

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Immigration, Asylum and Nationality Bill 2005

Liberty's Briefing for Third Reading in the House of Lords: Citizenship Clauses

March 2006

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent funded research.

Liberty's policy papers are available at

www.liberty-human-rights.org.uk/resources/policy-papers/index.shtml

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Introduction

1. Clauses 56 to 58 of the Immigration, Asylum and Nationality Bill (the “**Bill**”) were not considered at Report stage in the Lords on 7th February. It was agreed that these provisions would instead be considered at Third Reading on 14th March. This briefing is based on Liberty’s briefing for Report Stage.¹ It supports several of the amendments to Clauses 56 to 58 of the Bill laid by the Baroness Turner of Camden and the Lord Avebury. It also proposes some additional amendments to those clauses.

2. Liberty is concerned that legislation is again being proposed which treats counter-terrorism as a matter of immigration and nationality control. We fear that these provisions may ultimately be counter-productive. The underlying aim of Clauses 56-58 is to bring more people within the scope of immigration control by removing their citizenship or right of abode in the UK or refusing to register them as British citizens. Rather than exporting risk it would be better for world and national security if truly dangerous terrorist suspects were prosecuted in the UK. These proposals are also likely to have a disproportionate effect on minority ethnic and religious groups and are, therefore, likely to marginalize certain sectors of the population.

3. Given the severe impact that these proposals would have on individual rights we would expect the Government to have given clear and persuasive explanations about why they are needed. It has not. Vague assertions that these powers are necessary for the prevention of terrorism are unsatisfactory, especially as many of the provisions would apply far beyond the context of counter-terrorism. Neither do these assertions explain why the substantial powers that already exist in this context are unsatisfactory or why more precisely drafted powers would not suffice. These provisions would also create extremely broad administrative discretion and great scope for arbitrariness. This is inappropriate in the context of powers with such serious implications for those subjected to them.

¹ Available at: <http://www.liberty-human-rights.org.uk/resources/policy-papers/main.shtml>

Clause 56 - Deprivation of Citizenship

Liberty supports the Baroness Turner of Camden's amendment.²

Page 31, line 15, leave out subsection (1)

Page 31, line 20, leave out "that Act" and insert "the British Nationality Act 1981 (c.61)

4. Clause 56(1) of the Bill would amend the British Nationality Act 1981 to give the Secretary of State the power to deprive a person of their British citizenship if s/he is "satisfied that the deprivation is conducive to the public good". This would replace the Home Secretary's existing power to remove a person's citizenship where he is satisfied that they have done something "seriously prejudicial to the vital interests" of the United Kingdom or a British overseas territory.³ The Government has indicated that the exercise of the power would be informed, but not constrained, by the list of unacceptable behaviours.

5. Liberty opposes subsection 56(1) as:

- (a) The "conducive to the public good" test would cover actions outside the scope of international terrorism and cannot, therefore, be justified on the basis that it is needed to counter that threat.
- (b) This power would not be restricted to those who have recently acquired British citizenship, as much of the Government's rhetoric suggests. It would also apply to people who are born British and might never have visited the other country of which they have citizenship.
- (c) The test of "conducive to the public good", while perhaps appropriate in the context of immigration control, is too vague as a test for depriving a person of their citizenship, given the serious implications of such an action.
- (d) The list of unacceptable behaviours, which would inform the use of this power, do not provide sufficient certainty as to the actions which would be covered. The list is not exhaustive and includes very vague concepts like "justifying terrorism".

² This amendment was laid by Lord Dholakia and Lord Avebury at Report stage, but was not moved

³ Section 40, British Nationality Act 1981.

- (e) Human rights law may not confer a free-standing right to citizenship but depriving a person of their citizenship and thereby bringing them within the realms of immigration control, would engage a number of other human rights including, for example, the right to liberty (Article 5) and the right to respect for family life (Article 8).⁴ Accordingly, safeguards must be put in place to prevent the arbitrary deprivation of a person's British citizenship, which would include a clearly defined legal power. The "conducive to the public good" test falls far short of the required level of clarity.
- (f) The Government has not justified why this sweeping power is needed and why a more restrictive power, such as that which already exists, is unsatisfactory. Parliament should not grant administrative powers which would have serious implications for citizens unless these are really needed.
- (g) If British citizens are suspected of crimes, they should be properly charged and prosecuted in Britain and, if found guilty, should be punished in Britain. To the extent that this power is designed to address international terrorism, we do not believe that it would be an effective and proportionate solution to attempt to export the problem by declaring people to be 'non-citizens' so that they can be deported.
- (h) As the power could only be exercised in the case of dual-nationals, the clause would have a disproportionate impact on ethnic and religious minorities. It could seriously damage community relations which are already very strained, and ultimately prove to be counter-productive.
- (i) These proposals fly in the face of the Government's rhetoric about the importance of "Britishness" and the introduction of citizenship ceremonies and oaths of allegiance. This power would make a person's "Britishness" seem like a temporary state, removable at will by the Government, rather than a permanent and important part of a person's identity.

⁴ Cf. JCHR, 2005-2006, HL 75-1, para 159

Clause 57 - Deprivation of Right of Abode

Liberty supports the Baroness Turner of Camden's amendment.⁵

**Page 31, line 31, leave out from "State" to end of line 33 and insert "is satisfied that the person has done something seriously prejudicial to the vital interests of –
(a) the United Kingdom, or
(b) a British Overseas Territory**

6. Many of the concerns we have raised in relation to Clause 56 would apply to Clause 57, which would enable the Home Secretary to remove the right of abode in Britain from a Commonwealth citizen if s/he "thinks" that it would be "conducive to the public good" to do so. If the Government succeeds in satisfying Parliament that a power to remove the right of abode is needed, we consider that the test should match the current test for removal of citizenship, i.e. whether the Home Secretary "is satisfied that the person has done something seriously prejudicial to the vital interests of — (a) the United Kingdom; or (b) a British Overseas territory."

Additional amendment:⁶

Page 31, line 31, leave out "thinks" and insert "is satisfied"

7. Clause 56 would require the Secretary of State to be "satisfied" that the removal of a person's citizenship must be "conducive to the public good". Clause 57, on the other hand, only requires the Secretary of State to "think" that the removal would be "conducive to the public good". The House of Lords Select Committee on the Constitution questioned the use of the word in their letter of 13 December 2000, noting that "it would be unfortunate if a change in the language were inadvertently to alter the existing judicial approach to such statutory discretions".

⁵ This amendment was laid by Lord Dholakia, Lord Avebury and Baroness Turner of Camden at Report Stage but was not moved. The unintentionally omitted word "vital" has, however, been added.

⁶ This amendment was laid by Lord Dholakia and Lord Avebury at Report Stage but not moved.

Clause 58 – Acquisition of British Nationality

Liberty supports the Baroness Turner of Camden's amendment.⁷

Page 32, line 5, leave out “not”

Page 32, line 7, leave out “is of good character” and insert “has done something seriously prejudicial to the vital interests of -

(a) the United Kingdom; or

(b) a British Overseas territory”

8. Some restricted categories of people are currently entitled to register as British. This is a legal entitlement and, accordingly, is not limited by reference to a “good character” or other test. Clause 58 would require the Home Secretary to be satisfied that a person with an entitlement to register is “of good character” before registering them as British. Many of the concerns raised in relation to Clause 56 would apply to Clause 58. If the Government succeeds in satisfying Parliament that even those who are entitled to register should be required to satisfy a test of suitability, we consider that the test should match the current test for removal of citizenship, i.e. that the Home Secretary should grant it unless s/he "is satisfied that the person has done something seriously prejudicial to the vital interests of — (a) the United Kingdom; or (b) a British Overseas territory." The “good character” test is too vague and effectively ends the concept of registration by entitlement.

New amendment:

Page 32, line 5, leave out “not”

Page 32, line 7, leave out “is of” and insert “is not of”

9. As a result of this amendment, the Secretary of State would still be able to refuse to grant British citizenship on the basis of the “good character” test.⁸ The amendment would, however, reverse the burden of proof regarding who needs to establish whether the test has been met. As the Bill is currently drafted, the applicant would be required to satisfy the Secretary of State that s/he meets the good character

⁷ This is a repeat of an amendment laid by Lord Dholakia and Lord Avebury at Report stage but not moved

⁸ As we explain above, we do not consider this test to be appropriate.

test. The amendment would reverse this, requiring the Secretary of State to grant an application for registration as British unless satisfied that the person is not of good character. It is appropriate that the burden should be for the Secretary of State to meet as Clause 58 applies to people who are *entitled* to register as British. If the Secretary of State is to deny that entitlement it should be for him/her to prove that the test for denial has been met.

10. We also support the amendments laid by the Baroness Turner of Camden and the Lord Avebury and additional amendments proposed by the Immigration Law Practitioners' Association (ILPA) to remove certain categories of people, currently entitled to register as British, from the requirement to satisfy the good character test in Clause 58. In particular, we do not believe that the test should be applied to children under the age of 18. To refuse to register a child as British for something that they have done while a child is too harsh penalty.

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