



**Submission to:
Constitution Committee**

**Rule of Law inquiry
April 2025**

Introduction:

1. This submission addresses matters concerning the nationality of the UK (British citizenship) as these relate to the Committee's inquiry.
2. In its Call for Evidence, the Committee identifies a need to understand the rule of law as a constitutional principle and practical matter; evaluate the state of the rule of law in the UK having regard to the roles of Parliament, the judiciary and the executive; and consider the role of education, the media and civic society in promoting and securing the rule of law.
3. In this context, we seek to draw attention to a concern of especial importance to, at least, several of the five constitutional tenets identified by the Committee in 2001, including the rule of law.¹ In summary, this concern is that, whether by oversight or misunderstanding, the people of the UK – identified in British nationality law as those with the right to British citizenship by reason of their connection to this country – have been made disunited. The consequence of this is to deny to some the nationality that is the right of all.
4. The remainder of this submission is broken down into three parts. First, we explain the concern we have identified in paragraph 2. Second, we explain its relevance to the Committee's current inquiry. Third, we make brief recommendations by way of conclusion.

How some people of the UK are deprived of their nationality rights:

¹ *Reviewing the Constitution: terms of reference and methods of working*, First Report of Session 20012002, HL Paper 11, July 2001, para. 21

5. In 1980-1981, Parliament gave lengthy consideration to a new settlement of British nationality law.² A primary ambition was to create a nationality for the UK.³ It

passed the British Nationality Act 1981 ("the BNA 1981"), which received Royal Assent on 30 October 1981 and was commenced on 1 January 1983. British citizenship became and remains the UK's nationality.

6. In creating a nationality for the UK, Parliament considered and rejected principles previously adopted in British nationality law (and in other jurisdictions). It decided that neither *jus soli* nor *jus sanguinis* would provide an adequate basis for the UK's nationality. Rather, it decided to make connection the founding principle for this nationality – making the people of the UK to be the people who share a connection to this country.⁴ While birth on UK soil or British descent might indicate such a connection, they would not always do so. For example, children born in the UK to foreign nationals might, in the words of the minister who steered the British Nationality Bill through the House of Commons, be "*mere birds of passage*."⁵ Were these children to be taken by their parents to grow up in their parents' home country, they would be without significant connection to the UK as would the children born to them years later. However, the immediate solution – restricting automatic acquisition of British citizenship at birth in the UK to the children of parents who were either British or settled – was inadequate. Other children would be born and grow up in the UK as connected to this country as any of their peers.

If the UK's nationality law were to fulfil the purpose of identifying the people of the UK by reason of their connection to the country, these children must be recognised too. Parliament's solution was to provide for their right to British citizenship as soon as their connection here was sufficiently foreseeable or complete. It created statutory entitlements to be registered as a British citizen for this purpose.⁶

Distinguishing registration and naturalisation

7. Registration of nationality has a longer history in British nationality law. The British Nationality Act 1948 had provided for registration. Registration was and remains generally a matter of right possessed by a person identifiable as British, for whom a process of registration is available to formally recognise that identity.⁶ Since the

² The British Nationality Act 1981 considered and passed in that parliamentary session was preceded by Green and White Papers (albeit under different administrations). The former –*British Nationality Law: discussion of possible changes*, Cmnd 6795, April 1977 – invited consultation to which there were over 400 contributions. The latter – *British Nationality Law: outline of proposed legislation*, Cmnd 7987, July 1980 – indicated agreement with much of what had been proposed in the former.

³ e.g., Cmnd 7987, *op cit*, para. 14

⁴ e.g., Cmnd 7987, *op cit*, para. 37 & *Hansard* HC, Report, 3 June 1981 : Cols 979-980 *per* Timothy Raison MP, Minister of State

⁵ *Hansard* HC, Standing Committee F, 24 February 1981: Col 183 *per* Timothy Raison MP, Minister of State ⁶ This is more fully set out in *Reasserting Rights to British Citizenship Through Registration*, IANL, Vol 34, No 2, 2020, 139-157.

⁶ Registration as a citizen of the United Kingdom and Colonies under section 6 of the British Nationality Act 1948 was an entitlement restricted to British subjects who were citizens of the former colonies listed in section 1(3), to citizens of Eire, and to the wives of citizens of the United Kingdom and Colonies. Registration was also

creation of British citizenship, the importance of this formality for many children growing up in the UK has increased.

8. The fundamental error that deprives some people of the UK of their nationality rights is the treatment of rights of registration as if these are akin to, or a form of, naturalisation. In this submission, we refer to this as a categorical error.

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9. Registration was and remains an entirely distinct matter from naturalisation. Naturalisation is and has always been a matter of discretion.⁷ It concerns whether a person, specifically an adult who is not British, may be permitted to make their connection to the UK after having migrated to the UK and been permitted to settle here.⁸ This is fundamentally different from the purpose of registration, which is to secure the nationality of the UK for someone who is British by their connection to this country. The statutory provisions for registration are, therefore, nearly all expressed as statutory entitlements. The Home Secretary's role is to ensure the factual conditions for possessing the entitlement are met; and, if that is so, to fulfil that entitlement by registering the person as a British citizen.⁹ For example:

- 9.1. A child born in the UK, whose parent has become settled or British, is entitled to be registered as a British citizen.¹⁰

- 9.2. A person born in the UK, who has lived here for the first ten years of their life is, with no absences over 90 days in any of those years, entitled to be registered as a British citizen;¹¹ and in 'special circumstances' the person may be treated as satisfying the condition regarding absences despite one or more absence over 90 days.¹²

10. The discretion to register children as British citizens is, in significant part, a backstop to safeguard the position of children who are connected here but have some difficulty establishing they were born British citizens or have a statutory entitlement to that nationality.¹³ Registration under section 3(1) of the BNA 1981 is not a variation of naturalisation and the discretion is, accordingly, unfettered.¹⁴

available, though at discretion, to people who were no longer citizens of the United Kingdom and Colonies because they had renounced that citizenship.

⁷ e.g., section 10, British Nationality Act 1948

⁸ section 6, British Nationality Act 1981

⁹ e.g., *Hansard* HL, Report, 6 October 1981 : Col 36 *per* Lord Mackay of Clashfern, Lord Advocate

¹⁰ section 1(3), British Nationality Act 1981

¹¹ section 1(4), British Nationality Act 1981

¹² section 1(7), British Nationality Act 1981

¹³ *Hansard* HC, Standing Committee F, 24 February 1981 : Col 186 *per* Timothy Raison MP, Minister of State

¹⁴ See *R (Ali) v Secretary of State for the Home Department* [2007] EWHC 1983 (Admin). More on this discretion is set out in *Reasserting Rights to British Citizenship Through Registration: the section 3(1) discretion to register children*, IANL, Vol 37, No 3, 2023, 263-270.

Windrush

11. The first manifestation of the categorical error that is our concern lay at the heart of the scandal that erupted in 2018, now known as the Windrush scandal. Sadly, even now, this scandal is widely misunderstood. When Parliament created British citizenship, it recognised the connection of the people affected by this scandal to the UK. They were accordingly provided with a right to be registered as British citizens.¹⁵ However, the legislation presented by ministers and passed by Parliament imposed a time-limit on their registration. Ministers said this was to

encourage people to act on their nationality rights and gave assurances that these rights would be well-publicised to ensure people did so act.¹⁶ In the event, however, the Home Office disseminated information telling people that, since they were settled (an immigration status), there was no purpose to their registration. It would make no difference to them.¹⁷ Decades later, the impact of remaining subject to immigration law rather than securing British citizenship was all too palpable for many people.¹⁸

12. Two further manifestations of this categorical error can be traced to the mid2000s. The first concerns fees for a person's registration as a British citizen. The second concerns a requirement of good character.

Fees

- 12.1. The Home Office imposes a wide range of fees in respect of several of its functions.¹⁹ Around two decades ago, it decided these fees should be capable of raising revenue to cover more than the cost of delivering the specific function to which the fee relates. The department introduced and Parliament passed legislation permitting fees to be set at above administrative cost.²⁰ In doing so, there was no fundamental distinction made between either nationality and immigration functions or between registration and naturalisation. Many people of the UK are now deprived of their nationality rights because they cannot afford to exercise their right to be registered as a British citizen in the face of a fee that is set far above the cost to the Home Office of their registration.²¹

¹⁵ section 7, British Nationality Act 1981

¹⁶ *Hansard* HL, Committee, 21 July 1981 : Cols 183-184 *per* Lord Belstead, Minister of State

¹⁷ *Windrush Lessons Learned Review: independent review by Wendy Williams*, HC 93, March 2020, pp12, 69 & 113

¹⁸ See further HC 93, *op cit*, and *The Historical Roots of the Windrush Scandal*, published by the Home Office in September 2024, Amnesty International UK's submission to the Windrush Lessons Learned Review, October 2018 and Amnesty International UK's submission to the Joint Committee on Human Rights' inquiry on Black people, racism and human rights, September 2020.

¹⁹ See orders and regulations made under section 68, Immigration Act 2014.

²⁰ The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Immigration, Asylum and Nationality Act 2006 and UK Borders Act 2007 each contain relevant provisions.

²¹ More on the history of above-cost fees and registration is set out in *Reasserting Rights to British*

Good character

- 12.2. In 2006, the Home Office introduced and Parliament passed legislation to require a person aged 10 years or older to satisfy the Home Secretary of their good character to be registered as a British citizen.²³ Ministers

inaccurately asserted that this concerned people coming to the UK.²² By far the greater number of people affected were people born in the UK and grown-up here.²³ Again, the distinction between registration and naturalisation was missed. Many people of the UK are now deprived of their nationality rights because the Home Office requires them to demonstrate their good character in precisely the same way it has long required an adult migrant to the UK to do so for the purposes of considering whether they may be naturalised.²⁴

Distinguishing nationality rights and immigration policy

13. It is our experience that the proper distinction between nationality rights and immigration law, and between registration and naturalisation, is generally not recognised at the Home Office nor more widely. Among the wider public, and among those who might be expected to assist or educate them, there is little understanding of nationality rights, particularly as these relate to the circumstances of people born in the UK. Many people still believe that being born in the UK is sufficient to make a person a British citizen automatically. Many people have little understanding of registration – when the right to be registered arises, how it must be exercised, and why this is important. Many people born in the UK grow up needing to be registered, not being registered, unaware of this need or how to act on it. The result is that their own country regards them in the same way it regards migrants to it – as someone who requires permission to be here, who is subject to immigration requirements, exclusions and powers, and who may be required to leave.

How this relates to the rule of law:

Citizenship Through Registration: judicial review of the registration fee, IANL, Vol 36, No 4, 2022, 285-299. ²³

See section 58, Immigration, Asylum and Nationality Act 2006. The relevant provision has since been consolidated with the British Nationality Act 1981 and is now section 41A of that Act.

²² *Hansard* HL, Committee, 19 January 2006: Column GC279; Report, 7 February 2006: Column 622; and Third Reading, 14 March 2006: Column 1198, per Baroness Ashton of Upholland, Parliamentary UnderSecretary

²³ People with statutory entitlements under section 1(3) and (4), British Nationality Act 1981.

²⁴ The Secretary of State's relevant policy is to be found in her instructions to caseworkers: *Nationality: good character requirement*, version 6.0, February 2025. More on the history of this requirement and registration is set out in *Reasserting Rights to British Citizenship Through Registration: the requirement of good character*, IANL, Vol 38, No 2, 2024, 125-133.

14. There are various ways in which the rights to British citizenship discussed in the previous section are relevant to the Committee's inquiry. We address three matters. The first concerns equality and it has implications for the other two matters. The second concerns the purpose and legitimacy of the state and its primary constituent institutions – Parliament, the executive and the judiciary. The third concerns civic society.

Equality

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15. Among the basic ingredients of the rule of law is equality before the law.²⁵ That requires that all people, whose relevant circumstances are the same, should be treated the same.
16. In practice, nationality law creates a distinction between nationals and foreigners. While this distinction is not relevant for all legal purposes, there are considerable implications for people regarded as non-nationals by reason of their being subject to immigration law from which nationals are exempt.
17. When some of the UK's people are denied their nationality rights, this constitutes a profound disruption to equality before the law. That is quite apart from other concerns relating to equality – such as the alienating impact upon people born and raised here on learning that their own country does not regard them as belonging to it.²⁶ This alienation is compounded, in PRCBC's experience, because of its disproportionate racial impact.²⁹ That in turn compounds the inequality before the law that results from the denial of people's nationality rights.²⁷

Purpose and legitimacy of the state and its institutions

18. In a debate on the Rule of Law, Lord Sikka raised the questions concerning the rule of law – *"whose rule, whose law, and for whose benefit?"*³¹ His focus in doing so was on equality, which he immediately raised in response to his own question by identifying that, *"We live in a society differentiated by class, income, wealth, age, gender and many other factors."*

²⁵ A principle to which several peers from across the House made explicit reference in debating the Rule of Law: *Hansard* HL, 26 November 2024 : Cols 620ff.

²⁶ This alienation was made palpable to the High Court by what it described as a *"mass of evidence"*: see *PRCBC & Ors v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin), para. 21. ²⁹ PRCBC's experience of 13 years providing legal advice, assistance and representation to children and young people, their parents and carers, and lawyers and other people assisting or acting for children accords with the assessment over 40 years ago that ending *jus soli* without attention to children born in the UK to parents without British citizenship *"would have a serious effect on racial harmony"* (see Cmnd 7989, *op cit*, para. 42).

²⁷ The 1965 International Convention on the Elimination of All Forms of Racial Discrimination emphasises the particular repugnance of racial barriers to the ideals of any human society and the particular immorality and injustice of race discrimination. ³¹ *Hansard* HL, 26 November 2024 : Col 645

19. However, the way Lord Sikka framed his questions bears relation to a different matter that is of critical importance to the Committee, its inquiry and much of the debate in which he spoke. This is the relation between the UK and its people, and consequently between the UK's institutions and its people. In significant ways, those institutions' legitimacy rests on their relationship with the people of the UK.
20. However, that relationship and the legitimacy that depends on it are undermined by a failure to understand and respect the right of all the people of the UK to their shared nationality. In the absence of a written constitution guaranteeing these rights and their equal recognition, primary responsibility falls to Parliament, the

executive and the judiciary to provide that guarantee. Of especial constitutional importance in this matter is the role of the Home Secretary. She is responsible for upholding, confirming and registering rights to British citizenship.²⁸ For reasons and in ways that are explained above, this responsibility is not being fulfilled and that failure creates inequality before the law.

Civic society

21. Various concerns are expressed about whether the rule of law is adequately understood or respected. Concerns about understanding or respect for the UK's nationality are, however, rarely expressed.
22. It seems at least probable that most people of the UK think little of their nationality and their rights to it. For most, their nationality is not only acquired but often formally confirmed long before they are old enough to understand what it is and why it may be important to them. Whatever roles these people may eventually take on in life, this under-appreciation of what their nationality is and from where it derives is likely to stay with them – including when they may be appointed to roles that encompass responsibilities towards another person's nationality rights, such as many social workers, some lawyers, some judges, some Home Office officials, parliamentarians and even home secretaries.
23. The role of civic society, therefore, should include the promotion of understanding of British citizenship and rights to it. This is quite separate from a role of promoting citizenship in a broader civic sense. It also requires leadership from state institutions including Parliament and the executive. The inequality that results from not doing this is more widely socially damaging and thus of concern to any notion of civic society.

Conclusion and recommendations:

24. There is now a considerable constitutional deficit concerning nationality rights. The people of the UK are not equally treated in law, with potentially severe consequences for those adversely impacted by this inequality, because some are deprived of the

²⁸ These functions of the Home Secretary derive from the British Nationality Act 1981.

nationality (British citizenship) that is the right of all. This deprivation is arbitrary. It arises from oversight or misunderstanding of the UK's nationality – particularly as this concerns rights to be registered as a British citizen. It fundamentally undermines the rule of law in the UK.

25. Several things must be done to correct this. Chief among them are:

25.1. The Home Secretary must treat registration and naturalisation as legally distinct.

25.2. The Home Secretary should be required to fulfil her duty as the ministerial guardian of the UK's nationality. In the same way that ministers, and particularly the Lord Chancellor, are obligated to uphold judicial independence and the rule of law,²⁹ the Home Secretary might usefully be statutorily obligated to uphold the right of people of the UK to their nationality. In any event, her department must act to promote understanding and exercise of nationality rights.

25.3. Registration of British citizenship should no longer be treated as (or as if it is) one of the many Home Office immigration functions for the purpose of charging fees. Registration fees should not be charged in excess of estimated administrative costs and the Immigration Act 2014 should be amended accordingly.³⁰

25.4. All people of the UK should be entitled to their nationality rights equally free of a character requirement. The British Nationality Act 1981 should be amended to return to its original position whereby there was no statutory requirement of good character that applied to registration. Pending legislation to achieve this, the Home Office ought not to apply the distinct requirement of good character for registration of a statutory right³¹ as if it were the same character requirement that has always applied as a precondition for an adult migrant to apply to be made a British citizen at the Home Secretary's discretion.³²

²⁹ section 3(1), Constitutional Reform Act 2005

³⁰ In the immediate term, the Secretary of State may achieve this result by amending the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330.

³¹ section 41A, British Nationality Act 1981

³² paragraph 1(1)(b) of Schedule 1, British Nationality Act 1981
