



## BRIEFING PAPER

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# Deprivation of British citizenship and withdrawal of passport facilities

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## Summary

### Deprivation of citizenship powers

The Home Secretary has power to deprive a person of British citizenship in any of the following scenarios:

- She considers that deprivation of citizenship is ‘conducive to the public good’, and would not make the person stateless;
- The person obtained his citizenship through registration or naturalisation, and the Home Secretary is satisfied that this was obtained by fraud, false representation or the concealment of a material fact;
- The person obtained his citizenship through naturalisation, and the Home Secretary
  - considers that deprivation is conducive to the public good because the person has conducted themselves ‘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
  - has reasonable grounds to believe that the person is able to become a national of another country or territory under its laws.

In the second and third scenarios, deprivation of citizenship is permissible even if the person would be left stateless.

### Recent use of deprivation powers

A Home Office Freedom of Information response in June 2016 revealed that there had been 81 deprivation of citizenship orders made in the years 2006-2015. 36 orders were made on the grounds that deprivation was conducive to the public good; 45 orders were made on the grounds that the Home Secretary was satisfied that people had used fraud or false representation to gain British citizenship by registration or naturalisation. In December 2013 the Bureau of Investigative Journalism reported a significant increase in the use of deprivation powers in 2013, in part due to British citizens travelling to fight in Syria.

### Withdrawal of passport facilities

British citizens are not entitled to a British passport. The passport does not confer citizenship; it is merely evidence of it. Passports are issued at the discretion of the Home Secretary under the Royal Prerogative and can be withdrawn through the use of the same discretionary power.

### Appeal rights

Those who are the subject of a deprivation of citizenship order can appeal to the First Tier tribunal against the Home Secretary’s decision. Appeals must be made to the Special Immigration Appeals Commission where the Home Secretary considers that the information she relied on should not be made public.

As passports are issued at the Home Secretary’s discretion there is no right of appeal against a decision to withdraw passport facilities. However a person whose passport is withdrawn may seek a judicial review of the Home Secretary’s decision.

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### **Implications of deprivation of citizenship**

Deprivation of citizenship entails the loss of the right of abode in the UK. It makes possible the administrative ('immigration') detention, deportation and exclusion from the UK of the person concerned. Flowing from the loss of the right of abode are myriad associated and consequential rights, duties and opportunities.

### **The al-Jedda Case and the *Immigration Act 2014***

An annex to this briefing paper provides a summary of the al-Jedda case and of the Parliamentary and external scrutiny of the Coalition Government's legislative response to its loss in the Supreme Court.

# 1. Current deprivation of citizenship powers

Section 40 of the *British Nationality Act 1981* (as amended) provides a power to deprive a person of his or her British citizenship status.

British nationality law provides for six different types of British citizenship status:

- British citizenship
- British overseas territories citizen
- British overseas citizen
- British subject
- British national (overseas)
- British protected person

British citizenship is the most common of the six types of British nationality

The deprivation of citizenship powers apply to all six of these categories.

The Home Secretary may make an order to deprive a person of British citizenship status in any of the following circumstances:

- The Home Secretary considers that deprivation “is conducive to the public good”, and would not make the person stateless (s40 (2); s40 (4));
- The person obtained his citizenship status through registration or naturalisation, and the Home Secretary is satisfied that this was obtained by fraud, false representation or the concealment of any material fact (s40 (3));
- The person obtained his citizenship status through naturalisation, and the Home Secretary considers that deprivation is conducive to the public good because the person has conducted themselves “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** the Home Secretary has reasonable grounds to believe that the person is able to become a national of another country or territory under its laws (s40 (4A)).

In the second and third scenarios, deprivation of citizenship is permissible even if the person would be left stateless.

‘False representation’ means a representation which was dishonestly made on the applicant’s part. ‘Conducive to the public good’ means depriving in the public interest on the grounds of involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours.<sup>1</sup>

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<sup>1</sup> UKVI *Nationality Instructions*, volume 1 chapter 55 [‘Deprivation \(section 40\) and nullity’](#), 10 September 2015

## 2. The development of deprivation of citizenship powers

### 2.1 1948-1983

Section 20 of the *British Nationality Act 1948* (as amended) (BNA 1948) provided that:

- A person who had registered or naturalised as a Citizen of the UK and Colonies [the current main nationality status of the time] could be deprived of his citizenship on the basis of fraud, false representation and the concealment of material facts (s20 (2)).
- A person who had naturalised as a Citizen of the UK and Colonies could be deprived of his citizenship if the Secretary of State was satisfied that they had shown themselves to be disloyal or disaffected towards His Majesty, unlawfully traded or communicated with or assisted an enemy during war, or been sentenced to at least 12 months' imprisonment, or had been ordinarily resident in a foreign country for seven or more continuous years (s20 (3); s20 (4)).

The Act provided that the Secretary of State had to be satisfied that it would not be conducive to the public good for the person to continue to be a Citizen of the UK and Colonies.

### 2.2 1983-2003

The *British Nationality Act 1981* (BNA 1981) entered into force on 1 January 1983. Section 40 of the Act as introduced stated that the Secretary of State could by order deprive of citizenship a person who had acquired British citizenship by registration or naturalisation, if satisfied that:

- registration or naturalisation had been obtained by fraud, false representation or concealment of material fact: s40(1);
- the person had shown disloyalty of disaffection towards Her Majesty by act or speech: s40(3)(a);
- the person had unlawfully traded or communicated with an enemy during any war in which Her Majesty was engaged or been engaged in or associated with any business carried out to assist an enemy in that war: s40(3)(b); or
- the person had been sentenced in any country to twelve months or more imprisonment within five years of the date of naturalisation or registration and the person would not become stateless: s40(3)(c), s40(5)(b).

The Secretary of State could not deprive a person of his British citizenship unless satisfied that it was not conducive to the public good that that person should continue to be a British citizen.

These powers reflected the deprivation powers in place prior to 1983, under the BNA 1948.

A Home Office letter to the Joint Committee on Human Rights in February 2014 suggests that between 1949 and 1973 there were 10 cases in which people who had gained citizenship through application were stripped of their citizenship and left stateless.<sup>2</sup>

The deprivation of citizenship powers in the BNA 1948 and BNA 1981 then fell into disuse. As at 1 February 2002, the deprivation powers had not been used since 1973.<sup>3</sup>

## 2.3 2003-2014

The *Nationality, Immigration and Asylum Act 2002* (NIAA 2002) entered into force on 1 April 2003. For the first time people who had acquired British citizenship through birth were made subject to deprivation of citizenship powers.

A wholly different section 40 was inserted into the BNA 1981 to replace the original section. Gone were three of the specific grounds listed in section 2.2 above; in their place the NIAA 2002 introduced a general power for the Home Secretary to deprive a person of his citizenship status if satisfied that the person had done anything “seriously prejudicial to the vital interests of the UK or a British overseas territory” (new subsection 40 (2)).

The power to deprive a person of citizenship because registration or naturalisation was obtained by means of fraud, false representation or concealment of a material fact was retained, set out in new subsection 40 (3).

The amended provisions applied to all six types of British citizenship status. Whilst new section 40 (2) applied to persons who acquired British citizenship through birth as well as to those who had naturalised or registered as British citizens, the restriction on making a person stateless meant that the power could be used only on those who had acquired another nationality.

During the Act’s passage through Parliament, the then Government had confirmed that it intended to sign and ratify the 1997 European Convention on Nationality.<sup>4</sup> The new measures were considered to bring the UK’s legislation in line with the requirements of the 1997 Convention. Article 7 of the Convention permits states to withdraw citizenship on the grounds of “conduct seriously prejudicial to the vital interests of the State Party”, but not if the person would be made stateless. In the event, the UK did not sign the 1997 Convention.

Ministers also responded to concerns about how the powers would be used. For example, Lord Filkin gave a “categorical assurance” that the powers would not be used as an alternative to prosecution (such as under anti-terrorism legislation) if the Director of Prosecution

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<sup>2</sup> [Letter of James Brokenshire MP to the Chair of the Joint Committee on Human Rights](#), 20 February 2014, Q20

<sup>3</sup> Home Office, [Secure Borders, Safe Haven: Integration with Diversity in Modern Britain](#), Cm 5387, February 2002, p.35

<sup>4</sup> [HL Deb 8 July 2002 c535; c537](#)



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thought there was evidence to prosecute.<sup>5</sup> He explained that the term “vital interests” “includes national security, but it also covers economic matters, as well as the political and military infrastructure of our society”.<sup>6</sup>

Further changes to the deprivation of citizenship powers in the BNA 1981 were made in the aftermath of the July 2005 London bombings, through section 56 of the *Immigration, Asylum and Nationality Act 2006*.

With effect from 16 June 2006, the wording of s40 (2) of the BNA 1981 was changed again so as to allow the Home Secretary to deprive a person of citizenship if satisfied that “deprivation is conducive to the public good” (rather than on the grounds that the person had done something “seriously prejudicial to the vital interests” of the UK and territories, as previously).

The change was met with criticism that the new wording reduced the threshold for making deprivation of citizenship orders.<sup>7</sup>

### 2.4 2014 to date

The *Immigration Act 2014* (IA 2014) amended the BNA 1981 by inserting new subsection 40 (4A), which conferred upon the Home Secretary the power to deprive a person of British citizenship obtained through naturalisation even when to do so would render that person stateless.

The introduction of the power was the Coalition Government’s response to its failure to deprive an Iraqi born, naturalised British citizen named Hilal al-Jedda of his British citizenship. Following the Supreme Court’s dismissal of the Government’s appeal in the case, the Home Secretary tabled an amendment to the *Immigration Bill* ahead of its Commons Report Stage.

A summary of the al-Jedda case and of Parliamentary and external scrutiny of the power in subsection 40 (4A) is set out in an annex to this briefing paper.

This power, summarised in the third scenario set out in section 1 above, is distinct from the Home Secretary’s other powers. David Anderson QC, the previous Independent Reviewer of Terrorism Legislation, explained:

...the uniqueness of the power under review arises:

- (a) neither from the mere fact that deprivation of citizenship is exercisable on “conducive to the public good” grounds,
- (b) nor from the mere fact that its exercise makes people stateless.

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<sup>5</sup> [HL Deb 9 October 2002 c282-3](#)

<sup>6</sup> [HL Deb 8 July 2002 c505-6](#)

<sup>7</sup> See, for example, Joint Committee on Human Rights, [Counter-Terrorism policy and Human Rights: Terrorism Bill and related measures](#), HC 561-I, 5 December 2005, para 161; 164



Rather, the distinctive nature of the power lies in its combination of those factors.<sup>8</sup>

Mr Anderson noted two “striking features” of the power: the breadth of the discretion afforded to the Home Secretary - eg the exercise of the power is not contingent on conviction for a terrorist offence - and the absence of any requirement of judicial approval before deprivation is ordered.<sup>9</sup>

During the passage of the IA 2014 the Coalition Government asserted that the power is consistent with both the UK’s international obligations and with the principle of legal certainty, and argued that deprivation of citizenship may, in certain circumstances, be preferable to criminal prosecution.<sup>10</sup>

Nevertheless the disquiet over the proposed change prompted the Coalition Government to make provision for a regular review of the exercise of the power. A new section 40B was inserted into the BNA 1981 requiring the Secretary of State to arrange for a review after one year and every three years thereafter.

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<sup>8</sup> Independent Reviewer of Terrorism Legislation, [Citizenship removal resulting in statelessness](#), 21 April 2016, paragraph 1.4

<sup>9</sup> Ibid, paragraphs 3.16 and 3.18

<sup>10</sup> [Letter of James Brokenshire MP to the Chair of the Joint Committee on Human Rights](#), 20 February 2014, Qs 9 and 14

### 3. Recent use of deprivation orders: how many and in what circumstances?

In June 2016 the Home Office responded to a Freedom of Information request that sought the number of deprivation decisions made each year since 2006.<sup>11</sup> The Home Office revealed there had been 81 such decisions and provided the following break-down by year:

<b>Year</b>	<b>Number of Deprivation Orders Made</b>
<b>2006</b>	*
<b>2009</b>	*
<b>2010</b>	*
<b>2011</b>	6
<b>2012</b>	6
<b>2013</b>	18
<b>2014</b>	23
<b>2015</b>	19

\* Less than 5

The Home Office response also provided information as to the reasons for the deprivation decisions:

- 36 decisions were taken on the grounds that the Secretary of State was satisfied that deprivation was conducive to the public good (section 40 (2));
- 45 decisions were taken on the grounds that the Secretary of State was satisfied that the person's registration or naturalisation as a British citizen was obtained by means of fraud, false representation or concealment of a material fact (section 40 (3)).

<sup>11</sup> [www.whatdotheyknow.com](http://www.whatdotheyknow.com), 'Citizenship deprivations for last 10 years' (Home Office letter to Mr Colin Yeo dated 20 June 2006), accessed 9 June 2017

In December 2013 the Bureau of Investigative Journalism reported a significant increase in the use of deprivation powers in 2013, in part due to British citizens travelling to fight in Syria.<sup>12</sup> The article contended that in the vast majority of cases, the deprivation orders had been issued whilst the individual was overseas, resulting in them being left 'stranded abroad' whilst legal appeals against deprivation could take years to resolve.

The use of deprivation powers has increased since the start of the Syrian civil war

James Brokenshire, then Minister of State for Immigration, denied that the Coalition Government was deliberately waiting until people were outside the UK before making deprivation orders:

It is true that people have been deprived while outside the UK, but I do not accept that it is a particular tactic. It is simply an operational reality that in some cases the information comes to light when the person is outside the UK or that it is the final piece of the picture, confirming what has been suspected. In other cases, we may determine that the most appropriate response to the actions of an individual is to deprive that person while they are outside the UK. Equally, there are cases where it can be determined that it is appropriate to take action to deprive individuals while they are inside the UK.

(...)

I understand that Members are concerned about instances where deprivation action takes places when a person is outside the UK, and I hear the hon. Lady's point. I restate that the Home Secretary takes deprivation action only when she considers it is appropriate and that may mean doing so when an individual is abroad, which prevents their return and reduces the risk to the UK. That individual would still have a full right of appeal and the ability to resolve their nationality issues accordingly. It is often the travel abroad to terrorist training camps or to countries with internal fighting that is the tipping point—the crucial piece of the jigsaw—that instigates the need to act.<sup>13</sup>

The then Immigration Minister James Brokenshire asserted that it is often the fact of the person leaving the UK that necessitates the making of an order

<sup>12</sup> The Bureau of Investigative Journalism, '[Rise in citizenship-stripping as government cracks down on UK fighters in Syria](#)', 23 December 2013

<sup>13</sup> [HC Deb 11 February 2014 c261-2WH](#)

## 4. Powers to withdraw British passports

British citizens are not entitled to a British passport. The passport does not confer citizenship; it is merely evidence of it. Passports are issued at the discretion of the Home Secretary under the [Royal Prerogative](#) (an executive power which does not require legislation).<sup>14</sup> They can be withdrawn through the use of the same discretionary power.

There is no right to a British passport

### 4.1 Policy

In April 2013 Theresa May, then Home Secretary, provided an update on how these powers are exercised. Her Written Ministerial Statement redefined the 'public interest' criteria for refusing or withdrawing a passport:

A decision to refuse or withdraw a passport must be necessary and proportionate. The decision to withdraw or refuse a passport and the reason for that decision will be conveyed to the applicant or passport holder. The disclosure of information used to determine such a decision will be subject to the individual circumstances of the case.

The decision to refuse or to withdraw a passport under the public interest criteria will be used only sparingly. The exercise of this criteria will be subject to careful consideration of a person's past, present or proposed activities.

For example, passport facilities may be refused to or withdrawn from British nationals who may seek to harm the UK or its allies by travelling on a British passport to, for example, engage in terrorism-related activity or other serious or organised criminal activity.

This may include individuals who seek to engage in fighting, extremist activity or terrorist training outside the United Kingdom, for example, and then return to the UK with enhanced capabilities that they then use to conduct an attack on UK soil. The need to disrupt people who travel for these purposes has become increasingly apparent with developments in various parts of the world.

Operational responsibility for the application of the criteria for issuance or refusal is a matter for the Identity and Passport Service (IPS) acting on behalf of the Home Secretary. The criteria under which IPS can issue, withdraw or refuse a passport is set out below.

Passports are issued when the Home Secretary is satisfied as to:

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<sup>14</sup> See the GOV.UK webpage '[British passport eligibility](#)' and the HM Passport Office policy '[Royal prerogative](#)', 13 January 2012

- i. the identity of an applicant; and
- ii. the British nationality of applicants, in accordance with relevant nationality legislation; and
- iii. there being no other reasons—as set out below—for refusing a passport. IPS may make any checks necessary to ensure that the applicant is entitled to a British passport.

A passport application may be refused or an existing passport may be withdrawn. These are the persons who may be refused a British passport or who may have their existing passport withdrawn:

- i. a minor whose journey was known to be contrary to a court order, to the wishes of a parent or other person or authority in whose favour a residence or care order had been made or who had been awarded custody; or care and control; or
- ii. a person for whose arrest a warrant had been issued in the United Kingdom, or
- iii. a person who was wanted by the United Kingdom police on suspicion of a serious crime; or a person who is the subject of:

a court order, made by a court in the United Kingdom, or any other order made pursuant to a statutory power, which imposes travel restrictions or restrictions on the possession of a valid United Kingdom passport; or

bail conditions, imposed by a police officer or a court in the United Kingdom, which include travel restrictions or restrictions on the possession of a valid United Kingdom passport; or

an order issued by the European Union or the United Nations which prevents a person travelling or entering a country other than the country in which they hold citizenship;

or a declaration made under section 15 of the Mental Capacity Act 2005.

- iv. A person may be prevented from benefitting from the possession of a passport if the Home Secretary is satisfied that it is in the public interest to do so. This may be the case where:

a person has been repatriated from abroad at public expense and their debt has not yet been repaid. This is because the passport fee supports the provision of consular services for British citizens overseas; or

a person whose past, present or proposed activities, actual or suspected, are believed by the Home Secretary to be so undesirable that the grant or continued enjoyment of passport facilities is contrary to the public interest.

There may be circumstances in which the application of legislative powers is not appropriate to the individual applicant but there is a need to restrict the ability of a person to travel abroad.

The application of discretion by the Home Secretary will primarily focus on preventing overseas travel. There may be cases in which the Home Secretary believes that the past, present or proposed activities—actual or suspected—of the applicant or passport holder should prevent their enjoyment of a

The Home Secretary issues a passport when satisfied of three criteria

Theresa May identified four categories of people who may have their passports withdrawn

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passport facility whether overseas travel was or was not a critical factor.<sup>15</sup>

An answer to a Parliamentary Question in April 2017 confirmed that Mrs May's Written Ministerial Statement of 25 April 2013 remains the current policy on the exercise of the Royal Prerogative by the Home Secretary to withdraw a British citizen's passport.<sup>16</sup>

### 4.2 Power to seize a withdrawn passport

In updating the public interest criteria in April 2013, the Coalition Government became aware that there were no explicit powers allowing Crown officials to seize a cancelled passport, even though passports always remain the property of the Crown.<sup>17</sup> This was remedied by section 147 and Schedule 8 of the [Anti-social Behaviour, Crime and Policing Act 2014](#), which provide for powers to require the return of a cancelled passport, and to search for and seize and retain a passport or other travel document. Failure to hand over travel documents without reasonable excuse, or obstructing a search for documents are summary offences subject to maximum penalties of six months' imprisonment or a fine, or both. The powers came into effect on 14 March 2014.<sup>18</sup>

### 4.3 Commentary

The Home Affairs Committee's May 2014 report into counter-terrorism discussed use of the power to withdraw a passport:

95. In the past the use of the power has been thought to have been rare. It was reported to have been used only 16 times between 1947 and 1976. It was also reported to have been used in 2005 following the return from Guantanamo Bay of Martin Mubanga, Feroz Abbasi, Richard Belmar and Moazzam Begg. However, because it is a royal prerogative there is no requirement for the Home Office to report its use to Parliament. When he gave evidence to us on the 18 March 2014, the Immigration and Security Minister informed the Committee that the Royal Prerogative had been used 14 times since April 2013. (...)

96. The withdrawal of passports is a vital tool in preventing UK citizens from travelling to foreign conflicts. We understand the need to use the prerogative power to withdraw or withhold a citizen's passport. Given that the estimates of foreign fighters are in the low hundreds, we are surprised that it has only been used 14 times since April 2013 and recommend that, in all appropriate circumstances where there is evidence, the power is utilised as an exceptional preventative and temporary measure. However, we note that its use is not subject to any scrutiny external to the executive. We recommend that the Home Secretary report quarterly on its use to the House as is currently done with TPIMs and allow the Independent Reviewer

The Home Affairs Committee called the power a 'vital tool', but called on the Home Secretary to report quarterly on its use

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<sup>15</sup> [HC Deb 25 April 2013 c68-70WS](#)

<sup>16</sup> [PQ HL6651](#), 18 April 2017

<sup>17</sup> [Public Bill Committee Deb 16 July 2013 c491](#)

<sup>18</sup> *The Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No. 1) Order 2014 SI 2014/630*

of Terrorism Legislation to review the exercise of the Royal Prerogative as part of his annual review.<sup>19</sup>

#### 4.4 The Home Secretary's discretion unaffected by anti-terror legislation

The Court of Appeal recently affirmed that the decision to issue or withdraw a British passport remains at the discretion of the Home Secretary. In the case of [\*R \(on the application of XH\) v Secretary of State for the Home Department\*](#) the court rejected an argument that the *Terrorism Prevention and Investigation Measures Act 2011* had impliedly abrogated the Home Secretary's prerogative power to cancel the passports of British nationals involved in terrorism-related activities. The court found that the Home Secretary's decision to withdraw the passports of the two appellants on the basis of their involvement in terrorist-related activity was a proportionate restriction on their freedom of movement in accordance with both domestic and EU law.<sup>20</sup>

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<sup>19</sup> Home Affairs Committee, [Counter-terrorism](#), 9 May 2014, HC231 of 2013-14

<sup>20</sup> [R \(on the application of XH\) v Secretary of State for the Home Department](#), [2017] EWCA Civ 41



## 5. Rights of appeal

### Right of appeal against deprivation of citizenship

Before making a deprivation of citizenship order the Home Secretary must give the person concerned written notice, setting out:

- Her decision to make an order
- Her reasons for that decision
- The person's right of appeal<sup>21</sup>

Appeals are made to the First Tier Tribunal (Immigration and Asylum Chamber). Any further appeals are made to the Upper Tribunal and Court of Appeal (or Court of Session in Scottish cases).

However, if the Home Secretary certifies that her decision was taken wholly or partly in reliance on information which she considers should not be made public in the interests of national security, the interests of the UK's relationship with another country, or otherwise in the public interest, the right of appeal is to the Special Immigration Appeals Commission (SIAC) instead of the First -Tier Tribunal. In such cases onward appeals are to the Court of Appeal or Court of Session.

Appealing against the decision to make a deprivation order is 'non-suspensive' – ie the deprivation order can be made (and the person deported from the UK, if they are not already outside the UK) whilst the right of appeal is being exercised. In the event of a successful appeal, the Tribunal (or SIAC) may make a direction that a deprivation order be treated as having had no effect.

The Upper Tribunal has held that tribunals considering appeals against the deprivation of citizenship must identify the reasonably foreseeable consequences of deprivation. This requires consideration of the likelihood of the person's removal from the UK. It is not for a tribunal judge hearing an appeal against a deprivation order to pre-judge the outcome of any challenge to a subsequent deportation order, but he or she must take a view as to whether there was likely to be any force in such a challenge. The stronger the case, the less likely it would be that reasonably foreseeable consequences of deprivation of citizenship would include removal.<sup>22</sup>

### Challenging the withdrawal of a passport

As passports are issued at the Home Secretary's discretion there is no right of appeal against a decision to withdraw the passport. However an individual whose passport has been withdrawn is not left without remedy. The exercise of the prerogative power to cancel a passport is subject to judicial review. Further, as recently pointed out

The Home Secretary must give written notice before making an order

Appeals are to SIAC where the Home Secretary considers information should not be made public

Citizenship deprivation appeals must include consideration of likelihood of removal

There is no appeal against withdrawal of a passport

<sup>21</sup> *British Nationality Act 1981* (as amended), section 40 (5). The *British Nationality (General) Regulations 2003* specify the procedure for giving notice of a decision to make a deprivation of citizenship order. For example, if the person's whereabouts are known, written notice may be personally delivered or sent by post. If his whereabouts are not known, notice is sent to his last known address.

<sup>22</sup> [AB v Secretary of State for the Home Department \[2016\] UKUT 451 \(IAC\)](#)

by the Court of Appeal in *R (on the application of XH) v Secretary of State for the Home Department*, there is nothing to prevent an individual whose passport has been cancelled from applying for a new passport.

## 6. Practical implications of the deprivation of citizenship and the withdrawal of passports

The grave consequences of the deprivation of citizenship were summarised by the Home Office in written evidence submitted to the Home Affairs Committee's 2014 inquiry into counter-terrorism:

Deprivation of British citizenship results in simultaneous loss of the right of abode in the United Kingdom and so paves the way, for possible immigration detention, deportation or exclusion from the UK.<sup>23</sup>

The use of Royal Prerogative powers to withdraw a person's passport was described as:

an important tool to disrupt individuals who plan to engage in fighting, extremist activity or terrorist training overseas and then return to the UK with those skills.<sup>24</sup>

During the passage of the *Immigration Act 2014* the Joint Committee on Human Rights sought to highlight the seriousness repercussions for a person stripped of his citizenship:

13. As the Home Secretary acknowledges, depriving people of their citizenship is a serious matter, and becoming stateless has serious consequences for individuals. In the memorable words of Hannah Arendt, it deprives people of "the right to have rights."

The President of the Immigration and Asylum Chamber recently surveyed the number of rights lost through the deprivation of citizenship. Dismissing the appeals brought by those convicted of sexual offences against children in Rochdale and Oldham, Mr Justice McCloskey said:

...loss of the right of abode in the United Kingdom is the main consequence of depriving a person of British citizenship. The affected subject also suffers the loss of associated and consequential rights, duties and opportunities - in particular voting, standing for election, jury service, military service, eligibility for appointment to the Civil Service and access to state benefits, state financed healthcare and state sponsored education. Fundamentally, the relationship between the individual and the State, which lies at the heart of citizenship and nationality, is extinguished.<sup>25</sup>

The Home Office accepted that the deprivation of citizenship may engage rights enshrined in the European Convention of Human Rights (this despite the fact that a right to nationality is not expressly protected by the Convention). In a memorandum published ahead of the Commons Report Stage of the *Immigration Act 2014*'s passage through Parliament, the Home Office argued that the deprivation of

The Coalition Government viewed deprivation of citizenship as a step towards removal from the UK

Without citizenship a person loses the "the right to have rights"

<sup>23</sup> Home Affairs Committee, *Counter-terrorism*, 9 May 2014, HC231 2013-14, [written evidence of Home Office](#) dated 3 October 2013

<sup>24</sup> *Ibid*

<sup>25</sup> *Ahmed and Others (deprivation of citizenship)* [2017] UKUT 00118 (IAC), para 27

citizenship can nevertheless be carried out compatibly with the Convention.<sup>26</sup>

Home Office assertions in support of this argument were questioned by Guy Goodwin-Gill, Emeritus Professor of International Refugee Law at the University of Oxford. Professor Goodwin-Gill also pointed out that the deprivation of a person's citizenship has 'external' implications too, impacting upon the interests of other states or otherwise touching on the UK's international obligations.<sup>27</sup> For example he warned that the UK may breach its obligations to prosecute those alleged to have committed terrorist-related acts if it instead chooses to 'off-load' such suspects.

Stripping a person of British citizenship has implications for the UK's international obligations and relations with other states

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<sup>26</sup> Home Office, ['Immigration Bill, European Convention on Human Rights, Supplementary Memorandum by the Home Office'](#), 29 January 2014

<sup>27</sup> Guy S. Goodwin-Gill, ['Mr Al-Jedda, Deprivation of Citizenship, and International Law'](#), paper (revised) presented at Middlesex University, 14 February 2014

## Annex 1 - the al-Jedda case and *Immigration Act 2014* changes

On 9 October 2013 the Supreme Court handed down its judgment in the case of Hilal al-Jedda, in which it considered the meaning of section 40(4) of the BNA 1981 (as amended).<sup>28</sup>

Mr al-Jedda came to the UK from Iraq in 1992 as an asylum seeker, and obtained British citizenship in 2000. Under Iraqi law of the time, he automatically lost his Iraqi citizenship as a result of acquiring British citizenship. In 2004 he travelled to Iraq. He was subsequently arrested by US forces and transferred into the custody of the British forces. He was held without charge for over three years. In December 2007, shortly before his release, Mr al-Jedda was notified that the Home Secretary considered that depriving him of his British citizenship was conducive to the public good. Mr al-Jedda appealed against deprivation, partly on the grounds that the deprivation order would leave him stateless.

The case was considered on several occasions by the Special Immigration Appeals Commission (SIAC) and the Court of Appeal before it reached the Supreme Court. One of Mr al-Jedda's arguments was that the deprivation order would leave him stateless and was therefore void. SIAC found that Mr al-Jedda had regained Iraqi nationality under an Iraqi law in place between 2004 and 2006 and therefore would not be rendered stateless as a result of the Home Secretary's order. However the Court of Appeal subsequently found that SIAC had erred in law in arriving at that conclusion.

The Home Secretary's alternative argument was that if Mr al-Jedda did not have Iraqi nationality on the date of her deprivation order it was open to him to apply for it, and therefore it was his inaction, rather than her deprivation order, which had made him stateless. The Court of Appeal rejected this argument and found that the deprivation order had the effect of making him stateless.

The Home Secretary appealed to the Supreme Court, but her appeal was unanimously dismissed. Lord Wilson found that:

32. (...) Section 40(4) does not permit, still less require, analysis of the relative potency of causative factors. In principle, at any rate, the inquiry is a straightforward exercise both for the Secretary of State and on appeal: it is whether the person holds another nationality at the date of the order.

After his release from detention in December 2007 Mr al-Jedda travelled to Turkey using an Iraqi passport. Mr al-Jedda insisted it was a false passport but the Home Secretary claimed it was genuine. The Supreme Court did not consider this an issue it needed to resolve, but noted that it left open the possibility that the

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<sup>28</sup> [Secretary of State for the Home Department \(Appellant\) v Al-Jedda \(Respondent\) \[2013\] UKSC 62](#)

Home Secretary might issue a further deprivation order.<sup>29</sup> This was a course of action that the Home Secretary chose to take. Three weeks after the Supreme Court judgment was handed down, she issued a second order to deprive Mr al-Jedda of his British citizenship. He is appealing against this.<sup>30</sup>

In November 2013 the *Financial Times* reported that, in light of the al-Jedda case, the Home Secretary had instructed officials to consider the scope in international law to withdraw citizenship from terror suspects who would otherwise be left stateless.<sup>31</sup> The Coalition Government subsequently tabled a new clause to the *Immigration Bill* then going through Parliament, the effect of which was to amend the deprivation of citizenship powers in the BNA 1981.

### **Controversy surrounding the new powers introduced by the *Immigration Act 2014***

New Clause 18 of the *Immigration Bill* (subsequently clause 60)<sup>32</sup> was tabled shortly before Report stage in the Commons. The clause would amend the BNA 1981 so that naturalised British citizens could be deprived of their British citizenship if the Home Secretary was satisfied that deprivation was “conducive to the public good because the person (...) has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom,...”.

The Home Office published a [fact sheet on the clause](#), and a [supplementary memorandum](#) which set out the grounds on which the Government considered that the clause was compatible with the European Convention on Human Rights.<sup>33</sup>

The fact sheet gave an indication of how “seriously prejudicial” would be defined:

#### **What does “seriously prejudicial to the vital interests of the UK” mean?**

We do not want to be overly prescriptive about what this phrase means, but we would envisage it covering those involved in terrorism or espionage or those who take up arms against British or allied forces.<sup>34</sup>

Correspondence from Home Office Ministers to Members about the clause during the passage of the Bill were deposited in the Library.<sup>35</sup>

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<sup>29</sup> Supreme Court, Secretary of State for the Home Department (Appellant) v Al-Jedda (Respondent) press summary, 9 October 2013

<sup>30</sup> [Al-Jedda v Secretary of State for the Home Department](#), SIAC, 18 July 2014 (unreported); appeal dismissed by the Court of Appeal on 24 March 2017 (unreported)

<sup>31</sup> ‘May bids to make terror suspects stateless’, *Financial Times*, 11 November 2013

<sup>32</sup> [HL Bill 84 of 2013-14](#)

<sup>33</sup> GOV.UK, *Immigration Bill, Fact sheet: Deprivation of Citizenship (clause 60)*, January 2014; Home Office, *Immigration Bill, European Convention on Human Rights, Supplementary Memorandum by the Home Office*, January 2014

<sup>34</sup> GOV.UK, [Immigration Bill, Fact sheet: Deprivation of Citizenship \(clause 60\)](#), January 2014

<sup>35</sup> Letter from James Brokenshire to Rt Hon David Hanson, 20 February 2014, [DEP 2014-0262](#); Letter from Lord Taylor of Holbeach to Rt Hon Baroness Smith of Basildon, 17 April 2014, [DEP 2014-0641](#)

### Parliamentary scrutiny

During debate at Report Stage, then Home Secretary Theresa May said the new clause would return the law to the position it was in prior to the changes made by the last Labour Government, and would ensure that the UK continues to meet its obligations under the 1961 Convention. She confirmed that the Government did not intend to sign the 1997 European Convention on Statelessness.<sup>36</sup> She confirmed that the clause could be applied to people who had not been convicted of a particular offence, but emphasised that the power would be used in respect of a very small number of cases.<sup>37</sup>

Several Members, from various parties, expressed uncertainties about the proposal and pressed the Home Secretary for further details of how the powers would be used.<sup>38</sup>

For example, some Members expressed unease about how “seriously prejudicial” might be interpreted, and that the powers might end up being used more extensively than originally envisaged.<sup>39</sup>

In response to questions about how the Home Office would be able to enforce the deportation of a stateless person, Mrs May pointed out that the power could be used whilst a person was outside the UK.<sup>40</sup> However, she acknowledged that it might not always be possible to remove a person from the UK if they were deemed to be stateless. She said that such people might be given leave to remain in the UK as a stateless person. However she contended that “crucially, their status would not attract the privileges of a British citizen—they would not be entitled to hold a British passport or to have full access to certain services”.<sup>41</sup>

Dr Julian Huppert cast doubt on how easy it might be for people who had been deprived of British citizenship on “seriously prejudicial” grounds to get another nationality, and said that it was “deeply alarming” that they might end up being granted permission to stay in the UK as a result of being stateless.<sup>42</sup>

Jacob Rees-Mogg disagreed with the idea of creating a potential “second class” category of British citizen.<sup>43</sup> Frank Dobson made a similar point as he described the impact in his constituency of a case involving a Somali-British dual national deprived of British citizenship under existing powers:

Since Mahdi Hashi lost his citizenship and was kidnapped by the Americans, the response of the extremists has been, “Oh yeah? You’re not really a British citizen. You’re only a British citizen on sufferance and the Home Secretary can take your citizenship away.” That has been very damaging to the people

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<sup>36</sup> [HC Deb 30 January 2014 c1040; c1401-2, c1044, c1047](#)

<sup>37</sup> [HC Deb 30 January 2014 c1045](#)

<sup>38</sup> Lords Library Note LLN 2014/004, *Immigration Bill (HL Bill 84 of 2013-14)* also includes a summary of debate on the new clause at Commons Report Stage.

<sup>39</sup> [HC Deb 30 January 2014 c1044, c1086](#)

<sup>40</sup> [HC Deb 30 January 2014 c1043-5](#)

<sup>41</sup> [HC Deb 30 January 2014 c1043-4](#)

<sup>42</sup> [HC Deb 30 January 2014 c1100](#)

<sup>43</sup> [HC Deb 30 January 2014 c1087](#)



we are trying to encourage and has set back their efforts not just in my constituency, but in many other parts of the country where Somalis live.<sup>44</sup>

On the other hand, Alok Sharma and Rehman Chishti, both naturalised British citizens, spoke in favour of the new clause.<sup>45</sup>

Mr Sharma contended that:

There are rights as well as obligations that come with British citizenship. Perhaps my right hon. Friend should go even further—the Immigration Bill may not be the place to do so—and introduce similar sanctions against anyone who is British, irrespective of how they got British citizenship, if they do something so heinous against the British state.<sup>46</sup>

Labour tabled manuscript amendments which would have required the Home Secretary to obtain permission from a court before depriving a person of his British citizenship. Theresa May disagreed with this proposal, arguing that the initial deprivation decision should be taken by a person accountable to the electorate. However she confirmed that the person affected would have a “full right of appeal”.<sup>47</sup>

Labour abstained on division on the clause, which was approved by 294 votes to 34.<sup>48</sup>

A short [Westminster Hall debate](#) on the clause took place on 11 February 2014.<sup>49</sup>

In addition, the clause was considered by the Lords Constitution Committee<sup>50</sup> and the Joint Committee on Human Rights.<sup>51</sup>

The JCHR concluded that the clause would lead to an increase in statelessness and would represent a significant change in UK human rights policy, but would not breach the UK’s international obligations in relation to statelessness:

We accept the Government’s argument that, in strict legal terms, enacting the power in clause 60 to deprive a naturalised citizen of their citizenship even if it renders them stateless does not involve any breach by the UK of its obligations under the UN Conventions on Statelessness. The new power will lead to an increase in statelessness, which represents a significant change of position in the human rights policy of the UK, which has historically been a champion of global efforts to reduce statelessness. It does not per se, however, put the UK in breach of any of its international obligations in relation to statelessness.

However, it considered that the clause could put the UK at risk of breaching its obligations to other States:

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<sup>44</sup> [HC Deb 30 January 2014 c1094-5](#)

<sup>45</sup> [HC Deb 30 January 2014 c1042; c1047](#)

<sup>46</sup> [HC Deb 30 January 2014 c1042](#)

<sup>47</sup> [HC Deb 30 January 2014 c1102](#)

<sup>48</sup> [HC Deb 30 January 2014 c1104](#)

<sup>49</sup> HC Deb 11 February 2014 c255-262WH

<sup>50</sup> Lords Select Committee on the Constitution, [Immigration Bill](#), 7 March 2014, HL Paper 148

<sup>51</sup> Joint Committee on Human Rights, [Legislative Scrutiny: Immigration Bill \(Second Report\)](#), 3 March 2014, HC 1120

We would be very concerned if the Government's main or sole purpose in taking this power is to exercise it in relation to naturalised British citizens while they are abroad, as it appears that this carries a very great risk of breaching the UK's international obligations to the State who admitted the British citizen to its territory. We recommend that the Bill be amended to make it a precondition of the making of an order by the Secretary of State that, in the circumstances of the particular case, the deprivation is compatible with the UK's obligations under international law.<sup>52</sup>

The Coalition Government's response to the Committee was that it did not intend for the proposed new power to be targeted towards naturalised citizens whilst they are overseas. The Government acknowledged that there is a limited obligation to readmit former British nationals who become stateless, in certain circumstances, under Article 1 of the Special Protocol concerning Statelessness 1930, but it argued that this would rarely be applicable.<sup>53</sup>

The Joint Committee identified a number of other concerns. These included whether deprivation decisions engaged rights under the European Convention on Human Rights, whether the clause should have retrospective effect, and whether the arrangements for a right of appeal would be sufficient.

### *Scrutiny in the Lords*

The clause proved controversial in the House of Lords, and the Government was defeated on the clause at Report Stage.<sup>54</sup> Instead peers voted in support of an amendment providing for the establishment of a Joint Parliamentary Committee to consider and report on whether the *British Nationality Act 1981* should be amended to reflect the Government's proposal.<sup>55</sup>

A post on the European Network on Statelessness blog provides an account of some of the issues raised during Parliamentary debates on the clause (up to and including Lords Report Stage).<sup>56</sup>

### *Ping Pong*

The Commons subsequently disagreed with the Lords amendments and approved a modified version of the Government's original proposal.

Firstly, in response to concerns that an individual could be left permanently stateless, the Government proposed amending the clause so that it would require the Home Secretary to have

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<sup>52</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Immigration Bill (Second Report)*, 3 March 2014, HC 1120, p.3-4

<sup>53</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Immigration Bill, Government response to Immigration Bill (Second Report)*, (undated)

<sup>54</sup> See comments made at Second Reading, Committee and Report Stages: HL Deb 10 February 2014 c415- 443, c448-528; HL Deb 17 March c40-64; 7 April 2014 c1167-1195

<sup>55</sup> [HL Bill 98 of 2013-14](#)

<sup>56</sup> European Network on Statelessness blog, '[UK House of Lords defeats Government on deprivation of citizenship leading to statelessness](#)', 29 April 2014

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.

James Brokenshire, then Minister for Security and Immigration, confirmed that in reaching this decision, the Home Secretary would consider other relevant countries' nationality laws, and the personal circumstances of the individual affected, including having regard to practical or logistical arrangements.<sup>57</sup> If an individual in the UK could not acquire another citizenship, there would be scope to give them limited (restricted) leave to remain.<sup>58</sup>

Secondly, the Government proposed inserting a requirement for the Home Secretary to arrange for the exercise of this deprivation power to be reviewed after one year of operation, and every three years thereafter. Copies of such reviews would be laid before Parliament (subject to redactions on national security grounds). The Government had proposed a similar amendment at Lords Report Stage.

During the course of the debate, Mr Brokenshire confirmed that the Government had not yet decided who would be best placed to conduct such a review, but suggested that it might be appropriate for the independent reviewer of terrorism legislation to take on the responsibility.<sup>59</sup>

The Commons voted to reject the Lords amendment, and in favour of the Government's amendments, by 305 votes to 239.<sup>60</sup> These Commons amendments were subsequently agreed to by the Lords.<sup>61</sup>

The clause became section 66 of the *Immigration Act 2014*, and came into effect on 28 July 2014.<sup>62</sup>

### External commentary

The extension of powers to deprive a person of his citizenship and leave him stateless generated considerable external commentary and criticism, including from law practitioners, academics, NGOs and human rights advocates. [Liberty](#) and the [Immigration Law Practitioner's Association](#), amongst others, issued detailed Parliamentary briefings.

A [November 2013 post](#) on the European Network on Statelessness' blog considered some of the questions raised by the Government's plans, such as whether nationality is a right or a privilege, whether the UK would be in compliance with its international obligations if it rendered a person stateless, and whether depriving a person of citizenship helps to prevent terrorism.<sup>63</sup>

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<sup>57</sup> [HC Deb 7 May 2014 c191](#); c193

<sup>58</sup> [HC Deb 7 May 2014 c195](#)

<sup>59</sup> [HC Deb 7 May 2014 c199](#)

<sup>60</sup> [HC Deb 7 May 2014 c214](#)

<sup>61</sup> [HL Deb 12 May 2014 c1695](#)

<sup>62</sup> [SI 2014/1820](#)

<sup>63</sup> European Network on Statelessness Blog, 'Theresa May but the UK shall not', 19 November 2013

Matthew Gibney, Associate Professor of Politics and Forced Migration at the University of Oxford, highlighted various concerns with the clause, concluding that:

The key question supporters of denaturalisation need to ask is not whether it can in principle be right to strip citizenship (on that there may be room for debate), but whether it is wise to entrust denaturalisation to a government that has not hesitated to broaden the scope of its use.<sup>64</sup>

Reprieve, an NGO that works with prisoners facing the death penalty and those held in relation to the 'war on terror', argued that if the clause became law it

... will effectively leave people - who may have arrived in Britain at a young age and always called it home - on parole for the rest of their lives, vulnerable to having their citizenship revoked at the whim of the Home Secretary. It is an ill-conceived, dangerous piece of law which must be stopped when it reaches the Lords.<sup>65</sup>

A March 2014 [fact sheet](#) published by the Open Society Foundations Institute cited examples of other states that have made citizens stateless through "technical" legal amendments or on fraud, state security or poor character grounds (namely the Dominican Republic, Zimbabwe, Peru, Zambia, Cote d'Ivoire, Tanzania, Botswana and Swaziland). It argued that the Government's clause "would breach the spirit of the UK's international obligations to prevent statelessness", and that the UK would be setting "a dangerous international precedent" if it was approved.<sup>66</sup> The Open Society also published a [legal opinion](#) which concluded that there were good grounds to determine that the UK's declaration under Article 8(3) of the 1961 Convention on the Reduction of Statelessness does not extend to a new law authorising deprivation where this would make a person stateless.<sup>67</sup> The Government contended that its clause was not in breach of the Convention.<sup>68</sup>

Guy Goodwin-Gill, professor of international refugee law at University of Oxford and a barrister at Blackstone Chambers, also considered the legal implications of the Government's proposals in detailed briefings to the Joint Committee on Human Rights and in a legal opinion.<sup>69</sup>

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<sup>64</sup> New Statesman [online], '[Don't trust the government's citizenship-stripping policy](#)', 3 February 2014

<sup>65</sup> Reprieve, press release, '[Citizenship-stripping plans dangerous & must be stopped](#)', 30 January 2014

<sup>66</sup> Open Society Justice Initiative, '*Fact sheet: UK must not undermine global battle against statelessness*', March 2014

<sup>67</sup> Available from Open Society Foundations, Briefing Papers, 'Opinion on clause 60 of UK Immigration Bill and Article 8 of UN Convention on Reduction of Statelessness', March 2014

<sup>68</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Immigration Bill, Government response to Immigration Bill (Second Report)*, (undated)

<sup>69</sup> Professor Guy Goodwin-Gill, '*Mr Al-Jedda, Deprivation of Citizenship, and International Law*', revised draft of a paper presented on 14 February 2014; '*Deprivation of Citizenship Resulting in Statelessness and its implications in International Law*', 6 April 2014 (both available from the Joint Committee on Human Rights' pages on the [Immigration Bill](#)); '[Deprivation of Citizenship Resulting in](#)

He argued that the measure was “ill-considered”, and likely to result in considerable waste of public money if approved, as a result of the associated legal issues. In particular, he highlighted that there were broader questions under international law than whether the then clause was lawful under the 1961 Convention on the Reduction of Statelessness:

In addition, considerable harm will be caused to the United Kingdom’s international relations. The United Kingdom has no right and no power to require any other State to accept its outcasts and, as a matter of international law, it will be obliged to readmit them if no other State is prepared to allow them to remain. Likewise, and in so far as the UK seeks to export those who are alleged to have committed ‘terrorist-acts’, it will likely be in breach of many of those obligations which it has not only voluntarily undertaken, but which it has actively promoted, up to now, for dealing with international criminal conduct.<sup>70</sup>

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[Statelessness and its implications in International Law](#), 12 March 2014; [‘Deprivation of Citizenship, Statelessness, and International Law More Authority \(if it were needed...\)’](#), 5 May 2014

<sup>70</sup> Professor Guy Goodwin-Gill, ‘*Mr Al-Jedda, Deprivation of Citizenship, and International Law*’, revised draft of a paper presented on 14 February 2014, *ibid*

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