a judge will not be required to remove citizenship without notice. The Bill does not widen the reasons for which a person could be deprived of their citizenship or affect their right to appeal the decision; the provisions relate solely to the process of notification of a decision to deprive. As the provisions seek only to address the means by which such a decision can be brought into effect, the Government does not consider it appropriate to introduce a requirement of judicial oversight to a power that has been exercised by the Home Secretary for many years.

Examples of where Clause 9 could apply

The following examples set out where the provisions of Clause 9 could apply. It could apply on national security grounds where sensitive intelligence provides details of an individual's whereabouts but relying on that intelligence would reveal the source and could therefore cause damage to the UK's national security. Clause 9 could apply in the interests of the relationship between the UK and another country, where sensitive intelligence has been obtained from a country relating to an individual's whereabouts which could cause notice to be served, but using the address provided via that intelligence may damage the national security interests of the other country and therefore damage the relationship between the UK and that country.

Finally clause 9 could apply on public interest grounds where there is no functioning postal system in the country where the person is and delivery via courier would expose the courier to a risk of harm from the individual or, as a result of the prevailing circumstances in the region, that the Home Office would not want to expose the courier to that risk.

I look forward to debating these important issues with you all in due course.

I am placing a copy of this letter in the House libraries.

Kind regards,

A handwritten signature in black ink, appearing to read 'Susan', is centered on a light yellow rectangular background.

**Baroness Williams of Trafford
Minister of State**

