Deprivation of British citizenship and withdrawal of passport facilities

In recent years there has been an increasing use of powers to deprive people of their British citizenship and withdraw British passport facilities, particularly in respect of those who may be involved in fighting, extremist activity or terrorist training overseas.

Under section 40 of the British Nationality Act 1981 (as amended), an order to deprive a person of their British citizenship can be made if the Home Secretary is satisfied that:

- it would be conducive to the public good to deprive the person of their British citizenship status and to do so would not render them stateless; or
- the person obtained their citizenship status through naturalisation, and it would be conducive to the public good to deprive them of their status because they have engaged in conduct “seriously prejudicial” to the UK’s vital interests, and the Home Secretary has reasonable grounds to believe that they could acquire another nationality; or
- the person acquired their citizenship status through naturalisation or registration, and it was obtained by means of fraud, false representation or concealment of any material fact.

In the second and third scenarios, a person may be deprived of their British citizenship even if this would leave them stateless. “Conducive to the public good” means depriving in the public interest on the grounds of involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours.

The power to deprive a naturalised person of their citizenship status and leave them vulnerable to statelessness due to “seriously prejudicial” conduct derives from section 66 of the Immigration Act 2014, which came into effect on 28 July 2014. Some commentators have questioned how this controversial power will be applied, and whether it undermines the UK’s international obligations.

The Home Secretary also has powers to issue, withdraw and refuse to issue British passports under the Royal Prerogative (an executive power which does not require legislation).

The Counter-Terrorism and Security Bill of 2014-15 seeks to strengthen powers to seize passports and exclude British nationals from the UK (without extending citizenship deprivation powers).
1 Current deprivation of citizenship powers

The British Nationality Act 1981 (‘the BNA 1981’) is the basis of current nationality law. The Act came into force on 1 January 1983. It has always included powers to deprive a person of their British nationality, although the nature of these powers has changed over the years due to amendments made by subsequent pieces of legislation.\(^1\)

The evolution of deprivation of citizenship powers under the BNA 1981 is summarised in the appendices to this note.

Most recently, section 66 of the Immigration Act 2014 (in effect from 28 July 2014) inserted new provisions into the BNA 1981 enabling the Home Secretary to deprive a naturalised person of their British citizenship status on the grounds that they had conducted themselves in a manner “seriously prejudicial” to the vital interests of the UK, and there are reasonable grounds to consider that they could be eligible for another nationality. In reaching a decision to deprive on these grounds, the Home Secretary can take into account conduct which took place prior to this section coming into force.\(^2\)

As a result of these changes, the current powers, as set out in section 40 of the BNA 1981 (as amended), enable the Home Secretary to make an order to deprive a person of their British citizenship status in any of the following circumstances:

- The person obtained their citizenship status through registration or naturalisation, and the Home Secretary is satisfied that this was obtained by fraud, false representation or the concealment of any material fact (s40(3));

---

\(^1\) Powers to deprive a person of British nationality also existed in previous pieces of nationality legislation – introduced by the British Nationality and Status of Aliens Act 1914 (s7). The British Nationality and Status of Aliens Act 1918 repealed the original s7 and replaced it with extended deprivation powers. See also s20 and s21 of the British Nationality Act 1948 (as introduced).

\(^2\) Immigration Act 2014, s66(2)
- The Home Secretary considers that deprivation "is conducive to the public good", and would not make the person stateless (s40(2); s40(4));

- The person obtained their citizenship status through naturalisation, and the Home Secretary considers that deprivation is conducive to the public good because the person has conducted themselves "in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory", and the Home Secretary has reasonable grounds to believe that the person is able to become a national of another country or territory under their laws (s40(4A)).

In the first and third scenarios, deprivation of citizenship is permissible even if the person would be left stateless.

"False representation" means a representation which was dishonestly made on the applicant’s part. "Conducive to the public good" means depriving in the public interest on the grounds of involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours.³

British nationality law provides for six different types of British nationality/citizenship status, of which ‘British citizen’ is the most common. The deprivation of citizenship powers apply to all of these categories.

There are also provisions within common law to ‘nullify’ an application for British citizenship if it is found to have been ineffective from the outset. These do not depend on misconduct by the individual or the Secretary of State being satisfied on certain matters. The application is treated as if it never took place.

As discussed in section 6 to this Note, the Prime Minister has recently confirmed that the Government is considering what action it can take to exclude British nationals who are considered to pose a threat to national security but are not covered by existing deprivation of citizenship powers.

2 Rights of appeal against deprivation of citizenship

Section 40(5) of the BNA 1981 (as amended) states that before making an order for deprivation of citizenship, the Secretary of State must give the person written notice specifying the reasons for the order and the person’s right of appeal.

The British Nationality (General) Regulations 2003 specify the procedure for giving notice of a proposed deprivation of citizenship order and cancelling registration or naturalisation.⁴ For example, if the person’s whereabouts are known, written notice may be personally delivered or sent by post. If their whereabouts are not known, notice is sent to their last known address.⁵

Section 40A of the BNA 1981 sets out the rights of appeal. An appeal against the decision to make an order for deprivation is made to the First-Tier Tribunal (Immigration and Asylum Chamber). Onward appeals are to the Upper Tribunal and Court of Appeal (or Court of

³ UKVI Nationality Instructions, volume 1 chapter 55 ‘Deprivation (section 40) and nullity’ (undated; accessed 28 August 2014)
⁴ SI 2003/548
⁵ SI 2003/548, r10
Session in Scotland). However, if the Secretary of State certifies that her decision was taken wholly or partly in reliance on information which she considers should not be made public in the interest of national security, the UK’s relations with another country or otherwise in the public interest, the right of appeal is to the Special Immigration Appeals Commission instead of the First-Tier Tribunal. Onward appeals are to the Court of Appeal or Court of Session.

Appealing against the decision to make a deprivation order is ‘non-suspensive’ – i.e. the deprivation order can be made (and the person deported from the UK, if they are not already outside the UK) whilst the right of appeal is being exercised. In the event of a successful appeal, the Tribunal (or SIAC) may make a direction that a deprivation order be treated as having had no effect.6

A journal article published in late 2013 gave some details about some cases which have gone to appeal:

Of the s 40(2) BNA 1981 orders made so far, two subjects have successfully appealed to SIAC (including... one in the B2 appeal now reversed on appeal to the Court of Appeal), two have apparently been killed in drone strikes ordered by the Government of the United States of America, one has succeeded in reversing SIAC’s adverse decision on appeal to the Court of Appeal, by a decision of that Court recently upheld by the Supreme Court [al-Jedda], and one has been secretly transferred to custody in the United States. Further appeals at various stages are pending in some of these cases. It remains the case that all of the relatively few reported appeals to date have been appeals considered by SIAC following certification under s 40A(2) BNA 1981: no appeals against s 40(2) decisions seem to have remained in the Tribunal.7

3 Recent use of deprivation orders – how many and in what circumstances?

In May 2014 James Brokenshire, Minister for Immigration and Security, gave figures for the number of deprivation orders issued since 2006. He contended that the figures illustrated that the powers are used “extremely sparingly”:

- 27 deprivations had occurred on conducive to the public good grounds; and
- 26 deprivations had occurred on fraud, false representations or concealment of material fact grounds, and another case was outstanding.8

The Bureau of Investigative Journalism’s ongoing “Citizenship Revoked” investigation reports on the use of these powers and specific case-studies. By piecing together information from figures released to Parliament, FOI requests, and other sources, it has deduced that 48 of the deprivation cases have occurred under the Coalition government (as at 3 June 2014).

The increasing use of deprivation of citizenship powers in recent years has been borne out by answers to PQs, which also provide some further details about the use of the powers and profile of cases affected.

---

6 British Nationality Act 1981 (as amended), s40A(3)
8 HC Deb 7 May 2014 c191
Mr Harper: Since 2000, 24 individuals have had their British citizenship revoked in the following years:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>1</td>
</tr>
<tr>
<td>2007</td>
<td>1</td>
</tr>
<tr>
<td>2009</td>
<td>2</td>
</tr>
<tr>
<td>2010</td>
<td>5</td>
</tr>
<tr>
<td>2011</td>
<td>6</td>
</tr>
<tr>
<td>2012</td>
<td>6</td>
</tr>
<tr>
<td>2013</td>
<td>3</td>
</tr>
</tbody>
</table>

Of the 24, 20 were deprived on conducive grounds alone; two on both conducive and fraudulent grounds and two because of fraud, false representation or concealment of facts.

Of the 24 individuals that have had their citizenship revoked—two had British citizenship for less than one year; 13 had held citizenship between 1-10 years; nine had held citizenship for more than 10 years.

The 24 individuals’ other nationalities were: Russian, Somali, Yemeni, Australian, Pakistani, Afghan, Albanian, Egyptian, Lebanese, Sudanese, Vietnamese, Iranian, Iraqi and Nigerian. These individuals had either held British citizenship from birth or acquired it by application.

The 24 revocation cases are made up of both male and female individuals, all of whom were over the age of 18.

James Brokenshire: The figures for each year are:

(a) 2012: five orders issued on conducive [sic] grounds; fewer than five issued on fraudulent grounds.

(b) 2013: eight orders issued on conducive grounds; 12 issued on fraudulent grounds.

(c) 2014: 0 (zero) orders issued on conducive grounds; fewer than five issued on fraudulent grounds.

The nationality of the individuals who have been deprived of British citizenship since 2012 are as follows:

Afghanistan, Albania, Bangladesh, Egyptian, Iran, Iraq, Lebanon, Morocco, Nigeria, Pakistan, Somalia, Sudan, Uganda and Yemen.
The deprivation decision is permanent unless and until it is revoked. In accordance with the Home Office’s policy on information management, once a deprivation of citizenship order has been issued under section 40 of the British Nationality Act 1981, records on the individual will be retained until he/she reaches the age of 75 or until his/her death.

HC Deb 8 July 2014 c196-7W: (...) Karen Bradley: Since March 2014 fewer than five individuals have been deprived of their British citizenship.

(...) Due to the small number of cases involved, revealing the other nationalities of the individuals deprived may make it possible to determine their identity and so this detail will not be released.

This information has been provided from local management information and is not a national statistic. As such it should be treated as provisional and therefore subject to change.

In December 2013 the Bureau of Investigative Journalism reported a significant increase in the use of deprivation powers in 2013, in part due to British citizens travelling to fight in Syria.\(^9\) The article contended that in the vast majority of cases, the deprivation orders had been issued whilst the individual was overseas, resulting in them being left “stranded abroad” whilst legal appeals against deprivation could take years to resolve.

A Home Office response to a Freedom of Information request, published in December 2014, stated that 37 individuals had been deprived of their British citizenship on either “conducive to the public good” grounds, or grounds of fraud, false representation or concealment of material fact. None of the individuals were sole British nationals.\(^10\)

James Brokenshire has denied that the Government deliberately waits to make a deprivation order until the person is outside the UK:

It is true that people have been deprived while outside the UK, but I do not accept that it is a particular tactic. It is simply an operational reality that in some cases the information comes to light when the person is outside the UK or that it is the final piece of the picture, confirming what has been suspected. In other cases, we may determine that the most appropriate response to the actions of an individual is to deprive that person while they are outside the UK. Equally, there are cases where it can be determined that it is appropriate to take action to deprive individuals while they are inside the UK.

(...) I understand that Members are concerned about instances where deprivation action takes places when a person is outside the UK, and I hear the hon. Lady’s point. I restate that the Home Secretary takes deprivation action only when she considers it is appropriate and that may mean doing so when an individual is abroad, which prevents their return and reduces the risk to the UK. That individual would still have a full right of appeal and the ability to resolve their nationality issues accordingly. It is often the travel

---

\(^9\) The Bureau of Investigative Journalism, ‘Rise in citizenship-stripping as government cracks down on UK fighters in Syria’, 23 December 2013

\(^10\) GOV.UK, FOI release, Individuals deprived of British citizenship since January 2013, 18 December 2014
abroad to terrorist training camps or to countries with internal fighting that is the tipping point—the crucial piece of the jigsaw—that instigates the need to act.11

4 Powers to withdraw British passports

British citizens are not entitled to a passport. Passports are issued, withdrawn and refused at the discretion of the Home Secretary under the Royal Prerogative (an executive power which does not require legislation).12

In April 2013 the Home Secretary provided an update on how these powers are exercised, in a Written Ministerial Statement which redefined the 'public interest' criteria for refusing or withdrawing a passport:

A decision to refuse or withdraw a passport must be necessary and proportionate. The decision to withdraw or refuse a passport and the reason for that decision will be conveyed to the applicant or passport holder. The disclosure of information used to determine such a decision will be subject to the individual circumstances of the case.

The decision to refuse or to withdraw a passport under the public interest criteria will be used only sparingly. The exercise of this criteria will be subject to careful consideration of a person's past, present or proposed activities.

For example, passport facilities may be refused to or withdrawn from British nationals who may seek to harm the UK or its allies by travelling on a British passport to, for example, engage in terrorism-related activity or other serious or organised criminal activity.

This may include individuals who seek to engage in fighting, extremist activity or terrorist training outside the United Kingdom, for example, and then return to the UK with enhanced capabilities that they then use to conduct an attack on UK soil. The need to disrupt people who travel for these purposes has become increasingly apparent with developments in various parts of the world.

Operational responsibility for the application of the criteria for issuance or refusal is a matter for the Identity and Passport Service (IPS) acting on behalf of the Home Secretary. The criteria under which IPS can issue, withdraw or refuse a passport is set out below.

Passports are issued when the Home Secretary is satisfied as to:

i. the identity of an applicant; and

ii. the British nationality of applicants, in accordance with relevant nationality legislation; and

iii. there being no other reasons—as set out below—for refusing a passport. IPS may make any checks necessary to ensure that the applicant is entitled to a British passport.

A passport application may be refused or an existing passport may be withdrawn. These are the persons who may be refused a British passport or who may have their existing passport withdrawn:

---

11 HC Deb 11 February 2014 c261-2WH

12 See Gov.uk, 'British passport eligibility', 8 November 2013 and HM Passport Office, Passports policy, 'Royal prerogative', 13 January 2012
i. a minor whose journey was known to be contrary to a court order, to the wishes of a parent or other person or authority in whose favour a residence or care order had been made or who had been awarded custody; or care and control; or

ii. a person for whose arrest a warrant had been issued in the United Kingdom, or

iii. a person who was wanted by the United Kingdom police on suspicion of a serious crime; or a person who is the subject of:

   a court order, made by a court in the United Kingdom, or any other order made pursuant to a statutory power, which imposes travel restrictions or restrictions on the possession of a valid United Kingdom passport; or

   bail conditions, imposed by a police officer or a court in the United Kingdom, which include travel restrictions or restrictions on the possession of a valid United Kingdom passport; or

   an order issued by the European Union or the United Nations which prevents a person travelling or entering a country other than the country in which they hold citizenship; or

   a declaration made under section 15 of the Mental Capacity Act 2005.

iv. A person may be prevented from benefitting from the possession of a passport if the Home Secretary is satisfied that it is in the public interest to do so. This may be the case where:

   a person has been repatriated from abroad at public expense and their debt has not yet been repaid. This is because the passport fee supports the provision of consular services for British citizens overseas; or

   a person whose past, present or proposed activities, actual or suspected, are believed by the Home Secretary to be so undesirable that the grant or continued enjoyment of passport facilities is contrary to the public interest.

There may be circumstances in which the application of legislative powers is not appropriate to the individual applicant but there is a need to restrict the ability of a person to travel abroad.

The application of discretion by the Home Secretary will primarily focus on preventing overseas travel. There may be cases in which the Home Secretary believes that the past, present or proposed activities—actual or suspected—of the applicant or passport holder should prevent their enjoyment of a passport facility whether overseas travel was or was not a critical factor.13

In November 2014 the Home Secretary said that she had refused or cancelled 29 passports to disrupt the travel of people planning to engage in terrorist-related activity overseas since updating the Royal Prerogative criteria in April 2013.14

In updating the public interest criteria in April 2013, the Government became aware that there were no explicit powers allowing Crown officials to seize a cancelled passport, even though passports remain the property of the Crown.15 This was remedied by section 147 and Schedule 8 of the Anti-social Behaviour, Crime and Policing Act 2014, which give powers to...
require the return of a cancelled passport, and to search for and seize and retain a passport or other travel document. Failure to hand over travel documents without reasonable excuse, or obstructing a search for documents are summary offences subject to maximum penalties of six months' imprisonment or fine, or both. The powers came into effect on 14 March 2014.\(^\text{16}\)

The Home Affairs Committee’s May 2014 report into Counter-terrorism discusses use of the power:

95. In the past the use of the power has been thought to have been rare. It was reported to have been used only 16 times between 1947 and 1976. It was also reported to have been used in 2005 following the return from Guantanamo Bay of Martin Mubanga, Feroz Abbasi, Richard Belmar and Moazzam Begg, However, because it is a royal prerogative there is no requirement for the Home Office to report its use to Parliament. When he gave evidence to us on the 18 March 2014, the Immigration and Security Minister informed the Committee that the Royal Prerogative had been used 14 times since April 2013. (…)

96. The withdrawal of passports is a vital tool in preventing UK citizens from travelling to foreign conflicts. We understand the need to use the prerogative power to withdraw or withhold a citizen’s passport. Given that the estimates of foreign fighters are in the low hundreds, we are surprised that it has only been used 14 times since April 2013 and recommend that, in all appropriate circumstances where there is evidence, the power is utilised as an exceptional preventative and temporary measure. However, we note that its use is not subject to any scrutiny external to the executive. We recommend that the Home Secretary report quarterly on its use to the House as is currently done with TPIMs and allow the Independent Reviewer of Terrorism Legislation to review the exercise of the Royal Prerogative as part of his annual review.\(^\text{17}\)

The Counter-Terrorism and Security Bill, discussed in section 6 below, includes measures to strengthen powers to seize passports at ports.

A separate Library Standard Note on Schedule 7 of the Terrorism Act 2000 discusses powers available to police, immigration officers and designated customs officers to stop and question travellers at ports and airports.

5 Practical implications of depriving citizenship or withdrawing passports

The practical implications of decisions to deprive a person of their British citizenship were briefly outlined in written evidence submitted by the Home Office to the Home Affairs Committee’s 2014 inquiry into Counter-terrorism:

Deprivation of British citizenship results in simultaneous loss of the right of abode in the United Kingdom and so paves the way for possible immigration detention, deportation or exclusion from the UK.

The Royal Prerogative powers were described as:

\(^{16}\) SI 2014/630

\(^{17}\) Home Affairs Committee, Counter-terrorism, 9 May, HC231 of 2013-14
an important tool to disrupt individuals who plan to engage in fighting, extremist activity or terrorist training overseas and then return to the UK with those skills.\textsuperscript{18}

A letter sent from Lord Taylor of Holbeach, Home Office Minister, after Lords Report stage debate on the \textit{Immigration Bill} gave further detail about the practical consequences that the Government envisaged would apply to people if they had been deprived of British citizenship under the powers it had proposed in the \textit{Immigration Bill} and could not return to their country of origin.\textsuperscript{19}

It recognised that anyone who had been deprived of their British citizenship in such circumstances would be unlikely to satisfy the eligibility criteria for leave to remain under the Immigration Rules for stateless people. However, the letter stated that there would be scope to grant them a period of ‘restricted leave’, which could be subject to conditions such as restrictions on employment and residency.

6 Further measures in the \textit{Counter-Terrorism and Security Bill}

Part 1 of the \textit{Counter-Terrorism and Security Bill} currently before Parliament includes two new powers to place temporary restrictions on travel, as briefly summarised below. The Bill does not seek to extend deprivation of citizenship powers.

Library Research Paper \textit{Counter-Terrorism and Security Bill 2014-15} (prepared for the Bill’s Second Reading debate in the Commons) and Library briefing \textit{Counter-Terrorism and Security Bill 2014-15: Parliamentary Stages} (prepared to reflect the later stages of the Bill’s passage) provide additional background information and a more detailed summary of the Bill's provisions.

6.1 Temporary Passport Seizure powers

Part 1, Chapter 1 set out new powers for police constables and designated immigration and customs officers to seize travel documents (including passports and tickets) from individuals who are encountered at a port in Great Britain or Northern Ireland and suspected of involvement in terrorism.

The travel documents could be retained for up to 14 days initially, whilst investigations into the potential for longer term disruptive action take place. If more time is needed, the police could apply to a court for authorisation to continue to hold the travel documents for up to a maximum 30 days.

The powers could be used on inbound travellers (i.e. those who are returning to the UK), where there are reasonable grounds to suspect that they will soon travel again for terrorism-related purposes, as well as on those departing the UK. They would apply to British nationals and travellers of other nationalities.

The Home Office \textit{factsheet} for this part of the Bill contends that the powers are necessary because existing powers (such as the exercise of the Royal Prerogative) have a longer ‘lead-in time’. The new powers would enable the authorities to disrupt an individual’s immediate travel plans, and give them time to conduct further investigations and consider taking further action against the individual. Further action could involve criminal prosecution, imposing a

\textsuperscript{18} Home Affairs Committee, \textit{Written evidence: Counter terrorism}, as at 21 January 2014, p.22

\textsuperscript{19} Letter from Lord Taylor of Holbeach to Rt Hon Baroness Smith of Basildon, 17 April 2014, \textit{DEP 2014-0641}
TPIM, cancelling the passport through use of the Royal Prerogative, or pursuing deprivation of citizenship or deportation.\(^\text{20}\)

### 6.2 Temporary Exclusion Orders

**Part 1, Chapter 2** seeks to give the Government greater powers to manage the return to the UK of British people suspected of engaging in terrorism-related activity overseas.

It would allow for “temporary exclusion orders” (TEOs) to be imposed on British citizens and other nationals who have the ‘right of abode’ in the UK, if the Home Secretary “reasonably suspects” they have been involved in terrorism-related activity outside the UK.

Once a TEO had been imposed, it would be enforced by cancelling the individual’s travel documents and adding their details to relevant border ‘watch-lists’. An individual subject to a TEO would need to apply to the Home Secretary for a permit to return to the UK. The permit would specify the details of their return to the UK (time, manner, place of arrival etc.) and other conditions that the individual would be required to comply with upon their return, such as attending a deradicalisation programme.

At Lords Committee stage, the Government tabled some amendments providing for judicial oversight of decisions to impose TEOs. This had been an area of contention during the Bill’s earlier stages.

Appendix 1 International law, and changes to domestic legislation 1981 - 2006

International law
There are various provisions in international law and treaties related to deprivation of citizenship and statelessness. For example:

- **Universal Declaration of Human Rights**: Article 15 declares that “everyone has the right to a nationality”.

- **1954 UN Convention on Stateless Persons** (which aims to regulate and improve the legal status of stateless persons): Article 1 defines a stateless person as “a person who is not considered as a national by any State under the operation of its law.”

- **1961 UN Convention on the Reduction of Statelessness**, which aims to avoid incidents of statelessness.

The UK has signed and ratified the 1954 and 1961 UN Conventions. In 2013 the UK established dedicated procedures for determining whether a person in the UK is stateless, reflecting responsibilities under the 1954 Convention.

Article 8 of the 1961 Convention provides that contracting states shall not deprive persons of nationality if deprivation would render them stateless, but goes on to specify certain exceptions to this provision, including:

3. (...) a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

   (a) that, inconsistently with his duty of loyalty to the Contracting State, the person

      (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

      (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

   (b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.\(^\text{21}\)

The UK ratified the Convention in March 1966 with a reservation to Article 8, in accordance with paragraph (3)(a). The **British Nationality Act 1948** (as amended) was the relevant piece of domestic legislation at the time. Section 20 of the 1948 Act largely reflected the provisions in previous nationality legislation. It provided that:

- A person who had registered or naturalised as a Citizen of the UK and Colonies [the current main nationality status of the time] could be deprived of their citizenship on the basis of fraud, false representation and the concealment of material facts (s20(2)).

\(^{21}\) Paragraphs 4 and 5 of Article 7 state that a naturalised person may lose their nationality due to residence abroad, and that nationals born outside the contracting state’s territory may lose their nationality after attaining majority age, in certain circumstances.
A person who had naturalised as a Citizen of the UK and Colonies could be deprived of their citizenship if the Secretary of State was satisfied that they had shown themselves to be disloyal or disaffected towards His Majesty, unlawfully traded or communicated with or assisted an enemy during war, or been sentenced to at least 12 months’ imprisonment, or had been ordinarily resident in a foreign country for seven or more continuous years (s20(3); s20(4)).

The 1948 Act provided that the Secretary of State had to be satisfied that it would not be conducive to the public good for the person to continue to be a Citizen of the UK and Colonies.

Article 7 of the 1997 European Convention on Nationality identifies seven circumstances in which contracting states may deprive a person of their nationality. However only in one of these circumstances (fraudulent conduct, false information or concealment of fact) can they do so if the person would be left stateless.

In 2002 the then government confirmed that it intended to sign and ratify the European Convention. It made changes to the deprivation of citizenship powers set out in the BNA 1981 in order to bring the UK’s legislation into line with the Convention. In particular, it specified that an order to deprive citizenship from a person who had done anything “seriously prejudicial to the vital interests of the UK or a British overseas territory” could not be made if it would make them stateless.

In the event, the UK did not sign or ratify the European Convention, and the Coalition Government has confirmed that it does not intend to do so.

Changes to deprivation of citizenship powers in domestic legislation 1981 – 2006

Powers under the BNA 1981 as introduced

Section 40 of the BNA 1981 as introduced stated that the Secretary of State could by order deprive of citizenship a person who had acquired British citizenship by registration or naturalisation, if satisfied that:

- registration or naturalisation had been obtained by fraud, false representation or concealment of material fact: s40(1); or

- the person had shown disloyalty of disaffection towards Her Majesty by act or speech: s40(3)(a); or

- the person had unlawfully traded or communicated with an enemy during any war in which Her Majesty was engaged or been engaged in or associated with any business carried out to assist an enemy in that war: s40(3)(b); or

- the person had been sentenced in any country to twelve months or more imprisonment within five years of the date of naturalisation or registration and the person would not become stateless: s40(3)(c), s40(5)(b).

The Secretary of State could not deprive a person of their British citizenship unless satisfied that it was not conducive to the public good that that person should continue to be a British citizen.

These powers reflected the deprivation powers that were in place prior to 1983, under the British Nationality Act 1948. As at February 2002, the deprivation powers in the BNA 1981
had not been used - the last time that a person had been deprived of citizenship was in 1973.22

**Powers under the BNA 1981 as amended in 2002 (with effect from April 2003)**

The *Nationality, Immigration and Asylum Act 2002* made persons who had acquired British citizenship through birth subject to deprivation of citizenship powers for the first time. However the Act also introduced new restrictions on the circumstances in which a person could be deprived of their British nationality status.

With effect from 1 April 2003, section 4 of the *Nationality, Immigration and Asylum Act 2002* substituted an entirely different section 40 of the BNA 1981:

- The Secretary of State could by order deprive a person of their citizenship status if satisfied that the person had done anything “seriously prejudicial to the vital interests of the UK or a British overseas territory”, but not if the order would make the person stateless: s40(2), s40(4).

- A person who had obtained their citizenship status through registration or naturalisation (irrespective of whether before or after commencement of the BNA 1981) could be deprived of it if the Secretary of State was satisfied that it was obtained by means of fraud, false representation or concealment of material fact: s40(3), s40(6).

The amended provisions applied to all six types of British nationality status, and s40(2) applied to persons who acquired British citizenship through birth as well as to those who had naturalised or registered as British citizens. However, the impact of s40(2) on persons who had acquired British citizenship through birth and who did not have another nationality was limited, due to the restriction on making a person stateless.

During the Act’s passage through Parliament, the then Government had confirmed that it intended to sign and ratify the 1997 European Convention on Statelessness.23 The new measures were considered to bring the UK’s legislation in line with the requirements of the 1997 Convention. Article 7 of the Convention permits states to withdraw citizenship on the grounds of “conduct seriously prejudicial to the vital interests of the State Party”, but not if the person would be made stateless. In the event, the UK did not sign the 1997 Convention.

Ministers also responded to concerns about how the powers would be used. For example, Lord Filkin gave a “categorical assurance” that the powers would not be used as an alternative to prosecution (such as under anti-terrorism legislation) if the Director of Prosecution thought there was evidence to prosecute.24 He explained that the term “vital interests” “includes national security, but it also covers economic matters, as well as the political and military infrastructure of our society”.25

**Powers under the BNA as amended in 2006 (with effect from June 2006)**

Further changes to the deprivation of citizenship powers in the BNA 1981 were made in the aftermath of the July 2005 London bombings, through section 56 of the *Immigration, Asylum and Nationality Act 2006*.

---


23 HL Deb 8 July 2002 c535; c537

24 HL Deb 9 October 2002 c282-3

25 HL Deb 8 July 2002 c505-6
With effect from 16 June 2006, the wording of s40(2) of the BNA 1981 was changed in order to allow the Secretary of State to deprive a person of citizenship if satisfied that “deprivation is conducive to the public good” (rather than on the grounds that the person had done something “seriously prejudicial to the vital interests” of the UK and territories, as previously).

There were some criticisms that the change of wording reduced the threshold for making deprivation of citizenship orders.²⁶

Section 40 of the BNA 1981 (as amended) subsequently read:

40 Deprivation of citizenship

(1) In this section a reference to a person's “citizenship status" is a reference to his status as—

(a) a British citizen,

(b) a British overseas territories citizen,

(c) a British Overseas citizen,

(d) a British National (Overseas),

(e) a British protected person, or

(f) a British subject.

(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.

(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—

(a) fraud,

(b) false representation, or

(c) concealment of a material fact.

(4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.

(5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying—

(a) that the Secretary of State has decided to make an order,

(b) the reasons for the order, and

(c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).

(6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person

²⁶ See, for example, Joint Committee on Human Rights, Counter-Terrorism policy and Human Rights: Terrorism Bill and related measures, HC 561-I, 5 December 2005, para 161; 164
of the citizenship status if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—

(a) fraud,

(b) false representation, or

(c) concealment of a material fact.
Appendix 2 Deprivation, statelessness and Immigration Act 2014 changes

Background: the al-Jedda case

On 9 October 2013 the Supreme Court handed down its judgment in the case of Hilal al-Jedda, in which it considered the meaning of section 40(4) of the BNA 1981 (as amended).\textsuperscript{27}

Mr al-Jedda came to the UK from Iraq in 1992 as an asylum seeker, and obtained British citizenship in 2000. Under Iraqi law of the time, he automatically lost his Iraqi citizenship as a result of acquiring British citizenship. In 2004 he travelled to Iraq. He was subsequently arrested by US forces and transferred into the custody of the British forces. He was held without charge for over three years. In December 2007, shortly before his release, Mr al-Jedda was notified that the then Home Secretary considered that depriving him of his British citizenship was conducive to the public good. Mr al-Jedda appealed against deprivation, partly on the grounds that the deprivation order would leave him stateless.

The case was considered on several occasions by the Special Immigration Appeals Commission (SIAC) and the Court of Appeal before it reached the Supreme Court. One of Mr al-Jedda’s arguments was that the deprivation order would leave him stateless and was therefore void. SIAC found that Mr al-Jedda had regained Iraqi nationality under an Iraqi law in place between 2004 and 2006 and therefore would not be rendered stateless as a result of the Home Secretary’s order. However the Court of Appeal subsequently found that SIAC had erred in law in reaching this decision.

The Home Secretary’s alternative argument was that if Mr al-Jedda did not have Iraqi nationality on the date of her deprivation order it was open to him to apply for it, and therefore it was his inaction, rather than her deprivation order, which had made him stateless. The Court of Appeal rejected this argument and found that the deprivation order had the effect of making him stateless.

The Home Secretary appealed to the Supreme Court, but her appeal was unanimously dismissed. Lord Wilson found that:

32. (…) Section 40(4) does not permit, still less require, analysis of the relative potency of causative factors. In principle, at any rate, the inquiry is a straightforward exercise both for the Secretary of State and on appeal: it is whether the person holds another nationality at the date of the order.

After his release from detention in December 2007 Mr al-Jedda had travelled to Turkey (where he still lives), using an Iraqi passport. Mr al-Jedda had said that it was a false passport, but the Home Secretary argued that it was genuine. The Supreme Court did not consider that this was an issue for the Court to resolve, but noted that this left a possibility that the Home Secretary might issue a further deprivation order.\textsuperscript{28} It was subsequently reported that the Home Secretary issued a second order to deprive Mr al-Jedda of his British citizenship, and that he is appealing against this.\textsuperscript{29}

In November 2013 the Financial Times reported that, in light of the al-Jedda case, the Home Secretary had instructed officials to consider the scope in international law to withdraw

\textsuperscript{27} Secretary of State for the Home Department (Appellant) v Al-Jedda (Respondent) [2013] UKSC 62
\textsuperscript{28} Supreme Court, Secretary of State for the Home Department (Appellant) v Al-Jedda (Respondent) press summary, 9 October 2013
\textsuperscript{29} BBC News [online], ‘Terror suspect Hilal Al-Jedda stripped of UK citizenship’, 2 December 2013
citizenship from terror suspects who would otherwise be left stateless.\textsuperscript{30} The Government subsequently tabled a new clause to the \textit{Immigration Bill} (as then was) which sought to amend deprivation of citizenship powers in the BNA 1981.

\textbf{Controversy surrounding the new powers introduced by the \textit{Immigration Act 2014}}

New Clause 18 of the \textit{Immigration Bill} (subsequently clause 60)\textsuperscript{31} was tabled shortly before Report stage in the Commons. The clause would have amended the BNA 1981, so that people who had naturalised as British citizens could be deprived of their British citizenship if the Secretary of State was satisfied that deprivation was “conducive to the public good because the person (...) has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom,...”.

The Home Office published a \textit{fact sheet on the clause}, and a \textit{supplementary memorandum} which set out the grounds on which the Government considered that the clause was compatible with the European Convention on Human Rights.\textsuperscript{32}

The fact sheet gave an indication of how “seriously prejudicial” would be defined:

\textbf{What does “seriously prejudicial to the vital interests of the UK” mean?}

We do not want to be overly prescriptive about what this phrase means, but we would envisage it covering those involved in terrorism or espionage or those who take up arms against British or allied forces.\textsuperscript{33}

Correspondence from Home Office Ministers to Members about the clause during the passage of the Bill were deposited in the Library.\textsuperscript{34}

\textbf{Parliamentary scrutiny}

During debate at Report stage, Theresa May said that the new clause would return the law to the position it was in prior to the changes made by Labour, and would ensure that the UK continues to meet its obligations under the 1961 Convention. She confirmed that the Government did not intend to sign the 1997 European Convention on Statelessness.\textsuperscript{35} She confirmed that the clause could be applied to people who had not been convicted of a particular offence, but emphasised that the power would be used in respect of a very small number of cases.\textsuperscript{36}

Several Members, from various parties, expressed uncertainties about the proposal and pressed the Home Secretary for further details of how the powers would be used.\textsuperscript{37}

For example, some Members expressed unease about how “seriously prejudicial” might be interpreted, and that the powers might end up being used more extensively than originally envisaged.\textsuperscript{38}

\textsuperscript{30} \textit{Financial Times}, ‘May bids to make terror suspects stateless’, 11 November 2013
\textsuperscript{31} HL Bill 84 of 2013-14
\textsuperscript{33} Gov.uk, Immigration Bill, \textit{Fact sheet: Deprivation of Citizenship (clause 60)}, January 2014
\textsuperscript{34} Letter from James Brokenshire to Rt Hon David Hanson, 20 February 2014, DEP 2014-0262; Letter from Lord Taylor of Holbeach to Rt Hon Baroness Smith of Basildon, 17 April 2014, DEP 2014-0641
\textsuperscript{35} HC Deb 30 January 2014 c1040; c1401-2, c1044, c1047
\textsuperscript{36} HC Deb 30 January 2014 c1045
\textsuperscript{37} Lords Library Note LLN 2014/004, \textit{Immigration Bill (HL Bill 84 of 2013-14)} also includes a summary of debate on the new clause at Commons Report stage.
In response to questions about how the Home Office would be able to enforce the deportation of a stateless person, Theresa May pointed out that the power could be used whilst a person was outside the UK. However, the Home Secretary acknowledged that it might not always be possible to remove a person from the UK if they were deemed to be stateless. She said that such people might be given leave to remain in the UK as a stateless person. However she contended that “Crucially, their status would not attract the privileges of a British citizen—they would not be entitled to hold a British passport or to have full access to certain services.”

Dr Julian Huppert cast doubt on how easy it might be for people who had been deprived of British citizenship on “seriously prejudicial” grounds to get another nationality, and said that it was “deeply alarming” that they might end up being granted permission to stay in the UK as a result of being stateless.

Jacob Rees-Mogg disagreed with the idea of creating a potential “second class” category of British citizen. Frank Dobson made a similar point as he described the impact in his constituency of a case involving a Somali-British dual national deprived of British citizenship under existing powers:

Since Mahdi Hashi lost his citizenship and was kidnapped by the Americans, the response of the extremists has been, “Oh yeah? You’re not really a British citizen. You’re only a British citizen on sufferance and the Home Secretary can take your citizenship away.” That has been very damaging to the people we are trying to encourage and has set back their efforts not just in my constituency, but in many other parts of the country where Somalis live.

On the other hand, Alok Sharma and Rehman Chishti, both naturalised British citizens, spoke in favour of the new clause. Mr Sharma contended that:

There are rights as well as obligations that come with British citizenship. Perhaps my right hon. Friend should go even further—the Immigration Bill may not be the place to do so—and introduce similar sanctions against anyone who is British, irrespective of how they got British citizenship, if they do something so heinous against the British state.

Labour tabled manuscript amendments which would have required the Home Secretary to obtain permission from a court before depriving a person of their British citizenship. The Home Secretary disagreed with the proposal, arguing that the initial deprivation decision should be taken by a democratically accountable person. However she confirmed that the person affected would have a “full right of appeal”.

Labour abstained on division on the clause, which was approved by 294 votes to 34.

A short Westminster Hall debate on the clause took place on 11 February 2014.
In addition, the clause was considered by the Lords Constitution Committee and the Joint Committee on Human Rights. The JCHR concluded that the clause would lead to an increase in statelessness and would represent a significant change in UK human rights policy, but would not breach the UK's international obligations in relation to statelessness:

We accept the Government's argument that, in strict legal terms, enacting the power in clause 60 to deprive a naturalised citizen of their citizenship even if it renders them stateless does not involve any breach by the UK of its obligations under the UN Conventions on Statelessness. The new power will lead to an increase in statelessness, which represents a significant change of position in the human rights policy of the UK, which has historically been a champion of global efforts to reduce statelessness. It does not per se, however, put the UK in breach of any of its international obligations in relation to statelessness.

However, it considered that the clause could put the UK at risk of breaching its obligations to other States:

We would be very concerned if the Government’s main or sole purpose in taking this power is to exercise it in relation to naturalised British citizens while they are abroad, as it appears that this carries a very great risk of breaching the UK’s international obligations to the State who admitted the British citizen to its territory. We recommend that the Bill be amended to make it a precondition of the making of an order by the Secretary of State that, in the circumstances of the particular case, the deprivation is compatible with the UK’s obligations under international law.

The Government’s response to the Committee said that the proposed new power was not intended to be targeted towards naturalised citizens whilst they are overseas. It acknowledged that there is a limited obligation to readmit former British nationals who become stateless, in certain circumstances, under Article 1 of the Special Protocol concerning Statelessness 1930, but argued that this would rarely be applicable.

The Joint Committee identified a number of other concerns. These included whether deprivation decisions engaged rights under the European Convention on Human Rights, whether the clause should have retrospective effect, and whether the arrangements for a right of appeal would be sufficient.

Scrutiny in the Lords

The clause proved controversial in the House of Lords, and the Government was defeated on the clause at Report Stage. Peers voted instead in support of an amendment providing for the establishment of a Joint Parliamentary Committee to consider and report on whether the British Nationality Act 1981 should be amended to reflect the Government’s proposal.

---

48 HC Deb 11 February 2014 c255-262WH
49 Lords Select Committee on the Constitution, Immigration Bill, 7 March 2014, HL Paper 148, paras 19-
50 Joint Committee on Human Rights, Legislative Scrutiny: Immigration Bill (Second Report), 3 March 2014, HC 1120
51 Joint Committee on Human Rights, Legislative Scrutiny: Immigration Bill (Second Report), 3 March 2014, HC 1120, p.3-4
52 Joint Committee on Human Rights, Legislative Scrutiny: Immigration Bill, Government response to Immigration Bill (Second Report) (undated)
53 See comments made at Second Reading, Committee and Report stages: HL Deb 10 February 2014 c415-443, c448-528; HL Deb 17 March c40-64; 7 April 2014 c1167-1195
54 HL Bill 98 of 2013-14
A post on the European Network on Statelessness blog provides an account of some of the issues raised during Parliamentary debates on the clause (up to and including Lords Report stage).\(^5\)

**Ping Pong**

The Commons subsequently disagreed with the Lords amendments and approved a modified version of the Government’s original proposal.

Firstly, in response to concerns that an individual could be left permanently stateless, the Government proposed amending the clause so that it would require the Home Secretary to have reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory.

James Brokenshire, Minister for Security and Immigration, confirmed that in reaching this decision, the Home Secretary would consider other relevant countries’ nationality laws, and the personal circumstances of the individual affected, including having regard to practical or logistical arrangements.\(^5\) If an individual in the UK could not acquire another citizenship, there would be scope to give them limited (restricted) leave to remain.\(^5\)

Secondly, the Government proposed inserting a requirement for the Home Secretary to arrange for the exercise of this deprivation power to be reviewed after one year of operation, and every three years thereafter. Copies of such reviews would be laid before Parliament (subject to redactions on national security grounds). The Government had proposed a similar amendment at Lords Report stage.

During the course of the debate, James Brokenshire confirmed that the Government had not yet decided who would be best placed to conduct such a review, but suggested that it might be appropriate for the independent reviewer of terrorism legislation to take on the responsibility.\(^5\)

The Commons voted to reject the Lords amendment, and in favour of the Government’s amendments, by 305 votes to 239.\(^5\) These Commons amendments were subsequently agreed to by the Lords.\(^6\)

The clause became section 66 of the *Immigration Act 2014*, and came into effect on 28 July 2014.\(^6\)

**External commentary**

The extension of powers to deprive a person of their citizenship and leave them stateless generated considerable external commentary and criticism, including from law practitioners, academics, NGOs and human rights advocates. Liberty and the Immigration Law Practitioner’s Association, amongst others, issued detailed Parliamentary briefings.

---

5. European Network on Statelessness blog, ‘UK House of Lords defeats Government on deprivation of citizenship leading to statelessness’, 29 April 2014
6. HC Deb 7 May 2014 c191; c193
7. HC Deb 7 May 2014 c195
8. HC Deb 7 May 2014 c199
9. HC Deb 7 May 2014 c214
10. HL Deb 12 May 2014 c1695
11. SI 2014/1820
A November 2013 post on the European Network on Statelessness Blog considered some of the questions raised by the Government’s plans, such as whether nationality is a right or a privilege, whether the UK would be in compliance with its international obligations if it rendered a person stateless, and whether depriving a person of citizenship helps to prevent terrorism.\(^{62}\)

Matthew Gibney, Associate Professor of Politics and Forced Migration at the University of Oxford, highlighted various concerns with the clause, concluding that:

> The key question supporters of denationalisation need to ask is not whether it can in principle be right to strip citizenship (on that there may be room for debate), but whether it is wise to entrust denationalisation to a government that has not hesitated to broaden the scope of its use.\(^{63}\)

Reprieve, an NGO that works with prisoners facing the death penalty and held in relation to the ‘war on terror’, argued that the clause

> “… will effectively leave people - who may have arrived in Britain at a young age and always called it home - on parole for the rest of their lives, vulnerable to having their citizenship revoked at the whim of the Home Secretary. It is an ill-conceived, dangerous piece of law which must be stopped when it reaches the Lords.”\(^{64}\)

A blog post expands on some of its concerns.\(^{65}\)

A March 2014 fact sheet published by the Open Society Foundations Institute cited examples of other states that have made citizens stateless through “technical” legal amendments or on fraud, state security or poor character grounds (namely the Dominican Republic, Zimbabwe, Peru, Zambia, Cote d’Ivoire, Tanzania, Botswana and Swaziland). It argued that the Government’s clause “would breach the spirit of the UK’s international obligations to prevent statelessness”, and that the UK would be setting “a dangerous international precedent” if it was approved.\(^{66}\) The Open Society also published a legal opinion which concluded that there were good grounds to determine that the UK’s declaration under Article 8(3) of the 1961 Convention on the Reduction of Statelessness does not extend to a new law authorising deprivation where this would make a person stateless.\(^{67}\) The Government contended that its clause was not in breach of the Convention.\(^{68}\)

Professor Guy Goodwin-Gill, Professor of International Refugee Law at University of Oxford and a Barrister at Blackstone Chambers, also considered the legal implications of the

\(^{62}\) European Network on Statelessness Blog, ‘Theresa May but the UK shall not’, 19 November 2013

\(^{63}\) New Statesman [online], ‘Don’t trust the government’s citizenship-stripping policy’, 3 February 2014

\(^{64}\) Reprieve, press release, ‘Citizenship-stripping plans dangerous & must be stopped’, 30 January 2014

\(^{65}\) Reprieve, blog, ‘Depriving people of their citizenship is un-British’, 30 January 2014

\(^{66}\) Open Society Justice Initiative, Fact sheet, UK must not undermine global battle against statelessness’, March 2014

\(^{67}\) Available from Open Society Foundations, Briefing Papers, ‘Opinion on clause 60 of UK Immigration Bill and Article 8 of UN Convention on Reduction of Statelessness’, March 2014

\(^{68}\) Joint Committee on Human Rights, Legislative Scrutiny: Immigration Bill, Government response to Immigration Bill (Second Report) (undated)
Government’s proposals in detailed briefings to the Joint Committee on Human Rights and a legal opinion.\textsuperscript{69}

He argued that the measure was “ill-considered”, and likely to result in considerable waste of public money if approved, as a result of the associated legal issues. In particular, he highlighted that there were broader questions under international law than whether the then clause was lawful under the 1961 Convention on the Reduction of Statelessness:

In addition, considerable harm will be caused to the United Kingdom’s international relations. The United Kingdom has no right and no power to require any other State to accept its outcasts and, as a matter of international law, it will be obliged to readmit them if no other State is prepared to allow them to remain. Likewise, and in so far as the UK seeks to export those who are alleged to have committed ‘terrorist-acts’, it will likely be in breach of many of those obligations which it has not only voluntarily undertaken, but which it has actively promoted, up to now, for dealing with international criminal conduct.\textsuperscript{70}

\textsuperscript{69} Professor Guy Goodwin-Gill, Mr Al-Jedda, Deprivation of Citizenship, and International Law, revised draft of a paper presented on 14 February 2014; Deprivation of Citizenship Resulting in Statelessness and its implications in International Law, 6 April 2014 (both available from Joint Committee on Human Rights, Immigration Bill); Deprivation of Citizenship Resulting in Statelessness and its implications in International Law, 12 March 2014; Deprivation of Citizenship, Statelessness, and International Law More Authority (if it were needed…), 5 May 2014

\textsuperscript{70} Professor Guy Goodwin-Gill, Mr Al-Jedda, Deprivation of Citizenship, and International Law, revised draft of a paper presented on 14 February 2014