

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT NATIONALITY AND BORDERS ACT 2022
(CONSEQUENTIAL AMENDMENTS) (NO. 2)
REGULATIONS 2022

Monday 7 November 2022

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Friday 11 November 2022

© Parliamentary Copyright House of Commons 2022

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: JUDITH CUMMINS

- | | |
|---|--|
| † Afolami, Bim (<i>Hitchin and Harpenden</i>) (Con) | † Kinnock, Stephen (<i>Aberavon</i>) (Lab) |
| † Bailey, Shaun (<i>West Bromwich West</i>) (Con) | McDonald, Stuart C. (<i>Cumbernauld, Kilsyth and Kirkintilloch East</i>) (SNP) |
| Bradshaw, Mr Ben (<i>Exeter</i>) (Lab) | † Mann, Scott (<i>Lord Commissioner of His Majesty's Treasury</i>) |
| † Bridgen, Andrew (<i>North West Leicestershire</i>) (Con) | † Mayhew, Jerome (<i>Broadland</i>) (Con) |
| De Cordova, Marsha (<i>Battersea</i>) (Lab) | Mumby-Croft, Holly (<i>Scunthorpe</i>) (Con) |
| † Dinenage, Dame Caroline (<i>Gosport</i>) (Con) | Osamor, Kate (<i>Edmonton</i>) (Lab/Co-op) |
| † Dines, Miss Sarah (<i>Parliamentary Under-Secretary of State for the Home Department</i>) | † Smith, Henry (<i>Crawley</i>) (Con) |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | Abi Samuels, <i>Committee Clerk</i> |
| † Hamilton, Mrs Paulette (<i>Birmingham, Erdington</i>) (Lab) | |
| † Howell, John (<i>Henley</i>) (Con) | † attended the Committee |

Second Delegated Legislation Committee

Monday 7 November 2022

[JUDITH CUMMINS *in the Chair*]

Draft Nationality and Borders Act 2022 (Consequential Amendments) (No. 2) Regulations 2022

4.30 pm

The Parliamentary Under-Secretary of State for the Home Department (Miss Sarah Dines): I beg to move,

That the Committee has considered the draft Nationality and Borders Act 2022 (Consequential Amendments) (No. 2) Regulations 2022.

It is a pleasure to appear under your chairmanship, Ms Cummins.

The draft regulations were laid before the House on 13 October 2022. Maintaining our national security and keeping the public safe is a top priority for the Government. That is why deprivation of citizenship where it is conducive to the public good is reserved for those who pose a threat to the United Kingdom or whose conduct involves very high harm. When passing deprivation measures in the Nationality and Borders Act 2022, the House agreed that in cases where the Secretary of State intends to make a deprivation order on the ground that it is conducive to the public good without prior notification, an application must be made to the Special Immigration Appeals Commission, which will consider the Secretary of State's reasons for not giving notice.

To implement that process, we must first amend the Special Immigration Appeals Commission (Procedure) Rules 2003, which are made and amended by the Lord Chancellor, but to create the necessary power to amend those rules we must first amend the Special Immigration Appeals Commission Act 1997, which is the purpose of this technical instrument. Today, we take a significant step towards implementing the safeguards that the House has agreed to. I therefore commend the regulations to the Committee.

4.32 pm

Stephen Kinnock (Aberavon) (Lab): It is a real pleasure to serve under your chairship today, Ms Cummins.

Powers to deprive someone of their British citizenship in certain circumstances were initially introduced in section 40 of the British Nationality Act 1981. Those powers were subject to a requirement that the Home Secretary provide written notice to anyone subject to a deprivation of citizenship order. In recent years, some high-profile legal challenges have been brought against the Government by people who were deprived of their citizenship without having received the requisite notice.

During parliamentary consideration of the Nationality and Borders Bill, Ministers explained that under existing law written notice had to be sent to a person's last known address, and in some cases it might not be possible to

reach them at that address, including in cases where the individual in question was known by the Home Secretary to be abroad in a war zone. On that basis, the Government argued that there should be exceptions to the requirement to give notice. Section 10 of the Nationality and Borders Act provides for such exceptions to be made, primarily based on security concerns.

The Opposition were not convinced by all of the Government's arguments and worked in the other place with colleagues on a cross-party basis to secure important safeguarding amendments, the first of which established a far more restricted range of circumstances in which notice could be withheld. The original clause would have allowed the Secretary of State to withhold notice whenever that appeared to be in the public interest. Amendments removed the subjective element and provided that notice may be withheld only if the Secretary of State does not have an address for service, or if she reasonably considers it necessary on one of four exceptional grounds.

The second amendment was about judicial oversight. If the Secretary of State wishes to withhold notice, she must apply to a superior court of record, the Special Immigration Appeals Commission, in advance or within seven days. The SIAC, applying judicial review principles, will examine her reasons and decide whether or not her assessment is obviously flawed. The same test is applied to the making of terrorism prevention and investigation measures under the Terrorism Prevention and Investigation Measures Act 2011. If she does not succeed on her first attempt or on a subsequent application, which must be based on a material change of circumstances or further evidence, the Secretary of State must either give notice in the normal way or revoke the deprivation order altogether.

Thirdly, decisions must be reviewed regularly. The Secretary of State must consider three times a year for two years whether the reasons for non-notification remain valid. If, after the sixth review, she still resists notification, she must make a further application to the SIAC, which will once again give independent scrutiny to her decision.

As mentioned, the second of the safeguards is the reason we are here today, and we welcome the specifics of the instrument. The Act also stipulates, in schedule 2, that the Secretary of State should apply to the SIAC when making an order to deprive someone of their citizenship without notice. The commission may then determine whether the Secretary of State's reasons for not providing notice are valid. If the commission determines that the reasoning is obviously flawed, the Secretary of State may appeal that determination to the appropriate appeal court.

What the draft regulations do is enable the Lord Chancellor to make rules setting out details of how the process should work. The rules will need to be approved by Parliament before coming into force—a process that we think is vital. Governments have had the ability to revoke British citizenship in certain cases for decades now, so the concept is not new, but the specific measures introduced through the Nationality and Borders Act give the Secretary of State significant new powers. I am sure the Minister agrees that those powers should never be used lightly; their use should be the last resort, where there is no alternative, and there should be safeguards to ensure that the system is fair and subject to independent oversight. The regulations are the first step toward establishing mechanisms for that.

The Minister will be aware that some people have voiced concern about the proposed role of the SIAC, given the secrecy of its proceedings. Protecting sensitive material on security grounds is of course crucial. I have two questions for the Minister. First, what reassurances can she give that the new rules will strike the right balance between safeguarding national security and an individual's right to appeal? Secondly, setting up the new process and establishing rules for how it should operate may take some time; can she indicate how long it might take and when the new system might be up and running?

4.36 pm

Miss Dines: I am pleased by the welcome for the measures. They were carefully thought out and have been considered by both Houses now.

To set out the historical context, which is always interesting, the powers have existed for over 100 years. It is only right that we modernise and make sure that the powers are subject to rigorous scrutiny. There are safeguards of course, and lots of checks and balances along the way.

The hon. Gentleman spoke about secret decision making, and I want to be clear that there is to be no secret decision making in deprivation cases. Appeals against deprivation of citizenship are heard by the Special Immigration Appeals Commission where there is reliance on sensitive material that could harm the public or individuals if it were revealed in open court. However, appellants are appointed special security-cleared lawyers for the task, so their interests are appropriately represented. The process is robust, as we would all expect. The changes made by the regulations strike just the right balance to protect the security of the nation and the rights of those going through this process.

On the question of timing, I will write to the hon. Member for Aberavon to say when the measures will be introduced. As usual, we are grateful for the co-operation to protect national security that we have received from the Opposition.

Question put and agreed to.

4.38 pm

Committee rose.

