

DEPRIVATION OF NATIONALITY IN THE UK

IN A NATIONAL SECURITY CONTEXT

BRIEFING 1: DEFINING THE ISSUE

WATCH THE LECTURE BY
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Post-World War II, the importance of protecting the institution of citizenship, and protecting those who had been stripped of their citizenship by authoritarian states, was self-evident. Citizenship stripping was **no longer seen as democratic** and the **prohibition of arbitrary deprivation of nationality** became anchored in human rights law. In the United Kingdom (UK), in the same year that the Universal Declaration of Human Rights affirmed nationality as a human right, the grounds on which individuals could be deprived of their citizenship were narrowed under the British Nationality Act 1948, and **these powers were rarely used**. The last instance of citizenship stripping in the 20th century is understood to have been in 1973. Today, however, the policy has regained traction. Although most democratic states resist expanding these powers, 15+ countries, including the UK, have **expanded governmental power to deprive citizens of their nationality** in the last decade, asserting these powers are necessary to counter-terrorism efforts. These powers have been increasingly implemented, with both major political parties in the UK contributing to their resurgence. The powers are used most **often in relation to suspected or convicted terrorists**, and mostly in cases where the individual has travelled abroad to attend terrorist training camps or has become associated with ISIS. These powers and their use raise concerns from the perspective of international law as well as with regard to their effectiveness.



IN ESSENCE, CANCELLATION OF CITIZENSHIP IS ABOUT AVOIDING THE 'PROBLEM CITIZEN'.

Professor Devyani Prabhat
(University of Bristol)



HOW MANY PEOPLE HAVE BEEN STRIPPED OF UK CITIZENSHIP?

The Labour government, which introduced the first expansion of nationality deprivation powers in 2006, used them relatively sparingly, depriving 4 people of citizenship between 2006 and 2009. Since 2010, successive Conservative governments have deprived more than 150 people of citizenship, with a spike of 104 people in 2017 alone.*

* *The Independent*, Shamima Begum: Number of people stripped of UK citizenship soars by 600% in a year (2019), [here](#).

FURTHER RESOURCES

- [Principles on Deprivation of Nationality as a National Security Measure \(2020\)](#)
- [Draft Commentary to the Principles on Deprivation of Nationality as a National Security Measure \(2020\)](#)
- [Institute on Statelessness and Inclusion, The World's Stateless: Deprivation of Nationality \(2020\)](#)

NATIONAL SECURITY – MORE OR LESS?

[National security experts tell us](#) that citizenship deprivation ‘amounts to **another means of (states) avoiding the tough, but necessary, responsibility of dealing with their own citizens... this “hands off” stance will only create greater danger in the future**’. The UK’s practice also undermines its international standing. Post-Brexit Britain aims to strengthen ties with the Commonwealth and wider world, so it is imperative that it is seen as a trustworthy partner which helps solve common global challenges rather than adding to them. Depriving UK citizens of their citizenship while they are abroad, in effect, ‘exports’ the problem to other countries and may impede future prosecutions and convictions. This was also articulated in Canada’s statement in the wake of Jack Letts’ UK citizenship deprivation: [Canada expressed disappointment](#) “that the United Kingdom has taken this **unilateral action to off-load their responsibilities**”.

ASSESSING UK NATIONALITY DEPRIVATION POWERS AGAINST INTERNATIONAL LAW STANDARDS

In her lecture, Professor Prabhat raises various **questions and concerns** with regard to the UK powers for nationality deprivation. She highlights **three aspects** that also relate to the international law standards and limits on citizenship stripping. She says:

*“From a cancellation of citizenship perspective, there are three key legal issues to discuss. The first [...] is the right to **fair trial**. The second is issues of **statelessness**, which come from being stripped of citizenship. And the third is implications of citizenship stripping when it largely affects **ethnic minority nationals**.”*

As international law, and in particular human rights law has evolved, a number of key principles have been recognised as limiting state discretion in setting rules and criteria in relation to citizenship. Hence, the UK can set the rules for deprivation of citizenship, but **international law limits the UK's powers** in this regard. There is a wide range of well-established and developing international law standards, which states are obliged to uphold when considering the introduction of new powers or the implementation of existing powers to deprive nationality of their citizens. These have been brought together in the [Principles on Deprivation of Nationality as a National Security Measure](#), which restate or reflect international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship. The Principles apply to any situation in which loss, withdrawal or denial of nationality was not voluntarily requested by the individual. They were developed over a 30-month research and consultation period, with input from more than 60 leading experts in the fields of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and other related areas.

SECTION 40 OF THE BRITISH NATIONALITY ACT 1981 (AS AMENDED):

(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.

(4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.

(4A) But that does not prevent the Secretary of State from making an order under subsection (2) to deprive a person of a citizenship status if—

- (a) the citizenship status 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.

TIMELINE NATIONALITY DEPRIVATION POWERS IN THE UK:

- 1948:** Nationality deprivation powers narrowed
- 1973:** Last known use of nationality deprivation in 20th century
- 2004:** Suspensive right of appeal removed
- 2006:** Threshold for deprivation lowered to 'conducive to the public good'
- 2014:** Power to deprive naturalised British citizens even if they would be made stateless in case of acts 'seriously prejudicial to the vital interests of the UK'
- 2017:** Peak in cases of nationality deprivation

BASIC RULE FROM THE PRINCIPLES ON DEPRIVATION OF NATIONALITY AS A NATIONAL SECURITY MEASURE

- 4.1.** States shall not deprive persons of nationality for the purpose of safeguarding national security.
- 4.2.** Where a State, in exception to this basic rule, provides for the deprivation of nationality for the purpose of safeguarding national security, the exercise of this exception should be interpreted and applied narrowly, only in situations in which it has been determined by a lawful conviction that meets international fair trial standards, that the person has conducted themselves in a manner seriously prejudicial to the vital interests of the state.
- 4.3.** The exercise of this narrow exception to deprive a person of nationality is further limited by other standards of international law. Such limitations include:
 - 4.3.1. The avoidance of statelessness;
 - 4.3.2. The prohibition of discrimination;
 - 4.3.3. The prohibition of arbitrary deprivation of nationality;
 - 4.3.4. The right to a fair trial, remedy and reparation; and
 - 4.3.5. Other obligations and standards set forth in international human rights law, international humanitarian law and international refugee law.
- 4.4.** This basic rule also applies to the deprivation of nationality for other purposes, which serve as proxies to the purpose of safeguarding national security, as well proxy measures, which do not amount to deprivation of nationality but are likely to have a similarly adverse impact on individual rights.