

# Citizenship Deprivation Policy in the UK and Abroad: a Postcolonial Analysis

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## Citizenship Deprivation Policy in the UK and Abroad: a Postcolonial Analysis

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KATE GOODFELLOW, APR 10 2022

Counterterrorism policy in the UK requires a fine balance between equal citizenship protection and being harsh on those who threaten national security. When looking at citizenship deprivation (CD) powers, however, this balance is replaced with a murky conflict between citizenship and state power. As will become clear, CD 'foregrounds security over equality and echoes a colonial history of governing through a racialised conception of social order'. [1] The UK's colonial history of white supremacy means we understand Britishness as equivalent to being white; thus, CD policy identifies a terrorist threat and subsequently justifies the use of CD powers against those who do not conform to this identity. It is of crucial importance that CD is prevented from operating in this current state, as it imposes heavy consequences on the citizenship status of (in particular) Muslim communities on a domestic and international level. However, when looking to do so, policy alternatives follow the same racialised prejudices, making it clear that we must challenge our white British identity whose entire existence 'depends on not being questioned' [2] – thus, prevention will prove extremely difficult.

This essay begins by exploring the colonial history and domestic impacts of our citizenship laws, which, when combined with our Orientalist bias, have cemented a tiered segregation between 'us' as the white supremacist British identity, and 'them' as the Muslim terrorist threat. Events of the 21<sup>st</sup> century have resulted in using this segregation to target Muslims as the victims of CD powers. The role of neo-colonialism will be analysed in regard to the international impacts of CD policy to show how continued hegemonic status in the global order encourages a breach of international obligations, and risks smaller nations formulating copy-cat policies that fail to address individual security interests. This will lead to a discussion on the suitability of temporary exclusion orders (TEOs) as an alternative, before concluding that these would not remedy CD problems. I will ultimately conclude that through our counterterrorism response being so grounded in a racialised and Islamophobic understanding of who can be deprived of their citizenship, looking to alternatives is not enough. We must question the entire basis of our understanding of the white British identity before CD is regarded as unproblematic.

### Domestic impacts

The British Nationality Act 1948 [3] redefined our understandings of British citizenship in the wake of the Second World War. Whilst appearing to 'cast the net wide' [4] and welcome colonial citizens into the UK, our redefinition was to 'secure the imperial order'. [5] Placing citizens in categories of 'Citizenship of the UK and Colonies' (CUKC) or 'Citizenship of an Independent Commonwealth Country' [6] led to the emergence of tiered citizenship. Whilst strengthened in the wake of the War, whiteness and Christianity as the crux of British identity can be traced back to the beginning of the British Empire. [7] Thus, Commonwealth citizens entered a nation whereby identity and values grounded in whiteness had fortified into a concrete belief of what constituted 'Britishness', and more importantly, what did not. This compromised their security as citizens, as they were misaligned with this understanding of 'Britishness'. Instead of affording equal protection, our aim in expanding the definition of citizenship was fuelled by a colonial desire to retain our white, hegemonic identity. Collins argues that migration was merely an 'unintended consequence', [8] and our response to this influx of citizens who threatened our white British identity was to introduce draconian citizenship laws in the wake of the 1948 Act.

# Citizenship Deprivation Policy in the UK and Abroad: a Postcolonial Analysis

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Responding to the threat of increased migration, the Immigration Act 1971[9] was introduced. This 'made Britishness commensurate to whiteness'[10] as only those with a paternal or birth-right link were afforded the right to abode. Demographics indicate that people meeting such requirements were 98% likely to be white.[11] Those previously defined as 'CUKC' and their children saw their right of abode removed,[12] reiterating the message of our citizenship laws: to be afforded security as a 'British' citizen meant being white.

The British Nationality Act 1981[13] (BNA) mirrored the hierarchical citizenship imposed by its earlier version. The Act defined citizenship in national terms,[14] with nationals afforded full British citizenship. In a 'significant colonial manoeuvre'[15] that 'reinforced the racialised ethnic national identity',[16] CUKCs, who had already lost their right to abode, also saw their fragile citizenship status demoted further to a 'British Overseas Citizen'[17] or a 'British Dependent Territories' nationality.[18] The message was clear: only majority-white nationals constituted true 'Britishness', and thus, deserved full citizenship. Naturalised citizens did not align with British identity, and thus, were placed in a class below their white counterparts. An 'othering process'[19] of "us" versus "them" was unambiguously driving amendments to our citizenship laws, with naturalised citizens deemed inferior purely on their incoherence with white British identity. Moreover, CD powers were formalised in the BNA, yet they were limited to naturalised citizens.[20] This indicates that from its inception, CD has aligned with racialised prejudices of prior citizenship laws to target diasporic communities and threaten their identity and legal status as British citizens.

The twenty years succeeding the inception of the BNA saw little contestation surrounding citizenship and deprivation powers. However, the September 11<sup>th</sup> attacks reawakened attention on national security, leading to drastic changes to our citizenship laws. The Global War on Terror, spearheaded by the US and its allies, of which "America [had] no truer friend than Great Britain",[21] saw the isolation of diasporic communities in the West to an even further extent. This time and in the decades following, counterterrorism efforts have been directed towards the Islamic faith and Muslim identity. In Bush's landmark speech, he refers to the Islamic attackers as "enemies of freedom"[22] wishing to "disrupt and end [the Western] way of life".[23] Whilst reminding Muslims that "we respect your faith",[24] Bush mirrors Naqvi's othering process by pitting Islamic beliefs against Western values. His language situates America and the West as 'we', and the terrorist, Islamic identity as 'they', attributing an intrinsic yet exaggerated link between Islam and terrorism. The speech installed a stereotype that the Islamic faith is a threat to our white Western ideals and national security. This becomes dangerous when we consider the 'repetitive production and consumption of terrorism news'[25] as Orientalist conceptions of what constituted a terrorist were consistently reinforced, despite being based on an entirely racialised concept of the 'terrorist'.

Instead of reassuring our Muslim communities' citizenship security, we strengthened CD powers with the Nationality, Immigration and Asylum Act 2002[26] (NIAA). The Act marginally strayed from its racialised predecessors by removing the condition of dual-nationality as a prerequisite for CD. However, s.4[27] (inserting s.40(2) BNA[28]) simultaneously widened the scope by which an individual's citizenship could be stripped, in instances of anything 'seriously prejudicial' to the UK's 'interests'. This seems like a high threshold, but indoctrination to our colonial roots formed an unbreakable tie between 'Britishness' and whiteness, meaning that it was unlikely that white Britons would be held as acting against the nation's 'interests'. However, acting in peaceful support of an Islamic religious movement may be an example of behaving against the nation's (predominantly Christian) interests, effectively singling out Muslim citizens as targets for the new wording. This likely led to a pattern of repression within Muslim communities in openly practising their religion for fear of discriminatory treatment, leading to the deprivation of their citizenship.[29] Therefore, despite CD applying to both national and naturalised citizens, the racialised application of the Act continued to prefer white nationals at the expense of affording equal citizenship protection to all UK citizens.

Fear of discriminatory treatment was reinforced following the inception of the Immigration, Asylum and Nationality Act 2006.[30] Similarly to the NIAA, this Act was introduced in the wake of an attack threatening our white identity. In his speech following the 7/7 bombings, Blair 'culturalises the terrorist threat'[31] by echoing Bush's Orientalist rhetoric in establishing an 'important separation between "us" who "want to save and improve human life", and "them", who are "intent on destroying [it]"'.[32] Blair fails to minimise Orientalist bias as he does not specify that "they" are isolated, violent extremists and are unrepresentative of the entire Islamic faith. Thus, Orientalism continued to situate the entire Muslim community as the 'Other' detached from 'us' as a collective of 'British' people and the 'British way of life' in regard to counterterrorism policy. This is particularly poignant when we compare it with acts of white terrorist

# Citizenship Deprivation Policy in the UK and Abroad: a Postcolonial Analysis

Written by Kate Goodfellow

violence. In place of an 'us versus them' narrative, the 'lone wolf'[33] mentality is adopted. We do not view the attacker as acting on behalf of British values, as is the case when they belong to the Islamic faith. Summarising Meier,[34] such a lack of response shows that it is only when violence is perpetrated by individuals/groups incongruous with white supremacy's status that CD is a warranted response. We do not perceive white attackers as a separate 'Other' who threaten the structure of our society, since whiteness is the unifying factor underpinning what it means to be 'British'. Whereas, non-white violence 'constitutes such shocks...[to] the hegemonic nature of white supremacy as a component of identity'[35] that draconian policies such as CD are warranted. Thus, s.56[36] lowering the deprivation threshold from 'seriously prejudicial' to 'conducive to the public good' made it even easier to persecute those who *do* threaten our white supremacist identity. Choudhury illustrates this excellently by comparing the (lack of) counterterrorism response to the conflict with Northern Ireland and the 'denationalisation and exile...used against British Muslims'.[37] Due to our racialised perception of terrorists, IRA soldiers were not subject to CD orders despite killing 175 people and causing close to £1 billion worth of damage.[38] This can only be because their white demographic meant they did not threaten our national identity; thus, a draconian response was unwarranted.

S.56 is also problematic as the standard lacks statutory definition, meaning the exercise of the power in maintaining Britain's colonial order of non-whites being second-tier citizens acts on an unrestricted level. Moreover, switching the focus from punishment to pre-emption means enforcing 'logics of suspicion, anticipation and prediction'[39] onto Muslims already living in a quasi-contractual relationship with the state.[40] They must continue to earn their fragile citizenship as a 'privilege, not a right',[41] through 'proving'[42] their worth as citizens and striking an appropriate balance between promoting white British values (despite being rejected by them) and staying true to their faith, to avoid suspicion of acting against national interests, and thus, potentially being deprived of their citizenship.

A final change in CD laws occurred via s.66 Immigration Act 2014,[43] which implemented s.40(4A)[44] into the BNA. This holds that the Secretary of State (SoS) can deprive someone of their citizenship even if it renders them stateless if there are reasonable grounds to believe they can seek citizenship in another territory. This revision promotes hierarchical citizenship, as only individuals holding dual-nationality can acquire citizenship elsewhere. National citizens who only hold British citizenship will be rendered stateless with no prospect of alternative citizenship; thus the power cannot be exercised over them. S.66's amendment is, thus, 'not intended to have the same effects on all citizens'[45] and, in practice, follows the racialised precedent of earlier provisions in exclusively targeting already marginalised, majority-dual-national communities. It is easy to see why Chowdhury feels as if though 'the pejorative command: "Go back to where you came from"...appears to have become an official government position'.[46] The 'differentiation of conditionality'[47] fuels suspicions about Muslims being terrorists,[48] as society falsely attributes the ease with which they can be deprived of citizenship to some link to terrorist activity. S.40(4A) also 'disrupts social cohesion'[49] as the message purveyed echoes Orientalism in that only those superior enough to hold full British citizenship will be protected to a full extent under the law.

The history of our citizenship laws and the exercise of CD powers show a highly racialised domestic system. Not only does it impose an Orientalist understanding of who constitutes a threat to our national identity, and thus, should be deprived of citizenship, but our laws also suggest a refusal to detach from our colonial past. Colonialism still dictates how nationality and citizenship are viewed, with whiteness being the crux of British identity. This creates racialised, tiered citizenship whereby marginalised communities, specifically Muslim in this context, 'must constantly perform loyalty [to the]...flimsy conceptualisation of 'Britishness''[50] for fear of deprivation of their citizenship.

## International impacts

CD laws are also problematic on an international scale, particularly s.40(4A) BNA's statelessness consequence. Underpinned by the commodification of citizenship as a 'prize'[51] that must be earned – but only by those existing outside of 'Britishness' – s.40(4A) equips the SoS with powers to impose a punishment 'more primitive than torture'[52] in rendering an individual stateless. In doing so, we fall outside of our 1961 UN Convention on the Reduction of Statelessness[53] (UNC) obligations. Article 8(1) specifies that 'a state shall not deprive a person of his nationality if such deprivation would render him stateless'.[54] However, many Western states retained their right under Article 8(3)(ii) to deprive someone if they act in a manner seriously prejudicial to the nation's interests.[55] Anderson's review confirms that the 'Convention does not prevent the UK from using the power'.[56] This begs the

# Citizenship Deprivation Policy in the UK and Abroad: a Postcolonial Analysis

Written by Kate Goodfellow

question of why the UNC was introduced if an exception, effectively nullifying the purpose of its obligations, is permissible. However, when we consider the composition of the UN, it becomes obvious. Strong Western powers including the UK and US exercise a new form of 'neo-colonialism' whereby economic and cultural domination is used to influence other countries.[57] Thus, in obtaining the right to make an individual stateless, neo-colonialism works in tandem with our colonial past to permeate the international community with our Western understanding of the terrorist threat. Continued status as hegemonic global powers means that Western nations can drive and dictate the formulation of Conventions to best suit their political agendas. These nations were, thus, able to create and ratify the UNC that allows them to promote a racialised agenda of defining who falls within the ambit of Article 8(3)(ii) while still appearing to comply with international obligations.

This precedent becomes dangerous when we consider the response from other nations who model our citizenship laws. De Chickera highlights that this problem is not restricted to smaller, Eastern countries, as 'many Western democracies have expanded powers in comparable ways with the UK'.[58] Our neo-colonial influence leading to a *global* absorption of white superiority contradicts the Orientalist notion that it is only the East who are inferior and susceptible to our influence. Moreover, encouraging Western nations to adopt harsh measures and place themselves in breach of international obligations threatens the entire foundations upon which Orientalism is built. Orientalism sees the West as 'democratic and progressive'[59] and superior to the East in this sense, but modelling the UK's oppressive CD powers as a result of neo-colonial influence within supranational bodies undermines these ideals upon which we perceive Western society to be built. Destroying these foundations would mean unravelling centuries of perceived global order, which is something that the West should be careful to avoid if they wish to continue imposing their 'superiority' over the East.

Modelling on UK policy has also occurred in the East, with countries such as Egypt 'severing the legal bond with its own citizens'[60] in matters of national security. Encouraging countries particularly prone to conflict to begin alienating citizens is dangerous, as this reinforces Orientalist stereotypes of the East being 'barbaric'[61] whilst showing blindness to the ironic barbarity within our own practices. Oando and Achieng are careful to point out that the African Union has mitigated *some* Western influence in creating strategies that 'constitute a pan-African response to terrorism',[62] including the AU Plan of Action 2002 and Anti-Terrorism Law 2011. However, the Union formed in the wake of 9/11, and the 2011 Act has been criticised for 'drawing excessively from the US Patriot Act 2001',[63] making it clear that African counterterrorism policy is modelled on a Western-centric, racialised understanding of the terrorist threat. This has led to the 'stigmatisation of Muslims by the public'[64] even where they do not constitute a pressing threat. As Alzubairi reminds us, counterterrorism policy in the era of neo-colonialism does nothing other than 'maintain the status quo of an unequal position of powers'[65] and reinforce the Western misconstruing of the East of Muslims as a global terror threat.

The UK is setting a dangerous precedent on an international scale. Neo-colonialism threatens to disrupt counterterrorism policies of not only our Western allies, who should align with values of freedom and progression, but also the policies of those countries who are 'so enmeshed in [their] colonial relationships with the West'[66] that they are unable to implement policies more suitable to their individual political climates.

## Moving forward(?)

Logic stipulates that subsidising these consequences requires simply removing CD powers. A pattern is emerging of European preference for deradicalisation programmes, and non-Western nations, including Russia and Central Asia, 'have taken back hundreds of their nationals'.[67] An inherent irony to Orientalism again arises; those countries deemed as inferior in the global order seem to be less fuelled by a racialised desire to marginalise communities by keeping the exaggerated Islamic terrorist threat out. Van Waas and Jaghai iterate that states have 'found ways to address security threats...without denationalising [citizens]'.[68] If the UK looks to relax its perceived superior status in shaping global counterterrorism policy, we may learn a lesson in how to deal with the terrorist threat in a way that does not unduly threaten the citizenship status of our entire Muslim population.

Some may look to TEOs as a viable policy alternative, however, I argue that these would formulate into deprivation in disguise and thus are not suitable. TEOs were introduced in the Counter-Terrorism and Security Act 2015[69] to

# Citizenship Deprivation Policy in the UK and Abroad: a Postcolonial Analysis

Written by Kate Goodfellow

prevent terrorist suspects from returning to the UK for a period no longer than two years, usually via invalidation of a passport. Fenwick argues that TEOs may be preferable as they constitute a travel restriction rather than a 'de jure removal of nationality'.<sup>[70]</sup> While this is true in theory, the symbolic importance of this argument is underestimated. Due to misalignment with British identity, an individual's passport may be the last physical signifier of their British citizenship – removing it may be the final straw in complete alienation. This may leave isolated individuals with no choice but to align with those groups/organisations who do accept their identity. The danger thus arises in TEOs potentially 'reinforcing the identity issues that drive radicalisation'.<sup>[71]</sup>

Fenwick highlights how TEOs may help to mitigate racialised influence by suggesting that their main targets are mono, rather than dual, nationals.<sup>[72]</sup> This falters attention placed on dual-nationals who are already subject to s.40(4A) BNA statelessness powers and may remind national-born citizens that they fall within *some* scope of the law. However, to impose a TEO on a British national whilst abroad means that the country they are visiting must now absorb the issue. Acting in a 'unilateral sense rather than as part of an international struggle'<sup>[73]</sup> through 'exporting a security threat'<sup>[74]</sup> to smaller nations who are unlikely to possess the capacity nor resources to handle the case shows a clear disregard for other nations, as the UK continues to put itself on an untouchable pedestal based on our colonial perceptions of British superiority.

Finally, a lack of restrictions on the number of TEOs that can be imposed means there is potential for them to become deprivation in disguise. This leaves those individuals in a state of citizenship limbo, leading to the conclusion that TEOs are not an appropriate policy alternative.

## Conclusion

This essay has demonstrated that CD as a counterterrorism policy is incredibly problematic. Not only is it built upon a racialised and Islamophobic notion of who threatens our white, 'British' identity and thus warrants being subject to CD, but it also sets a dangerous international precedent through encouraging Western allies to utilise the same oppressive practices. Neo-colonialism also means that we continue to exert considerable influence over smaller Eastern countries as a Western hegemony, where they are also encouraged to model our deprivation powers and the Islamophobic rhetoric underpinning them. This is translating into a universal understanding of Muslims as *the* terrorist threat, where this isn't always the case.

Whilst a full examination of alternative policies remains outside of the scope of this essay, Fenwick's analysis of TEOs leaves me unconvinced of their suitability as a solution. To truly absolve of the problematics of CD policy would mean acknowledging the racism that drives it and questioning our entire white British identity as the pinnacle of this racialisation. Whilst Collins' analysis focuses on the Prevent strategy, her postulation that 'processes of racialisation and the construction of a white British identity cannot be removed...because it is key to its identity'<sup>[75]</sup> applies here. Repealing CD means striking heavily at the core of white British identity, and based on our colonial past and neo-colonial future, it is highly unlikely that this will be a welcome suggestion. Until we demolish our racialised understanding of who should be subject to CD, its existence as a counterterrorism policy will continue to be extremely problematic.

## End Notes

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[2] Anna Meier, 'The idea of terror: institutional reproduction in government responses to political violence' *International Studies Quarterly* 64(3) (2020) p. 507.

[3] British Nationality Act 1948.

[4] Emily Collins, 'Beyond the Race-neutrality of Prevent: White Britain and the Racialised Threat', *E-International Relations*, 2021 <https://www.e-ir.info/2021/09/20/beyond-the-race-neutrality-of-prevent-white-britain-and-the-racialised-threat/> [accessed 10 January 2021] p. 6.

# Citizenship Deprivation Policy in the UK and Abroad: a Postcolonial Analysis

Written by Kate Goodfellow

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[7] Robert A Huttenback, 'The British Empire as a "White Man's Country" – Racial Attitudes and Immigration Legislation in the Colonies of White Settlement' *Journal of British Studies* 13(1) (1973) pp. 108-137.

[8] Collins, 'Beyond the race-neutrality of Prevent' p. 6.

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[11] Nadine El-Enany, *(B)ordering Britain* (Manchester University Press, 2020) p.4.

[12] Immigration Act 1971, s.2.

[13] British Nationality Act 1981.

[14] Collins, 'Beyond the race-neutrality of Prevent' p. 6.

[15] El-Enany, '(B)ordering Britain' p. 5.

[16] Choudhury, 'The radicalisation of citizenship deprivation' p. 231.

[17] British Nationality Act 1981, Part III.

[18] *Ibid.*, Part II.

[19] Zainab Batul Naqvi, 'Coloniality, Belonging and Citizenship Deprivation in the UK: Exploring Judicial Responses' *Social & Legal Studies* (2021) p. 8.

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[22] *Ibid.*

[23] *Ibid.*

[24] *Ibid.*

[25] Deepa Kumar, 'Terrorcraft: empire and the making of the racialised terrorist threat' *Race & Class* 62(2) (2020) p. 38.

[26] Nationality, Immigration and Asylum Act 2002.

[27] *Ibid.*, s.4.

[28] British Nationality Act 1981, s.40(2).

# Citizenship Deprivation Policy in the UK and Abroad: a Postcolonial Analysis

Written by Kate Goodfellow

- [29] See: Nisha Kapoor and Kasia Narkowitz, 'Unmaking citizens: Passport removals, pre-emptive policing and the reimagining of colonial governmentalities' *Ethnic and Racial Studies* 42(16) pp. 45-62.
- [30] Immigration, Asylum and Nationality Act 2006.
- [31] Émilien Fargues, 'The revival of citizenship deprivation in France and the UK as an instance of citizenship renationalisation' *Citizenship Studies* 21(8) (2017) p. 992.
- [32] Collins, 'Beyond the race-neutrality of Prevent', p. 2.
- [33] Boaz Ganor, 'Understanding the Motivations of "Lone Wolf" Terrorists' *Perspectives on Terrorism* 15(2) (2021) pp. 23-32.
- [34] Meier, 'The idea of terror' pp. 499-509.
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- [43] Immigration Act 2014, s.66.
- [44] British Nationality Act 1981, s.40(4A).
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- [47] Fargues, 'The revival of citizenship deprivation' p. 992.
- [48] Choudhury, 'The radicalisation of citizenship deprivation' p. 229.
- [49] Laura van Waas and Sangita Jaghai, 'All Citizens are Created Equal, but Some are More Equal Than Others' *Netherlands Law Review* 65 (2018) p. 418.

# Citizenship Deprivation Policy in the UK and Abroad: a Postcolonial Analysis

Written by Kate Goodfellow

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[51] Sangeetha Pillai and George Williams, 'The Utility of Citizen Stripping Laws in the UK, Canada, and Australia' *Melbourne Law Review* 41(2) (2017) p. 856.

[52] Chief Justice Warren, *Trop v Dulles* [1958] 356 U.S. 86 at [20].

[53] UN General Assembly, 'Convention on the Reduction of Statelessness', United Nations, 1961, Treaty Series, vol. 989 [https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf) [accessed 22 January 2021].

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[55] *Ibid.*, Article 8(3)(ii), p. 12.

[56] David Anderson QC, 'Citizenship Removal Resulting in Statelessness: First Report of the Independent Reviewer on the Operation of the Power to Remove Citizenship Obtained By Naturalisation From Persons Who Have No Other Citizenship', *GOV.UK*, 2016, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/518120/David\\_Anderson\\_QC\\_-\\_CITIZENSHIP\\_REMOVAL\\_\\_web\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/518120/David_Anderson_QC_-_CITIZENSHIP_REMOVAL__web_.pdf) [accessed 02 January 2022] p. 5.

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[68] van Waas and Jaghai, 'All Citizens are Created Equal', p. 425.

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[70] Helen Fenwick, 'Terrorism threats and temporary exclusion orders: counter-terror rhetoric or reality?' *European Human Rights Law Review* 3 (2017), p. 270.



# Citizenship Deprivation Policy in the UK and Abroad: a Postcolonial Analysis

Written by Kate Goodfellow

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# Citizenship Deprivation Policy in the UK and Abroad: a Postcolonial Analysis

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