

SOAS ICOP Policy Briefings

To Inform Government and Parliamentary Debates

From Second Class British Citizenship to None by Fahad Ansari, Solicitor (27th January 2022)

Until 2003, the power of the Secretary of State (SS) to deprive individuals of their citizenship was severely restricted and limited to cases where citizenship was obtained by fraud and where the SS was satisfied that **naturalised** or **registered** citizens had engaged in **treasonous** conduct, even if this left them stateless. Citizens who were British by birth could not be deprived of citizenship. **There was not a single incident of deprivation between 1973 and 2003.**

Since then, the powers of the SS in this respect have been [significantly broadened](#):

- [2003](#): expanded use of these powers to those **born British**, if they are deemed to automatically inherit citizenship from the country their parents were originally citizens of according to the laws of that country. A lowered threshold was also applied such that the SS had to be satisfied that a person had engaged in conduct **seriously prejudicial to the vital interests of the UK**. The Act provided for the Special Immigration Appeals Commission (SIAC) to hear appeals and rely on **secret evidence**. Citizens could also no longer be deprived if it left them stateless.
- [2005](#): removed suspensive effect of the appeal such that the deprivation order can be made with immediate effect prior to an appeal and therefore **without prior judicial oversight**.
- [2006](#): lowered threshold to SS being satisfied deprivation is **conducive to the public good**.
- [2014](#): enabled the SS to deprive a naturalised citizen, even if it makes them **stateless**, if the SS has a reasonable belief that the person is able to become a citizen of another country and that they have acted in a manner seriously prejudicial to the vital interests of the UK.

The cumulative effect of this has been that:

- Since 2003, the power has been used on [approximately 500](#) occasions.
- Exercise of the power has had a [disproportionate impact on non-white British citizens](#) due to their ancestral connections with other countries under whose laws they are nationals.
- Individuals have been deprived who did not even know they were dual nationals and had little or no connection with the country of their second nationality.
- Deprivation almost always occurs while individuals are abroad, leaving them stranded for years (due to shortage of court resources) without access to lawyers and struggling to provide evidence of finances required for legal aid.
- It has been left to the SS to define in [policy](#) what is 'conducive to the public good' as there is no statutory definition of the phrase.
- The power has even been used to deprive individuals [convicted of serious organised crime](#) as opposed to ['the most flagrant cases of disloyalty'](#) as was parliament's stated intention in 2002.
- Judges must give [due respect](#) and significant deference to the assessment of the SS.
- Children of British citizens born after deprivation have been [left without British citizenship](#), in some cases effectively stateless, even where their parents have succeeded in their appeals.

Through Clause 9, the government now wishes to further strengthen the powers of the SS by enabling the SS to deprive people of their citizenships without even informing them.

Recommendations

- Repeal section 40(2) and 40(4) so that the power to deprive is limited to cases where citizenship was obtained by fraud.
- Remove the discretion of the SS to certify a decision such that any appeal goes to the SIAC, where secret evidence can be used. Appellants should see the evidence against them.
- Re-introduce the suspensive effect of the appeal right so that deprivation orders cannot be made until appeal proceedings have come to an end.
- Protect the citizenship rights of children born after an individual has been deprived.
- Provide automatic entitlement to legal aid for anyone deprived of their citizenship.
- Allocate greater resources to the courts to hear these appeals in good time.

For further information contact the author at fahad@riverwaylaw.com. Contact Prof Alison Scott-Baumann for access to other experts at as150@soas.ac.uk, and visit [our website](#) for more information. *The views expressed in SOAS ICOP Briefings are those of the authors and do not necessarily represent those of SOAS.*