

# BRIEFING

12 December 2024

## NATIONALITY RIGHTS

### The Windrush scandal: then and now

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In April 2018, the Prime Minister and Home Secretary made public apologies for what has become known as the Windrush scandal.<sup>i</sup>

The weeks, months, and years that followed saw changes to law,<sup>ii</sup> a dedicated help team,<sup>iii</sup> a compensation scheme,<sup>iv</sup> a review and recommendations,<sup>v</sup> promises (and failures) to act on these recommendations,<sup>vi</sup> and much else – but what has really been learned and what still needs to change? This briefing addresses these questions.

#### What is the Windrush scandal?

The Windrush scandal is an accumulation of law, policy, and their impact over many decades that robbed many people in the UK of their British nationality, identity, and security in the UK; **and did so *because of the colour of their skin***.<sup>vii</sup>

Black and Asian British people were disproportionately affected and deprived of their rights to live, work, receive housing, support, and healthcare in the UK, and much else.<sup>viii</sup> The laws and policies which did this were motivated by racism.<sup>ix</sup> The result has been a profound alienation of British people, particularly people of Black Caribbean heritage.

The scandal has scarred people and communities in the UK. Its effects were clear for many years before being exposed in the media.<sup>x</sup> However, as explained further in this briefing, **this scandal remains too little understood and several of its harms remain outstanding**.

#### What are the origins of the Windrush scandal?

The immediate origins of this scandal are neatly summarized in a Government-commissioned report published in September 2024:<sup>xi</sup>

*“...the politics of race and immigration became intertwined with one another to the extent that during the period 1950-1981, every single piece of immigration or citizenship legislation was designed at least in part to reduce the number of people with black or brown skin who were permitted to live and work in the UK.”*

As that report also identifies, the British Nationality Act 1981 and its creation of British citizenship from 1 January 1983 lie at the heart of this scandal.<sup>xii</sup>

## British Nationality Act 1981

A key purpose of the British Nationality Act 1981 was to create a nationality for people of the UK.<sup>xiii</sup> **British citizenship was made to be that nationality. It remains so and is intended to encompass all British people connected to the UK.**<sup>xiv</sup> A separate nationality (now known as British overseas territories citizenship) was created for British people connected to former colonies that remain UK possessions.<sup>xv</sup>

To fulfil this intention, the British Nationality Act 1981 contains several provisions by which various British people are provided the right to British citizenship because of their connection to the UK. While the Act makes some people British citizens automatically, it requires other British people to formally claim their citizenship through a process of registration.<sup>xvi</sup>

## The people affected by the Windrush scandal

The people directly affected by the Windrush scandal were **all British people with the right to British citizenship because of their UK connection** – they had already travelled to this country on their British passports and made it their home. However, they needed to make a claim to be registered.<sup>xvii</sup>

When the Act was passed, ministers promised that British people, who were being required to make a claim to be registered, would be informed, encouraged, or assisted to do so.<sup>xviii</sup> The opposite happened. The Home Office even published information advising people there was no need for them to be registered. The information said it would make no difference.<sup>xix</sup> But it made a big difference.

**British people lost their British nationality. They were made ‘migrants’ in their own country.** For many, nothing seemed to change straightaway, but years later changes to immigration policy began to affect them – precisely because they were no longer recognized to be citizens in their own country.

## Lessons not learned

This scandal is frequently presented as if about immigration policy. The truth is importantly different. The core of the scandal concerns British nationality law and rights to British citizenship. Although lessons to be learned include lessons concerning immigration policy, it is vital to understand the true roots of the scandal. Otherwise, key lessons, including those listed below, will remain outstanding:

### The principal key lesson:

1. **Rights to British citizenship remain too little understood and too little respected, including at the Home Office.** This may be because most people who are British citizens by right never have to think about their personal entitlement to nationality of the UK. They acquire their citizenship automatically at birth and grow up correctly assuming they belong, and are entitled to belong, in the UK. However, for the minority of British people whose right to British citizenship must be secured by their making a formal claim to be registered, this assumption can prove costly. Many people still do not know that being born in the UK is no longer sufficient to make someone a citizen of this country.<sup>xx</sup> This is made worse by several barriers to people’s registration introduced since the British Nationality Act 1981 was passed – including fees set far above the cost of processing someone’s claim to have their citizenship registered and a requirement that someone aged 10 years or over should satisfy the Home Office they are of good character to be registered. **Just like the people affected by the Windrush scandal, British people – including many people born in the UK – continue to be excluded from their right to British citizenship and effectively made ‘migrants’ in their own country.**<sup>xxi</sup> Once again, these people are disproportionately Black or Asian British people.

## Other key lessons include:

2. Any system will likely do more harm than good if attention is not given to the circumstances of the people affected by it. When the Home Secretary apologized for the scandal in 2018, she identified that **the Home Office had simply “lost sight” of people when devising and implementing policy and strategy** that affected them.<sup>xxii</sup> This is a lesson of very wide application across all parts of the Home Office and wider government. Yet, it is difficult to detect any serious change. This is despite the fact that failing to consider the people affected by policy repeatedly leads to policy failure as well as harming the people affected.
3. Intensifying hardships faced by people, who cannot demonstrate their lawful status in the UK or their day-to-day rights that depend on that status, risks doing more harm to people. **When people must prove their status to a wide range of public and private bodies – e.g. employers, landlords, banks, hospitals, local authorities, and benefits offices – there is huge scope to do harm.** **For example:** the Home Office strategy of [eVisas replacing physical status documents](#) is of grave concern. Something vital to millions of people’s day-to-day security and wellbeing is being taken largely out of their hands and left in the hands of the Home Office (its digital systems, processes, and technology). That department gave false assurances to people affected by the Windrush scandal. Its promises now to protect people it is depriving of any physical documentation to prove their status are not reassuring.
4. The immigration system can do people, including British people, severe harm. It can also do serious harm to whole communities. It is **especially important, therefore, that the Home Office is held to account for its actions and policies.** Basic safeguards that apply to other government departments must apply to it too. **For example:** Home Office exemptions from duties under the Equality Act 2010 and Data Protection Act 2018 should be withdrawn or narrowed.<sup>xxiii</sup> Effective legal aid provision and access to courts for people affected by Home Office decision-making and powers is vital to protect against serious injustices that can be life-changing and beyond repair.<sup>xxiv</sup>
5. Amnesty’s detailed [submission to the Windrush Lessons Learned Review](#) in October 2018 includes several further discrete and systemic lessons that need to be learned. Our [November 2021 response](#) to Wendy Williams’ call for evidence for her to assess progress on lessons learned gave five discrete examples of systemic lessons not being learned.

## Conclusion

Shortly after the formal apologies for the Windrush scandal in April 2018, Amnesty warned that it was vital to properly and clearly identify the roots of the scandal before the efforts of ministers and officials to ‘contain’ the scandal were realized.<sup>xxv</sup>

Nearly seven years later, this warning remains relevant. The scandal remains too little understood. Harms directly associated with its roots – particularly concerning rights to British citizenship – and other harms that share some of its characteristics continue. Meanwhile, promises to achieve cultural change at the Home Office remain unfulfilled, just like similar promises made years earlier.<sup>xxvi</sup> British people are still being deprived of their citizenship rights and immigration policies are made that repeat some of the errors that contributed to the scandal.

**If lessons of the Windrush scandal are to be learned, full and equal recognition of the citizenship rights of all British people must be a priority. This includes recognition of rights to be registered as a British citizen, which must be made accessible to all who possess them. Beyond this, a wider commitment is needed to ensure policy is no longer made or implemented without care and attention to the people affected – their needs, interests and rights.**<sup>xxvii</sup>

## Notes

- <sup>i</sup> Theresa May gave an apology to Caribbean leaders. Amber Rudd did so in Parliament: e.g., *Hansard* HC, [16 April 2018 : Col 27](#); [23 April 2018 : Col 619](#). As, for example, did Priti Patel two years later: *Hansard* HC, [19 March 2020 : Col 1155](#).
- <sup>ii</sup> The most immediate changes to law were made by the Immigration and Nationality (Requirements for Naturalisation and Fees) (Amendment) Regulations 2018, SI 2018/618.
- <sup>iii</sup> The help team was announced in Parliament (*Hansard* HC, [16 April 2018 : Col 27](#)); and ultimately tasked to assist people to secure their citizenship and/or right to stay under [the Windrush scheme](#), which was formally announced on 24 May 2018.
- <sup>iv</sup> A compensation scheme was [launched on 3 April 2019](#) following a [public consultation and advice from Martin Forde QC](#).
- <sup>v</sup> The Windrush Lessons Learned Review received submissions and produced [a report with recommendations](#) in March 2020. [Amnesty's submission to the review](#) was made in October 2018.
- <sup>vi</sup> On 30 September 2020, Priti Patel published a '[comprehensive improvement plan](#)' in response to the Windrush Lessons Learned Review's recommendations. Over two years later, her successor, Suella Braverman, made a written statement to Parliament including a decision that three recommendations were no longer to be proceeded with "in their original format": [Hansard HC, WS523](#). More fundamentally, however, cultural change at the Home Office remains as elusive as ever, notwithstanding Yvette Cooper's more recent commitment by written statement of 24 October 2024: [Hansard HC, WS167](#).
- <sup>vii</sup> This is, for example, clearly articulated in the Home Office-commissioned report [The historical roots of the Windrush scandal](#), published on 26 September 2024, and [Amnesty's submission to the review](#) (the [Windrush Lessons Learned Review](#)) made in October 2018.
- <sup>viii</sup> See, e.g., [Amnesty's submission to the review](#) (the [Windrush Lessons Learned Review](#)) made in October 2018.
- <sup>ix</sup> See, e.g., the Home Office-commissioned report [The historical roots of the Windrush scandal](#), published on 26 September 2024, and [Amnesty's submission to the review](#) (the [Windrush Lessons Learned Review](#)) made in October 2018.
- <sup>x</sup> [Home Office guidance](#) (p24) archived before the scandal broke in 2018 had expressly recognised the risk of adverse publicity if mishandling the cases of people settled in the UK prior to 1 January 1973, i.e., treating the people affected by the Windrush scandal as if without the right to be and stay in the UK.
- <sup>xi</sup> [The historical roots of the Windrush scandal](#) was published on 26 September 2024. The cited extract is from p4.
- <sup>xii</sup> "As far as the historical roots of the Windrush Scandal are concerned, the 1981 BNA is both the beginning and the end of the story.": see p46 of [The historical roots of the Windrush scandal](#).
- <sup>xiii</sup> See, e.g., the White Paper, *British Nationality Law: Outline of Proposed Legislation*, July 1980, Cmnd. 7987.
- <sup>xiv</sup> See, e.g., *Hansard* HC, [3 June 1981 : Cols 979-980](#) per Timothy Raison, Home Office Minister.
- <sup>xv</sup> Originally, this nationality was titled 'British dependent territories citizenship'. The origins and purpose of this distinct British nationality are briefly explained in paras 22-24 of the [joint PRCBC and Amnesty submission](#) to the Nationality and Borders Bill Public Bill Committee, September 2021.
- <sup>xvi</sup> See, e.g., sections 1(3), (3A), and (4) of the British Nationality Act 1981. More information on children's registration rights is available from PRCBC's booklet [Children and their rights to British citizenship](#), November 2022.
- <sup>xvii</sup> Section 7, British Nationality Act 1981
- <sup>xviii</sup> The opportunity to make a claim was time-limited. This was said to be for the purpose of encouraging registration: *Hansard* HL, [21 July 1981 : Col 174](#), per Lord Belstead. It was also emphasized that "every effort" would be made to ensure people understood the effect of the Act: *Hansard* HL, [21 July 1981 : Col 184](#), per Lord Belstead.
- <sup>xix</sup> See [Windrush Lessons Learned Review](#), pp12 & 59.
- <sup>xx</sup> The British Nationality Act 1981 ended *jus soli*. For more on this, see PRCBC's [Commentary on Parliament's intention in introducing registration provisions for children in the British Nationality Act 1981](#), 25 August 2018
- <sup>xxi</sup> See, e.g., the [joint PRCBC and Amnesty briefing](#) to amendment 184 (in the names of Lord Moylan, Lord Hodgson, Lord Blunkett, and Baroness Lister) to the Nationality and Borders Bill at Lords' Committee stage.
- <sup>xxii</sup> *Hansard* HC, [16 April 2018 : Col 28](#), per Amber Rudd.
- <sup>xxiii</sup> See, e.g., para 2 of Schedule 18 to the Equality Act 2010 and para 4 of Schedule 2 to the Data Protection Act 2018.
- <sup>xxiv</sup> In [Amnesty's submission to the Windrush Lessons Learned Review](#), para 45(f) identified reinstatement of legal aid, access to judicial oversight, and removing or narrowing exemptions from statutory duties within a general recommendation.
- <sup>xxv</sup> [The Windrush scandal – just the tip of the iceberg](#), April 2018
- <sup>xxvi</sup> See, e.g., *Hansard* HC, [23 March 2013 : Cols 1500-1501](#) per Theresa May
- <sup>xxvii</sup> A summary of the Windrush scandal and its relevance to ongoing injustice and racism is provided by [Amnesty's submission to the Joint Committee on Human Rights](#)' inquiry, [Black people, racism and human rights](#), September 2020.

Amnesty International United Kingdom Section  
The Human Rights Action Centre  
17-25 New Inn Yard  
London EC2A 3EA  
[www.amnesty.org.uk](http://www.amnesty.org.uk)

