Submission to:
Constitution Committee

Rule of Law inquiry

April 2025

1. In this submission, we address certain of the Committee's questions for its Rule of Law inquiry through a focus on immigration law, policy and practice. There are two related reasons for that focus:

    1.1. Immigration is a field in which concerns regarding the role and effectiveness of Parliament, Government and the judiciary in upholding the Rule of Law are widespread, acute and in conflict.

    1.2. The breadth and sharpness of these concerns, and conflict over them, is destabilising in several respects, including but not limited to the Rule of Law itself.

What are the components of the Rule of Law?

2. Our response to this question is not comprehensive. We provide a sketch of the Rule of Law's minimal constituency. Our purpose is to avoid, insofar as possible, controversy over the content of the Rule of Law when evaluating roles and effectiveness of various bodies on which the Committee raises questions.

3. A good starting point is, "*…law should be capable of guiding human conduct.*"[i] The Rule of Law, therefore, makes several demands of principle. We refer to the following as 'basic principles':

    3.1. Power is to be exercised according to laws;

    3.2. Laws are to be applied consistently, universally (nobody is above the law) and without arbitrariness (which requires recognition of distinctions that are relevant and avoidance of those that are not);

    3.3. Laws should be both knowable and understandable to people to whom they are applied, to those who apply them and more generally; and

    3.4. There must be some guarantee that the foregoing principles are effectively put into practice.

4. These basic principles ensure that laws can guide human conduct.[ii] Consistency and universality are basic ingredients of fairness. People cannot reasonably be expected and may well not adhere to laws that are inconsistent or from which some people are arbitrarily excused. Non-arbitrariness goes further in requiring that laws take proper account of people's true circumstances, without which laws may even be incapable of being followed. That laws are known and understandable is more basically necessary for people to adhere to them. None of the foregoing has any reality unless given practical effect.

5. One reason the Rule of Law is an important tenet of the UK constitution is, therefore, that it promotes governance that respects the interests, needs and dignity of people. Laws are to be made and applied with people's true circumstances in mind. This avoids such outcomes as unnecessary or unintended harm, wasted resources, and the social and political tensions that arise from the pursuit of policy that is bad, for example, by reason of promising what it cannot deliver.

6. One reason for this minimalist sketch of the Rule of Law is to avoid the question of whether respect for human rights and/or respect for international law is a component of the Rule of Law. The observations in this submission are not founded upon any assertion that these are such components. What is said here is equally valid whether such assertions are treated as correct or, as some argue, such matters as respect for human rights and international law are – however important in their own right – distinct from the Rule of Law.[iii] Whichever view is taken, there is a clear connection between disrespect for human rights law in the UK (and elsewhere) and disrespect for the Rule of Law. That disrespect often centres on the Human Rights Act 1998 ("the HRA") and/or the 1950 European Convention on Human Rights ("the ECHR"), and on those who are charged with giving effect to these. We return to this matter in the closing section of this submission.

What is Parliament's and Government's role in upholding the Rule of Law? Are they performing these roles well, and how could this be improved?

7. We take these together because much of our assessment of the role of Parliament relates directly to the role of Government. In the UK, Government – by which we mean ministers and the departments they lead – is both the primary arm of the executive and the most powerful arm of Parliament. While Parliament is the ultimate law-maker in the UK, most legislation emanates from Government and Government exercises considerable influence in ensuring it secures its legislative agenda. We focus on two matters when it comes to assessing the role of each:

    7.1. Law-making: in the making of both primary and secondary legislation, Parliament's formal role as the ultimate law-maker is, in practice, more a role of scrutiny over the laws that Government introduces.

7.2. Policy-making and its implementation: Government is responsible for making and implementing its policies according to, or within the bounds of, law. Parliament's formal and practical role is one of scrutiny.

8. We mean no disrespect to either Parliament or Government in our focus on these two matters and in framing them in this way. We recognise that our doing so does not fully account for the role of either body. Nonetheless, for the purposes of the inquiry, this focus and framing seems adequate and necessary for giving attention to primary responsibilities that may be said to be not working well.

Law-making

9. By way of example only, we highlight the following:

9.1. The Rule of Law requires that laws are applied according to facts as established by evidence (see below on the role of the judiciary). Anything less, invites or requires inconsistency and arbitrariness. This is unfair, cannot guide human conduct (even to the point of necessitating noncompliance with law), and undermines respect and confidence in the Rule of Law. The Committee has previously identified serious constitutional irregularities relating to this matter when it reported on the Safety of Rwanda (Asylum and Immigration) Bill.[iv] That bill provides an extreme example of legislation undermining the Rule of Law by encouraging or directing official and judicial decision-makers to apply law on the basis of an incomplete assessment or prejudged determination of fact regardless of available evidence. There are, however, several other examples of this such as in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004,[v] the Nationality and Borders Act 2022,[vi] and the Illegal Migration Act 2023.[vii] Neither Government nor Parliament has the capacity to foretell the evidence or facts, but in making laws they act (save in very rare cases) prospectively. Accordingly, their role in law-making should ordinarily be to determine the criteria in law by which a person's entitlement, eligibility or liability is to be determined. Where the criteria are clear, this will limit what turns out to be evidentially or factually relevant to a decision-maker (including a court).

9.2. The Rule of Law requires that statutory powers are clearly and narrowly defined to suit identified and legitimate purposes.[viii] Anything less invites inconsistency and arbitrariness, not least because those to whom power is delegated are without clarity as to its legitimate limits. This includes ministers, whose assurances (if given) to Parliament about the use of power are inadequate to bind themselves, their successors or officials.[ix] Equally, those over whom power may be exercised cannot determine what they must do to avoid its exercise. The Border Security, Asylum and Immigration Bill, currently before Parliament, provides a stark example of an improperly wide legislative power. That example is the introduction by the Government, at Public Bill Committee, of a power to

impose electronic tagging, curfews, and other severe restrictions on freedom of movement as matters of general administration of immigration policy, potentially applicable to all migrants in the UK save those given permanent residence.[x] The power is reminiscent of Terrorism Prevention and Investigation Measures, but there is far greater executive discretion and an utter lack of statutory safeguards to protect civil liberties. [xi] This serves as a reminder of the breadth of power that has, over the years, been granted to immigration officials.[xii] The extent of that power, the degree to which its oversight has been curtailed, and the seeming routine acceptance that general administration of immigration requires such powers (and ever more of them) raises further Rule of Law questions because, in relation to very large populations of people, officials are being licensed or encouraged to exercise highly intrusive and potentially harmful powers without adequate clarity or constraint.

9.3. To the degree that parliamentary scrutiny is lacking, the risks to the Rule of Law are enlarged. There are many facets to this. The quality of scrutiny depends on the time made available, the transparency of the Government, the opportunity and capacity of civil society and others to inform Parliament, and the volume and complexity of the matters to which it relates.[xiii] The Committee has previously identified serious constitutional concerns relating to scrutiny when it reported on the Illegal Migration Bill.[xiv] That bill – particularly its accelerated passage through the Commons and the volume of last-minute Government amendments – provides an extreme example of such concerns. There are, however, other examples, which include scrutiny of delegated powers. Nationality and immigration fees are, for example, set by regulations, which require no affirmative resolution.[xv] While they must be within maxima set by an order that requires such a resolution in each House,[xvi] the volume and range of fees that are set is far in excess of what Parliament can be expected to scrutinise by such a process – especially given conventional understanding that such delegated legislation is not to be obstructed in the Lords and the usual degree of Government control of the Commons.

9.4. Furthermore, the immigration rules, which are the detailed requirements migrants must meet to obtain or maintain their permission to be in the UK are made and revised according to an even more limited structure of parliamentary scrutiny.[xvii] There are thousands of changes to these rules every year, some closing or drastically altering immigration routes with little to no notice, often in breach of the convention that provides Parliament with 21 days to consider an instrument before it is to come into force.[xviii] The volume of these rules, their complexity, and regularity and frequency of their change would challenge Parliament's capacity for scrutiny even if affirmative resolutions were required.[xix]

9.5. This all invites – and has resulted in – fee-charging and rule-making which many people cannot plan for, understand or comply with. Ultimately, the

law is unable to guide human conduct. The impacts, which include causing people to overstay,[xx] are arbitrary and inconsistent (whether someone's leave is due for renewal on one day rather than another may be of unreasonably grave significance). The severity of these impacts is particularly acute given the investment made by individuals who come to the UK and that the people affected include many of whom it is already accepted their future is intended or likely to lie in this country (i.e., people on a route to settlement).

Policy

10. By way of example only, we highlight the following:

10.1. Setting policy to operate in blanket fashion is antithetical to basic principles, particularly as it invites inconsistency and arbitrariness. A particular example is given by deportation policy. This example has had wider Rule of Law implications. Deportation policy concerns the expulsion and barring of people from the UK on the basis that their presence is not conducive to the public good.[xxi] The range of circumstances in which a person may be liable for deportation are varied – ranging from long, lawful residence to recent irregular arrival; from having close family including partners or children who are British or settled to having no family in the UK; from being long and well economically, socially and culturally integrated to living on the margins of society; to having little or no connection with the place to which expulsion might be considered to having strong ties in that place; to being at risk of torture or other serious harm in the place of intended expulsion to there being no issues of safety; and to having acted in ways that are relatively modestly irresponsible or harmful, or being associated with such acts, to having committed extremely serious criminal acts carrying the most severe of sentences. Up until 2006, immigration rules sought to reflect this variety and directed decision-makers to conduct a sophisticated balancing exercise of various relevant factors.[xxii] Changes to rules and legislation from that time have increasingly sought to remove that sophistication. The catalyst for this change of policy was straightforward administrative failure to carry out the policy.[xxiii] Government and Parliament have responded with rules and legislation to eviscerate the policy, rendering it unnuanced and blanket in approach. The rules, supported by legislation, are now narrowly focussed on sentencing and related thresholds permitting narrow consideration of limited factors of family life with partners and children and relating to lawful residence in the UK.[xxiv] As such, the policy has increasingly been incapable of guiding human conduct while human rights law (Article 8, HRA/ECHR in particular) has increasingly been called upon to fill the gap that law and policy-makers have created. That too has prompted a legislative response: to attempt to narrowly confine for courts and tribunals the meaning and effect of Article 8.[xxv]

10.2. Immigration policy has been permitted to pursue aims beyond its proper scope - for example, the encroachment of immigration policy upon matters of British nationality law. In summary, the British Nationality Act 1981 created a nationality for the people of the UK (British citizenship). At the time, Parliament considered the basis for such a nationality at length. It settled on a principle that identified the people of the UK (those entitled to British citizenship) by reason of their connection to the UK. This principle is embedded in the Act by statutory rights to British citizenship, including several entitlements to be registered as a British citizen. These entitlements include those to secure the British citizenship of people born in the UK, whose connection is confirmed by their continued childhood in the UK, for whom the right to British citizenship was expressly intended to avoid the alienation that would otherwise be caused by the end of *jus soli* in British nationality law.[xxvi] Together, these rights set out circumstances in which a person is connected to the UK for nationality purposes.[xxvii] Government and Parliament have since lost sight of this when permitting registration fees to be set for immigration purposes[xxviii] and the introduction of a character requirement for registration.[xxix] The result is to treat British people – most of whom born here – as if migrants to the UK, who require permission to be here and may, if permitted to settle, apply to become British citizens by a discretionary process of naturalisation. This has constitutional implications beyond merely the Rule of Law.[xxx]

10.3. Retrospective lawmaking is increasingly the norm in immigration and asylum law. Three recent examples include:

10.3.1. deprivation of citizenship and interpretation of certain Articles of the Refugee Convention in the Nationality and Borders Act 2022;[xxxi]

10.3.2. the Illegal Migration Bill was initially introduced with retroactive effect for persons arriving on or after the Bill's introduction, with this only amended during ping-pong so that it would not, in the main, affect people arriving until after the Act passed. However, this retroactivity was retained in the provisions regarding granting entry, settlement, and citizenship until the new Government laid Regulations to provide certainty regarding granting people leave,[xxxii] and, to this day, it remains in section 16 of the Act which would render lawful the Home Office's accommodation of unaccompanied children seeking asylum in hotels, which the High Court has found to be unlawful;[xxxiii] and

10.3.3. the Border Security, Asylum and Immigration Bill contains two concerning retrospective provisions: a new retrospective detention power and provision to make lawful government departments' (currently the Home Office and Department for Education) prior charging of English language fees, when they had no legal basis to do so.[xxxiv]

What is the judiciary's role in upholding the rule of law? Is it performing this role well, and how could it be improved?

11. The UK judiciary has a primary responsibility for interpreting the law and ensuring it is properly applied. The most orthodox statement of the nature of Parliamentary sovereignty and legislative supremacy, Dicey's Introduction to the Study of the Law of the Constitution, states, "*We mean…when we speak of the "rule of law" as a characteristic of our country, not only that with us no man is above the law, but (what is a different thing) that here* ***every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals***." (emphasis added)[xxxv]

12. Concerns include obstruction of the judicial role, the jurisdiction of the ordinary tribunals, judicial independence, and the interrelation of these.

13. There are three aspects to obstruction:

    13.1. There is direct obstruction. This includes where the judicial role is partially or fully ousted *per se* or its ordinary functioning is inhibited by prohibitions on considering factual and evidential matters that are integral to it. Some of our earlier examples are of this.

    13.2. There is indirect obstruction. This includes where the capacity of the judiciary to fulfil its role is inhibited by policy decisions which restrict meaningful and effective access to the courts, such as by limiting appeal rights or legal aid,[xxxvi] or making the latter's provision so bureaucratic and/or inadequately paid as to seriously undermine its effectiveness.[xxxvii]

    13.3. More generally, law and policy that is inconsistent with basic principles obstructs the judicial role. It makes conditions in which that role cannot be readily or effectively performed such as where the judiciary are tasked to interpret and apply law that is unclear or arbitrary, and unsuited to guide human conduct – both by those expected to abide by it and those expected to implement it.

14. The Constitutional Reform Act 2005 requires ministers to uphold the continued independence of the judiciary, including with a duty on the Lord Chancellor to have regard to the need to defend that independence and for the judiciary to have the support necessary to enable them to exercise their functions.[xxxviii] Nevertheless, there has been improper political criticism of the judiciary in the immigration field over many years, including by governments of differing political colours.[xxxix] This encourages and licenses wider criticism, including in mainstream media and on social media.[xl] This cannot but undermine respect for the Rule of Law.

15. Additionally, there has been a recent trend of overturning judicial decisions, including of the most authoritative nature and those containing well-established common law principles, without sufficient or any justification for such departure. Recent examples of this include in the Nationality and Borders Act 2022, in relation to retrospective deprivation of citizenship and reinterpretation of the Refugee Convention,[xli] in the Illegal Migration Act 2023, overturning the wellestablished common law principle that it is for the courts to determine whether the length of detention is reasonable, which is a safeguard against arbitrary deprivation of liberty,[xlii] and the clear and obvious example being the Safety of Rwanda (Asylum and Immigration) Act 2024 reversing the Supreme Court's factual assessment of the risk of harm in Rwanda, without properly addressing the Court's concerns about the Rwandan asylum system.

16. Obstruction and criticism are variously interrelated and in circular fashion. Law and policy that does not meet basic principles produces tension between Government (and to some degree, Parliament) and the judiciary. The more inadequate the making of law and policy, and its implementation, the more judicial intervention is liable to be demanded. The more such intervention, the more Government (and to some degree, Parliament) is liable to consider itself in some way thwarted. Moreover, the more intervention required by inadequate law or policy, the greater public and political attention there is liable to be and the more criticism may be resorted to in defence of that inadequacy.

Further considerations:

17. The examples provided in this submission, which are far from complete, should be considered separately and cumulatively. They also need considering in a wider context because their implications, including for the Rule of Law, go further than the field of immigration.

18. There is considerable heat and conflict in much public and political discourse concerning immigration; and this frequently focuses on law, lawyers, and courts, including as these relate to the ECHR and HRA. We recall, without further comment, that some of these same concerns were also related to controversy regarding the UK's previous EU membership.

19. In a submission of this length, it is not possible to develop these wider considerations in more detail. Nor is there space to consider international implications including for the Rule of Law in other jurisdictions or on the international plane, which can also have consequences in and for the UK.

Conclusion:

20. The degree of heat and conflict in public and political discourse concerning immigration causes strain upon the Rule of Law, as identified by the basic principles we have set out. However, buckling to that strain has proven to be selfdefeating in the

sense of merely encouraging further strain and other harmful effects, including constitutional concerns. On the other hand, respect for and application of the Rule of Law offers a principled means of resisting that strain, including the wider harms it causes, and, we suggest, a means ultimately of introducing calm to the discourse rather than further agitation. At the heart of the reason for this risk and opportunity is the observation with which we began, albeit borrowed from others, that law should be capable of guiding human conduct.

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[i] Joseph Raz, 'The Rule of Law and Its Virtue' in Joseph Raz (ed), *The Authority of Law: Essays on Law and Morality* (Clarendon Press, 1979) 210; Lon Fuller, *The Morality of Law* (Yale University Press, 2nd ed, 1964) 95.
[ii] These basic principles broadly summarise the principles derived from Lon Fuller, *op cit*, as discussed by Lord Sales in his Robin Cooke lecture, *What is the rule of law and why does it matter?*, at Victoria University of Wellington on 12 December 2024. They are reflected in Oral Evidence the Committee received on 26 March 2025 (Uncorrected oral evidence, Qs1 & 2, *per* Dr Jan van Zyl Smit and Professor Jeff King). They are also, less explicitly, reflected in Oral Evidence the Committee received on 2 April 2025 (Uncorrected oral evidence, Q1, *per* Baroness Hale of Richmond and Lord Sumption). [iii] The Committee has received Oral Evidence regarding this, 26 March 2025, *ibid*, Qs 6-7; and 2 April 2025, *ibid*, Qs 20-21.
[iv] The Committee's Third Report of Session 2023-24, HL Paper 63, February 2024. [v] Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. [vi] Sections 18-26 of the Nationality and Borders Act 2022.
[vii] Section 59 of the Illegal Migration Act 2023, which is retained by the Border Security, Asylum and Immigration Bill currently before Parliament. [viii] Lack of clarity in immigration law offends basic principles and the Committee has previously commented on this: see the Committee's Fourth Report of Session 2017–19, HL Paper 27, October 2017 (paragraphs 110–123) and Eleventh Report of Session 2021-22, HL Paper 149, January 2022 (paragraph 5). [ix] There is much jurisprudence on the matter of statutory interpretation, and this is not the place for an extensive review or analysis of that. It is well known, nonetheless, that the courts will generally strictly confine consideration of such assurances for the purpose of statutory interpretation to situations of ambiguity, obscurity or absurdity on the face of the statutory wording: *Pepper v Hart* [1993] AC 593. [x] Clause 43 which is to amend section 3(1)(c) of the Immigration Act 1971. [xi] For example, Clause 43 of the Border Security, Asylum and Immigration Bill permits the imposition of 'such other conditions as the Secretary of State thinks fit'. By contrast, the Terrorism Prevention and Investigation Measures Act 2011 both lists specific measures and contains safeguards: a time-limit, judicial scrutiny, automatic review of ongoing necessity, and a right of appeal against refusal to revoke or vary measures. [xii] It is beyond the scope of this short submission to review the expansion of Home Office powers, including those to arrest, detain, electronically tag, search persons or property, seize property, prosecute, and fine, in addition to immigration powers of refusing admission, withdrawing leave to enter or remain, and expelling and barring individuals from the UK. [xiii] The Committee has discussed these matters more fully in its Twenty-fourth Report of Session 2019-2021, HL Paper 393, July 2019.
[xiv] The Committee's Sixteenth Report of Session 2022-23, HL Paper 2000, May 2023.
[xv] Section 68 of the Immigration Act 2014. [xvi] *Ibid.* [xvii] Sections 1(4) and 3(2) of the Immigration Act 1971.
[xviii] The breach of the 21-day convention has been commented upon time and time again by the House of Lords Secondary Legislation Scrutiny Committee. See, for example, Secondary Legislation Scrutiny Committee's First Report of Session 2023–24, HL Paper 3, November 2023 and Sixteenth Report of Session 2023–24, HL Paper 78, March 2024.
[xix] The Committee considered such matters in its Sixteenth Report of Session 2017-2019, HL Paper 225, November 2018.
[xx] That is staying beyond the period of a person's leave to enter or remain without having made, prior to its expiry, an application for further leave to remain. [xxi] Section 3(5)(a) and (5A) of the Immigration Act 1971; and section 32(4) of the UK Borders Act 2007.

[xxii] The relevant rules and legislative history are set out and explained in '*How ministers evaded responsibility for immigration policy and blamed Article 8 for the consequences*' IANL, Vol 38, No 4, 2024, pp319-334. [xxiii] This was most clearly explained by HM Inspector of Prisons, see *Foreign national prisoners: a thematic review*, July 2006, page 1; see also the Joint Committee on Human Rights' Thirty-second Report of Session 2005–06, HL Paper 278, HC 1716, November 2006.

[xxiv] Paragraphs 13.2.1. to 13.2.6. are broadly reflective of section 117C of the Nationality, Immigration and Asylum Act 2002.

[xxv] See rules and legislation, *ibid* [xxvi] Sections 1(3) to (4) of the British Nationality Act 1981. [xxvii] Relevant law and policy are explained and discussed in a series of journal articles on '*Reasserting Rights to British Citizenship Through Registration*', IANL, Vol 34, No 2, 2020, p139ff; Vol 36, No 4, 2022, pp285ff; Vol 37, No 3, 2023, p263ff; Vol 38, No 2, 2024, p125ff. [xxviii] See IANL, Vol 36, No 4, 2022, pp285ff, *ibid.* [xxix] See IANL, Vol 38, No 2, 2024, p125ff, *ibid*; see also the short joint submission of the Project for the Registration of Children as British Citizens (PRCBC) and Amnesty International UK (DBA0007) to the Joint Committee on Human Rights in connection with that Committee's Twentieth Report of Session 2017-2019, HC 1943, HL Paper 397, July 2019 concerning a remedial order to the British Nationality Act 1981. [xxx] See e.g., Paolo Sandro, '*A 'political' constitution, but for whom?*', UK Constitution Law Association, 23 February 2022.

[xxxi] Section 10(6) of the Nationality and Borders Act 2022, in relation to deprivation of citizenship makes it so a pre-commencement deprivation order was always valid, even though it was made without notice, which both the High Court and Court of Appeal found to be *ultra vires*: *R (D4) v Secretary of State for the Home Department* [2022] EWCA Civ 33; *R (D4) v Secretary of State for the Home Department* [2021] EWHC 2179 (Admin). An earlier version of this provision was referenced in this Committee's Eleventh Report of Session 2021–22 on the Nationality and Borders Bill, paragraphs 17 to 24. Additionally, sections 37 and 38 of the Nationality and Borders Act 2022 have retroactive effect pursuant to section 30(5). [xxxii] See sections 30 and 31 of the Illegal Migration Act 2023, amended by the Illegal Migration Act 2023 (Amendment) Regulations 2024 and Clause 38(2) of the Border Security, Asylum and Immigration Bill. [xxxiii] See section 16(3) of the Illegal Migration Act 2023; *R (ECPAT UK) v Kent County Council & Secretary of State for Home Department* [2023] EWHC 1953 (Admin). This section is proposed for repeal by section 38 of the Border Security, Asylum and Immigration Bill. [xxxiv] See ILPA, 'Briefing on the Border Security, Asylum and Immigration Bill for the Second Reading in the House of Commons' (February 2025) paragraphs 40-41, regarding Clause 41, and paragraphs 66-69 regarding what was then Clause 51, and now Clause 53 following Public Bill Committee in the House of Commons: https://ilpa.org.uk/wp-content/uploads/2025/02/ILPA_HC-Second-Reading-Briefing_Border-Security-Bill.pdf. [xxxv] A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (8th edition, 1915) Ch IV, page 114 [xxxvi] Section 15 of the Immigration Act 2014 removed appeal rights against various immigration decisions and substituted rights of appeal limited to appeals on human rights and/or asylum grounds against refusals of human rights-based immigration and/or asylum applications. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 largely removed non-asylum immigration scope of civil legal aid. [xxxvii] The issue of immigration legal aid remuneration rates is well documented. The issue of the immigration legal aid bureaucracy, however, receives less attention, presumably because it is a more complex matter to articulate and understand. However, the impact of that bureaucracy is significant – both in terms of the time and resources it demands, and the financial risks associated with error in compliance with it. [xxxviii] Section 3 of the Constitutional Reform Act 2005. [xxxix] As discussed, e.g., in the Joint Committee on Human Rights' Thirty-second Report of Session 2005-06, HC 1716, HL Paper 278, November 2006 and Tenth Report of Session 2017-19, HC 669, HL Paper 171, July 2018. [xl] See, e.g., widely disseminated discussion of judicial decisions on deportation said to be made on the basis of having a pet cat or a child's distaste for chicken nuggets.

[xli] See (n xxxi above) in relation to *D4* on deprivation of citizenship; and the Nationality and Borders Act 2022 in reinterpreting the standard of proof, in a manner rejected by the Court of Appeal in 2003 in the case of *Karanakaran v Secretary of State for the Home Department* [2000] 3 All ER 449 at paragraph 53, affirmed in *R*
(Sivakumar) v Secretary of State for the Home Department [2003] UKHL 14 at paragraph 19, and reinterpreting Article 31 of the Refugee Convention inconsistently with the well-established interpretation by the High Court in *R (Adimi) v Uxbridge Magistrates Court & Anor* [1999] EWHC Admin 765 at [18], upheld by Lord Bingham in *R v Asfaw* [2008] UKHL 31 at [22].

[xlii] Section 12 of the Illegal Migration Act 2023, seeking to overturn one of the *Hardial Singh* principles clarified in *R (A(Somalia)) v Secretary of State for the Home Department* [2007] EWCA Civ 804, see Explanatory Notes, Bill 262-EN for that Bill at paragraph 88. This section is not proposed for repeal by the Border Security, Asylum and Immigration Bill.