

Background note: the legal framework

Prior to 2003, the concept of depriving British citizens of their citizenship was relatively rare and the threshold was high. Under the [British Nationality Act 1981](#), deprivation of citizenship could only occur “if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—(a) fraud, (b) false representation, or (c) concealment of a material fact.” [s.40(3)(a)].

[Section 4 of the Nationality, Immigration and Asylum Act 2002](#) replaced s. 40 of the British Nationality Act and enabled the Secretary of State to deprive an individual of their citizenship if s/he was satisfied that the person had done anything ‘seriously prejudicial to the vital interests of—(a) the United Kingdom, or (b) a British overseas territory’ or if the Secretary of State was satisfied that a person who had obtained their citizenship through registration or naturalisation had done so by means of fraud, false representation or concealment of material fact. Importantly this now applied to those who acquired British citizenship through birth as well as to those naturalised or registered British citizens. It also lowered the threshold.

This was further amended via the [Immigration, Asylum and Nationality Act 2006](#) at s.56 which provided the Secretary of State with a very broad discretionary power to deprive an individual of their citizenship on the basis that “deprivation is conducive to the public good.” This is not defined in the statute and the sole limitation on the power was that the person subject to a deprivation order should not be made stateless. However the UK Border Agency Naturalisation guidance gives the examples of involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours”.¹ The prohibition on removing citizenship if it would leave an individual stateless was also applied to those deprived under this basis. There is no Home Office Guidance on how the Home Secretary uses the relevant powers under s.40, which have the effect of depriving a citizen of rights to abode, freedom of movement, diplomatic protection, consular assistance and various civic rights such as the right to vote.²

While there is the right to an appeal under these provisions, this is tempered by the fact that a deprivation order can take effect before the right to appeal has been exercised. The right to appeal is exercised in the Special Immigration Appeals Commission (SIAC). Where the Secretary of State wishes to rely on material which s/he objects to disclosing to the appellant or his representative on the basis of national security or public interest, there will be a closed material procedure and a Special Advocate can be appointed. Ordinarily the Special Advocate will not be allowed to take instructions from the appellant. Citizenship cases which do not fall within this criteria are addressed by the First-Tier Tribunal (Immigration and Asylum Chamber) with onward appeals at the Upper Tribunal. However, concerns have been raised that the deprivation order is often served when an individual is outside the UK, inhibiting an individual’s ability to access their right to appeal. According to a recent Freedom of Information request, in response to orders made under section 56 of the Immigration, Asylum and Nationality Act 2006, 15 appeals have been lodged and two have been upheld.³

¹ UK Border Agency, Nationality Instructions, Chapter 55: Deprivation and nullity of British Citizenship at 55.4.4.

² Lord Goldsmith QC, Citizenship: Our Common Bond, 2008, paras 15-17.

³ Home Office, response to a Freedom of Information request, 12 April 2013 (submitted 16 January 2013).

The table below outlines the changes in the regime relating to the deprivation of citizenship in the UK.⁴

Table 3
Changes in UK deprivation of citizenship criteria, 2000-2010

Criterion	2000	2002	2006	2009
1 British-born	No	Yes	Yes	Yes
2 Definition	Treason	Eur. Convention on Nationality wording	'Conducive to public good'	'Conducive to public good'
3 Removes right of abode	No	No	Yes	Yes
4 Naturalised on false information	Yes	Yes	Yes	Yes

Parliamentary Questions

There have been a number of Parliamentary Questions on the issue of citizenship deprivation. Most recently Frank Dobson MP (Lab) asked the Home Secretary, in reference to his constituent Mahdi Hashi, who was deprived of his citizenship while in Somalia and subsequently rendered to the United States,

(1) for what reason Mahdi Hashi was deprived of his British citizenship; (2) when the decision was taken to deprive Mahdi Hashi of his British citizenship; (3) when Mahdi Hashi was informed of the decision to deprive him of his British citizenship; (4) how Mahdi Hashi was informed of the decision to deprive him of his British citizenship.

Mark Harper, the Minister for Immigration responded that "As this matter is currently subject to litigation, it would not be appropriate to discuss the detail of this case"⁵

Previous questions have focused on the numbers of those deprived of their citizenship, under both s.40 of the British Nationality Act 1981 and s.56 of the Immigration, Asylum and Nationality Act 2006, with questions asked by Stewart Jackson MP⁶, Tom Brake MP⁷, Mark Burley MP⁸ and Mark Pritchard MP⁹. Sajid Javid MP asked, in April 2012, how many of those deprived of their citizenship under s.56 of the Immigration, Asylum and Nationality Act 2006 were British by birth – the answer was five.¹⁰

There have been no Early Day Motions on this subject.

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⁴ Helen Williams, University of Birmingham, *Changing the national narrative: Discourse on citizenship and naturalisation policy in Germany and the UK, 2000-2010*, Political Perspectives 2010 Vol 4 (2), 6-24.

⁵ Hansard HC Debates, 4 March 2013, Col 788W.

⁶ Hansard HC Debates, 1 March 2012, Col 458W.

⁷ Hansard HC Debates, 7 March 2011, Col 865-6W.

⁸ Hansard HC Debates, 24 January 2011, Col 54W.

⁹ Hansard HC Debates, 1 March 2012, Col 458-9W.

¹⁰ Hansard HC Debates, 16 April 2012, Col 10W.