



1) Right to Enter the UK

While the new Bill aims to simplify and reform Britain's immigration system, it has failed to address how British nationals without full British citizenship will stand under the new system. Given that most of these British nationals will have been born on British soil and have allegiance to the UK, the UK's human rights obligations, historical racial discrimination, and the freedom of entry given to EU citizens and those with "ancestral" connections to the UK, it would only seem appropriate that the new Bill rectifies this incongruous situation.

Recommendations:

- Restore the right to enter the UK for all British nationals in the new Immigration and Citizenship Bill, by:
 - 1) Granting an entitlement to register directly as full British citizens, and
 - 2) An entitlement to the right of abode or permanent/indefinite permission to enter the UK for those who do not register as full British citizens.
- Ensure that the new system does not give the power to expel British nationals from their country of nationality, in accordance with international human rights standards.

Reasons:

Human Rights:

- 1) The right to enter one's country of nationality and not to be expelled is one that is guaranteed under various human rights instruments:

International Covenant on Civil and Political Rights (ICCPR):

Part III, Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. **No one shall be arbitrarily deprived of the right to enter his own country.**

Protocol 4 to the European Convention of Human Rights (ECHR):

Article 3 . Prohibition of expulsion of nationals

- 1 No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
- 2 **No one shall be deprived of the right to enter the territory of the state of which he is a national.**



- 2) Despite this, British Nationals (Overseas) and some other British nationals do not currently have the right to enter the UK – their country of nationality, or any other British territory for that matter. This is clearly in breach of the UK's obligations under the above treaties.
- 3) While the UK has signed Protocol 4 to the ECHR in 1963, and has ratified the ICCPR in 1976, it has currently avoided all responsibility to uphold the human rights guaranteed by these instruments by failing to ratify Protocol 4 to the ECHR – one of only five members of the Council of Europe not to have ratified the Protocol, and issuing reservations with regards to the ICCPR.
- 4) If the UK is at all a nation that respects the fundamental human rights of its citizens and to uphold the spirit of these treaties, it would be reasonable to expect that the UK take the appropriate steps towards the full ratification of these treaties. The restoration of the right of entry for these British nationals will be an important step for the UK in working towards this ultimate goal.

Historical Racial Discrimination

- 1) Prior to the Commonwealth Immigrants Act 1962, all British nationals were considered to be Citizens of the UK and Colonies (CUKC), and had the right to enter the UK. However, the implementation of that Act removed this right, which was subsequently cemented by the Immigration Act 1971 which introduced the concept of “right of abode” and the British Nationality Act 1981, which separated CUKCs into the various categories of British nationality.
- 2) Thereafter, only those who had a connection with the UK mostly through birth in the UK, or UK-born grandparents or parents retained their right to enter the UK. In effect, this excluded British nationals of the British overseas territories from entering the UK, with the explicit aim of stopping primary migration. However, many Commonwealth citizens of the “white” Commonwealth, retained their right to enter the UK, despite not being British nationals.
- 3) These measures may be seen as racially discriminatory by modern standards, as the differential treatment is based either directly or indirectly on the place of birth, ancestry and ethnicity of the individual:

International Convention on the Elimination of All Forms of Racial Discrimination (Ratified by the UK in 1969)

Article 5

*In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, **without distinction as to race, colour, or national or ethnic origin, to equality before the law**, notably in the enjoyment of the following rights:*

(d) Other civil rights, in particular:

- (i) The right to freedom of movement and residence within the border of the State;*
- (ii) **The right to leave any country, including one's own, and to return to one's country;***
- (iii) **The right to nationality;***



Charter of the Fundamental Rights of the European Union:

CHAPTER III – EQUALITY

Article 20 - Equality before the law

Everyone is equal before the law.

Article 21 - Non-discrimination

1. **Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.**

European Convention on Nationality:

Article 5 – Non-discrimination

1. **The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.**
 2. **Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently.**
- 4) The effect of this legislation is clearly racially discriminatory – with mainly white British nationals retaining their right to enter the UK, while others were barred:

"My hon. Friend Ms Abbott was absolutely right to say that the policy dates back to 1971. If one reads Hansard reports of the debates on the Immigration Act 1971, one will see that they were contentious and, in parts, coloured by the language of race." - Liam Byrne, Minister of State.

- 5) Given this historical injustice and discrimination, it would only seem appropriate that these rights be restored to these British nationals.

Nationals of the European Union/European Economic Area

- 1) Currently, EU/EEA/Swiss have a freedom of movement which is **guaranteed** under EU laws. This allows more than 400 million people the right to freely enter the UK to work, study and reside.
- 2) Thus these **foreign** nationals currently enjoy significantly greater rights to enter the UK and other civil, political and economic rights within the UK, compared to British nationals who are nationals of this country, most of whom will have been born and have lived under the British flag.
- 3) This is a particularly unfair and incongruous situation where foreign nationals are treated more favourably than British nationals – this lack of regard for a country's own nationals is absurd and unseen anywhere else in the world.



- 4) While the government may argue that this is a result of bilateral freedom of movement agreements, this is completely illogical, as these British nationals cannot enter **any** British territory as result the actions of past governments. Clearly, no reciprocal agreement can ever be arranged in these circumstances, and if a reciprocal agreement is to exist, it would be a reciprocal agreement to enter the UK itself, as the UK will be the country of nationality of these British nationals.
- 5) While the Draft Bill clearly re-affirms the rights of EU/EEA/Swiss nationals to enter & reside in the UK and other legislation confirm the various other entitlements of these nationals in the UK, it is deeply concerning that it makes no such provision for British nationals, who are not British citizens, to enter the UK.
- 6) Thus, we strongly encourage that the Draft Bill include measures to rectify this situation and allow British nationals to be treated at least on a par with these foreign nationals by granting the right to full British citizenship and the right of entry into the UK.
- 7) In addition, the 3-4 million British nationals without right of entry into the UK also pales in comparison to the large number of EU/EEA/Swiss nationals (400+ million) who currently enjoy these rights, which can only increase in number from the further expansion of the European union. Thus, the restoration of rights to this comparatively small number of British nationals who rightfully deserve these rights should not cause any difficulty for the UK.

Ancestry Visas:

- 1) The government has proposed that the Ancestry visa route for entry will be maintained in the current immigration reform, as outlined in their response to the consultation on *The Pathway to Citizenship: Next Steps in Reforming the Immigration System*:
*“The Government values the special relationship it holds with all Commonwealth countries and we recognise that large numbers of Commonwealth nationals regard their ancestry as British and treasure the ancestry route to citizenship in the UK...Having considered this very carefully **we believe that it is right to retain a route to citizenship based on UK Ancestry** and that this remains open to all Commonwealth nationals”.*
- 2) The current scheme of Ancestry Visas allows Commonwealth citizens who have a UK-born grandparent to obtain visa which allows them to work and live for the UK for 5 years based solely on their “*ancestry*”, leading to permanent permission to remain after 5 years and the option of naturalization as British citizens.
- 3) Thus the UK government has confirmed the continued right for people to enter the UK to live and work based on British *ancestry*, yet many British nationals who are British do not enjoy these rights.
- 4) Clearly, this is illogical and unfair. Despite having direct, personal connections with Britain through birth in a British territory etc, and having lived under the British flag, British nationals are currently treated in the same way as



foreigners when applying for entry to the UK.

This is while 2nd generation descendants of British people born miles away from the UK, with at most a tenuous connection with the UK, can enter based solely on their supposed “ancestral” connections to the country.

- 5) The “patriality principle” by which these visas are granted has also been considered racially discriminatory:

*“When one considers the number of such visas being given, nine out of 10 go to white Commonwealth citizens. **That cannot be fair. It rests on the old patriality clause, which ensured that white Commonwealth citizens were spared the rigours of increasing immigration enforcement.** A provision that indirectly allows white Commonwealth citizens rights that black Commonwealth citizens do not have is not fair.”* – Diane Abbot, Member for Parliament for Hackney North and Stoke Newington.

- 6) The same patriality clause which is considered discriminatory and unfair for Commonwealth citizens in relation to Ancestry visas, is also the same principle which removed the right to enter the UK of certain British nationals, and separated the previous *one* British nationality – Citizenship of the United Kingdom and Colonies (all with the right to enter the UK) to the current system of British nationalities with no right to enter the UK.
- 7) This same principle has also allowed several million Commonwealth citizens who are no longer British nationals to retain their right of abode in the UK. Again, it creates a situation where **foreign** nationals, with no obligation and allegiance to the UK, are treated more favourably than **British** nationals.



2) Route to full British Citizenship

While the new Bill proposes to reform the way in which foreign nationals are able to acquire British citizenship through naturalisation, it has again failed to acknowledge the position of British nationals under the new system.

Recommendations:

To restore the citizenship rights of all British nationals, including British Nationals (Overseas), by allowing an entitlement to register as full British Citizens.

Rationale:

Human Rights and Discrimination

- 1) As a continuation of legislation which removed the right of British nationals to enter the UK, the British Nationality Act 1981 categorised British nationals into different nationalities based on whether one has the right to enter the UK.
- 2) Thus the breaches of human rights and the racial discrimination that is evident in the UK's removal of the right of entry for British nationals (as outlined above) would also apply to the UK's nationality laws.
- 3) In particular in relation racial discrimination within British nationality law:

*"The Government has preferred an over-complicated scheme based on old categories, whose effect is **to give full British citizenship to a group of whom at least 96% are white people, and the other four forms of nationality to groups who are at least 98% non-white.**" – Anne Dummett, *The New British Nationality Act*, British Journal of Law and Society, Vol 8, No 2.*

"There is no indication at all in our nationality law of ethnic origin being a criterion. But the purpose of the law since 1981, and the manner in which it is implemented, make sure that ethnic origin is in fact and in practice a deciding factor." – Anne Dummett.

*"It is undeniable that in the past the different categories [of British Nationality] have created much unhappiness particularly as the concepts of "patriality" were seen as a way of discriminating between white and black members of overseas communities" – Lord Goldsmith's Citizenship Review (*Citizenship: Our Common Bond*).*

- 4) With regards to human rights instruments relating to nationality, while the UK is not a currently a signatory to the European Convention on Nationality, the Convention has been signed by a 28 members of the Council of Europe. If the UK is at all committed to uphold basic human rights, it should aim towards the principle of these human rights instruments:

European Convention on Nationality

Article 4 – Principles

The rules on nationality of each State Party shall be based on the following principles:



- a. **everyone has the right to a nationality;**
- b. *statelessness shall be avoided;*
- c. **no one shall be arbitrarily deprived of his or her nationality;**
- d. *neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.*

Article 7 – Loss of nationality *ex lege* or at the initiative of a State Party

3. **A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:**
 1. *voluntary acquisition of another nationality;*
 2. *acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;*
 3. *voluntary service in a foreign military force;*
 4. *conduct seriously prejudicial to the vital interests of the State Party;*
 5. *lack of a genuine link between the State Party and a national habitually residing abroad;*
 6. *where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;*
 7. *adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.*

- 5) While prior to the British Nationality Act 1981, all British nationals were Citizens of the UK and colonies, the Act has resulted in British nationals who are no longer hold a full form of British nationality, but an inferior form which includes less rights and entitlements. This is clearly against the principles of equality and anti-discrimination, and would not be in line with the principles against the arbitrary deprivation of nationality outlined in the European Convention.
- 6) The UK government owe a moral and legal obligation to uphold and protect the human rights of British individuals. In not allowing these British nationals entry to their country of nationality and the subsequent deprivation of full British nationality, it has clearly failed these obligations. Thus, we urge the UK government to restoration of full British citizenship to these British nationals.

Lord Goldsmith's Citizenship Review

- 1) In Lord Goldsmith's recent citizenship review, he recommended that:

"The residual categories of citizenship, with the exception of British Overseas Territories Citizenship and British Nationals (Overseas) status, should be abolished allowing people who would qualify for those categories with access to full British citizenship. Though this change will only affect relatively small numbers of people, it is important to address the history involved in the residual categories as part of renewing our common bond of citizenship" – Page 6, *Citizenship: Our Common Bond*.

- 2) However, the new Draft (Partial) Immigration and Citizenship Bill has failed to put this recommendation into effect. As the Bill was intended to give effect to



Lord Goldsmith's recommendations, it would only seem appropriate that this be included in the final Bill.

3) In relation to British Nationals (Overseas):

"The only option which would be characterized as fair would be to offer existing BN(O) holders the right to gain full British citizenship. It is likely that many would not take this up as the prospects economic and fiscal of moving to the UK are not favourable to those well-established in Hong Kong. However, I am advised that this would be a breach of the commitments made between China and the UK in the 1984 Joint Declaration on the future of Hong Kong, an international treaty between the two countries; and that to secure Chinese agreement to vary the terms of that treaty would not be possible. On that basis, I see no alternative but to preserve this one anomalous category of citizenship." – Page 74, Citizenship: Our Common Bond.

4) While Lord Goldsmith may have felt that the Joint Declaration on the Future of Hong Kong would be a barrier to remove the status of British Nationals (Overseas) and to replace that with full British Citizenship, this would not in fact be in breach of any terms of the Joint Declaration itself. As pointed out by the Foreign Affairs Committee in 1989:

*"To grant full British Citizenship, however, would contradict the British memorandum on nationality attached to the Joint Declaration. **This memorandum is not part of the Joint Declaration and to go against it would not constitute a breach of the Treaty**" – Page xviii, Foreign Affairs Committee: Hong Kong, Second Report, 1988/1989 HC281.*

5) Thus, the Joint Declaration will not form a barrier to allow all British Nationals (Overseas) to register as full British citizens, and no agreement would be required from the Chinese authorities.

6) In fact, British citizenship has been granted on a selective basis to British Nationals (Overseas) and British Dependent Territory Citizens under the British Nationality (Hong Kong) Act 1990. Any person who was registered under the Act automatically ceased to be a British Dependent Territories citizen (and also a British National (Overseas) if they had such a status) upon registration as a full British citizen. Certain British Nationals (Overseas) have also been also granted full British citizenship under the British Nationality (Hong Kong) Act 1997. Clearly, British Nationals (Overseas) have already been granted full British Citizenship in the past in spite of the existence of the Joint Declaration. Therefore, the grant of full British Citizenship to all British Nationals (Overseas) should not be seen as a breach of the Joint Declaration today.

7) Therefore, we recommend that all British Nationals (Overseas), together with other British nationals, be given an entitlement to register as full British citizens. This will bring their rights and responsibilities in line with all British citizens, and rectify the numerous breaches of human rights as outlined earlier.

Comparison with EU nationals



- 1) Due to the privileged position of EU/EEA nationals in having the freedom of movement within the UK, this has resulted in situations where these **foreign** nationals have privileged access to British citizenship, even compared to those who are already **British** nationals.
- 2) Given that British nationals who do not have full British citizenship already have an allegiance to the Queen and have the many responsibilities associated with British nationality under various criminal and anti-terrorism laws, it would only seem reasonable that they be given a privileged path to British citizenship.
- 3) While a privileged path to full British citizenship may seem to exist already, since they are able to “register” as British citizens, this is actually not the case:

For British nationals to register as British citizens:

- 5 years residence in the UK
- Freedom from immigration time restrictions in the last year of residence
- Be of good character
- In order to obtain indefinite leave to remain (ILR) (i.e. freedom from immigration control), one needs to demonstrate knowledge of language and life in the UK, e.g. by passing the “Life in the UK” test.

For foreign nationals (including EEA/EU nationals) to naturalise as British citizens:

- 5 years residence in the UK
- Freedom from immigration time restrictions in the last year of residence
- Be of good character
- Knowledge of language and life in the UK, e.g. by passing the “Life in the UK” test.

- 4) Thus, non-citizen British nationals must fulfil essentially the same requirements as foreign nationals in order to be eligible for British citizenship. While the requirement for knowledge of language and life in the UK is not a specific requirement for registration as a British citizen, a British national must have fulfilled that requirement in order to obtain indefinite leave to remain, which is required before registration.
- 5) As non-citizen British nationals are under immigration control, the qualifying period before one is “free from immigration time restrictions” varies depending on the individual’s status in the UK:
 - 4 years - for former members of HM Forces;
 - 5 years - for work permit holder; employment not requiring a work permit (but sole representatives should use form BUS); writer, composer or artist; United Kingdom ancestry; and highly skilled migrant; and
 - 10 years or 14 years - for long residence



- 6) This contrasts with the 5 year requirement for EU/EEA nationals to obtain permanent residence (and be free from immigration time restrictions) under EU laws, regardless of their purposes in the UK.
- 7) Thus, there are circumstances where a British national will not qualify for permanent residence in 5 years, under the immigration rules, while EU/EEA nationals will. As a result, these EU/EEA nationals will become eligible for British citizenship with a **shorter** period of residence compared to British nationals.

Example: a student studying in the UK.

EU national:

After 5 years residence – eligible for permanent residence

Additional 1 year residence – eligible for British citizenship

Total residence = 6 years

British national:

After 10 years residence – eligible for ILR from long residence

Additional 1 year residence – eligible for British citizenship

Total residence = 11 years

- 8) Thus, while both the British and EU national are in the UK for the same purpose, they are treated differently based solely on nationality. Not only will this be considered **discrimination based on race and national origin**, in breach of the UK's human rights obligations (as outlined earlier), it is also illogical, as it is actually more difficult for a **British** national to obtain full citizenship compared to a **foreign** national.
- 9) Again, we urge the UK to allow all British nationals an entitlement to register as full British citizens without any residence, good character or knowledge requirements so that the UK can fulfill its human rights obligations and to rectify these incongruous situations.



3) Access to Benefits and Services in the UK

As outlined in the Government's response to the consultation on *The Pathway to Citizenship: Next Steps in Reforming the Immigration System*, there is a proposal to restrict the entitlement of foreign national migrant's access to benefits and services, such as "Home rate" fees at higher education institutions. Again, the Government has failed to clarify the position of non-citizen British nationals who are resident in the UK.

Recommendations:

While the UK may decide to restrict access to benefits and services for foreign nationals, the new Immigration and Citizenship (and other relevant legislation) should guarantee that all British nationals have access to benefits and services in the UK on the same basis as full British citizens.

Rationale:

Human Rights

- 1) Under various human rights treaties, the UK is obliged to provide for several basic human rights, including the right to work, right to social security, right to housing, right to healthcare and right to education etc:

International Covenant of Economic, Social and Political Rights
(Ratified by the UK in 1976)

Article 6

1. The States Parties to the present Covenant recognize **the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.**

Article 9

The States Parties to the present Covenant recognize **the right of everyone to social security, including social insurance.**

Article 11

1. The States Parties to the present Covenant recognize **the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.** The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Article 12

1. The States Parties to the present Covenant recognize **the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.**

Article 13

1. The States Parties to the present Covenant recognize **the right of everyone to education.** They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.



- 2) As the UK is the country of nationality of British nationals, the UK must therefore provide for these rights for British nationals within its territory, as these rights cannot be guaranteed for British nationals in any non-British territory. To not do so will be a great breach of the UK's human rights obligations.
- 3) In addition, since the rights of EEA/EU nationals to a range of benefits and services in the UK are already guaranteed under EU law, it would only seem reasonable that the British nationals should enjoy at least the same range of benefits and services in the UK.
- 4) In fact, non-citizen British nationals are usually barred from recourse to public funds as a condition of their entry, just like other non-EU foreign nationals. This is in stark contrast to the full range of services available to other EEA/EU nationals. It is patently absurd that **foreign** nationals can enjoy more rights and have access to a greater range of services and benefits than **British** nationals. This is such great injustice to one's own nationals that justice should now be done by guaranteeing the basic human rights of British nationals in this new Bill.