CLAUSE 60 DEPRIVATION IF CONDUCT SERIOUSLY PREJUDICIAL TO VITAL INTERESTS OF THE UK

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ILPA supports Lord Pannick, Baroness Lister and Baroness Kennedy in their opposition to Clause 40 standing part of the Bill. We have discussed clause 60 with a number of specialists, including the c.40 expert academics and practitioners gathered for the 14 February 2014 "Deprivation of citizenship" conference at Middlesex University. We refer you in particular to the Memorandum of Professor Guy Goodwin Gill, fellow of All Souls.

We should also like to see the broader question of whether deprivation when a person is outside the country, with a non-suspensive right of appeal, challenged. In practice, the worst problems have arisen when a person is outside the country at the point of deprivation.

Trying to conduct an appeal before the Special Immigration Appeals Commission is fraught with difficulty at the best of times. When the client is overseas, it is well-nigh impossible. Because of the closed material system, evidence made available to the appellant is drip-fed. It then has to be discussed with the appellant. But a person accused of endangering national security may be at enormous risk in even discussing the allegations from the country in which they find themselves (and are trapped) at the moment of being made stateless.

The safeguards that would make a difference in practice are:

a) That a person can only be deprived of their citizenship when they are within the UK;
b) That a decision to deprive be taken first and appealed, and that deprivation take effect only after any appeals against that decision have finally been determined. This used to be the process. It was altered in 2004, but without its having been identified in parliament that it would lead to deprivation of citizenship when persons were outside the UK as described below. And, of course, at that time it affected dual nationals rather than the stateless;
c) That appeals against deprivation be suspensive.

AMENDMENTS

Clause 60 Deprivation of Citizenship (PRIORITY)

ILPA is aware that many different amendments have been proposed for this clause. We have concentrated here on what we consider essential and on those already laid.

AMENDMENT - CLAUSE STAND PART (PRIORITY)

ILPA supports Lord Pannick, Baroness Lister of Burtersett and Baroness Kennedy of the Shaws in their opposition to Clause 60 standing part of the Bill.

We have seen a number of different draft amendments to Clause 60. ILPA considers that only leaving out the clause will meet our concerns. We also wish to see amendments to reverse the changes the House of Lords unwittingly passed in 2004 that mean that people

can be deprived of their citizenship while they are outside the UK in circumstances that amount to summary exile. We confine ourselves to amendments that achieve those two aims and comments on amendments already laid but are happy to comment on other drafts on request.

PROPOSED AMENDMENT (PRIORITY)

Clause 60, page 47, line 31, leave out line 31 to line 2 on page 48 and replace with

(1) Section 40A of the British Nationality Act 1981 is amended as follows:

Insert
(4A) An order under section 40 may not be made in respect of a person while an appeal under this section or section 2B of the Special Immigration Appeals Commission Act 1997 (c.68) -

(a) has been instituted and has not yet been finally determined, withdrawn or abandoned, or

(b) could be brought (ignoring any possibility of an appeal out of time with permission).

Purpose

Removes clause 60 and thus preserves the status quo. Then improves on the status quo by restoring what used to be subsection 40A(6) of the British Nationality Act 1981 so that the order to deprive (in any case, whether or not a person is made stateless) does not take effect until the person is outside the UK.

AMENDMENT 74 Baroness Smith of Basildon, Lord Rosser

Purpose

Requires the Secretary of State to apply to a court for permission to make an order depriving a person of their citizenship where this will make them stateless. The court will determine whether the order is "obviously flawed" and whether to give permission for an order to be made. ILPA does not support this amendment.. While its focus on procedural protection is welcome it does not prevent an order taking effect prior to any appeal, with the attendant risk of summary exile. We not consider that the "obviously flawed" test it propounds would offer any real protection, especially in a case before the Special Immigration Appeals Commission using closed material procedures. The words come from Terrorism Prevention and Investigation Act 2011 and the Prevention of Terrorism Act 2005. These have in practice never led to permission to make a control order or a terrorism prevention order being refused. There is likely to be duplication with the post-decision appeal. Nor do we consider that a challenge should be limited to the principles applicable on an application for judicial review, rather than affording a full right of appeal as now. This can be contrasted with appeals against exclusion, or a refusal to naturalise in the first place, which are decisions on judicial review principles. Before it was the case that these decisions were heard in before the Special Immigration Appeals Commission, they would have been heard in the High Court, as judicial reviews, because there was no appeal against either. This is not the case for deprivation of citizenship where there is a right of appeal. A person at risk of statelessness should not enjoy lesser protection than a person at risk of deprivation of citizenship who will retain a nationality. Appeals against deprivation currently take place before the Special Immigration Appeal Commission (SIAC) and are full appeals.

AMENDMENT 75 Lord Lester and Lord Pannick

Purpose
To provide that deprivation of citizenship resulting in statelessness cannot take place unless it is a necessary and proportionate response. ILPA does not consider that it would ever be necessary and proportionate to deprive a person of their citizenship making them stateless and therefore supports this probing amendment which builds on suggestions by the Joint Committee on Human Rights.

In 2004 the House of Lords unwittingly passed amendments that allowed a person to be deprived of their nationality in circumstances that amount to summary exile. That dreadful decision must be revisited.

AMENDMENT 76 Lord Lester and Lord Pannick

Purpose
To provide that deprivation of citizenship resulting in statelessness cannot take place unless it consistent with the UK's obligations under International law. ILPA does not consider that it would ever consistent with the UK's obligations under international law to deprive a person of their citizenship in circumstances that would make them stateless. We consider it arguable that having cased to rely on its reservation/declaration to Article 8(3) of the 1961 UN Convention on the Reduction of Statelessness the UK cannot now revive it given the language of "retention" in Article 8(3). See the briefing from the Open Society Institute. We also consider that where deprivation out of the country is concerned, the UK cannot refuse to take responsibility for and indeed readmit a former national whom it has deprived of citizenship and left stateless without thereby breaching its obligations toward other States:

> *'In 1960, ... it was said on behalf of Her Majesty's Government that no other State can be required to accept a stateless deportee, and that the power of deportation was not, therefore, available in a case in which a person's naturalization had been revoked following conviction for espionage offences...'*
> 606 H.C. Deb., col. 1176 (case of Klaus Fuchs), cited in 'Contemporary Practice VIII, (1960) 9 International and Comparative Law Quarterly 253, 305

We therefore support this probing amendment which builds on suggestions by the Joint Committee on Human Rights.

AMENDMENT 77 Lord Lester and Lord Pannick

Purpose To provide that making a decision to deprive person of nationality where this results in statelessness the UK must take into account the best interests of any child affected. ILPA supports this probing amendment which serves to highlight the web of international and domestic law obligations put in jeopardy by deprivation, whether or not resulting in summary exile. The scourge of statelessness must be eradicated if every child is to enjoy their right to acquire a nationality as per Article 7 of the UN Convention on the Rights of the Child.

We therefore support this probing amendment which builds on suggestions by the Joint Committee on Human Rights.

PROPOSED AMENDMENT

Page 48, line 1, after "may" insert "not"

Purpose
To ensure that the clause cannot be used to make people stateless on the basis of conduct that took place before the clause were to come into force. Thus removes any element of retrospectivity. A probing amendment.

AMENDMENT 78 Lord Lester and Lord Pannick

Purpose Not known. May be a defective version of amendment above.

AMENDMENT 79 Baroness Smith of Basildon and Lord Rosser

Purpose Not known

There is no need for the following separate amendment

(2) The Special Immigration Appeals Act 1997 (c.68) is amended as follows
(a) In Schedule 2, paragraph Delete the words "(and section 40A(3)(a) shall have effect in relation to appeals under this section"

because it is already in the Bill at Schedule 9, paragraph 17(3) having been inserted at Commons committee.

BRIEFING

Deprivation leading to statelessness (based on briefing presented for Commons Committee stage)

Most stateless people are not stateless as a result of a deprivation of nationality on the grounds of character, instead they are the victims of discrimination and oppression, deprived, in the memorable words of Hannah Arendt, of the right to have rights. They need the UK's protection. In the words of UNHCR:

> *To be stateless is to be without nationality or citizenship. There is no legal bond of nationality between the state and the individual. Stateless people face numerous difficulties in their daily lives: they can lack access to health care, education, property rights and the ability to move freely. They are also vulnerable to arbitrary treatment and crimes like trafficking. Their marginalization can*

create tensions in society and lead to instability at an international level, including, in extreme cases, conflict and displacement[1].

In his preface to the UNHCR *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*[2], UN High Commissioner for Refugees (UNHCR), the UN High Commissioner for Refugees, António Gutierres, said

> *I am especially heartened by the real breakthrough – what I would describe as a 'quantum leap forward' – in relation to the protection of stateless people. Statelessness was one of the most neglected areas of the global human rights agenda. … awareness of the problem of statelessness has expanded significantly in all regions, and substantive progress has been made in addressing it…*
>
> *Over sixty States made statelessness-related pledges. …The pledges set out in this document constitute a profound expression of solidarity and commitment. They signal a watershed in the reinforcement of the international protection regime and, once implemented, will lead to tangible improvements in the lives of men, women, boys and girls affected by displacement and statelessness in the decade ahead.*

UK took an active part in the negotiations that produced the 1961 UN Convention on the Reduction of Statelessness.

On 16 August 1961 at the Sixteenth Plenary Meeting of the Conference that agreed the Convention, the UK delegate, Mr Ross, said of deprivation of nationality that 'the Conference still had the duty of doing its upmost to eliminate that minor cause of statelessness as well...' The UK's compromise text 'admitted no grounds for deprivation other than those already specified in the current law of the Contracting States... [I]t attempted to overcome... objections... by restricting the causes for deprivation of nationality to certain well-defined categories': UN doc. A/CONF.9/SR.16, 11 October 1961, 2, 3-4.

At the Twentieth Plenary Meeting on 23 August 1961, the UK delegate, Mr Harvey, said:

> *... There had been considerable discussion as to whether or not separate grounds of deprivation or nationality should be applied to natural-born and to naturalized persons. The feeling of the Group had been that the distinction was not a happy one, and it had concluded that it was unnecessary to grant extended grounds for deprivation in the case of naturalized persons. Hence the grounds mentioned applied to both types of cases. The effect of the article was to "freeze" the grounds of deprivation at the date on which the State acceded to the Convention, and to limit them to certain specified types. Paragraph 4 provided that, while the grounds could not subsequently be extended, certain modifications and improvements could be made...* [3]

Paragraph 4 was deleted from the final version by a vote of 12 to none, with 18 abstentions but on the basis:

> *... that the United Kingdom understood the intention of paragraph 4 as being to make it clear that nothing in paragraph 3 should prevent States from restricting their grounds for deprivation of nationality. However, that could be implied from the terms of the Convention*

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[1] http://www.unhcr.org/pages/49c3646c158.html
[2] October 2012, available at: http://www.refworld.org/docid/50aca6112.html [accessed 30 January 2014]
[3] UN doc. A/CONF.9/SR.20, 11 October 1961, 2-3.

as a whole; paragraph 4 was therefore unnecessary… its deletion…would…make no difference to the meaning of the Convention[4]

The Supreme Court in *Al Jedda* set out the history of the UK's approach. The UK has had a power to deprive persons of citizenship on the ground that is has been obtained by misrepresentation or fraud since the British Nationality and Status of Aliens Act 1914, regardless of whether such deprivation leaves a person stateless.

The question of deprivation the grounds of character tracked the wars of the 20th century. Section 1 of the British Nationality and Status of Aliens Act 1918 converted the power to deprive into a duty and extended it to grounds of public interest: acts of disloyalty to the Crown and, provided that the Secretary of State was satisfied that the continuance of a person's certificate of naturalisation was not conducive to the public good, to any of five further facts. Following the second World War, section 20 of the British Nationality Act 1948 converted the duty back into a power, to be exercised on broadly the same grounds as before. In 1959 the UK ratified the 1954 UN Convention relating to the Status of Stateless Persons. It recited the "profound concern" of the United Nations for stateless persons and the desirability of regulating and improving their status. It did not address deprivation. In 1966 the UK ratified the 1961 UN Convention on the Reduction of Statelessness. To do so, parliament passed the British Nationality (No 2) Act 1964 abolishing two of the grounds for deprivation under the 1948 Act, which were not permitted by the Convention and in the case of a third, a sentence of imprisonment of over a year within five years of naturalisation, providing that the power to deprive could be exercised only where to do so would not make the person stateless. This was the beginning of the UK's limiting its powers of deprivation to prevent statelessness.

Upon ratification the UK made a declaration under paragraph 8(3)(a) which allowed it to retain its existing power to deprive a person of citizenship on the ground of what the Supreme Court in Al Jedda described as, "in effect, conduct seriously prejudicial to the vital interests of the State". That term is used and there is also reference to rendering services to the enemy.

Section 40 of the British Nationality Act 1981 maintained the position. In the Nationality, Immigration and Asylum Act 2002 the UK took powers to deprive both those born British and those naturalising as British, of their British citizenship on the grounds that they had done something "seriously prejudicial to the vital interests" of the UK. At the time, with a view to future ratification of the 1997 Council of Europe European Convention on Nationality which prohibited deprivation leading to statelessness other than on the grounds of misrepresentation or fraud, the UK provided that deprivation on character grounds could not lead to statelessness. In .the Immigration and Asylum Act 2006, passed in the wake of the 7 July 2006 bombings in London, the UK changed the test to deprivation's being contrary to the public good. Still the prohibition on deprivation leading to statelessness remained.

The UK risks losing a proud position, a position of solidarity, a potential position of leadership.

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[4] Twenty-second Plenary Meeting, 24 August 1961: UN doc. A/CONF.9/SR.22, 11 October 1961, 7.

In 2013 the UK Government lost the case of *Al Jedda* [2013] UKSC 62. The Secretary of State sought to deprive Mr Al Jedda of his British citizenship on the basis that he had, or could at once acquire Iraqi nationality and should forfeit his British nationality because this was conducive to the public good for reasons of national security. It was held that Mr Al Jedda did not have Iraqi nationality. It was held that whatever the prospects of his acquiring British nationality, the law did not permit the Secretary of State to make him stateless. It is that law that the Secretary of State seeks to change.

The Secretary of State fought the *Al Jedda* case on the basis that Mr Jedda was not stateless. She then argued that if he were to become so it would be because of his own failure, rapidly and without formality, to reacquire resume his Iraqi nationality. She did not argue that his character, conduct or associations made it permissible to contemplate consigning him to life as stateless person. This clause does contemplate that the actions of the UK could leave a person stateless for an indefinite period or for ever.

The clause is concerned only with persons who naturalised as British. It is silent on the proposal as to the immigration status, if any, to be afforded a person deprived of their citizenship. As set out below, the question of whether a difference should be made between those naturalising as British and those born British has preoccupied the UK since the 1961 UN Convention on the Reduction of Statelessness was negotiated, as has the desire to reduce statelessness.

Suffice to say that in 2002 when in the wake of the 11 September 2001 bombings in the United States there was the utmost concern for all matters of national security, the UK considered it proper to make provision in its law to prohibit deprivation of citizenship on the grounds that this was conducive to the public good, where such deprivation would make a person stateless. This is perhaps unsurprising. A person with no ties to any State, for which no State has responsibility is not obviously a lesser threat to national security. We recall the words of the late Lord Kingsland when the Nationality Immigration and Asylum Act 2002 was debated:

> *"Clause 4(2) says: The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that the person has done anything seriously prejudicial to the vital interests of—*
> *1. (a) the United Kingdom, or*
> *2. (b) a British overseas territory*".
> *Subsection (4) qualifies that by adding that citizenship cannot be so deprived if it would render the citizen stateless.*
>
> *Our amendment would add to that qualification, or if the seriously prejudicial conduct in question constitutes an offence under the Terrorism Act 2000 (c.11), the Anti-terrorism, Crime and Security Act 2001 (c.24) or general criminal law". We have tabled the amendment because, under the clause, the Secretary of State can override any single stipulation of criminal law in the land by this massive discretionary power, which depends solely on his subjective judgment. …*
>
> *Why should such a person not be prosecuted in the normal way in our criminal courts instead? Why on earth should the Secretary of State be given this discretion to pick somebody out of the normal judicial process and deal with him by his own subjective judgment.*

Again in another place, Miss Eagle referred to war criminals as a category of person whom we would wish to deprive of citizenship—if they had it—using these new powers. Does that mean that the Government will, in future, consider deprivation of citizenship under Clause 4 as an alternative to prosecuting war criminals by due process?

The noble Lord, Lord Filkin, made an intriguing comment in Committee on 8th July. He said: We do not consider that deprivation of citizenship should in future be applied as a penalty for acts of a general criminal nature".—[Official Report, 8/7/02; col. 503.] What then do the Government envisage as a response to acts of the most serious criminal nature against the state, such as those that I have already outlined?

Later in that debate I asked the noble Lord to outline the circumstances in which he foresaw the discretion of the Secretary of State being exercised. He replied: One circumstance would be where a British citizen, either by himself or in concert with others, had taken actions against the interests of the British state and its citizens in ways that were clear and blatant while not resident in the United Kingdom. In that situation, I cannot see that the British criminal law could be used against them if their acts were committed abroad, even if their acts were against the interests of the British state from abroad".—[Official Report, 8/7/02; col. 511.] Surely, however, the Government are at perfect liberty in such a case to apply for the extradition of that person with a view to prosecuting him or her in our own courts in the United Kingdom.

I hope that the Minister will at least be able to reassure noble Lords—indeed, to undertake—that the proposals in this clause will not be used so as to evade the obligation to prosecute terrorists and others who commit serious crimes against the United Kingdom under any of our criminal laws.

I conclude with this point. Clause 4 must be against the rules of comity in international law. If we identify someone as a person proposing to commit a serious terrorist offence, for example, surely the obligation is on us to deal with that person. If we simply deport him, we shall be handing on—in my submission, irresponsibly—this terrorist problem to another state which may not have the same capability of dealing with it as we do. It cannot be a proper response to the terrorist threat to refuse to deal with it ourselves if the act involved occurs in our jurisdiction or in another jurisdiction from which we can gain extradition. That would be irresponsible of us. HL Report 9 October 2002, cols 277-278

Deprivation and summary exile

It was never envisaged that in amending the British Nationality Act 1981 and the Special Immigration Appeals Act 1997, that parliament was agreeing to summary exile, with persons stripped of their citizenship left stranded outside the UK before ever a judge had considered the merits of the case deprivation of nationality. We annexe the relevant extracts from *Hansard* below. Lord Rooker explains that the change had been made by accident but was seen to be helpful because it allowed two decisions to be made together. The text makes clear that it was in no way envisaged at any stage in the debate in the debate that a person might be outside the country at the point of deprivation.

Thus the clause simply takes Parliament back to the clause that it thought it had passed.

The consequences of the change have been far reaching. Between 1915 and 1948 there were 287 deprivations. Between 1949 and 1973 10. Between 1973 and 2002, none (Hansard HL Deb 8 July 2002, col 66W). In 1961 for example, 120 cases were forwarded to the Home Office for consideration. It proceeded in only nine, referring seven cases to the deprivation committee that dealt with reviews of deprivation decision under the British Nationality Act 1948.

In the 30 years to 2002 only one person was deprived of their citizenship. Only one order was made 2002 to 2006 and that was challenged.

Between 16 June 2006 and 16 April 2012 15 orders were made (see HC Report 16 Apr 2012 : Column 10W) of which five between 2006 and mid October 2010. A freedom of information request response of 16 October 2010 described them as follows:

2007 – 1 (deprived whilst out of the UK)
2008 - 0
2009 - 2 (1 deprived whilst out of UK)
2010 - 5 (5 deprived whilst out of UK)

They are not broken down into deprivation on grounds of fraud and deprivation because of character.

As of May 2012 the post 2006 total was sixteen cases, 10 under the coalition. Last year 20 people were deprived, more than every other year combined. Some are fraud cases some character, we do not have a breakdown. In total there have been 41 deprivations since 2006, 27 under the coalition government.

Cases include:

Bilal al Berjawi British Lebanese . Lost citizenship Oct 2010. Killed in USA drone strike Somalia Jan 2012.

Mohamed Sakr – born in London. British and Egyptian. He had never had an Egyptian passport. In Somalia when his British passport was cancelled. Lost citizenship September 2010. Killed February 2013 in a Drone strike by the United States. Reports of the strike refer to an Egyptian commander having been killed.

See *L1 v SSHD* [2013] EWCA Civ 906. L1 was a refugee, married, with British children. L1 naturalised in the early 2000s. Refugee. He travelled to Sudan each summer. Discovered from disclosure in the documents before the court that a decision to deprive him of his nationality was taken in 2009. The nit was released that, it being the end of the children's holidays, he was returning to the UK. The deprivation proceedings were halted. L1 returned to the UK and was at liberty. Nothing happened until the next summer when L1 went again to Sudan for the summer. The decision to deprive was served at his home in London and the deprivation order signed straight away. L1 learned of this only when he went to the Embassy to get his wife's documents. He was told that he was no longer a citizen and should surrender his passport. Documents disclosed in the case made clear that L1's precarious health (a life-threatening brain condition) and the risks of death together with concerns that he would have a case based on Article 3 (prohibition on torture, inhuman and degrading treatment) if deprived in the UK were recognised although none of this had been revealed in the open proceedings before the Special Immigration Appeals Commission. Found as a fact in the case that the Secretary of State had waited until L1 was out of the country before setting the process in train.

S1 – case now going to the Supreme Court had three British born sons, all of whom have been deprived of their citizenship and all of whom have been stranded in Pakistan.

Madhi Hashi – had come to the UK as a child asylum seeker. Deprived of citizenship June 2012. He disappeared, in Djibouti, shortly after he lost his British citizenship. His next known whereabouts as in a jail in New York, where he awaits trial.

Y1 was a British citizen who had been born in Afghanistan. He was detained by British forces in Afghanistan in July 2011 and deprived of his British citizenship in August 2011. Mr Justice Irwin found that the Security service advice had been that he remain under surveillance in the UK but that this had been rejected and he had been deprived of his citizenship while out of the UK.

For further details of cases see http://www.thebureauinvestigates.com/2013/02/26/medieval-exile-the-21-britons-stripped-of-their-citizenship/

http://www.thebureauinvestigates.com/2013/02/27/graphic-detail-how-uk-government-has-used-its-powers-of-banishment/

Annexe – debates on deprivation

Section 40A of the British Nationality Act 1981 originally read

40A Deprivation of citizenship: appeal.
(1) A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against the decision to an adjudicator appointed under section 81 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal). .
(2) Subsection (1) shall not apply to a decision if the Secretary of State certifies that it 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 United Kingdom and another country, or .
(c) otherwise in the public interest. .
(3) A party to an appeal to an adjudicator under subsection (1) may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator's determination on a point of law. .
(4) A party to an appeal to the Immigration Appeal Tribunal under subsection (3) may bring a further appeal on a point of law— .
(a)where the decision of the adjudicator was made in Scotland, to the Court of Session, or .
(b)in any other case, to the Court of Appeal. .
(5)An appeal under subsection (4) may be brought only with the permission of— .
(a)the Tribunal, or .
(b)if the Tribunal refuses permission, the court referred to in subsection (4)(a) or (b). .
(6)An order under section 40 may not be made in respect of a person while an appeal under this section or section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68)— .
(a)has been instituted and has not yet been finally determined, withdrawn or abandoned, or .
(b)could be brought (ignoring any possibility of an appeal out of time with permission).
(7)Rules under section 106 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal: rules) may make provision about an appeal under this section.
(8)Directions under section 107 of that Act (practice directions) may make provision about an appeal under this section."

The cumulative effect of amendments made in 2004 was the following

> **"SCHEDULE 2 Asylum and Immigration Tribunal: Consequential Amendments and Transitional Provision**
>
> **Part 1 Consequential Amendments**
> **…**
> ***British Nationality Act 1981 (c. 61)***
>
> 4 In section 40A of the British Nationality Act 1981 (deprivation of citizenship: appeal)—.
> (a)in subsection (1) for "an adjudicator appointed under section 81 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal)" substitute " the Asylum and Immigration Tribunal ",.
> (b)for subsections (3) to (5) substitute—.
> "(3)The following provisions of the Nationality, Immigration and Asylum Act 2002 (c. 41) shall apply in relation to an appeal under this section as they apply in relation to an appeal under section 82 or 83 of that Act— .
> (a)section 87 (successful appeal: direction) (for which purpose a direction may, in particular, provide for an order under section 40 above to be treated as having had no effect), .
> (b)sections 103A to 103E (review and appeal), .

(c)section 106 (rules), and .
(d)section 107 (practice directions).", and .
(c)omit subsections (6) to (8).

The crucial deletion is thus subsection 6, which was the bar on an Order's being made while an appeal could be brought or was pending.

When **Lord Falconer** introduced repeal of section 40A(6) of the British Nationality Act 1981 in 2004 it was amendment 52 and he said only:

> Amendments Nos. 50A and 52 to 59 make changes to Schedule 2, which provides for consequential amendments and transitional provision. In particular, I would like to draw the attention of noble Lords to Amendment No. 59. It introduces the transitional measure of a filter mechanism for cases applying for a review to the High Court. This is to ensure that …" (**HL Deb 04 May 2004 vol 660 c999**)

Lord Rooker later explained (15 June 2004 Col 720) that the effect of the earlier amendment (52) had been unintentional. He said

> Although the earlier amendment was actually unintentional, having reviewed the position we believe that it would make considerable sense to be able to run the appeals – the deprivation appeal on citizenship and the deportation or certification appeal – together. We therefore propose to amend the relevant appeals procedure rules, subject to the approval of parliament to require the appeal against citizenship deprivation and any appeal against deportation or against certification under the 2001 Act, to be heard together.

Then on 15 June 2004, at col 720 Lord Rooker moved Amendment No. 38:

> Page 38, line 38, at end insert—
> "(za) section 87 (successful appeal: direction) (for which purpose a direction may, in particular, provide for an order under section 40 above to be treated as having had no effect),"
>
> **15 Jun 2004 : Column 720**
> The noble Lord said: In moving Amendment No. 38, I shall speak also to Amendments Nos. 39 and 40. Amendment No. 38 is necessary because of an amendment—I understand that it was Amendment No. 52—that was made in Committee. The effect of that earlier amendment is that the fact that an appeal against a decision to make an order for deprivation of citizenship under Section 40 of the British Nationality Act 1981 is pending, or that such an appeal could be brought, does not prevent an order for deprivation being made. The deprivation order might then be followed more or less immediately by the commencement of deportation action, or by certification and detention under the Anti-terrorism, Crime and Security Act 2001. In either case, this further action also attracts a right of appeal.
>
> Although the earlier amendment was actually unintentional, having reviewed the position we believe that it would make considerable sense to be able to run the appeals—the deprivation appeal on citizenship and the deportation and or certification appeal—together. We therefore propose to amend the relevant appeals procedure rules, subject to the approval of Parliament, to require the appeal against citizenship deprivation and any appeal against deportation or against certification under the 2001 Act, to be heard together.
>
> Where a deprivation order has been made, and the appeal against the decision to make that order is later allowed, Amendment No. 38 would enable the appellate body to direct that any such order should be treated as having had no effect. In other words, the successful

appellant could be deemed never to have lost his British nationality. That seems to us to be the best way to safeguard the interests of the person concerned and to avoid any difficulties that might arise if he were instead treated as having lost his citizenship and then had it restored only at the conclusion of the appeal. This could, for example, affect the entitlement to citizenship of any children born to the appellant between the making of the deprivation order and the determination of the appeal.

Amendment No. 39 is a technical amendment about practice directions for appeals against deprivation of citizenship. It removes Section 40A(8) from the British Nationality Act 1981, the effect of which is to be continued without modification, by the new Section 40A(3) which will be inserted by paragraph 4(b) of Schedule 2 to the present Bill. That will look a lot better in *Hansard* than it sounded just now.
Amendment No. 40 provides for the repeal of Section 40A(6) to (8) of the British Nationality Act 1981. These repeals reflect the changes made by Amendment No. 39 and by the earlier Amendment No. 52 when your Lordships' House was previously in Committee. I beg to move.

Lord McNally: The Minister should rest assured that we all sound better in *Hansard*. As he will know, my noble friends Lord Russell and Lord Avebury only let me intervene on special occasions. Therefore, I will stick very closely to my brief, which says that these are sensible and overdue provisions, which should be supported.

15 Jun 2004 : Column 721

On Question, amendment agreed to.

See further 6 July 2004 and Amendment No 45
Schedule 2 [*Asylum and Immigration Tribunal: Consequential Amendments and Transitional Provision*]:

Lord Rooker moved Amendment No. 45:
Page 50, line 3, at end insert—

"At the end of section 2B (deprivation of citizenship) insert "(and section 40A(3)(a) shall have effect in relation to appeals under this section).""

The noble Lord said: My Lords, paragraph 4(b) of Schedule 2 empowers the Asylum and Immigration Tribunal, in the event of a successful appeal against deprivation of British nationality, to direct that any order for such deprivation made prior to determination of the appeal is to be treated as having no effect.

The amendment will confer a parallel jurisdiction on the Special Immigration Appeals Commission in relation to successful appeals to that body against deprivation of nationality under Section 2B of the Special Immigration Appeals Commission Act 1997.

This might be thought to be a minor technical amendment, and I suspect that it probably is, but it ensures that the Bill gives full effect to the policy on joining deprivation appeals with appeals against deportation action and/or certification, as the case may be, under the Anti-terrorism, Crime and Security Act 2001, whose daily passage I remember even now. The measure was described in detail at recommittal, and your Lordships supported it. I believe that the noble Lord, Lord McNally, said at the time that they were sensible and overdue provisions that should be supported.

I want to make it clear for the avoidance of any doubt, because there will not be opportunities later, that the Bill does not alter the grounds for deprivation of citizenship. It is important to make that clear. The Bill does not have retrospective implications. It is not directed, for example, at Abu Hamza and his appeal. The changes in the Bill would make the procedure for appeals against deprivation of citizenship and the effect of such appeals not retrospective. Any appeal currently in progress will be conducted in accordance with the existing procedure. That is an important point; I would not want people to get the wrong idea. Furthermore, the Bill does not limit the grounds for appeal against deprivation of citizenship or take away appeal rights in those cases.

Deprivation of citizenship is one issue—but it does not necessarily mean that deportation or removal from the United Kingdom automatically follows. Each case will be considered on its merits and separate decisions taken about the propriety of deportation or removal, as distinct from deprivation of citizenship. There might, for example, be practical or legal difficulties

preventing deportation or removal which would not prevent deprivation of citizenship, and circumstances in which the latter action would be desirable or appropriate notwithstanding the impossibility of the former.
I believe that I have milked everything that I can from this minor technical amendment. I beg to move.

On Question, amendment agreed to.