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### **Note Verbale No. 097**

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit the response to communication OL GBR 3/2022, further to the letter dated 11 February 2022 from the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children and the Working Group on discrimination against women and girls.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 5 May 2022

Special Procedures Branch  
Office of the United Nations High Commissioner for Human Rights

Ms Beatriz Balbin  
Chief  
Special Procedures Branch  
Office of the High Commissioner

Dear Ms Balbin

Thank you for your letter of 11 February relating to the UK Government's Nationality and Borders Bill, specifically concerns about Clause 9 regarding notice of a decision to deprive a person of British citizenship. I am very grateful for the careful consideration the Special Rapporteurs have given to this matter.

I would first like to clarify that the power to deprive individuals of British citizenship is not specifically a counter-terrorism tool. The power is set out in section 40 of the British Nationality Act 1981: Section 40(3) of the British Nationality Act 1981 permits deprivation where a person has fraudulently obtained citizenship, either by employing fraud, by concealing material facts, or by making false representations. Section 40(2) of the Act permits deprivation if the Secretary of State is satisfied that it would be conducive to the public good. While this can include where an individual poses a threat to national security, the power is also used where a person has been involved in serious organised crime, war crimes, or unacceptable behaviours such as extremism.

UK deprivation legislation is fully compliant with international legislation, including the UN Convention on the Reduction of Statelessness. Other than where a decision is taken on the grounds that the person has conducted themselves in a manner which is seriously prejudicial to the vital interests of the UK, the power to deprive on the grounds that it is conducive to the public good is limited so that it cannot be applied where the Secretary of State is satisfied that the order would make a person stateless. The UK Parliament chose to enact the power on that basis specifically in order to avoid the prospect of leaving individuals stateless, which would of course be contrary to the UK's commitments under the 1961 Statelessness Convention. Where a decision is taken on the grounds that the person has conducted themselves in a manner which is seriously prejudicial to the vital interests of the UK, the power to deprive a person of their citizenship can be used only where there are reasonable grounds to believe that the person could, under the laws of another country or territory, become a national of that country or territory. "Seriously prejudicial" is a high threshold, which would include individuals involved in terrorism, espionage and taking up arms against British or allied forces. To date this aspect of the UK's deprivation power has never been used.

The UK recognises that to deprive someone of citizenship is a very serious matter. That is why the deprivation powers in the British Nationality Act 1981 are used sparingly and only against those whose conduct involves very high harm, those who pose a threat to the security of the UK, or those who obtained their citizenship by fraudulent means.

In using the power to deprive a person of British citizenship, the UK does not discriminate against particular groups, for example those of a particular race, religion, ethnicity or gender. The UK's Equality Act 2010 sets out the protected characteristics of age, disability, gender, marriage and civil partnership, pregnancy and maternity, race (including nationality), religion or belief, gender reassignment and sexual orientation. Section 149 of the Act contains the public sector equality duty, which obliges a public authority in the exercise of its functions to have due regard to the need to eliminate discrimination, harassment and victimisation and to advance equality of opportunity between those who have a protected characteristic and those who do not. In deciding whether to deprive a person of British citizenship, the primary factor is the behaviour of the individual who has chosen to defraud the Home Office or engage in criminal behaviour or activities that cause real harm to other individuals or to wider society. The UK considers that British citizenship is a privilege and those who have acted in a manner which is contrary to our values should not enjoy the benefits which come with holding British citizenship. While this may indirectly impact some from certain minorities, the UK considers this is justified on the grounds of preserving public safety, national security and the integrity of the immigration system.

Nevertheless, the UK recognises that a decision to deprive a person of British citizenship must be reasonable and proportionate. Each case is assessed individually, including consideration of whether an individual's fundamental rights are engaged. This does not necessarily mean they will not be deprived of citizenship, but decision-makers are obliged to strike a balance between the impact deprivation would have on the individual and the prevailing public interest. The UK also has a statutory obligation to have regard to the need to safeguard and promote the welfare of a child who may be affected by a deprivation decision. This is set out in section 55 of the Borders, Citizenship and Immigration Act 2009, and complies with the UK's obligations under Article 3 of the UN Convention on the Rights of the Child.

Further, the UK does not consider that the power to deprive a person of British citizenship is contrary to our obligations under international law relating to victims of trafficking. The UK's Modern Slavery Act 2015 introduced protection for victims of trafficking who commit offences and created an independent anti-slavery commissioner to improve and better coordinate the UK's response to modern slavery. The UK Government is committed to ensuring that all potential victims get the help and support they need as quickly as possible. The aim of the modern slavery elements of the Nationality and Borders Bill are to provide clarity on victims' rights and entitlements, supporting effective recovery from this horrendous crime and reducing opportunities for the system to be misused. We will continue to adopt a victim focussed approach to all potential victims of modern slavery, irrespective of their immigration status or nationality.

In the Nationality and Borders Bill, we are introducing provisions which enable decision-makers to withhold protections of the National Referral Mechanism (NRM) from victims in certain circumstances. Clause 61 provides clarity as to the circumstances when individuals should receive multiple recovery periods under the NRM and Clause 62 introduces a definition of public order which enables individuals who are a threat to public order to have the NRM protections withheld, in line with the provision of Article 13 in ECAT. We believe it is right that the Government can remove dangerous individuals from our broad NRM protections, and we believe it is important to close off any opportunities for potential misuse particularly by those wishing to delay their removal from the UK. However, I want to reassure you that these are not blanket disqualifications; cases will be considered on an individual basis, taking into account individual circumstances and vulnerabilities.

Turning specifically to Clause 9 of the Nationality and Borders Bill, I am concerned at the level of inaccurate reporting there has been regarding what Clause 9 actually means. I would like to assure the Special Rapporteurs that it does not alter the reasons why a person may be deprived of British citizenship and is not creating new deprivation powers. It is solely about the mechanics of how a deprivation decision is conveyed to the individual concerned. In the first instance, the Home Office will always persevere to tell an individual that they are to be deprived of their British citizenship. However, this might not be possible in exceptional circumstances; for example, when the Home Office does not know where an individual is, or because an individual is in a war zone where it is impossible to communicate with them, or because informing them would reveal sensitive intelligence sources.

Clause 9 also does not alter existing procedural safeguards. Section 40A of the British Nationality Act 1981 provides a statutory right of appeal against a decision to deprive someone of British citizenship, and the Nationality and Borders Bill does not change this right to a fair hearing. In cases where a notice of deprivation has not been given but a person later makes contact with the Home Office, they will be issued with the decision notice and an explanation of appeal rights so they can then seek to exercise their statutory right to appeal against the decision. Amendments we are making to the clause will mean that, where a deprivation order is made without notice, any time limit for bringing the appeal will not begin unless and until the person has been given notice that the order has been made, thereby protecting the person's appeal rights.

I would like to stress that the UK does not arbitrarily deprive people of British citizenship, and the vast majority of law-abiding citizens are not 'eligible' for deprivation if they have done nothing wrong. Nevertheless, as the Nationality and Borders Bill continues its passage through the UK Parliament, we will continue to listen carefully to issues raised and seek to amend Clause 9 where appropriate to ensure the final legislation is as robust as possible.

I would like to end by reiterating that the UK is committed to promoting and protecting human rights and freedoms throughout the globe, working with our allies to build a network of liberty. We have put human rights at the heart of what we do, from establishing the UK's first Global Human Rights sanctions regime, to leading on UN Human Rights Council resolutions on the situation in Syria, South Sudan and elsewhere, and joint statement on Xinjiang, through to

our work in human rights priority countries around the world. The UK led efforts to refer the situation in Ukraine to the International Criminal Court. We will continue to use 2022 as a year of continued action to protect and promote human rights, including through our upcoming international conferences on Freedom of Religion or Belief, and Preventing Sexual Violence in Conflict. Following the Foreign Secretary's announcement in November of £22 million funding to end child marriage, support survivors, and fund women's rights organisations, the UK will also continue its global leadership on ending violence against women and girls, and in encouraging all states to uphold international human rights obligations and hold those who violate human rights to account.