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Case Law Database

United Kingdom - R (on the application of D4) (Notice of deprivation of citizenship) v Secretary of State for the Home Department

A dual British and Pakistani national who was detained in a camp in Syria was deprived of her British nationality in December 2019 on the grounds that this would be conducive to the public good. A copy of the notice of the deprivation was placed on the applicant's file but was not communicated to her at this time. Under regulations made under the British Nationality Act 1981, this was considered to constitute notice. The deprivation of citizenship was only communicated to the applicant when her lawyers contacted the Foreign and Commonwealth Office in September 2020 to ask for assistance with the applicant's repatriation and were later informed of this decision by the Home Office in October 2020. The applicant applied for judicial review, claiming that the domestic regulation in question and the deprivation decision had no legal effect. The Court of Appeal dismissed the Secretary of State appeal against the High Court decision finding in the applicant's favour. The judgment is currently under appeal before the Supreme Court.

Case name (in original language) : R (on the application of D4) (Notice of deprivation of citizenship) v Secretary of State for the Home Department
Case status: Appealed
Case number: [2022] EWCA Civ 33
Citation: R (on the application of D4) (Notice of deprivation of citizenship) v Secretary of State for the Home Department [2022] EWCA Civ 33
Date of decision: 26/01/2022
State: United Kingdom
Court / UN Treaty Body: Court of Appeal of England and Wales
Language(s) the decision is available in: English
Applicant's country of birth: United Kingdom
Applicant's country of residence: United Kingdom
Key aspects: Deprivation of nationality, Procedural safeguards

Relevant Legislative Provisions:

British Nationality (General) Regulations 2003, as amended by the British Nationality (General) (Amendment) Regulations 2018 - Regulation 10(4)

British Nationality Act 1981 - sections 40, 40A, 41

Facts

The applicant, a dual British and Pakistani national, was born in the UK. In January 2019 she became detained in Camp Roj in Syria. In December 2019, a deprivation of nationality order was made on the grounds that depriving the applicant of her nationality was conducive to the public good.

The 1981 British Nationality Act regulates the notice requirement and Regulations were taken under that Act. National regulation (Regulation 10(4) of the British Nationality (General) Regulations 2003) purportedly permitted to give notice through placing a copy of the notice of the deprivation on the applicant's file where the whereabouts of the person were unknown. As the Home Office assessed that the applicant was no longer using her last known address in the UK, the notice of deprivation of nationality was accordingly placed on the applicant’s Home Office file and was not communicated to her.

In September 2020, the applicant’s lawyers contacted the Foreign and Commonwealth Office to seek assistance in repatriating the applicant. The Home Office informed the lawyers that the applicant had been deprived of her nationality in 2019.

The applicant lodged an application for judicial review in March 2021 arguing that Regulation 10(4) of the Regulations was *ultra vires*. The court of first instance (High Court) found in favour of the Claimant. The Home Secretary appealed.

Legal arguments by the applicant

The applicant argued that the judge at first instance had been correct in his reasoning.

Namely, the 1981 Act did not give the Home Secretary the power to dispose of the notice requirement altogether. The requirement for notice was imposed by primary legislation and the Home Secretary did not have the power to remove it via secondary legislation. Regulation 10(4) effectively allowed the notice requirement to be disposed of.

The requirement for notice was not qualified in the primary legislation by words such as "so far as reasonably practicable".

Putting notice on file did not constitute giving notice in any ordinary use of language. The primary legislation was not ambiguous and the words must be taken to mean what they said.

Deprivation of citizenship was an interference with fundamental rights, and the notice requirement was a safeguard ensuring that the person concerned knew of both the decision and their right of appeal. This was a question of fairness.

Finally, case law indicated that notice should be considered given when it was received. The common law requirement for notice to be deemed given was therefore that notice was received.

Legal arguments by the opposing party

On appeal, the Home Secretary argued that the power to make Regulation 10(4) existed either under the general power granted by section 41(1) of the 1981 Act, or under the particular provision of section 41(1)(e). Section 41(1) provided that "The Secretary of State may by regulations make provision generally for carrying into effect the purposes of this Act...". Section 41(1)(e) provided that the Secretary of State may make provision "for the giving of any notice required or authorised to be given to any person under this Act."

The Home Secretary's discretion to regulate the giving of notice under the 1981 Act was broad, and included the power to regulate when notice should be deemed to have been given.

Further, notice was not the same thing as receipt. There were good reasons why the Home Secretary may wish notice to be deemed to have been given, even if it had not been received. The purpose of the legislation could be frustrated if the State were prevented from exercising its power to deprive an individual of their

nationality.

Regulation 10 read as a whole provided a reasonable and coherent approach to notice. Notice was only permitted to be served to file where there was no other practicable means of giving notice. In any event, the Home Secretary was required as a matter of public law to give notice as soon as the person in question's whereabouts became known.

An individual who ran out of time to appeal a deprivation of nationality order because they did not receive notice could apply to extend the time to appeal.

Regulation 10(4) was no different than the numerous other legislative provisions which allowed the Secretary of State to deem that notice had taken place, even where there was no receipt.

Finally, if Regulation 10(4) were to be found unlawful, there could be a knock on effect. Other cases where notice of deprivation of nationality had been served to file could be affected, as well as, possibly, other cases.

Decision & Reasoning

In the leading judgment, the judge (Whipple LJ) considered general issues of notice and deemed notice. She summarised the leading authorities and the key points which could be extracted from them [38]-[48]:

- The natural meaning of notice was that it involved receipt, but this was not an invariable rule. [47]
- Receipt did not mean full knowledge. Rather, it meant that there was an opportunity for the individual concerned to acquaint themselves with the contents of the notice. [47]
- It was possible for a contract or statute to provide for deemed notice, even without notice being in fact given or received [47].
- In some circumstances notice could be given without receipt, even in the absence of deeming provisions [48].

The notice requirement contained in section 40(5) of the British Nationality Act 1981 implied that Parliament intended to include minimum safeguards for persons subject to a deprivation of nationality order.

That provision represented, “a balance between the public interest in permitting the Home Secretary to deprive a person of their citizenship, and the individual’s rights to know what has occurred, why, and what avenues are open to them to challenge the decision" [53].

Parliament would have understood that notice was subject to limitations. It must have intended that a person of unknown whereabouts could be deprived of their nationality and that notice could be given in those circumstances [54].

However, the British Nationality Act 1981 did not go so far as to allow notice to be dispensed with altogether [59]. This was the practical effect of Regulation 10(4). That Regulation was at odds with the language and purpose of section 40(5), and with the constitutional principle that a decision could not take effect until the person in question had been notified [59].

Although there may be compelling reasons to permit the Home Secretary to dispense with the notice requirement in some circumstances, this was a question for Parliament. [60]

The judge concluded "that regulation 10(4) is ultra vires. The 1981 Act does not confer powers of such breadth that the Home Secretary can deem notice to have been given where no step at all has been taken to communicate the notice to the person concerned and the order has simply been put on the person’s Home Office file. To permit that would be to permit the statute to be subverted by secondary legislation. Only Parliament can decide that the requirement for notice contained in the 1981 Act should be altered in this way." [61]

Another judge (Baker LJ) added that “There are a number of ways in which notice can be given but putting the document in a drawer is not one of them. That is not “giving notice”.” [65]

A **dissenting judge** (Sir Geoffrey Vos, Master of the Rolls) would have allowed the appeal. He argued that the notice requirement in the 1981 British Nationality Act was a mechanism for achieving the overall purpose of the legislation. This purpose was to enable the Home Secretary to deprive persons of their citizenship where this was conducive to the public good.

The 2003 Regulations read as a whole provided a coherent hierarchy of means of giving notice, with each means requiring some kind of deeming [72-73]. Where

notice was sent to a person’s last known address, it was sometimes unlikely or impossible for the notice to come to that person’s attention. The Home Secretary could serve notice in this way, even if they knew it would never come to the person’s attention, and:

"There is, in my view, no substantive difference between a regulation that allows valid service of a notice by sending it to an address at which it is known the person will not receive it and serving it to file [73]."

The 1981 British Nationality Act would be neutered if the Home Secretary could not deprive a person of their citizenship because they had no legal representative, could not be contacted, or had no known address [75].

Further, the Home Secretary accepted their duty to take reasonable steps to communicate with the person affected and in this case had informed the applicant's representative of the decision as soon as they had made themselves known [75].

Decision documents
UK - R (on the application of D4) judgment - English
Outcome

The court dismissed the appeal, holding that Regulation 10(4) was *ultra vires.*

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

https://freemovement.org.uk/stripping-people-of-british-citizenship-wit...

https://www.theguardian.com/politics/2022/jan/26/uk-unlawfully-stripped...

Caselaw cited

- R (Masud Alam) v Secretary of State for the Home Department [2020] EWCA Civ 152
- R (AA (Sudan) v Secretary of State for the Home Department [2017] 1 WLR 289
- Williams v Central Bank of Nigeria [2014] UKSC 10
- Inco Europe Ltd v First Choice Distribution [2000] 1 WLR 586
- Goodyear Tyre and Rubber Company v Lancashire Batteries Ltd [1958] 1 WLR 857

- Sun Alliance and London Assurance Co Ltd v Hayman [1975] 1 WLR 177
- UKI (Kingsway) v Westminster City Council [2019] 1 WLR 104
- R (Anufrijeva) v Secretary of State for the Home Department [2003] UKHL 36
- Pham v Secretary of State for the Home Department [2015] UKSC 19
- Fowler v HMRC [2020] 1 WLR 2227

Third party interventions

There were no third party interventions.