NATIONALITY AND BORDERS BILL

CLAUSE 9

JOINT OPINION

A. SUMMARY

1. We have been asked by the Good Law Project, which we understand is working with CAGE and Media Diversified, to advise on clause 9 of the Nationality and Borders Bill ("**the Bill**"). The Bill is currently being considered in the House of Lords.

2. Clause 9 was introduced by the Government on 2 November 2021 at the Committee stage in the House of Commons. It seeks to expand significantly the Secretary of State's existing powers under s.40 of the British Nationality Act 1981 (the **"BNA 1971**") to make an order stripping British citizens of their citizenship (a **"deprivation order"**). Clause 9, as presently framed, confers upon the Secretary of State an exorbitant, ill-defined and unconstitutional power to a make a deprivation order without notice, even where (a) she has the information required to give notice; (b) it is reasonably practicable for her to do so; and (c) there are no national security or foreign relations reasons not to. Clause 9 also has retrospective effect: the validity of past orders – made in contravention of the presently existing notice requirements in s.40 – is expressly preserved, even in cases which do not fall within the scope of the new provisions.

3. This Joint Opinion is confined to issues of law. We do not address broader policy issues, upon which others have commented, including in detailed debates in the House of Commons and House of Lords.

4. Although the Joint Opinion is focused on clause 9, that provision must be considered in the following important context. ***First***, citizenship is a critically important and fundamental right. It is, as Hannah Arendt famously said, and as both the US Supreme Court in *Trop v Dulles* 356 U.S. 86 (1958) and our Court of Appeal in *EB (Ethiopia)* [2007] EWCA Civ 809 have recognised, "*the right to have rights*". It follows that the deprivation of citizenship is a far-reaching and draconian power. It has the effect of

"*extinguish[ing] … the relationship between the individual and the State*": *Ahmed v SSHD* [2017] UKUT 118 (IAC) §27. As Lord Wilson recognised in *SSHD v Al-Jedda* [2014] AC 253, "*worldwide legal disabilities with terrible practical consequences still flow from lack of nationality*" (§12). British citizenship confers the right of abode, a right which Lord Denning MR described as "*the most precious right that anyone can have*": *R v SSHD Ex parte Phansopkar* [1976] QB 606, 615H.[1] It is in light of the serious and debilitating consequences that minimum procedural safeguards have been developed and protected by domestic and international courts.

5. ***Second***, the powers available to the Secretary of State to strip a person of British citizenship are already very broad. The deprivation powers were historically tightly circumscribed. In 2003, 2006, 2014 and 2018 those powers were significantly expanded such that the position now is that they may be exercised:

   (1) in relation to any British citizen, including British citizens from birth, if they are dual nationals, where the Secretary of State "*is satisfied that deprivation is conducive to the public good*". This could include a situation where the person does not even know that they are a dual national and have little or no connection with the country of their second nationality, as Lord Reed expressly recognised in *R (Begum) v SSHD* [2021] AC 765, §94.

   (2) in relation to naturalised British citizens, even where they are *not* dual nationals, where the Secretary of State is satisfied that deprivation is conducive to the public good because the person has acted in a manner "*seriously prejudicial to the vital interests of the UK*", and the Secretary of State has a reasonable belief that the person is able to become a national of another country.

[1] In *R (SA) v SSHD* [2015] EWHC 1611 (Admin), the High Court recognised that "*[t]he importance of citizenship is perhaps obvious but in addition to the subjective experience that may come with it – in particular affecting one's sense of identity and belonging – a person who has a right of abode in the UK is free to live in, and to come and go to and from, the UK without let or hindrance [...] with British citizenship, the Claimant would enjoy the comfort of complete security in knowing that he can come and go freely throughout his life"* (§26); (ii) *"a sense of identity and belonging [...] would inevitably be fostered by the grant of citizenship and undermined by its refusal*" (§77). See also the comments of Lord Woolf MR in *Al Fayed v SSHD (No 1)* [1998] 1 WLR 763 at 773E, identifying the "*substantial*" benefits of citizenship; and of Baroness Hale in *R (Johnson) v SSHD* [2017] AC 365 that "*the denial of citizenship having such an important effect upon a person's social identity is sufficiently within the ambit of article 8 to trigger the application of the prohibition of discrimination in article 14*" (§27).

6. This progressive extension over the last two decades has meant that it is no longer necessary to demonstrate that someone is "*a terrorist or a traitor*"[2] before stripping them of British citizenship. Individuals may be deprived of citizenship on general public interest grounds of the sort invoked to justify deportation, rather than on the basis of a severing of the bonds of allegiance that is the hallmark of nationality.[3]

7. ***Third***, from a comparative perspective, recent reports suggest that the United Kingdom already has significantly more power to deprive an individual of their citizenship than any other G20 country. At the same time that other countries are seeking to limit the circumstances in which individuals may be stripped of their citizenship,[4] the United Kingdom seeks the opposite, by promoting a clause that dispenses with basic procedural safeguards that have long been in place in relation to a power the breadth of which, again in Lord Anderson's words, is "*striking*."[5]

8. ***Fourth***, exercise of the deprivation power is now relatively common. In the period 1973 to 2002 no deprivation orders were made at all. Since 2011, the power has been used in at least 441 cases, with 104 cases in 2017 alone. Clause 9 has the potential significantly to increase the use of this power.

9. ***Fifth***, exercise of the deprivation power has a disproportionate impact on non-white British citizens. This is because such citizens tend to have an ancestral connection with other countries under whose laws they either (a) are considered as nationals, or (b) have the ability to obtain nationality. This is the position even if they have little or no connection with that country: Lord Reed in *Begum* at §94.

10. Against that background, this Joint Opinion: first, traces the genesis and expansion of the United Kingdom's deprivation of citizenship powers (at §§11-35 below); second, summarises the current legal framework (§§36-44 below); third, summarises the impact of a deprivation decision and traces the significant increase in the use of the deprivation powers (§§45-57 below); and fourth, addresses the legal issues arising from clause 9 of

[2] HL Debate, 5 January 2022, cols 602-604.
[3] See, e.g. the *Nottebohm* case (1955) ICJ Reports 4, 23: "*nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.*"
[4] See, e.g., De Chickera, Open Democracy 26 November 2021; van der Merwe, New Stateman 9 December 2021.
[5] HL Debate, 9 February 2022, cols 296-270.

the Bill (§§58-116 below). For the reasons developed in that final section, we consider that clause 9 is inconsistent with constitutional principle. Moreover, the use of the powers conferred by clause 9 is highly likely to give rise to deprivation decisions that are incompatible with Article 6 and 8 ECHR, and potentially Article 14 ECHR.

B. GENESIS AND EXPANSION OF DEPRIVATION OF CITIZENSHIP POWERS

The proposals of 1870

11. Powers to revoke British citizenship were narrowly circumscribed and, until recently, rarely used.

12. Deprivation powers were first mooted in 1870 and were roundly rejected by Parliament. Gladstone's government had proposed a provision in the Naturalization Bill that would grant the Home Secretary power to revoke the British subject status (to which we will refer where necessary as "British citizenship" – a simplification adequate for present purposes) of those naturalised as such[6] who had "*acted in a manner inconsistent with [their] allegiance*".[7] This drew fierce criticism in the Lords, with members describing the proposal as "*most objectionable*", "*arbitrary*", lacking in safeguards, and generating unjustified inequalities between those born British and naturalised British subjects.[8]

13. At the time, Lord Westbury described the proposed power as:

> "*…so wide and so loose that it was impossible to make any man's personal status to depend on them. Suppose the man attended a meeting where the conduct of the Government was discussed, or that he wrote an article in a newspaper condemning it, was his certificate to be cancelled because it might appear to a Secretary of State that he had acted in a manner inconsistent with his allegiance? … Was it intended to say that a man had power to take away the personal status of another because he was of opinion that the other had acted in a manner inconsistent with his allegiance? That would be a most objectionable provision, and would give a kind of discretion which that House could never approve.*"[9]

[6] Essentially those who were not UK citizens from birth (whether by birth or by descent).
[7] HL Debate, 3 March 1870, col 1119.
[8] HL Debate, 10 March 1870, cols 1616–1618.
[9] HL Debate, 10 March 1870, col 1617.

14. The provision was subsequently withdrawn by the sponsoring minister.[10]

The 1914 Act

15. The power to revoke British citizenship did not find its way into the statute book until the British Nationality and Status of Aliens Act 1914 (the "**1914 Act**"), enacted shortly after Britain entered World War I. That Act (by s.7) granted the Secretary of State the power to deprive British subjects of that status, although the scope of the power differed in significant material respects from the one that exists today.

16. ***First***, only naturalised subjects could be deprived of their status. British subjects from birth could not have their status revoked.[11]

17. ***Second***, the Secretary of State had power to make a revocation order if it appeared that naturalisation had been obtained by *"false representation or fraud"*. Towards the end of the First World War, the original text of s.7 was amended (with retrospective effect) in a way which expanded the original power of deprivation.[12] The Secretary of State was now required to revoke a certificate of naturalisation where certain conditions were met. These included that naturalisation had been obtained under false pretences; that the person had *"shown himself by act or speech to be disaffected or disloyal to His Majesty"*;[13] that the person had during wartime unlawfully traded or communicated with the enemy or engaged in business that assists the enemy; that the person had been given a serious criminal sentence within five years of naturalisation; that the person was not of good character at the date of the grant; that the person had gone on to live abroad for more than seven years without maintaining a *"substantial connection"* to the UK or its territories; or that the person was an enemy subject. In each of the latter five examples the Secretary of State *also* needed to be satisfied that the continuance of certificate of naturalisation was not *"conducive to the public good."*[14] As the Court of Appeal stated in *SSHD v Hicks*

[10] HL Debate, 10 March 1870, col 1618. See further the Naturalization Act 1870.
[11] 1914 Act, s.7(1).
[12] By s.1 of the British Nationality Status of Aliens Act 1918, the original s.7 was repealed and replaced by a new ss.7 and 7A.
[13] 1914 Act, s.7(1), as amended
[14] 1914 Act, s.7-(2).

[2006] INLR 203 at §17, the provisions of s.7 *"demonstrate strong hostility to the enemies of His Majesty and those who traded with them."*

18. ***Third***, the 1918 Act introduced s.7(3), by which a deprivation order could not be made unless the Secretary of State had notified the affected individual, "*giv*[ing] *him an opportunity*" to refer the case for an independent inquiry.[15] Pending the result of the inquiry and any final decision by the Secretary of State, a person remained a subject.[16]

The 1948 Act and BNA 1981

19. The deprivation power remained substantially unaltered for several decades. Although s.7 of the 1914 Act (as amended) was repealed and replaced by s.20 of the British Nationality Act 1948 (the "**1948 Act**"), amended by the British Nationality Act (No 2) 1964, and then replaced again by s.40 of the BNA 1981, the deprivation power remained largely unchanged until 2003.

20. The most notable developments during this period were as follows:

    (1) the obligation to make a deprivation order in specific circumstances reverted to a discretion;

    (2) the discretion to make a deprivation order was extended to registered British citizens (registration generally recognises or declares a pre-existing status as citizen[17]) as well as to naturalised citizens (naturalisation creates the status of citizen);

    (3) the deprivation power could not be exercised where it would render a naturalised or registered British citizen stateless (unless registration or naturalisation was obtained by fraud, false representation or concealment of a material fact). Thus, the

[15] 1914 Act, as amended, s.7(3) and (4). The language of the Act was that of *"claiming"* that the case be referred for an inquiry, to be presided over by a panel headed by a person *"who holds or has held high judicial office."*
[16] *R v SSHD, ex parte Akhtar* [1981] QB 46.
[17] Acquisition of citizenship by registration was first introduced by the BNA 1948 to permit Commonwealth and Irish citizens, and British subjects without citizenship, to register as citizens of the UK and Commonwealth ("**CUKC**"). See Fransman's British Nationality Law, 3rd Ed. 2011, pp.211-214. Registration mostly arises as of statutory right.

deprivation power could only be exercised against registered or naturalised British citizens, who were dual nationals (save in fraud, false representation or concealment cases).[18]

21. Pursuant to both the 1948 Act and the BNA 1981, the Secretary of State remained under an express statutory obligation to notify affected individuals in writing of any proposed deprivation order, the grounds on which that order was proposed to be made, and the right to an inquiry.[19] Regulations consistently provided that, where a person's whereabouts were known, notice could be given in person or by post; and that, where they were not known, it could be given by sending it to their last known address.[20]

22. Section 40 of the BNA 1981 has since been amended many times. The effect of these amendments since 2003 has been steadily to increase the scope of the Secretary of State's deprivation powers.

Nationality, Immigration and Asylum Act 2002

23. In 2003, the deprivation powers were significantly expanded by the Nationality, Immigration and Asylum Act 2002 (s. 4(1)). There were two key changes.

24. ***First***, the powers to deprive a person of their citizenship were no longer restricted to those who had obtained it through registration or naturalisation. They were, for the first time, extended to any British citizen, including citizens from birth, if they were dual nationals (which could include a person with little or no *actual* connection to the second state of nationality: see the remarks of Lord Reed in *Begum*, cited at §5(1) above).

25. ***Second***, the circumstances under which the deprivation powers could be exercised, as had originally been set out in the 1914 Act, 1918 Act, 1948 Act and BNA 1981, were removed. Instead, the Secretary of State could revoke citizenship on the overarching ground that a person had engaged in conduct "*seriously prejudicial to the vital interests*

[18] BNA 1981 (as originally enacted), s.40(5)(b).
[19] 1948 Act, s.20(6) and BNA 1981 (as originally enacted), s.40(6).
[20] See e.g. British Nationality Regulations 1048 (SI 1948/2721), reg. 12 and British Nationality Regulations 1972 (SI 1982/2061), reg. 22.

of" the UK or a British overseas territory.[21] But this was essentially a change in terminology. As Lord Filkin (Parliamentary Under-Secretary of State) explained, the previous language of "*disloyalty or disaffection towards the Crown*":[22]

> *"…may now seem a little dated, and the European Convention on Nationality sets out a better and more modern formulation … I wish to emphasise … that we regard deprivation of citizenship as a very serious step to be contemplated only in the most flagrant cases of deception or disloyalty. It would be reserved, as it has been in the past, for serious cases in which the individual's actions were totally incompatible with the holding of British nationality."*

26. The same amendments introduced, for the first time, a statutory right of appeal against a deprivation decision (replacing the right to a pre-decision inquiry).[23] The appeal was in the first instance to an adjudicator, and subsequently (with permission) to the Immigration Appeal Tribunal and the Court of Appeal. In cases certified by the Secretary of State[24] the route instead ran directly to the Special Immigration Appeals Commission ("**SIAC**").[25] At the time, an appeal was expressly treated as suspensive: that is, a deprivation order could not be made while an appeal could be brought in time or was pending.[26] However, further amendments made not long after (via the Asylum and Immigration (Treatment of Claimants etc) Act 2004) repealed this provision. The combined effect was to remove all pre-decision controls on the exercise of the Secretary of State's powers, leaving the Secretary of State free to make a deprivation order which would remain in force unless and until an appeal succeeded.

Immigration, Asylum and Nationality Act 2006

27. The deprivation powers were further significantly expanded in 2006, this time by operation of the Immigration, Asylum and Nationality Act 2006 (s.56(1)). As a result of this amendment, the Secretary of State no longer needed to be satisfied that the person (who was a dual national) had done anything "*seriously prejudicial to the vital interests*

[21] This phrase was derived from Article 7 of the European Convention on Nationality, although this Convention was not, and has not been, signed or ratified by the UK.
[22] HL Debate, 9 October 2002, cols 279-280.
[23] This was done by introducing a new s.40A into the BNA 1981.
[24] On grounds that the underlying decision was taken wholly or partly in reliance on information which in his opinion should not be made public (a) in the interests of national security, (b) in the interests of the relationship between the UK and another country, or (c) otherwise in the public interest.
[25] BNA 1981, s 40A (as originally introduced).
[26] BNA 1981, s 40A(6) (as originally introduced).

of" the UK or a British overseas territory in order to make a deprivation order. Instead, to strip a person of their citizenship, the Secretary of State needed only be satisfied that deprivation was "*conducive to the public good*". Debate in the House of Lords suggests that those supporting the change considered that the previous threshold had been too high.[27]

28. On any view this was a dramatic and unprecedented expansion of the deprivation power, intended it appears to align the power of deprivation for dual nationals with the power of deportation.[28]

Immigration Act 2014

29. The deprivation power was expanded yet further by operation of the Immigration Act 2014. That Act inserted a new subsection (s.40(4A)) into the BNA 1981, enabling the Secretary of State to make a deprivation order against a person who does not have dual nationality provided that:

> "*(a) the citizenship status* [e.g. British citizenship] *results from the person's naturalisation,*
>
> *(b) the Secretary of State is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself 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*
>
> *(c) the Secretary of State has 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.*"

30. The result was that in such cases the Secretary of State could render a person stateless.

2018 amendments to the British Nationality Regulations 2003

31. Finally, in 2018 the British Nationality Regulations 2003 ("**Nationality Regulations**") were amended in order to widen the mechanisms for notification of a deprivation order.

[27] See e.g., the comments of Baroness Ashton of Upholland, HL Debate, 14 March 2006, col. 1190.
[28] Fransman, ibid, pp.609, 617-618.

The consequences of these amendments was that even where the Secretary of State had never held an address for a person, she could in certain narrow circumstances serve notice by placing it on a person's Home Office file (reg. 10(4)). This was to be treated as sufficient only where:

(1) the person's whereabouts were not known;

(2) either the person had never provided the Secretary of State with an address for correspondence, or the address previously provided was defective, false, or no longer in use; *and*

(3) either the person did not appear to have a representative, or the address provided for their representative was defective, false or no longer in use.

32. In *R (D4) v Secretary of State for the Home Department* [2021] EWHC 2179 (Admin), the Administrative Court (Chamberlain J) considered whether the Secretary of State had the power to make these amendments, given that there was no realistic way that placing information on an internal Home Office file would serve to inform the person affected of the intended decision.

33. The BNA 1981 conferred a power to make to make regulations "*for the giving of any notice*" about a deprivation order (s.41(e)). Chamberlain J held that this power did *not* extend to providing for a notification mechanism which was bound to be ineffective. He observed (at §24): *"'Serving' notice 'to file' is a euphemism. It gives no notice at all. The requirement to give written notice imports an obligation to 'take steps that have at least a reasonable prospect of bringing the deprivation decision to the attention of the affected individual.'"* Accordingly, he held that the 2018 amendments were *ultra vires* and of no legal effect.

34. Chamberlain J also held that the result of a failure to comply with the notice requirement was to render any subsequent deprivation order a nullity – that is, of no legal effect.

35. As explained below, the stated intention of clause 9 is to reverse the effect of both aspects of this judgment. The reality is that, for the reasons given in section F, it goes considerably further.

C. THE CURRENT LEGAL FRAMEWORK: THE BNA 1981

36. Against that background, we turn to consider the current legal framework. Pursuant to the BNA 1981 as currently in force, British citizens may be deprived of their citizenship by order of the Secretary of State (s.40). Deprivation orders are not obtained from any court or tribunal (although there is a right of appeal). The Secretary of State may deprive a person of their citizenship if satisfied that this is "*conducive to the public good*" (s.40(2)). The Secretary of State may also deprive a person of citizenship obtained by registration or naturalisation if obtained by fraud, false representation, or concealment of material facts (s.40(3)).

37. The Secretary of State may not make a deprivation order on the basis that it is *"conducive to the public good"* if that would make a person stateless (s.40(4)), save where certain conditions are met (ss.40(4)-(4A)).[29] The conditions are:

    (1) that the person's citizenship status results from the person's naturalisation (i.e. they were not a British citizen from birth or registered as such);

    (2) that the Secretary of State is satisfied that deprivation is conducive to the public good because the person has acted in a manner *"seriously prejudicial to the vital interests"* of the UK or an overseas territory; and

    (3) that the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the UK, to acquire another nationality.

38. The result is that the Secretary of State *does* have the power to make a person stateless in certain cases – for example, where a naturalised citizen whose conduct meets condition (2) above. Moreover, where that person is ultimately denied citizenship by the country

[29] This restriction does not apply to orders made against naturalised/registered citizens on the basis of fraud etc.

whose nationality the Secretary of State reasonably believed they could acquire, statelessness is likely to become permanent.[30]

39. The Secretary of State's current policy regarding the exercise of her deprivation powers is set out in Chapter 55 of her Nationality Instructions. The contents of this policy are potentially significant because, as a matter of general public law, the Secretary of State is required to follow it unless there is a good reason not to do so.[31] The Secretary of State of course has power to change her policy from time to time, provided the policy is compatible with the statute.

40. Chapter 55 defines *"conduciveness to the public good"* by reference to *"involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours"* (para. 55.4.4). It does not provide any further detail as to (for example) what is considered as constituting *"unacceptable behaviour"* falling short of the conduct expressly listed, and what degree of *"involvement"* is considered sufficient to warrant the deprivation of citizenship. By way of contrast, extensive provision is made regarding the circumstances in which deprivation may or may not be appropriate on grounds of fraud, false representation, etc (paras 55.6-55.7). The policy does not address the Secretary of State's approach to the operation of the notice provisions described above.

41. Crucially, under the current legislation, the Secretary of State *may not (in any case)* make a deprivation order without giving a person a written notice specifying: (a) that the Secretary of State has decided to make an order; (b) the reasons for the order; and (c) the right of appeal (s. 40(5)).

42. Notice can generally be given via a person's last known address or the address of their representative (British Nationality (General) Regulations 2003, reg. 3). As noted at §30 above, in 2018 the Secretary of State amended the Regulations to provide that, in certain limited circumstances, notice could be given simply by placing the required information

[30] See *Pham v SSHD* [2015] 1 WLR 1591, where the Vietnamese government simply declined to accept that the appellant was a Vietnamese national (despite the fact that the relevant legislation appeared to entitle him to citizenship). The deprivation order was upheld despite this. Contrast *Al-Jedda v SSHD* [2014] AC 253, confirming that (prior to the enactment of s.40(4A)) a deprivation order made on *"conducive to the public good"* grounds would contravene s.40(4) if the person affected did not hold another nationality, even where they could successfully apply for one.

[31] See *Aziz v SSHD* [2019] 1 WLR 266, §35; *Lumba v SSHD* [2012] 1 AC 245, §26.

on a person's Home Office file (which is not publicly accessible). In a judgment given on 30 July 2021, the Administrative Court (Chamberlain J) held that the Secretary of State did not have the power make regulations to this effect and that the amendments were therefore *ultra vires* and of no legal effect.

43. A person can appeal a decision to deprive them of their citizenship to the First-tier Tribunal or, in cases certified by the Secretary of State,[32] to the Special Immigration Appeals Commission (**"SIAC"**) (s.40A, with s.2B of the Special Immigration Appeals Commission Act 1997). No specific grounds of review are prescribed. The Upper Tribunal has held that this empowers the Tribunals to take a broad approach, including considering for themselves whether the discretion was properly exercised (albeit with proper weight given to the views of the Secretary of State).[33] A similar approach was taken by SIAC, though the recent judgment of the Supreme Court in *R (Begum) v SSHD* [2021] AC 765 means this will now be narrowed so as to mirror that applicable in administrative law.[34]

44. An appeal is not treated as suspensive: that is, the Secretary of State can make a binding deprivation order (with all the consequences that entails) even while an appeal against her decision to do so is pending.[35]

D. THE SIGNIFICANCE OF A DEPRIVATION DECISION

45. The draconian effects of a deportation decision are well documented. The central importance of citizenship, and the significance of a deprivation decision, has long been recognised by courts and tribunals. By way of illustration only:

    (1) In *R (Bancoult) v Secretary of State for Foreign Affairs (No 2)* [2009] 1 AC 453, Lord Rodger accepted that the right of the citizen not to be banished from the country of which he is a citizen is a "*fundamental principle of English law*" (§§87-

[32] On the same grounds set out in FN 24 above.
[33] See e.g. *BA (Deprivation of citizenship: appeals)* [2018] UKUT 00085 (IAC), endorsed by the Court of Appeal in *KV (Sri Lanka) v SSHD* [2018] 4 WLR 166.
[34] The consequences for the position in the First-tier Tribunal remain unclear: see *Laci v SSHD* [2021] 4 WLR 86, §40.
[35] See *R (W2) v SSHD* [2018] 1 WLR 2380, at §19 (citing with approval the summary provided by the court below); *R (Begum) v Special Immigration Appeals Commission* [2021] 2 WLR 556, §1.

89). Lord Carswell, who agreed with Lords Rodger and Hoffmann (§12) said "*it has been part of the law of England at least since Magna Carta, chapter 29 of which provides that no freeman shall be exiled otherwise than by the lawful judgment of his peers or by the law of the land*" (§124). Lord Mance said of the right of abode that "*the right is fundamental and, in the informal sense in which that term is necessarily used in the United Kingdom context, constitutional*" (§151). At §154 he said "*the common law position must in my opinion be that every British citizen has a right to enter and remain in the constitutional unit to which his or her citizenship relates*". In the same case, Lord Hoffmann said (at §45):

> "*I quite accept that the right of abode, the right not to be expelled from one's country or even one's home, is an important right. General or ambiguous words in legislation will not readily be construed as intended to remove such a right: see R v Secretary of State for the Home Department ex parte Simms [2000] 2 AC 115, 131-132.*"

(2) In *R (Begum) v SSHD* [2021] AC 765, Lord Reed stated (at §94):

> *"…a deprivation decision may have serious consequences for the person in question: although she cannot be rendered stateless, the loss of her British citizenship may nevertheless have a profound effect upon her life, especially where her alternative nationality is one with which she has little real connection."*

(3) In *R (Project for the Registration of Children of British Citizens) v Secretary of State for the Home Department* [2021] 1 WLR 3049, the Court of Appeal noted (at §32) that:

> *"…it is not disputed by anyone, least of all by the Secretary of State, that British citizenship is a status of importance to those that hold it and that the entitlement to be registered as a British citizen is likewise a right of importance."*

(4) In *Pham v Secretary of State for the Home Department* [2015] 1 WLR 1591, Lord Sumption JSC said (at §108):

> "*A person's right in domestic law to British nationality is manifestly at the weightiest end of the sliding scale, especially in a case where his only alternative nationality (Vietnamese) is one with which he has little*

historical connection and seems unlikely to be of any practical value even if it exists in point of law."

(5) In *Ahmed and Others (deprivation of citizenship)* [2017] UKUT 00118 (IAC) McCloskey J said (at §27):

> *"The effect of modern British nationality laws is that loss of the right of abode in the United Kingdom is the main consequence of depriving a person of British citizenship. The affected subject also suffers the loss of associated and consequential rights, duties and opportunities – in particular voting, standing for election, jury service, military service, eligibility for appointment to the Civil Service and access to state benefits, state-financed healthcare and state-sponsored education. Fundamentally, the relationship between the individual and the State, which lies at the heart of citizenship and nationality, is extinguished.*"

46. During the passage of the Immigration Act 2014, the Joint Committee on Human Rights further highlighted the serious consequences for a person stripped of their citizenship: "*depriving people of their citizenship is a serious matter, and becoming stateless has serious consequences for individuals. In the memorable words of Hannah Arendt, it deprives people of 'the right to have rights.* "[36]

47. The exercise and discussion of the Secretary of State's deprivation powers has, over the past decade, increasingly been accompanied by the slogan: "*British citizenship is a privilege, not a right*". This idea was first publicly deployed in Parliament in 2008 by David Davis, and was later repeated by Chris Grayling and Damien Green.[37] In 2015, James Brokenshire described the government's position as being that "*UK citizenship is a privilege for those who deserve it, not an automatic right for those who do not.*"[38] The same language was used by the Home Office on 17 November 2021 to justify clause 9 of the Bill: "*British citizenship is a privilege, not a right. Deprivation of citizenship on conducive grounds is rightly reserved for those who pose a threat to the UK or whose conduct involves very high harm*."[39]

[36] Joint Committee on Human Rights, *Legislative Scrutiny: Immigration Bill (Second Report)*, Twelfth Report of Session 2013-14, 26 February 2014, §13.
[37] HC Debate, 20 February 2008, col 354; HC Debate, 2 June 2009, col 183; HC Debate, 14 July 2009, col 223.
[38] HC Debate, 5 January 2015, col 17.
[39] The Guardian, New bill quietly gives powers to remove British citizenship without notice, 17 November 2021.

48. The following day, the UN Secretary General, António Guterres, stated: "*[h]aving a nationality is not a privilege – it's a human right*" protected by UN treaties, to which the UK is party and is obliged to protect.[40] This is self-evidently right. As observed above, citizenship is "*the right to have rights*".[41] In 1958, Chief Justice Warren for the US Supreme Court declared that a statutory provision providing that a citizen "*shall lose his nationality*" for desertion was unconstitutional as being cruel and unusual punishment. Loss of nationality amounted to "*the total destruction of the individual's status in organised society … the expatriate has lost the right to have rights*": *Trop v Dulles* (1958) 356 US 86, 101-102. In 2007, the Court of Appeal endorsed this view: *EB (Ethiopia) v SSHD* [2009] QB 1 at §§69-70; 75.

E. THE INCREASED USE OF THE DEPRIVATION POWERS IN PRACTICE

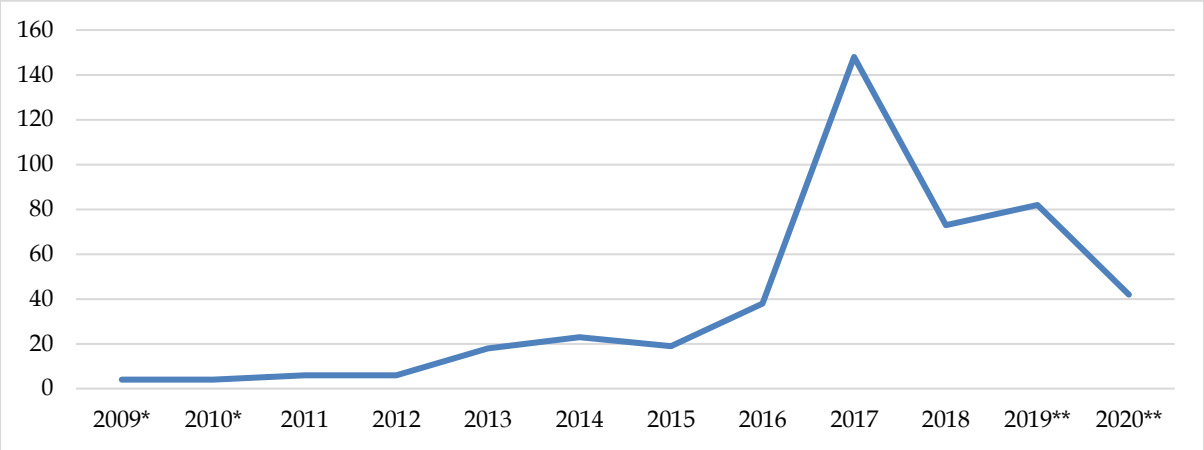
49. The gradual legislative expansion of the deprivation powers has had real impact on both (i) the number of people deprived of British citizenship in recent years, and (ii) the circumstances in which the power is exercised.

50. As to overall numbers, the statistics on the number of deprivation orders made are set out in the Annex to this Joint Opinion and, for the period 2009 onwards, summarised in Chart 1 below. Between 1949 and 1973 at least 10 deprivation orders were made.[42] The power then appears to have fallen into desuetude for several decades. Between 1973 and 2002, no deprivation orders were made at all.[43] However, since 2011, the power has been used to strip at least 441 people of their citizenship, with 104 cases in 2017 alone.[44] For the years from 2019 onward the only figures available relate to deprivation on the basis of fraud (etc), as the Home Office has yet to publish any data relating to the use of the power on *"conducive to the public good"* grounds, insisting that she will do so at a time of her

[40] António Guterres (@AntonioGuterres), tweet on 18 November 2021: https://twitter.com/antonioguterres/status/1461156202268794881.
[41] See §4 above; Arendt; "The Rights of Man: What Are They"; *The Origins of Totalitarianism, Chapter 9.*
[42] Letter of James Brokenshire MP to the Chair of the Joint Committee on Human Rights, 20 February 2014, Q20.
[43] Home Office, Secure Borders, Safe Haven: Integration with Diversity in Modern Britain (Cm 5387), February 2002, §2.22.
[44] Home Office Response to FOI 38734, 20 June 2006; Home Office, Immigration and protection data, Q2 2021, 26 August 2021; HM Government, Transparency Report 2018: Disruptive and Investigatory Powers (Cm 9609), July 2018; HM Government, Transparency Report: Disruptive Powers 2018/19 (CP 212), March 2020.

choosing.[45]

Chart 1: Number of deprivation orders made[46]



* The only publicly available data is that less than 5 deprivation orders were made in 2009 and 2010. For illustrative purposes, Chart 1 shows the maximum possible number of orders (i.e. 4 orders) for each of those years.

** Data is only available where deprivation was ordered on the basis that fraud, false representation or concealment of facts was used to obtain British citizenship. It is not known for these years how many people were deprived of citizenship on the ground that the Secretary of State considered deprivation "*conducive to the public good*".

51. As to the circumstances in which the power is exercised in practice, there have been two notable areas of expansion.

52. The first concerns the making of deprivation orders against individuals whilst they are abroad. In 2013, the Bureau of Investigative Journalism reported a significant increase in the use of deprivation powers in these circumstances. Of the 37 orders issued by Theresa May as Home Secretary between 2010 and 2013, all but two were reportedly issued

[45] See, e.g. Free Movement report 10 January 2022.
[46] Sources: Home Office Response to FOI 38734, 20 June 2006; Home Office, Immigration and protection data, Q2 2021, 26 August 2021; HM Government, Transparency Report 2018: Disruptive and Investigatory Powers (Cm 9609), July 2018; HM Government, Transparency Report: Disruptive Powers 2018/19 (CP 212), March 2020.

whilst the individual was abroad.[47] This meant that those individuals would be stranded overseas whilst awaiting the outcome of any appeal in the UK – a process which may take several years – and might be at risk of detention in or removal from their country of residence in breach of their fundamental rights. If they were in custody abroad, they might also face risks flowing from the loss of the protection afforded by their British nationality.

53. The Secretary of State has, in recognition of risks of this kind, maintained since around 2014 a policy (discussed in the case of *X2 v SSHD,* SC/132/2016, Judgment of 18 April 2018 and by the Supreme Court in *Begum*) of refraining from making deprivation orders where doing so would expose the individual to a real risk of breaches of Article 2 or 3 ECHR.

54. The second expansion concerns the use of deprivation powers against individuals who have committed serious offences but whose conduct does not represent "*one of the most flagrant cases of … disloyalty*". As noted at §39 above, the Secretary of State's current published policy cites involvement in *"serious organised crime"* as an example of a situation in which deprivation of citizenship may be considered "*conducive to the public good*". However, in practice the exercise of the power in such cases appears to be a comparatively recent phenomenon.

55. The earliest example reflected in the authorities is the July 2015 decision of Theresa May, then Secretary of State, to strip certain members of the Rochdale sex trafficking gang of their British citizenship. Subsequently, in October 2018, then Home Secretary Sajid Javid announced that he would start to use his powers under the BNA 1981 in cases involving serious criminality. He said (emphasis added):

> "*The Home Secretary has the power to strip dual citizens of their British citizenship. It is a power used for extreme and exceptional cases. It should be used with great care and discretion – but also determination. In recent years we have exercised this power for terrorists who are a threat to the country. Now,*

[47] Bureau of Investigative Journalism, Rise in citizenship-stripping as government cracks down on UK fighters in Syria, 23 December 2013.

for the first time, I will apply this power to some of those who are convicted of the most grave criminal offences."[48]

56. As a result of the considerable expansion described above, the UK Government currently has greater powers to deprive individuals of their citizenship than any other G20 country. For example, the United States, Australia and Turkey are the only other G20 countries that allow those who were citizens from birth to lose their citizenship.[49] However, in each case, the power to do so is more limited than the power set out in s.40 of the BNA 1981. In particular:

(1) Natural-born US citizens can only be deprived of their citizenship if they voluntarily perform specific acts with the intention to relinquish US nationality.[50]

(2) In Australia, those who are citizens from birth can only be deprived where they have committed specified acts (primarily terrorist activities or engaging in the armed forces of an enemy at war) or received a sentence of more than three years' imprisonment for specified offences (again primarily associated with terrorism), and in either case their conduct demonstrates that they have *"repudiated their allegiance to Australia"* and it would be contrary to the public interest for them to remain an Australian citizen.[51]

(3) The New Statesman reports that Turkey similarly deprives citizens from birth of their nationality only where they have committed specific offences, such as assisting a combatant state.[52]

57. We are not aware of any G20 country (or indeed any country) which allows a country to make its citizens stateless by depriving them of citizenship without any form of notice.

[48] Sajid Javid, Conservative Party Conference Speech 2018, 5 October 2018.
[49] New Statesman, Priti Patel's powers to revoke citizenship are the broadest in the G20, 9 December 2021.
[50] 14th Amendment to the US Constitution; US Code, Title 8, §1481; USA Government, Renounce or Lose your U.S. Citizenship.
[51] Australian Citizenship Act 2007, ss.36B and 36D.
[52] New Statesman, Priti Patel's powers to revoke citizenship are the broadest in the G20, 9 December 2021.

F. CLAUSE 9: ANALYSIS AND DISCUSSION

Clause 9 of the Bill

58. The Bill was introduced to the House of Commons on 6 July 2021. In its original form, it did not contain any provisions relating to deprivation of citizenship. At Committee stage, the Government proposed a new clause specifying the circumstances under which the Secretary of State would be able to deprive a person of their British citizenship without notice. That is clause 9 in the current draft of the Bill.

59. As proposed, clause 9 provides:

> *"**9. Notice of decision to deprive a person of citizenship***
>
> *(1) In this section, "the BNA 1981" means the British Nationality Act 1981.*
>
> *(2) In section 40 of the BNA 1981 (deprivation of citizenship), after subsection (5) (which requires notice to be given to a person to be deprived of citizenship) insert—*
>
> > *"(5A) Subsection (5) does not apply if it appears to the Secretary of State that—*
> >
> > *(a) the Secretary of State does not have the information needed to be able to give notice under that subsection,*
> >
> > *(b) it would for any other reason not be reasonably practicable to give notice under that subsection, or*
> >
> > *(c) notice under that subsection should not be given—*
> >
> > *(i) in the interests of national security,*
> >
> > *(ii) in the interests of the relationship between the United Kingdom and another country, or*
> >
> > *(iii) otherwise in the public interest.*
> >
> > *(5B) In subsection (5A), references to giving notice under subsection (5) are to giving that notice in accordance with such regulations under section 41(1)(e) as for the time being apply."*

(3) In section 40A of the BNA 1981 (appeals against deprivation of citizenship), for subsection (1) substitute—

"(1) A person—

(a) who is given notice under section 40(5) of a decision to make an order in respect of the person under section 40, or

(b) in respect of whom an order under section 40 is made without the person having been given notice under section 40(5) of the decision to make the order, may appeal against the decision to the First-tier Tribunal."

(4) In the British Nationality (General) Regulations 2003 (S.I. 2003/548), in regulation 10 (notice of proposed deprivation of citizenship), omit paragraph (4).

(5) A failure to comply with the duty under section 40(5) of the BNA 1981 in respect of a pre-commencement deprivation order does not affect, and is to be treated as never having affected, the validity of the order.

(6) In subsection (5), "pre-commencement deprivation order" means an order made or purportedly made under section 40 of the BNA 1981 before the coming into force of subsections (2) to (4) (whether before or after the coming into force of subsection (5)).

(7) A person may appeal against a decision to make an order to which subsection (5) applies as if notice of the decision had been given to the person under section 40(5) of the BNA 1981 on the day on which the order was made or purportedly made."

60. This clause seeks to make two important changes to the existing law.

61. ***First,*** clause 9 alters the current notice requirements by inserting a new subsection (s.40(5A)) into the BNA 1981. By this new subsection, the Secretary of State is able to deprive a person of their British citizenship without notice if: (a) she does not have the information needed to give notice; (b) it would "*not be reasonably practicable*" to give notice "*for any other reason*"; *or* (c) notice *"should not be given"* in the interests of national security, the UK's relations with another country, or otherwise in the public interest. The potential breadth of these exceptions is striking. We discuss that below.

62. ***Second***, clause 9 would ensure that where the Secretary of State has failed in the past to give notice of a deprivation of citizenship (as she was legally required to do), this would not invalidate the deprivation order. Importantly, this appears to be the case *irrespective* of whether the circumstances in which the Secretary of State failed to give notice would have fallen within the new exceptions. As a result, even if there was no good reason for the failure, the courts would have no power to quash the decision on this basis.

63. On 8 December 2021, MPs gave the Bill a third reading by 298 votes to 231, so that it passed to the House of Lords with a majority of 67. On 5 January 2022 the second reading of the Bill took place in the House of Lords. Committee stage is due to take place on 27 January 2022.

The importance of notice at common law

64. It is a *"fundamental principle"* of the UK legal system that *"notice of a decision is required before it can have the character of a determination with legal effect"*: ***R (Anufrijeva) v SSHD*** [2004] 1 AC 604 *per* Lord Steyn (Lords Hoffman, Millett and Scott agreeing) at §26. Lord Steyn described the need for notice as *"an application of the right of access to justice"*, which has been repeatedly identified as constitutional in character: ibid, and see *R (UNISON) v Lord Chancellor* [2020] AC 869, §66 (describing the *"constitutional right of access to the courts"* as *"inherent in the rule of law"*). The link between the two is that a person cannot effectively challenge a decision they do not know has been made: *Anufrijeva*.

65. In *Anufrijeva*, Lord Steyn explained that the need for notice was further strengthened by *"the constitutional principle requiring the rule of law to be observed"*, which *"requires that a constitutional state must accord to individuals the right to know of a decision before their rights can be adversely affected"* (at §28); notification ensures that *"the accountability of public authorities is achieved"* (at §30). Lord Steyn described the proposition that an uncommunicated administrative decision could bind an individual as *"astonishingly unjust"*, as *"[i]n our system of law surprise is regarded as the enemy of justice"*: §30.

66. Notice, and in particular the giving of reasons, is also (in this context) a requirement of procedural fairness. It is well established that, where a decision is liable to have a serious adverse impact on the person concerned, fairness requires that they be made aware of the criteria on which the decision will be based and afforded an opportunity to make representations as to why those criteria are (or are not) satisfied. For example, in *R (Talpada) v SSHD* [2018] EWCA Civ 841, Singh LJ confirmed that *"the fundamental requirement of the second limb of procedural fairness is to give an opportunity to a person whose legally protected interests may be affected by a public authority's decision to make representations to that authority before (or at least usually before) the decision is taken"*: §57.

67. This requirement has been consistently given effect in the context of decisions relating to citizenship. In *R (Al-Fayed) v SSHD* [1998] 1 WLR 763, the Court of Appeal – considering a challenge to the refusal of an application for naturalisation – held that procedural fairness required the Secretary of State to inform the applicants of his intended decision and the basic reasons for it in order to afford them an opportunity of addressing those matters. Lord Woolf MR explained that – given the importance of citizenship, the damaging reputational effects of a refusal, and the "*nebulous*" nature of the relevant criterion (which related to good character):

> *"…unless the applicant knows the areas of concern which could result in the application being refused in many cases… it will be impossible for him to make out his case. The result could be grossly unfair. The decision-maker may rely on matters as to which the applicant would have been able to persuade him to take a different view."*

68. These principles apply *a fortiori* to a decision to *deprive* a person of their citizenship, and (to date) have been reflected in the notice requirement described above.

The scope of the new powers to deprive without notice

69. In order to understand the extent of the conflict with the common law principles identified above, it is necessary to understand both the scope of the Secretary of State's existing powers, and the scope of the new powers under clause 9.

70. The Explanatory Notes to the Bill suggest that the new powers:

"provide a means of depriving a person of their British citizenship where it is not possible to give, or there are reasons for not giving, prior notice of the deprivation decision, as specified in subsection (2) of the clause. This is necessary to ensure that deprivation powers can be used effectively in all appropriate circumstances including, for example, where a person is no longer contactable by the Home Office."

71. On 3 December 2021, the Home Office published a factsheet on the Bill which states:[53]

"The Bill allows for the Home Office to deprive someone of their citizenship without prior notification but only in exceptional circumstances.

[…]

Though we will always try to tell an individual that their citizenship is to be deprived, it might not be possible in exceptional circumstances. For example, this may be because we do not know where they are, or because they are in a war zone where we can't get in touch with them, or because informing them would reveal sensitive intelligence sources. It is vital, including to our national security, that we ensure that just because we cannot immediately tell a person they are to be deprived of British citizenship, it doesn't make the decision any less valid or prevent the deprivation order being made."

72. Finally, on 5 January 2022 – in response to a public petition (on the Parliamentary petitions website) to remove clause 9,[54] which has received over 300,000 signatures – the Government asserted that:[55]

"It cannot be right that the proper functioning of the immigration and nationality system is impeded because an individual has removed themselves from contact with the Home Office, or they are in a war zone where they cannot be contacted, or where to make contact would disclose sensitive intelligence sources.

[…]

This clause is therefore necessary to avoid the situation where we could never deprive a person of their British citizenship just because it is not practicable, or not possible, to communicate with them."

73. The analysis published by the Home Office is simply incorrect. The BNA 1981 does not provide that the Secretary of State cannot deprive a person of their citizenship *"just*

[53] Home Office, Nationality and Borders Bill: Deprivation of Citizenship Factsheet, 3 December 2021 .
[54] UK Government and Parliament, Petition: Remove Clause 9 from the Nationality and Borders Bill.
[55] UK Government and Parliament, Petition: Remove Clause 9 from the Nationality and Borders Bill.

because [she] cannot immediately tell [them]" or *"just because it is not practicable, or not possible, to communicate with them"*. Indeed, and as noted above, the Nationality Regulations make *specific* provision for notification via a person's last known address or via their representative, without any further requirement that the notice be received by the person concerned before a deprivation order can be made. The question of whether such a requirement is *implicit* in s.40 has never, to the best of our knowledge, been decided by the courts. In *D4*, for example, the Court considered the issue but did not need to determine it: it expressly acknowledged the possibility that *"the concept of 'giving notice' does not always require the notice to be received"*, and that the requirement to give notice *"might be satisfied provided only that reasonable steps have been taken to bring the notice to the attention of the person concerned"* (§47; see also §50).

74. Nor is the Home Office correct to say that the Secretary of State cannot (in any circumstances) deprive a person of their citizenship *"where [the] person is no longer contactable by the Home Office"* or has *"removed themselves from contact"*. Again, as noted above, for many years the Nationality Regulations expressly identified the use of a person's last known address as an appropriate means of notification *where their whereabouts were not known.*

75. Contrary to the impression that appears to be given in various Home Office statements, Clause 9 is not filling some obvious gap: it represents a deliberate choice to extend the scope of the Secretary of State's powers. It does so in a way which goes significantly beyond what would be required to reverse the judgment in *D4*, which would have simply required reinstatement – by way of primarily legislation – of the limited provision for notification via the Home Office file. That is clear from the following:

    (1) The powers in the new s.5A are not limited by a criterion of *"exceptional circumstances"*.

    (2) To the contrary, their scope is extremely wide. For example:

(a) The circumstances in new s.5A(a)[56] and (b)[57] are alternative, not cumulative. As a result, if the Secretary of State does not have a person's last known address or the address of a representative, she is not (on the face of the provision) required to take *any* steps to find these details before relying on her power to dispense with the notice requirement altogether. Unless a court found such a requirement to be implicit, any commitment to *"always try[ing] to tell an individual that their citizenship is to be deprived"* would be a matter of policy only. Similarly, the Secretary of State could rely on the *"for any other reason… not reasonably practicable"* exception in s.5A(b) even if all the information needed to serve notice were readily available.

(b) Neither of these provisions is limited by reference to what is *"possible"* (or even *"reasonably possible"*). Accordingly, that the Secretary of State could dispense with notice even though it *was* possible for her – by reference to the information available and any other practical considerations – to give it.

(c) The language of s.5A(b) is particularly broad. It applies where there is no lack of information, which is covered by s.5A(a), and no national security, international relations or public interest concerns, covered by 5A(c)).

(d) Section 5A(c) is also extremely broad. First, the inclusion of the *"otherwise in the public interest"* is extraordinary, applying *ex hypothesi* where there is requisite information to give notice, it is reasonably practicable to do so, and there is no national security or international relations reason not to.[58] Second, the power is triggered where *"it appears to the Secretary of State"* that notice *"should not be given"* on one or more of these grounds – by comparison to (for example) requiring the Secretary of State to be satisfied that giving notice would seriously or unacceptably compromise these interests. Third, the provision allows the Secretary of State to dispense not only with giving *reasons* for an intended deprivation of citizenship, but also with giving *any*

[56] "*The Secretary of State does not have the information needed to be able to give notice under [s.40(5)]*."
[57] "*It would for any other reason not be reasonably practicable to give notice under [s.40(5)]*."
[58] Speaking during the second reading of the Bill in the Lords, Baroness Jones of Moulsecoomb said: *"The term "otherwise in the public interest" is so broad a discretion as to be almost meaningless. The Secretary of State can basically choose not to give notice on a whim"*: HL Debate, 5 January 2022, col 604.

notice at all; it is difficult to see how the latter could compromise (for example) national security in all but a tiny number of cases.

(3) This breadth is compounded by the combination of the impact of non-notification on the right of appeal with the absence of other safeguards (which we discuss below).

76. In the recent debate in the House of Lords, Lord Anderson drew these threads together, noting that:

> *"Clause 9 allows notice to be withheld even when up-to-date contact details are available, when it is practicable to give notice, and when no considerations arise of national security or foreign relations. The Secretary of State does not even have to try to give notice: she must only believe that dispensing with notice is 'in the public interest'. Hints of future ministerial restraint of the sort that the Home Office has been energetically tweeting during this debate have no basis in this clause and are no substitute for properly defined laws."*[59]

77. We agree. The inroads clause 9 makes into the constitutional principle that notice must be given of administrative decisions and into the common-law requirements of procedural fairness are both wide and deep.

The impact of the changes on the right of appeal

78. As noted above, one of the reasons notice is so important to the operation of our legal system is that a person must know a decision has been made in order to challenge it in court. Access to the courts and tribunals has long been recognised as a fundamental constitutional right in the UK. It is fundamental to the rule of law.

79. In its response to the Parliamentary petition calling for the removal of clause 9, the Government stressed that the clause *"does not affect the right to appeal"*. It continued:

> *"… the Government wishes to make clear that it does not intend to deny a person their statutory right of appeal where a decision to deprive has been made. The amendment to section 40A of the British Nationality Act 1981 preserves the right of appeal in cases where the notice of a decision to deprive has not been given to the person as their current whereabouts are unknown. Once a person makes*

[59] HL Debate, 5 January 2022, col 602.

contact with the Home Office, they are given a copy of the deprivation decision notice. They can then seek to exercise their statutory right to appeal against that decision.

The Government is not extending deprivation powers through the inclusion of this measure and is not denying a person their statutory right of appeal where a decision to deprive has been made. The proposed amendment preserves this right."

80. In our view, while clause 9 does not *formally* remove the right to appeal a deprivation decision, it would *in practice* impede it in real and significant ways.

81. First and most obviously, a person will be unable to exercise their right of appeal unless and until they know that a decision has been made. Where the Secretary of State has dispensed with the notification requirement, this may never occur. Clause 9 does not contain any requirement that the Secretary of State seek to notify a person of a deprivation decision *even after the event* (for example, when the reasons for invoking the relevant exemption to the notice requirement cease to apply).[60] A person may therefore, in practice, be rendered unable to appeal for an indefinite period. By way of comparison, in Australia where notice of deprivation of citizenship is dispensed with the relevant Minister is required to review the dispensation at regular intervals, and to give notice as soon as possible after they revoke it.[61]

82. We note in this context the question of whether a person's right of appeal is liable to lapse while they remain unaware of the underlying decision. In our view this is not a key concern. This is because the time limit for an appeal:

(1) to the First-tier Tribunal runs from the date on which a person *"[is] sent the notice of the decision against which the appeal is brought"* (if they are in the UK),[62] or from the date on which they *"receive the notice of the decision"* if they were outside the UK when the decision was made[63]; and

[60] As Lord Anderson observed in the recent debate in the House of Lords: *"What reason could there possibly be for not informing somebody within days, weeks or months of such a potentially cataclysmic event as the removal of their citizenship—especially when it is their only citizenship?"* HL Debate, 5 January 2022, cols 602-604.
[61] Australian Citizenship Act 2007, s 36F.
[62] Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014/2604, Rule 19(1).
[63] FTT Rule 19(3)(b). We note that a potential difficulty arises insofar as under rule 19(3)(a) of the FTT Rules time runs from the date of departure where a decision was *made* while the person was in the UK (with no reference to notification or service); however, we do not understand this rule, which focuses on cases where an appeal can

(2) to SIAC, generally runs from the date on which the person *"is served with notice of the decision against which he wishes to appeal."*[64]

83. In these cases, even if the Secretary of State deprived a person of their citizenship without notice, time for an appeal would only begin to run if and when they were finally notified.

84. Again, however, the critical point is that the *technical availability* of a right of appeal is very different from the *practical ability to exercise* that right. This is precisely what the Supreme Court recognised and discussed in *UNISON*, where it referred repeatedly to a right to *"unimpeded"* or *"unhindered"* access to the courts; and made it clear that *"impediments to the right of access to justice can constitute a serious hindrance even if they do not make access completely impossible"*, and that any such hindrance or impediment *"requires clear authorisation by Parliament"* (see §76-§79). The setting of Tribunal fees at a level that made appeals unaffordable in reality fell squarely within this category. The position is still clearer in respect of the new s.5A, given that those who remain unaware that a decision has been made will be effectively precluded from appealing it unless and until it is brought to their attention.

85. Further, even if an affected person is ultimately made aware of the decision and is able to bring an appeal, the effectiveness of that right may have been undermined by the passage of time. As Chamberlain J observed in *D4*, a delay in being able to bring an appeal *"is likely to diminish the quality of the evidence* [about why the decision was made and whether it was correct] *and/or the appellant's access to it"* (§27(c)).

86. The impact of both the likely delay in being able to appeal a deprivation decision, and of being impeded in the ability successfully to do so, is exacerbated by the fact that:

(1) The failure to give notice has the effect of depriving the person affected of the opportunity, which procedural fairness would (absent statutory intervention) have

only be brought out of country under the Nationality Immigration and Asylum Act 2002, to be applicable to appeals against deprivation of citizenship.

[64] Special Immigration Appeals Commission (Procedure) Rules 2003/1034, Rule 8(1).

required, to make representations to the Secretary of State before she made her decision.

(2) Since the removal of the right to a pre-decision inquiry, there have been no other prior safeguards governing the Secretary of State's exercise of the deprivation powers. In 2016 David Anderson QC, then the Independent Reviewer of Terrorism Legislation, noted the absence of a requirement for judicial approval as one of two *"striking features"* of the powers.[65] As he recently observed in the House of Lords, prior judicial approval *is* required for the imposition of less drastic and less permanent measures, such as Terrorism Prevention and Investigation Measures.[66] Judicial approval is also (by way of example) required in New Zealand where the relevant Minister wishes to dispense with the requirement to notify a person of a deprivation of citizenship.[67]

(3) As noted above, since 2014 the availability or exercise of a right of appeal has not impeded the Secretary of State's ability to make a binding deprivation order. In consequence, a person will be unable to access the benefits of British citizenship unless and until any appeal succeeds. The longer a person is rendered unable to set the wheels of the appeal process in motion, the longer (in all likelihood) they will be forced to suffer the effects of the deprivation – even if it is ultimately found to have been unlawful.

(4) Absent an appeal or other challenge by the person concerned, there is simply no mechanism for independent review of the underlying decision. By way of contrast:

(a) In New Zealand, where the court allows for dispensation of the notice requirement, it proceeds to *"consider the merits of the case" as if* the person concerned had challenged the deprivation decision.[68]

[65] The other being the breadth of the *"conducive to the public good"* criterion: see Independent Reviewer of Terrorism Legislation, Citizenship removal resulting in statelessness, 21 April 2016, §3.16 and §3.18: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/518120/David_Anderson_QC_-_CITIZENSHIP_REMOVAL__web_.pdf.
[66] Terrorism Prevention and Investigation Measures Act 2011, s.6
[67] Citizenship Act 1977, s.19(3).
[68] Citizenship Act 1977, s.15(3).

(b) In Australia, the relevant Minister is required to inform a Parliamentary Joint Committee when a deprivation of citizenship is effected without notice, and the Committee is empowered to require the Minister to explain their decision to do so.[69]

87. For all these reasons, the notice provisions of s.5A should be recognised as having a potentially significant impact on the fundamental right of access to the courts, and – insofar as they thereby immunise deprivation decisions from judicial scrutiny – on the rule of law.

Issues arising under the European Convention on Human Rights

Article 6 ECHR: Right to access court

88. Clause 9 also authorises breaches of Article 6 ECHR because it permits the disproportionate frustration of the right to access to court: *Ashingdane v UK* (1985) 7 EHRR 528, §57. The right of effective access under Article 6 includes due process: the individual must be given reasonable notice of the decision which interferes with his civil rights, so that a proper opportunity is afforded to challenge it in court: *de la Pradelle v France* (1992) A 253-B, §34. Article 6 applies to deprivation decisions because the defining feature of British citizenship is the possession (and conferral) of the right of abode: see BNA 1981, s.11(1); Immigration Act 1971, s.2. The right of abode is a common law (or civil) right, recognised by the Immigration Act 1971, s.2: *DPP v Bhagwan* [1972] AC 60, 77G (Lord Diplock). Proceedings concerning the deprivation of citizenship extinguish (and therefore "*determine*") that right: *Pomiechowski v Poland* [2012] 1 WLR 1604, §§31-32 (Lord Mance). We note that this analysis has been rejected by the Court of Appeal in *Harrison v SSHD* [2003] EWCA Civ 432, which predates the Supreme Court decision in *Pomiechowski*, and by the Administrative Court in *QX v SSHD* [2021] QB 315, before which *Pomiechowski* was not cited, and which with respect wrongly proceeded on the basis that the right of abode was a statutory, rather than a common law (civil) right.

[69] Australian Citizenship Act 2007, s.51C.

Article 8 ECHR: Right to respect for private and family life

89. It is well established that the concept of "*private life*" is a broad one, not susceptible of exhaustive definition: *Niemietz v Germany* (App. No. 13710/88, 10 December 1992), §29. It encompasses *"the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity"*: *Hoti v Croatia* (App. No. 63311/14, 26 April 2018), §119. The threshold for interference with Article 8 *"is not a specially high one"*: *AG (Eritrea) v SSHD* [2007] EWCA Civ 801, §28.

90. In light of this, the ECtHR has recognised that – although the Convention does not guarantee a right to citizenship *per se* – the deprivation of citizenship is capable of breaching Article 8: *Genovese v Malta* (2011) 58 EHRR 25, §30, §33; *Ramadan v Malta* (App. No. 76136/12, 21 June 2016), §62, §§84-85. The key issues are (i) the impact of the deprivation on the individual in all the circumstances, and (ii) whether the deprivation was arbitrary (in its full legal sense).[70] In assessing arbitrariness, relevant factors include *"whether the [decision] was in accordance with the law; whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of citizenship was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly"*: *Usmanov v Russia* (App. No. 43936/18, 22 December 2020), §63.

91. The question of whether a particular measure is "*in accordance with the* law" in turn requires an assessment of both "*accessibility*" and "*foreseeability*": see *Lorraine Gallagher for Judicial Review (Northern Ireland); R (P, G & W) v SSHD; R (P) v SSHD* [2020] AC 185, §16. Accessibility requires that a measure be *"published and comprehensible"*: *Gallagher*, §17. It involves consideration of whether the law *"indicate[s] with sufficient clarity the scope of any… discretion conferred on competent authorities and the manner of its exercise"*: *Gillan and Quinton v UK* (2010) 50 EHRR 1105, §77. Foreseeability requires that rules be *"formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences*

[70] These principles were recently applied by the Administrative Court in *R (Vanriel and Tumi) v SSHD* [2021] EWHC 3415 (Admin).

which a given action may entail": *Silver v UK* (App. No. 4947/72 & ors, 25 March 1983), [88]. The need for safeguards also forms part of the requirement of foreseeability, particularly where the terms of a discretion are broad or vague: *Gallagher*, §17, §24, §31.

92. In our view, and applying the principles summarised above, there is a very significant likelihood that decisions taken in reliance on the Secretary of State's new powers would result in serious breaches of Article 8.

93. As to the significance of the impact of a deprivation of citizenship without notice, this will of course differ between cases. However, the potential consequences are necessarily severe: they will include the loss of the right of abode in the UK; the loss of important rights, such as the right to vote; the loss of the right to re-enter the UK if a person is abroad; consequences for the lawfulness of their stay in another country; the withdrawal or unavailability of British consular assistance; or even (in extreme cases) exposure to ill-treatment in detention.

94. As to the potential for arbitrariness where the notice requirement is dispensed with, this is in our view high. In particular:

    (1) The circumstances in which the power to dispense with notice arises – in particular (and as discussed above) under s.5A(b) (*"for any other reason… not reasonably practicable"*) and the final limb of (c) (*"should not be given… otherwise in the public interest"*) – are identified in terms so broad and vague that, and on their face, they do very little to constrain the exercise of the Secretary of State's discretion. For the same reasons, it is difficult to see how a person – even with the benefit of legal advice – could have any idea whether, particularly if their whereabouts were known and their case raised no national security concerns, they were liable to be deprived of their citizenship without notice on one or both of these grounds.[71]

[71] Of course, broad concepts such as 'national security' and 'in the public interest' are already used in other legislative contexts – in many cases accompanied by published guidance which provides further information about how the Secretary of State will interpret and apply them. Some assistance may be gained from consideration of this guidance and/or relevant authorities; however, given the importance of context and the judicial tendency to avoid prescriptive definition (see e.g. *SSHD v Rehman* [2003] 1 AC 153), this assistance is likely to be limited. While the use of such broad language alone would not deprive a measure of the quality of law or render decisions under it arbitrary, it is the combination of factors identified which gives cause for concern.

These concerns could, of course, be mitigated by the adoption of a detailed published policy.[72]

(2) Decisions to deprive a person of citizenship without notice would be subject to few if any procedural safeguards capable of protecting those affected from arbitrariness. In particular, and as noted above:

(a) The failure to give notice would preclude an individual from making effective representations in advance of a decision being made.

(b) There would be no independent, pre-decision controls on the exercise of either the discretion to deprive, or the discretion to dispense with notice.

(c) In many cases, and for the reasons outlined above, this failure would also impinge on – or even in practice negate – the right of appeal against the underlying decision. This is particularly so in the absence of a requirement to give notice at a later date, or even to review the continued applicability of the relevant exemption.

(d) Absent a challenge by the person affected, there would be no other independent mechanism for reviewing or challenging either a deprivation decision or a decision to dispense with notice.

(3) There would be no express obligation on the Secretary of State to act diligently in seeking to notify an individual of a deprivation decision (for example, by ascertaining their up-to-date contact details) before exercising the power to dispense with notice altogether. Again, absent a more detailed published policy governing her approach to s.5A, there may be many cases in which she fails to do so.

95. In consequence, the introduction of s.5A would substantially increase the risk of individuals being deprived of their British citizenship arbitrarily and in contravention of

[72] The contents of which would be taken into account in assessing compliance with the "*in accordance with the law*" requirement see e.g *Silver v UK* (App. No. 4947/72 & ors, 25 March 1983), §§88-89.

Article 8 ECHR. There is also, and for the same reasons, a real concern as to whether decisions to deprive a person of notice would be in accordance with the law and therefore compatible with Article 8 ECHR.

Article 14 ECHR: Freedom from discrimination in the enjoyment of Convention rights

96. There is also, in our view, a real concern as to the compatibility of the notice provisions with Article 14 ECHR taken with Article 8.

97. Article 14 prohibits indirect, as well as direct, discrimination in the enjoyment of other Convention rights. As Lord Reed explained in *R (SC, CB and 8 children) v SSWP & Ors* [2021] 3 WLR 428 (at §53):

> *"… it has to be shown by the claimant that a neutrally formulated measure affects a disproportionate number of members of a group of persons sharing a characteristic which is alleged to be the ground of discrimination, so as to give rise to a presumption of indirect discrimination. Once a prima facie case of indirect discrimination has been established, the burden shifts to the state to show that the indirect difference in treatment is not discriminatory. The state can discharge that burden by establishing that the difference in the impact of the measure in question is the result of objective factors unrelated to any discrimination on the ground alleged. This requires the state to demonstrate that the measure in question has an objective and reasonable justification: in other words, that it pursues a legitimate aim by proportionate means…"*

98. As we have sought to explain above, since 2014 the power to deprive individuals of British citizenship has been available for use both against dual nationals, and against naturalised citizens who are "*able, under the law of a country or territory outside the United Kingdom, to become a national*" of that country or territory. The result is that, even in its existing form, the power has an overwhelmingly disproportionate impact on people of non-white racial and ethnic backgrounds – as they are substantially more likely to have or be eligible for another nationality.

99. For example, a recent analysis of 2011 census data by the New Statesman found that 41% of people in England and Wales from non-white ethnic minorities are likely to be eligible for deprivation of citizenship, compared to just 5% of people categorised as white. It also found that non-white ethnic minority citizens are eight times more likely to be eligible for deprivation of citizenship than white residents of all backgrounds. Almost half of all

Asian British people in England and Wales are likely to be eligible, compared with two in five black Britons. [73] The two largest groups of British citizens eligible for deprivation of citizenship are those born in India and Pakistan:

> *"An estimated 431,000 residents of England and Wales were born in India at a time when the country offered citizenship to anyone born there. A further 204,000 are likely to be eligible if they were born with at least one parent who was an Indian citizen at the time. Pakistan offers citizenship to anyone born in the country after 1951. More than 417,000 residents of England and Wales are likely to meet this criterion, with another 65,000 likely to be eligible if they were born to at least one Pakistani parent."*[74]

100. On 4 January 2022, 100 civil society figures signed an open letter describing the Bill as "*overtly racist*" and "*a route to disenfranchisement and even deportation of people of colour on an unprecedented scale*". [75]

101. Speaking during the second reading of the Bill in the Lords, Baroness Chakrabarti said:

> *"That the Government are bound by international law not to render people stateless ensures that this provision must inevitably be applied in a racist fashion, with the Executive determining without public scrutiny, judicial involvement or even notice to the individual concerned that they are of a category of British citizen who may potentially qualify for nationality somewhere else, regardless of whether such nationality has even been applied for, let alone granted. No wonder this provision has inspired fear and loathing in our minority communities in particular."* [76]

102. Similarly, Baroness Warsi – noting that the new notice provisions, like the deprivation powers themselves, cover "*around 40% of our ethnic minority communities*" – stressed the danger inherent in conceiving of citizenship solely as a privilege, and in conflating issues of immigration control with nationality rights. In her view, "*those who mix them do so because their flawed understanding does not see beyond the colour of someone's skin*."[77]

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[73] Ben van der Merwe, 'British citizenship of six million people could be jeopardised by Home Office plans', *New Statesman*, 1 December 2021: https://www.newstatesman.com/politics/2021/12/exclusive-british-citizenship-of-six-million-people-could-be-jeopardised-by-home-office-plans.
[74] Ibid.
[75] Media Diversified, Joint letter from 100 Civil Society Figures Opposing the Nationality and Borders Bill, 4 January 2022.
[76] HL Debate, 5 January 2022, cols 593-594.
[77] HL Debate, 5 January 2022, cols 654-655.

103. The grounds protected under Article 14 expressly include "race", "colour", and "national or social origin". Accordingly, it is in our view clear that the prospective impact of s.5A – which effectively expands the circumstances in which the deprivation power can lawfully be exercised, as well as exacerbating the adverse consequences of a deprivation order for the person affected – would also fall disproportionately on a group which shares a protected characteristic for the purposes of Article 14.

104. The question, then, would be whether the State could show that the notice provisions in s.5A were a proportionate means of achieving a legitimate aim, having regard to the nature and extent of their disproportionate impact.

105. The Government's stated objective is to ensure that a deprivation order can be made even where a person's whereabouts are unknown and they are not otherwise contactable by the Home Office. But the powers are far broader and at least in some cases there will be no rational connection between the purpose of the measure and its application.

106. In assessing proportionality, the level of scrutiny the courts apply will depend on a number of interrelated factors: see *R (SC, CB and 8 children) v SSWP & Ors* [2021] 3 WLR 428 at §158; *R (Joint Council for the Welfare of Immigrants) v SSHD* [2021] 1 WLR 1151. In this case, factors weighing in favour of a rigorous approach would include (for example) the fact that the alleged discrimination relates to what is commonly regarded as a "*suspect*" ground, and the seriousness of the consequences for those affected. Factors weighing in favour of greater deference to the balance struck by Parliament might include the extent to which decisions about notice engage questions of national security and international relations. Other relevant considerations would include whether other parties to the ECHR held common standards on the giving of notice, and whether Parliament had expressly considered the potential for discrimination and appropriate mitigation when adopting the relevant provisions.

107. When considering proportionality, one important question will be whether there was a less intrusive way of achieving the intended purpose.[78] In the present case, for the reasons given above, there would be a strong argument that – even adopting a relatively light-

[78] See, e.g., *In re Brewster* [2017] 1 WLR 519 §66.

touch standard of review – the provisions of s.5A are broader in scope, and incorporate fewer safeguards, than is necessary to ensure that valid deprivation orders can be made even where a person's whereabouts are unknown and/or they cannot immediately be contacted. In light of this, there would be real concerns as to whether the provisions struck a *"fair balance"* between the rights of those affected and the wider public interest.

108. There is some question as to whether this analysis would be complicated by the question – posed, for example, in *JCWI* – of whether the provisions were capable of being operated compatibly with Article 14 in *"all or almost all"* cases. In our view this approach is, on its face, inapt in circumstances where the focus is on the potential for *indirect* discrimination by a *single* decision-maker (the Secretary of State) – such that the question of discrimination in an individual case cannot be disentangled from the discriminatory impact of the framework as a whole.[79]

Retroactive provisions

109. The other significant changes introduced by clause 9 are contained in the following sub-clauses.

> "*(5) A failure to comply with the duty under section 40(5) of the 1981 Act in respect of a pre-commencement deprivation order does not affect, and is to be treated as never having affected, the validity of the order.*
>
> *(6) In subsection (5), "pre-commencement deprivation order" means an order made or purportedly made under section 40 of the 1981 Act before the coming into force of subsections (2) to (4) (whether before or after the coming into force of subsection (5)).*"

110. It is a fundamental common law principle that a statute will not be given retrospective effect unless this intention *"appears with reasonable certainty"* from its terms: *Maxwell*

[79] Cf. *JCWI*, where it was possible to consider the potential for direct *or indirect* discrimination by the multitude of private landlords who would be applying the statutory provisions under challenge. In that case, it was possible to ask whether all or almost all landlords could apply the statutory framework without engaging in indirect discrimination. In this case, the question of whether the Secretary of State can operate the provisions compatibly with Article 14 in an individual case is almost wholly indistinguishable from the question of whether the apparently neutral provisions she is applying to that case are indirectly discriminatory.

v Murphy (1957) 96 CLR 261, 267. As Lord Kerr explained in *Walker v Innospec Limited* [2017] 4 All ER 1004 (at §22):

> *"The general rule, applicable in most modern legal systems, is that legislative changes apply prospectively. Under English law, for example, unless a contrary intention appears, an enactment is presumed not to be intended to have retrospective effect. The logic behind this principle is explained in Bennion on Statutory Interpretation, 6th ed (2013), Comment on Code section 97:*
>
> *"If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it."*

111. The House of Lords Select Committee on the Constitution has described retroactive legislation as *"inherently constitutionally suspect"* and as requiring particularly cogent justification.[80]

112. As noted above, in *D4* the Administrative Court held that a failure to comply with the notification requirement contained in the BNA 1981 (s.40(4)) rendered a subsequent deprivation order invalid. In the present case, we consider it clear that the intention of clause 9(5)-(6) is to reverse this decision with retrospective effect. This is consistent with the Explanatory Notes, which identify the aim as being "*to ensure that deprivation orders made before subsections (2) to (4) come into force remain valid and cannot be declared null and void."*[81]

113. Importantly, clause 9 does *not* do this by applying the new exemptions to the notice requirement to decisions made in the past. As noted above, its effect is much broader and would effectively validate *any* deprivation order made without complying with the notification requirement – even if the new exceptions would never have applied to it, and indeed even if there was no good reason for the failure at all.

114. The Court's decision on validity in *D4* was based on its conclusion that this was what Parliament had intended when enacting the notice requirement in s.40(4). It reasoned that:

[80] House of Lords, Select Committee on the Constitution, 4th Report of Session 2015-16, Energy Bill [HL], §§7-9.
[81] Explanatory Notes to the Nationality and Borders Bill, 9 December 2021, §§140-141.

"(a) The language of s. 40(5) suggests that the giving of written notice is a condition precedent to the existence of the power.

(b) This is consistent with, and may be considered a reflection of, the principle identified by Lord Steyn at §26 of his speech in Anufrijeva that "[n]otice of a decision is required before it can have the character of a determination with legal effect".

(c) That principle is of particular importance where the decision is to deprive a person of a status as fundamental as citizenship.

(d) If an order made in breach of the requirement in s. 40(5) were nonetheless valid, there would be no way of enforcing the requirement and no effective sanction for non-compliance. The Home Secretary could simply ignore it. Parliament does not legislate in vain, so cannot have intended that."

115. The reversal of this conclusion would therefore make still further inroads, in this particularly anxious context, into the fundamental principle that notice of administrative decisions should be given. It would also render the requirement unenforceable in respect of all past decisions, thereby sanctioning potentially serious breaches of procedural fairness and potentially flagrant disregard of a requirement expressly imposed by Parliament.

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ANNEX

DEPRIVATION ORDERS MADE

Year	Number of deprivation orders made[82]
1973-2002	0[83]
2002-2006	No data published
2006-2010	Fewer than 5 per year.[84]
2011	6
2012	6
2013	18
2014	23
2015	19
2016	38
2017	148
2018	73
2019*	82
2020*	42

*For the years 2019 and 2020, data is only available where deprivation was ordered on the basis that fraud, false representation or concealment of facts was used to obtain British citizenship. It is not known for these years how many people were deprived of citizenship on the ground that the Secretary of State considered deprivation "*conducive to the public good*".[85]

[82] Unless otherwise indicated, these statistics are available from a combination of Home Office Response to FOI 38734, 20 June 2006; Home Office, Immigration and protection data, Q2 2021, 26 August 2021; HM Government, Transparency Report 2018: Disruptive and Investigatory Powers (Cm 9609), July 2018; HM Government, Transparency Report: Disruptive Powers 2018/19 (CP 212), March 2020.
[83] Home Office, Secure Borders, Safe Haven: Integration with Diversity in Modern Britain (Cm 5387), February 2002, §2.22.
[84] Home Office Response to FOI 38734, 20 June 2006.
[85] HM Government, Transparency Report 2018: Disruptive and Investigatory Powers (Cm 9609), July 2018; HM Government, Transparency Report: Disruptive Powers 2018/19 (CP 212), March 2020.