

Baroness Williams of  
Trafford  
Minister of State for the  
Home Office



2 Marsham Street  
London SW1P 4DF  
[www.gov.uk/home-office](http://www.gov.uk/home-office)

BY EMAIL ONLY  
All Peers  
House of Lords  
SW1A 0PW

**25 February 2022**

**To: All Peers**

My Lords,

**Nationality and Borders Bill: Lords Committee Stage 27 January 2022**

I am grateful to all members of the House for the detailed debate on the Nationality and Borders Bill on 27 January. This covered groups 1 through to 7 and during the course of that debate, I undertook to write on the following matters raised by the Noble Lords.

**Clause 10**

I wanted to clarify our position on Clause 10. This will amend the current provision for the registration of a child born in the UK, who has been stateless since birth, and lived in the UK for at least five years without acquiring a nationality, even where they could easily access one.

As I explained in Committee, our rationale in making this change is that the current provision was intended to benefit genuinely stateless children, but is susceptible to abuse by parents who choose not to register their child's birth, where that could easily acquire a nationality for their child, effectively choosing statelessness for their child. Judge Ockleton in the 2017 decision of the High Court in *R (MK (a child)) v. Secretary of State for the Home Department* ([2017] EWHC 1365 (Admin)) recognised that his conclusion in that case, that such children are legally stateless, "opens an obvious route to abuse".

Whilst citizenship may not have been the longer term goal in a parents' choice not to register the birth, a successful application for registration under the statelessness provisions once the child has reached the age of five can then have an advantageous impact on the parents' status in the UK.

## **Background and Trends**

Between 2010 and 2015, fewer than ten applications under this route were received each year. In 2016 there were 40, but in 2017 that number rose to 1265 and remained at a similar level for the following years. However, it is not solely the numbers in themselves that concern us, but the trends that these reflect. In Home Office sampling of over 200 stateless child applications received between 2015 – 2021, 90% of parents were Indian and 6% were Sri Lankan. In simple terms, this means that 96% of applicants during this time were parents with nationalities that simply require a child's birth to be registered at a High Commission in the UK for the child to acquire their parent's nationality by descent, but otherwise have ready access to a nationality. Many cases had poor immigration histories, with 79% of parents having no leave at the time of the birth, and only 16% of parents with leave at the time of the birth. In 67% of the cases, the parents had, by the time of the sample, gone on to get leave as a result of this application (or a previous child registered under the same provision). In addition, within this sample, 90% of Indian and Sri Lankan parents had been able to take steps to contact the High Commission to obtain a letter to show their child was in fact not a citizen of that country, and so clearly had no problem in approaching their authorities. (We do not have data on how many actually attempted to register the birth, although, as I said in the House, it is not difficult to do so.) Caseworkers have confirmed that this sample reflects their overall experience of considering cases on this route. This demonstrates a clear and conscious decision by the parents not to acquire a nationality for their child for at least 5 years, which we do not believe is right, when it is so readily available to them.

Views were expressed that we are preventing children born in the UK from acquiring British nationality. Genuinely stateless children will continue to be able to acquire British nationality under the stateless provisions. Those who are not genuinely stateless will be able to apply for citizenship when their parents become settled, or on reaching the age of 10, in exactly the same way as other children born in the UK to non-settled parents. Holding the nationality of another country does not preclude such an application.

## **1961 Convention**

We are satisfied clause 10 complies with our obligations under the Convention on the Reduction of Statelessness 1961 (the "1961 Convention") and we have taken into account the approach recommended by the UNHCR Guidelines No. 4 in drafting this provision. In particular, we note paragraph 24 of these Guidelines which provides that responsibility to grant nationality to children who would otherwise be stateless "is not engaged where a child is born in a State's territory and is stateless, but could acquire a nationality by registration with the State of nationality of a parent". The footnote to this paragraph records that this issue was raised during the drafting of the 1961 Convention by the representative for Switzerland, suggesting that this is an issue which has been encountered by other state parties to the Convention and which necessitated guidance on the point.

We will consider each case on its own merits, taking into account what steps are needed to be taken in order for their child to acquire their parents' nationality, and whether it would be reasonable, for example, for parents to obtain any relevant documents. We will publish guidance to set out examples of what we consider to be reasonable steps that someone, or someone acting on a child's behalf can take to acquire citizenship. However, where acquisition of a citizenship is dependent on the parents taking an action, such as registering the child's birth, we anticipate that we would consider whether they could reasonably be expected to do so in the particular circumstances.

I look forward to continuing to work with you all to deliver this important legislation and further discussing these critical issues as the Bill moves through Parliament.

A copy of this letter will be placed in the libraries of both Houses.

A handwritten signature in black ink, appearing to read 'Susan', written in a cursive style.

**Baroness Williams of Trafford  
Minister of State**