

Reasserting Rights to British Citizenship Through Registration

Solange Valdez-Symonds and Steve Valdez-Symonds

At a glance

The British Nationality Act 1981 introduced British citizenship as the category of British nationality that would provide the right of abode in the UK to those possessing it. Parliament chose to make ‘connection to the UK’ the foundational principle for conferring British citizenship. The Act included several provisions by which the connection of many people, who would not automatically acquire that citizenship at the commencement of the Act or at their birth, would be recognised through rights to British citizenship. This was generally done through a series of statutory entitlements to British citizenship by registration. Taken together, the provisions for automatic acquisition and registration constitute a comprehensive assessment by Parliament of whom is connected to the UK such that they should be equally recognised as citizens by right. However, this original intention has now become widely forgotten, permitting changes in law, policy and practice that undermine and frustrate that intention and the rights under the Act. This article aims to establish Parliament’s original intention by attention to the statutory language and drawing upon the *Hansard* record; expose the most critical ways by which that intention has been damaged; and highlight the recent High Court ruling in *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin) as providing encouragement and opportunity for its reassertion.

Introduction

The British Nationality Act 1981, hereafter referred to as ‘the Act’, commenced on 1 January 1983. The Act made profound changes to British nationality law. Among these changes was the introduction of British citizenship as the category of British nationality providing its holders with the right of abode in the UK. In considering the basis upon which to found this new category of nationality, Parliament rejected each of *ius soli*, which had previously applied in British nationality law, and *ius sanguinis*. Parliament instead chose a far less precise principle as the foundation for British citizenship. That principle was ‘connection’. A critical aim of Part I of the Act, therefore, was to establish a comprehensive set of rights by which British citizenship would be conferred on persons based on the possession by those persons of the requisite connection to the UK. The Act necessarily dealt with then current and future generations. As regards the latter group, the Act provided for persons born in the UK and persons born outside the UK. As regards all such people, the Act established starting points whereby citizenship would be acquired automatically. It provided for certain of the then-current generation to be made

British citizens at the Act's commencement;¹ and it provided for certain people among future generations to be made British citizens at their birth.²

Parliament, however, recognised that the provisions for automatic acquisition were inadequate. There were more people among the current generation whose connection to the UK demanded recognition of their right to British citizenship; and there would be more people among future generations with such a connection. The means to address this inadequacy provided by the Act were the rights it provided to registration of British citizenship. The intention – made clear in the parliamentary debates as the British Nationality Bill (hereafter referred to as 'the Bill') made its way to royal assent – was to ensure that all people with the requisite connection were recognised as British citizens subject to the formality of their making an application to register. It was expressly recognised that any failure to achieve that recognition would do individual and social harm; and would damage race relations. Nearly four decades later, it is apparent that intention has not been achieved. Among the causes of that is the underlying intention of the registration under the Act has become forgotten or overlooked at the Home Office, and more widely, permitting the introduction of law, policy and practice that has increasingly undermined and frustrated that intention.

The exposure of the Windrush scandal in the period leading up to and following April 2018³ and the ruling of the High Court in *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department*⁴ (hereafter referred to as *PRCBC, O & A*) in December 2019 provide suitable occasion for review of what has gone wrong and how it may and should be repaired. This article aims to provide that. It begins in Section A with an analysis of the relevant provisions of the Act which provide for British citizenship to reveal the statutory intention. In Section B, it then addresses discrete developments since the Act's commencement that expose how and why that intention has not been met. These developments are addressed under discrete subheadings. The concluding Section C brings all of this together with some concise observations concerning the opportunity to reassert Parliament's original intention.

A. British citizenship and connection

The British Nationality Act 1948 had established 'British subject' as the nationality of all citizens of the United Kingdom and Colonies and all citizens of those Commonwealth countries, specified in the Act, that had formerly been colonies.⁵ All British subjects were Commonwealth citizens and *vice versa*; and all had the right to enter and settle in the UK. However, when that right was exercised, including in response to invitations of employment in various public services such as the newly established National Health Service, by an increasing number of black and Asian British subjects, successive governments sought to curtail that right. A prime motivation for the Commonwealth Immigrants Acts 1962 and 1968, and Immigration Act 1971, was the desire of successive administrations to restrict the entry of black and Asian people to the UK.⁶

1 Section 11, British Nationality Act 1981.

2 Sections 1(1) and 2(1), British Nationality Act 1981, which respectively apply to persons born in the UK and persons born outside the UK.

3 On 16 April 2018, then Home Secretary, Rt Hon Amber Rudd, gave an apology in answer to an urgent question from Rt Hon David Lammy for the wrong Home Office treatment of Commonwealth citizens, long settled in the UK from the Caribbean, as people without permission to be in the country.

4 [2019] EWHC 3536 (Admin).

5 Section 1, British Nationality Act 1948.

6 This is discussed, for example, in the submission of Amnesty International UK to the Home Office Windrush Lessons Learned Review.

The Act made profound changes to British nationality law. One of these was to introduce ‘British citizenship’, a category of British nationality that replaced the category of ‘citizen of the United Kingdom and Colonies’ (sometimes referred to as CUCK). This constituted the final resting point in British nationality law of the various legislative devices by which the British government had sought to curtail the entry to the UK of black and Asian British subjects from the Commonwealth. The Act was introduced following Green and White papers,⁷ each of which had proposed ending *ius soli* (‘right of soil’) – the principle whereby birth on the territory would in and of itself confer nationality. Consideration was also given to *ius sanguinis* (right of blood), by which a person acquires nationality through her or his parent. In passing the Act, Parliament decided that neither of these principles would be an adequate foundation for conferring British citizenship. The intention was to adopt ‘connection’ as the basic principle.⁸ Doing so required Parliament to specify in the Act what would constitute the required connection since a mere statement of this principle – unlike *ius soli* – is insufficient to reveal its meaning and application.

A starting point for connection

Introducing a new nationality required addressing two distinct groups of people. Firstly, the Act needed to address who among the then current generation were to be regarded as possessing the necessary connection. The answer to this begins with s 11(1) of the Act, which provides that all citizens of the United Kingdom and Colonies, who had the right of abode at the Act’s commencement, would become British citizens at that time. As regards the living, therefore, the Act took patriality – a concept introduced on 1 January 1973 by the Immigration Act 1971 to restrict the category of British nationals having the unfettered right of entry and stay in the UK (the right of abode) – as its starting point for connection. This reflected the express purpose pursued by successive administrations to restrict the entry of black and Asian British nationals to the UK. The introduction of British citizenship (and the ending of citizenship of the United Kingdom and Colonies) formalised the position created by the 1971 Act in British nationality law. It removed the inequality among citizens of the United Kingdom and Colonies, whereby some were free to go to and from, and stay in, the UK and some were not. However, it did so by depriving those, who were not so free, from the citizenship they had formerly held; and among the people so deprived were many people who had long since settled in the UK.

The second group of people to be addressed were future generations. As regards who among those yet to be born were to be regarded as possessing the necessary connection, the Act takes separate starting points for those born in, and those born outside, the UK. For people born in the UK, s 1(1) provides for British citizenship to be acquired at birth if one or other parent is a British citizen or settled in the UK at the time of a child’s birth.⁹ The purpose of this starting point for people born in the UK was explained by Mr Timothy Raison, the Home Office Minister of State, during the passage of the Act:

‘The question must be faced as to what rational reason there is for the children of people who are here purely temporarily or, for that matter, illegally, expecting to have the right

7 The White Paper, *British Nationality Law: Outline of Proposed Legislation*, July 1980, Cmnd 7987 had declared at para 37: ‘British Citizenship will be the status of people closely connected with the United Kingdom.’

8 See eg *Hansard* HC, 3 June 1981: Cols 979–980 per Mr Timothy Raison, Minister of State, Home Office.

9 Section 50(2)–(4) defines what is meant by ‘settled’. Essentially, a person is settled in the UK if this is her, his or their place of ordinary residence and there is no restriction on how long she, he or they may stay.

to acquire British citizenship. The more one thinks about that fundamental point ... the more doubtful it becomes as to what is the rationale in terms of principle for saying that everybody born here should be a British citizen, even if the person is merely born here, goes away after a few weeks and spends the next years or decades of life in some remote part of the world.’¹⁰

This still left the many people born in the UK to parents, neither of whom were British citizens or settled, who stay and grow up in this country.

For people born outside the UK, s 2(1)(a) provides for British citizenship to be acquired at birth if one or other parent is a British citizen so long as that parent is not a British citizen by descent. Section 14 sets out an exhaustive list of circumstances in which a person is a British citizen by descent, each of which relate to people born outside the UK. The broad intention is to prevent the passing on of British citizenship across successive generations born outside the UK. This starting point also left out many people, who would grow up connected to the country, such as people whose parents – although born elsewhere – had themselves retained a close connection by taking up UK residence.

As can be seen, these various starting points exclude many people from British citizenship, despite their having a similarly close connection to the UK as those included. More was needed, therefore, to make comprehensive provision for citizenship on the basis of connection to the UK. The means adopted to achieve that was the provision in the Act of several rights to registration as a British citizen. Whereas it is always necessary to consider each such provision discretely in assessing whether it is fulfilled by any particular individual, doing so without more is to disconnect each provision from the others and thereby from the overall statutory purpose. Over time, a relatively complex set of rights for establishing a shared connection to the UK that *requires* recognition by citizenship may become, in the minds of those responsible for its maintenance, little more than a disparate collection of individual rights.

Commonwealth citizens settled in the UK

One group of people clearly connected to the UK were the many British subjects who had settled in the UK from elsewhere in the Commonwealth. Many such people had experienced significant change to their British nationality over the post-War period and to the rights that nationality gave them.¹¹ As former colonies secured their independence, many people had ceased to be citizens of the United Kingdom and Colonies but remained British subjects and Commonwealth citizens; and many other people from territories that had yet to secure independence, who had remained citizens of the United Kingdom and Colonies, had nonetheless had restrictions on their rights to enter and stay in the UK introduced by the Commonwealth Immigrants Acts 1962 and 1968. On 1 January 1973, the Immigration Act 1971 introduced the concept of patriality (the right of abode) by which some citizens of the United Kingdom and Colonies retained unfettered rights of entry and stay in the UK and some did not.

The Commonwealth Immigrants Acts and the Immigration Act 1971 had provided statutory schemes whereby British subjects who had settled in the UK could register as citizens

¹⁰ *Hansard* HC, 3 June 1981: Col 980.

¹¹ See eg Robin M White, ‘The Nationality and Immigration Status of the “Windrush Generation” and the Perils of Lawful Presence in a “Hostile Environment”’ (2019) 33 *IANL* 218.

of the United Kingdom and Colonies.¹² Anyone who had done so prior to the commencement of the Act became a British citizen by s 11(1) on the Act's commencement on 1 January 1983. For Commonwealth citizens who had not exercised the right to so register by the time of its commencement, the Act made provision under s 7 for registration as a British citizen. Section 7 made express that such registration was by entitlement.

However, the right to register as a British citizen under s 7 was time limited. At the time, Ministers emphasised that it was the government's desire and intention that people exercise their entitlement to citizenship under s 7.¹³ When pressed as to why it was then necessary or appropriate to place a time limit on the entitlement, Ministers suggested that it was better to focus the minds of those with the entitlement on ensuring they exercised it rather than allow, by passage of time, their entitlement to become in effect lost to them by a practical inability to demonstrate their circumstances in years long past.¹⁴ Whereas it was said that the government would make every effort to bring the legislation's effect to the attention of the people affected, it is difficult to credit Ministers with a firm commitment to do so, or understanding of what was required, given that in the very next breath it was argued that it should not be particularly difficult for those concerned at the changes being made to draw attention of people to those changes including, in particular, their right and need to register.¹⁵

It is a dreadful irony that, at the same time, Ministers also emphasised to Parliament that Commonwealth citizens settled in the UK had 'nothing to fear' in any event.¹⁶ Decades later, after it had ultimately been exposed just how much so many people did indeed have to fear from developments in immigration policy, it is poignant that a critical element of the government's remedial action has been its offer of naturalisation without charge to Commonwealth citizens settled in the UK prior to 1973. Given that registration in 1983 would have cost £35 whereas naturalisation in 2018 cost £1,250, the waiving of the fee for naturalisation was a necessary step for effectively putting people in the position they would and should have been had the promise to make people aware and encourage their take up of registration in the 1980s been made good.¹⁷ However, as discussed below, there was at least one way in which such restitution was not provided. This concerns the good character requirement.

Future generations born in the UK

Much time during the parliamentary scrutiny of the Bill was spent considering the circumstances of children born in the UK, who would not be born British citizens under the Act. In bringing an end to the application of *ius soli*, the Act was intended to reserve British citizenship for people connected to the UK and to exclude, among others, people who, although born in the UK, grow up somewhere else. It was not intended to exclude children born and grown up in the UK from recognition by citizenship of the connection they share with their peers, who

12 In doing so, these reflected the provision made in s 6, British Nationality Act 1981 whereby British subjects could register by entitlement as citizens of the United Kingdom and Colonies if they had become ordinarily resident in the UK for at least 12 months.

13 See eg *Hansard* HL, 21 July 1981: Cols 183–184 *per* Lord Belstead, Minister of State.

14 *Hansard* HL, 21 July 1981: Col 183 *per* Lord Belstead. The report of the independent advisor, Wendy Williams, *Windrush Lessons Learned Review*, HC 93, March 2020, confirms at p 59 that in the event the Home Office discouraged some people from registering their British citizenship while generally assuring people that it was not necessary to do so.

15 *Hansard* HL, 21 July 1981: Col 184 *per* Lord Belstead.

16 *Hansard* HL, 21 July 1981: Col 174 *per* Lord Belstead.

17 The Immigration and Nationality (Requirements for Naturalisation and Fees) (Amendment) Regulations 2018, SI 2018/618 were laid before Parliament within barely a month of the government's first formal recognition of the injustice done to the Windrush generation and took effect on 30 May 2018.

enjoy the advantage of having acquired citizenship at birth by reason of the status of one or other of their parents. At the Bill's committee stage in the Commons, the Minister laid out what he referred to as 'the fundamental position':

'We believe that it is extremely important that those who grow up in this country should have as strong a sense of security as possible.'¹⁸

Social harmony and race relations were among the reasons emphasised by Ministers for the imperative of ensuring the 'minimum of fear, apprehension and doubt' among the population by making provision whereby citizenship would be secured for all children growing up in the UK. The starting point – whereby citizenship is acquired at birth to a parent who is either a British citizen or settled – reflected the view that citizenship or settlement of the parent was sufficient indication of the child's future to immediately satisfy the intended condition of connection. As the Minister explained somewhat floridly:

'There are people who are clearly not birds of passage but are born here to those who are settled here, and who by definition live here. The term "settled here" is about living in this country, and about having the intention of continuing to do so. It would be reasonable on both humane and common sense grounds to pick up those children when they are born, rather than to wait'.¹⁹

We will momentarily come to the question of waiting for what. For now, it is instructive to reflect on the clear focus of this explanation on the situation of the child. It is not that the status of a parent in itself establishes the connection of the child. Rather, the status of the parent, if settled, entails a reasonable expectation that the child will grow up in the UK. In recognition of that – the child's connection to the UK – s 1(1) of the Act confers British citizenship upon a child. This notion of connection is reflected in the two primary ways by which Parliament chose to recognise the connection of children born in the UK to parents who were neither British citizens nor settled. In each of the two relevant provisions, the focus is similarly on the circumstances of the child – in one case as revealed by a parent's status and in the other case with no reference to the parent whatsoever.

Section 1(3) and (4) of the Act each relate solely to children born in the UK. In the case of the former, a child born in the UK acquires an entitlement to register as a British citizen if – before she, he or they reach majority – one or other parent becomes a British citizen or settled. The provision straightforwardly reflects the intention in s 1(1). Children born in the UK, who are not, in the Minister's words, 'birds of passage', should grow up with the security of British citizenship. Just as a child's future in the UK is confirmed by a parent being settled at the time of the child's birth, so it is confirmed by a parent becoming settled after the child's birth. It is no less humane and common sense to recognise the connection of a child born in the UK at the point a parent becomes settled by providing an entitlement to registration than it is to recognise the connection of a child at birth in the UK where a parent is already settled.

Section 1(4) completes the picture. It provides an entitlement to register as a British citizen that is entirely independent of a child's parents. The entitlement arises on a child's attaining the

¹⁸ *Hansard* HC, Standing Committee F, 24 February 1981: Col 177.

¹⁹ *Hansard* HC, Standing Committee F, 24 February 1981: Col 183.

age of ten if the child was born in the UK and has spent the intervening period living in the UK. This is subject to maximum periods of absence,²⁰ albeit subject to a discretion upon the Secretary of State to waive any absence beyond those limits.²¹ The debates in 1981 indicate that Parliament did not anticipate that this provision would apply to many children for it expected that parents, who were not settled at the time of a child's birth in the UK, would ordinarily have either left or become settled before the child's tenth birthday.²² Nonetheless:

‘The essence of the matter is that if a child has been here for 10 years, we believe that it is reasonable, even though his parents may be illegals or overstayers, that he be granted citizenship because his roots will have gone deep.’²³

This brings us back to the Minister's earlier statement when – in contrasting ‘birds of passage’ – he had emphasised the humane and common-sense rationale for immediate recognition of citizenship at birth where a parent was already settled. To complete the passage cited above:

‘It would be reasonable on both humane and common sense grounds to pick up those children when they are born, rather than to wait for the 10-year provision, which frankly, has been brought in to deal with another category of person – those whose parents are not lawfully settled in this country.’

As can be seen, s 1 – whether as regards the children who acquire citizenship at birth or the children who acquire entitlements to register as a British citizen – is clearly focused on the connection of the child to the UK. Growing up in the UK after being born in this country establishes connection. Where a child's future life in the UK can be reasonably anticipated because a parent is settled in this country, recognition of that connection is not delayed. However, taken together, the various provisions of this section recognise the connection of all children born and growing up in this country, whatever the status of a child's parent, by granting the right to British citizenship.

Reduction of statelessness

One particular problem of ending recognition of *ius soli* in British nationality law concerned the UK's obligations under the 1961 UN Convention on the Reduction of Statelessness. Article 1 of the Convention requires state signatories to make provision to reduce statelessness in one of two ways. The state must either provide for automatic acquisition of its nationality by any person born on its territory, if that person would otherwise be stateless;²⁴ or it must provide for granting its nationality on the application of any stateless person born on its territory subject to that person fulfilling such conditions the state may adopt from among those permitted by the Convention.²⁵ In the latter case, the article expressly states that no application fulfilling

20 The requirement is for no more than 90 days absences from the UK in each of the first ten years of the person's life.

21 The discretion is to be found in s 1(7), British Nationality Act 1981 and may be exercised ‘in the special circumstances of any particular case’. In keeping with the underlying statutory purpose, it is suggested that special circumstances are circumstances that, despite the absences beyond the limits, demonstrate the person's connection to the UK.

22 See eg *Hansard* HL, 7 July 1981: Col 666 *per* Lord Belstead.

23 *Hansard* HC, 26 February 1981: Col 230 *per* Mr Timothy Raison.

24 Article 1(1)(a), 1961 UN Convention on the Reduction of Statelessness.

25 Article 1(1)(b), 1961 UN Convention on the Reduction of Statelessness.

the permitted conditions may be refused. Those conditions include conditions as to periods of habitual residence on the state's territory, the person's age and that she, he or they have remained stateless.²⁶ For so long as British nationality law recognised *ius soli*, there had been no need to make further provision to give effect to the obligation under art 1. It was necessary, however, to make such provision in the Act.

This was recognised by Ministers during the passage of the Act when introducing what is now para 3 of Sch 2. They repeatedly made clear the intention was to ensure full compliance with the UK's obligations under the Convention. For example:

'Our approach reflects our need and our desire to continue to comply with our international obligations under the United Nations convention on the Reduction of Statelessness ... Our proposals to change the existing law have of course meant a consequential need to change the way in which we approach statelessness. This is because the move away from the full operation of the *ius soli* has meant that some children will not acquire our citizenship on birth in the United Kingdom ... They could be stateless if they do not acquire the citizenship of a parent ... [W]e have turned to reliance on those provisions of the convention which provide for the acquisition of citizenship after a period of residence in the territory of the State.'²⁷

Accordingly, para 3 of Sch 2 to the Act provides a statutory entitlement to register as a British citizen. In short, it provides a right to British citizenship to a person born stateless in the UK provided the person has remained stateless, is younger than 22 years and has lived in the UK for five continuous years at the point of applying to register.²⁸

This is not the only provision made for registration of a stateless child as a British citizen. Provision is also made for children born stateless outside the UK to a British citizen parent. Section 3(2) of the Act provides an entitlement to registration to any child (while she, he or they remain a child) born stateless outside the UK if that child would have been born a British citizen had the British citizen parent not been a British citizen by descent. It can be seen that both provisions also reflect the Act's concern with connection. In each of s 3(2) and para 3 of Sch 2, the child or young person entitled to register has a connection to the UK that is emphasised by her, his or their having no connection of nationality to any other place but that is not sufficient. In the case of the former, it is necessary that the child would have been born a British citizen but for the provision to restrict the passing on of citizenship across generations born outside the UK. In the latter, it is necessary that the child or young person has an additional connection of birth and a lengthy period of residence in the UK to the point of application for registration.

Future generations born outside the UK

Section 3 of the Act – referred to under the previous subheading – makes further provision for rights of children to register as British citizens. It only applies to children. A child who does not exercise any right she, he or they may have under s 3 before reaching majority loses

26 Article 1(2), 1961 UN Convention on the Reduction of Statelessness.

27 *Hansard* HC, Standing Committee F, 6 May 1981: Col 1730.

28 There are somewhat similar provisions made for absences as are found in s 1(4) of the Act, albeit with the added complication that para 3 of Sch 2 addresses the circumstances of people born in the UK or in a British overseas territory and the right is to either British citizenship or British overseas territories citizenship subject to whether the person has spent more of the relevant five years period in the UK or in the British overseas territories respectively.

that right. The bulk of the provisions of s 3 concern children born to a parent who although a British citizen is, by reason of being a British citizen by descent, prevented from passing on that citizenship to a child born outside the UK. Leaving to one side children born stateless in such circumstances, the section makes two distinct provisions for registration by entitlement of these children.

Section 3(2) provides an entitlement to register to a child born to a British citizen by descent if the parent in question has spent at least three years living in the UK prior to the child's birth.²⁹ Section 3(5) provides an entitlement to register to a child born to a British citizen by descent if the child has spent three years living in the UK with her, his or their parents – or living with a parent if the other parent is dead or the parents are separated within the terms of s 3(6)(a).³⁰ The focus of these provisions in s 3 can be understood in similar fashion to the provisions of s 1. The underlying intention is to recognise the connection of the child. Where the child's parent has retained some connection through sufficient residence in the UK before the child's birth, even though born overseas, the Act anticipates the likelihood of the child's connection even though she, he or they are also born outside the UK. In other circumstances, the child's connection is recognised once the child has taken up residence in the UK with the parents for a sufficient period.

The discretionary power to register any child

What has been discussed thus far of s 3 is of relatively limited scope. Section 3(2) and 3(5) only apply to children born outside the UK to a British citizen parent. Section 3(1), however, is of far wider application. It provides:

‘If while a person is a minor an application is made for his registration as a British citizen, the Secretary of State may if he thinks fit, cause him to be registered as such a citizen.’

On its face, this retains the general discretion under which any child may be registered as a British citizen formerly found in s 7(2) of the British Nationality Act 1948. The discretion is unfettered. As recognised by the High Court in *R (Ali) v Secretary of State for the Home Department* [2007] EWHC 1983 (Admin), it cannot properly be reduced to ‘rigid considerations.’ It is clear from parliamentary scrutiny of the Bill that s 3(1) was expected to perform a variety of roles. One role, or variety of roles, expressly relied upon by Ministers was to cater for hard, obscure or compassionate cases of children, who do not meet the other provisions of the Act conferring rights to British citizenship or are unable to evidence their doing so.³¹

However, it is necessary to recall the underlying intention of Part I of the Act. That intention is to recognise British citizenship on the basis of connection to the UK. As discussed above, what is meant by connection is revealed by considering the rights to British citizenship established by Part 1 holistically. The connection that is relevant is that of the particular person. In the case of s 3(1), which only applies to children, that means the particular child whose

29 This is subject to a maximum period of absences totalling 270 days over the relevant three years: see s 3(3)(c)(ii), British Nationality Act 1981.

30 Again, this is subject to a maximum period of absences totalling 270 days over the relevant three years. Here it is necessary to consider each of the child and parent(s) separately in calculating whether any of them have exceeded the absence limit: see s 3(5)(b), British Nationality Act 1981.

31 See eg *Hansard* HC, Standing Committee F, 24 February 1981: Col 186; 26 February 1981: Cols 217–218.

right to British citizenship is in question. The Ministerial assurances and explanations on which Parliament acted in legislating for various entitlements to British citizenship for children born in the UK included express concern that all children growing up in this country be recognised as its citizens and so share the same sense of belonging and security as their peers. The requisite connection was said to be reasonably anticipated when the child's parent was a British citizen or settled or to have been conclusively demonstrated, whatever the status of the child's parents, where the child had spent the first 10 years of her, his or their life in the UK.

Whereas it is not possible to exhaustively delineate the application of s 3(1), it is possible to identify certain of the circumstances in which the section, read in the context of the statutory rights in Part 1 taken as a whole, provides children with the right to register as British citizens. The work of the Project for the Registration of Children as British Citizens (PRCBC) – the public interest claimant in *PRCBC, O & A* – has particularly highlighted two such circumstances. The first concerns children taken into care. PRCBC has represented several children in local authority care under full care orders. The issue of a full care order is an emphatic statement of the state's responsibility for the child at both the time of the making of the order and into the future, including statutory responsibilities of social services to the child that extend into the early years of adulthood.³² The future of these children clearly lies in the UK and the connection the Act seeks to recognise by citizenship is thereby established.

The second concerns children brought to the UK at a young age. PRCBC has assisted many children who arrived in the UK long before their teenage years and have grown up in this country. Some of these children began life in the UK only a few years old, others only a few months of age. In such circumstances, children have little more – sometimes no more – memory, let alone connection, with any other place than children born in the UK. If the intention underpinning Part 1 of the Act is to be fulfilled, it is no less imperative that these children be recognised as British citizens. Registration under s 3(1) provides the means to achieve that. As with other provisions for registration, the status of a parent is not what is ultimately relevant. The connection that is of concern is that of the child. In the same way that a parent's status under s 1 of the Act is a sufficient but not necessary indicator of a child's connection – under subs (1) or (3) it is sufficient but under subs (4) it is neither necessary nor relevant – so is the case under s 3(1).

These are not the only circumstances in which s 3(1) will apply. The circumstances of one of the child claimants in *PRCBC, O & A* gives another. A was born after 1 July 2006 in the UK to a mother who was neither a British citizen nor settled. Her father was a British citizen but not married to her mother. Although the Act had been amended so that from that date citizenship would be passed on by fathers to children born out of wedlock, this did not include children born to mothers married to somebody else. In such circumstances, s 50(9A) treats the father as being the mother's husband for the purposes of the Act. This situation has since been declared by the High Court, and accepted by the Secretary of State, to be incompatible with the Human Rights Act 1998.³³ As yet, however, the only provision by which this incompatibility can be remedied is s 3(1), under which the Secretary of State has the power, on an application received, to put a child in the position she, he or they would and should have been but for the Act's current incompatibility.

32 Responsibilities under the Children Act 1989 may continue beyond majority.

33 *R (K, a child) v Secretary of State for the Home Department* [2018] EWHC 1834 (Admin). The Secretary of State's appeal to the Court of Appeal was withdrawn.

The distinction between registration and naturalisation

Thus far, one aspect of Part 1 has not been considered. That is naturalisation. Section 6 and Sch 1 to the Act make provision for adult migrants to the UK to be naturalised at the discretion of the Secretary of State. There are several statutory requirements, many but not all of which the Secretary of State may waive. It is not the purpose of this article to review naturalisation. However, it is important to understand its distinction from registration. Naturalisation is concerned with adult migrants – that is with people who ordinarily have a connection to another place but who wish to make their connection with the UK. By contrast, registration is concerned with people who have a connection to the UK, a connection that provides a right to British citizenship. This distinction was expressly highlighted by Ministers during scrutiny of the Bill. At Commons' report stage, Rt Hon William Whitelaw, Home Secretary, went to considerable length to emphasise this basic distinction when responding to an amendment to introduce appeal rights against decisions to refuse naturalisation. He said:

‘I do not believe that a right of appeal, as proposed in the new clause, is compatible with the general principles underlying naturalisation as it has always existed in our law ... I say “naturalisation” because the case is different with the provisions in our legislation which provide for registration as an entitlement – the decisions taken by the Secretary of State on such applications are not discretionary. If satisfied that the entitlement exists, the Secretary of State must grant the application ...

I thought that I had made the case that registration is an entitlement and naturalisation is not ... The existence, therefore, of entitlement to registration in our nationality law does not affect my main contention, which is that people who are not our citizens can have no right to our citizenship.’³⁴

None of this is in any way to question the strong reasons for enabling people – whose connection in life has been firmly established somewhere else but who wish to make their connection here – to become British citizens. It is, however, to recognise that the approach of British nationality law maintains a clear distinction between that process of naturalisation, which is importantly conditional upon the person having satisfied the requirements of the immigration system for settlement,³⁵ and the rights granted under the Act of people already connected to the UK to British citizenship by automatic acquisition or registration.

Other registration provisions

Before moving on to consider how the registration rights have been undermined by subsequent developments of law, policy and practice, it is necessary to add a few words in relation to provisions for registration that have so far not been addressed. Firstly, there are provisions that were time limited and have since been repealed by the Nationality, Immigration and Asylum

³⁴ *Hansard* HC, 2 June 1981: Cols 855–856.

³⁵ The requirement that a person be settled in the UK is one of the statutory requirements for naturalisation for which the Act provides no power to the Secretary of State to waive.

Act 2002. Section 7 of the Act has been referred to in the discussion of Commonwealth citizens. Section 8 entitled wives of citizens of the United Kingdom and Colonies, who had become British citizens at commencement of the Act and had not renounced that citizenship, to register as British citizens. It included discretionary power to register wives who would have enjoyed that entitlement but for the death of their husband before the Act's commencement or where their husband had renounced. Section 9 entitled certain children born outside the UK to fathers, who had become British citizens at commencement of the Act (or would have become so had they not died), to register as British citizens in circumstances where, had they been born before the Act's commencement, they would also have become British citizens at that event. It can be seen that the purpose here is similar to that of s 7.

Secondly, there are provisions recognising the connection of people with other British nationalities. In brief, these provide entitlements to certain British nationals who are settled in the UK³⁶ and to certain British nationals without the nationality of any other country.³⁷ As regards British overseas territories citizens there is special provision for registration by discretion of such citizens even though not settled in the UK.³⁸

Thirdly, there are provisions introduced to the Act since its commencement. Certain of these are to recognise the connection of children born to members of the Armed Forces.³⁹ Of especial significance, are provisions to address historical injustices in British nationality law that have served to exclude people from British citizenship.⁴⁰ Section 4C concerns people born to British mothers.⁴¹ The Act ended the historical discrimination whereby fathers could pass on nationality but mothers could not but this left many people born outside the UK before 1983 without British citizenship because their mothers had not been permitted to pass on their British nationality. Sections 4E to 4J concern people born to British fathers out of wedlock.⁴² Until 1 July 2006, British nationality law did not permit fathers to pass on their nationality in these circumstances. The change then made to permit this did not rectify the position for people born before that date.⁴³ These later amendments to the Act provided entitlements to register to people who would either have been born British citizens, or have acquired British citizenship at the commencement of the Act, but for the relevant historical discrimination.

It is necessary to note here that the provisions concerning people born to fathers out of wedlock have created an anomaly. A person born in these circumstances before 1 July 2006 was not a British citizen at birth but she, he, or they now have an entitlement to that citizenship. This is so whether or not the person's mother was married to someone other than the person's father. However, someone born after that date in these circumstances will still not acquire citizenship if the mother is married to someone else, who like the mother is not a British citizen or settled. This person remains without an entitlement to register as a British citizen leaving her, him or them in a worse position than the person born before the relevant date. As discussed above, s 3(1) is the only provision of the Act that can assist such a person. Not only is that provision discretionary it is generally subject to the registration fee and the power to waive that fee, solely for the purposes of registering a child who would have been born a British citizen but

36 Section 4, British Nationality Act 1981.

37 Section 4B, British Nationality Act 1981.

38 Section 4A, British Nationality Act 1981.

39 Sections 1(1A), 1(3A) and 4D, British Nationality Act 1981.

40 A discussion of the righting of these wrongs is to be found in Alison Harvey, 'Nationality Law: Righting to Wrongs of History?' (2017) 31 IANL 289.

41 Section 4C was introduced in April 2003 by section 13, Nationality, Immigration and Asylum Act 2002.

42 These sections were introduced in April 2015 by s 65, Immigration Act 2014.

43 Section 9, Nationality, Immigration and Asylum Act 2002.

for these particular circumstances, has only lately been introduced following the High Court judgment in *PRCBC, O & A*.⁴⁴ The entitlement of the person born before 1 July 2006 in similar circumstances is exempted from that fee.⁴⁵ This anomaly nonetheless provides one example that emphasises the vital importance of s 3(1) – a necessarily discretionary power because of its need to cater for a wide range of circumstances not all of which can be either anticipated or precisely specified in the statutory language.

Finally, there are a couple of provisions which continue from the Act's beginning. Section 13 concerns people who have renounced their British citizenship. It provides that in specified circumstances the person is entitled to regain her, his or their citizenship by registration; and in other circumstances (either where the person has renounced more than once or renounced for reasons other than to retain an alternative nationality) may be registered at the discretion of the Secretary of State. Section 5 entitled certain British nationals, who fell to be treated as nationals of the UK for the purposes of the EU Treaties, to register as British citizens.

All of these provisions for registration fulfil a shared objective of securing the parliamentary intention that connection be the principle underpinning the recognition of British citizenship. With limited exception of now s 3(1) and the provision for resumption – where a person's renunciation is indicative of a particular determination to abandon her, his or their connection – each of these provisions is by way of entitlement.⁴⁶ However, s 3(1) is critical for completion of the statutory purpose for without it connection, which can be rationally identified from consideration of the rights to citizenship in Part 1 as a whole, would go unrecognised by the Act for want of the legislature's capacity to foresee and specify every circumstance in which the connection would arise.

B. Developments that have affected or undermined registration rights

There are four distinct categories of development that will be considered here. Firstly, changes in policy that have had an impact on the number of people, particularly children, to whom the rights of registration apply. Secondly, legislative changes that have undermined these rights; fee-making powers and the good character requirement are separately considered. Thirdly, the UK's withdrawal from the EU. Fourthly, practice at the Home Office.

Changes in policy

There have been a number of changes in policy that have affected a key aspect of what Parliament had anticipated when passing the Act. The expectation was that it would be relatively rare that people who had migrated to the UK would remain in the country for ten years or more without having become settled.⁴⁷ For many years, immigration policy concessions enabled people, who had been living in the UK over many years, to become settled. Towards the end of its period in office, the last Labour administration moved concessions related to individuals

44 Regulation 9, Immigration and Nationality (Fees) (Amendment) (No 2) Regulations 2020, SI 2020/294.

45 Paragraph 1 of Sch 8 to the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 lists the relevant provisions for registration under the British Nationality Act 1981 in respect of which fees apply. It omits ss 4C, 4G, 4H and 4I.

46 More on the significance of that statutory language can be found in *PRCBC's Commentary on Parliament's intention in introducing registration provisions for children in the British Nationality Act 1981 as this relates to fees*, August 2018.

47 *Hansard* HL, 7 July 1981: Col 666.

into the immigration rules. It withdrew the concession related to families with children. The Conservative administration that succeeded it went further. It revised the immigration rules such that many people, who would previously have benefited from the concessions, either lost the opportunity to settle altogether or were required to secure 30 months leave to remain and renew this over successive periods before being eligible to apply for settlement after amassing ten years of such leave.⁴⁸

These changes have had a dramatic effect in relation to the Act. The number of children born in the UK without British citizenship will be greater because these changes have delayed or prevented parents from having become settled prior to the birth of their children. Similarly, the proportion of children born in the UK reliant on s 1(4), rather than s 1(3), for their citizenship rights has increased because the changes have delayed or prevented parents from becoming settled earlier in the child's life.⁴⁹

It is also worthy of note that these changes have increased the importance of s 3(1) to many children brought to the UK at a young age. Section 3(1) provides a right to registration that is lost if not exercised before a child reaches majority. The impact of this loss of citizenship rights is now all the greater for many young people left having to satisfy the immigration rules over many years and make several successive applications for periods of 30 months leave to remain before they may apply for settlement. The impact is not only felt by these young people but also by their children born in the UK without the British citizenship they would have acquired at birth had their parent been registered before reaching majority.

Fee-making powers

When the Act took effect on 1 January 1983, the fee for registration as a British citizen stood at £35. During the Act's passage, Ministers made clear the government's intention to recover as much of the administrative cost of nationality applications as possible while emphasising the importance of people securing British citizenship and assuring Parliament that there was no intention to set fees 'at a totally impossible level.'⁵⁰ At the time, there was no power to set Home Office fees – whether nationality or immigration fees – at levels above administrative cost. That general position changed in the mid-2000s beginning with the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The first fee for registration as a British citizen set at above administrative cost was in April 2007, when the fee for a child to register as a British citizen was doubled from £200 to £400.⁵¹ This was also the first time that nationality and immigration fees were made by joint regulations. Previously, nationality fees had been set by distinct regulations.⁵²

Fees are now set by regulations made under ss 68 and 69 of the Immigration Act 2014. The current fees of £1,012 for a child to register as a British citizen, and £1,206 for an adult

48 A discussion of the concessions and rules discussed here may be found in Solange Valdez & Declan O'Callaghan *Children pay the price of tough immigration policies*, Legal Action Group, February 2015.

49 FOI responses provided to PRCBC have shown a considerable rate of increase in the number of s 1(4) applications recorded by the Home Office since PRCBC's establishment.

50 *Hansard* HC, Standing Committee F, 12 May 1981: Cols 1883–1884.

51 Regulation 20, Immigration and Nationality (Fees) Regulations 2007, SI 2007/1158.

52 The Immigration and Nationality (Fees) Regulations 2007, SI 2007/1158 were made under ss 51 and 52, Immigration, Asylum and Nationality Act 2006 and pursuant to s 42, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The previous British Nationality (Fees) Regulations 2003, SI 2003/3157 (last amended in 2005) had been made under s 41, British Nationality Act 1981.

to do so, are set far above the £372, which is said by the Home Office to be the administrative cost of registration.⁵³ The current legislative fee scheme, as its immediate predecessor, draws no distinction between nationality and immigration fees; and, as Ministers have repeatedly confirmed, is designed to raise revenue to pay for the UK's immigration system.⁵⁴ In pursuing this objective, and in legislating to permit it, neither government nor Parliament had considered the nature of the specific rights to British citizenship conferred by registration and the impact on rights to British citizenship established under the Act. In recent years, the advocacy of PRCBC has led to reflection in some quarters of Parliament upon these matters, but Ministers have steadfastly refused to engage with this, insisting instead that – particularly in relation to children – the interests and rights of people, who have lived all or most of their lives in the UK and have rights to its citizenship, are sufficiently or even best served by the possibility of their being granted leave to remain in the country and treated as migrants to it.⁵⁵

This is the subject of the recent judgment in *PRCBC, O & A*, in which the High Court ruled that the Secretary of State failed to assess and have regard to the best interests of children in setting the £1,012 fee (and its predecessor). Importantly, the court – having decided it was bound by a decision of the Court of Appeal that there was otherwise power to set the fee above cost and at a level beyond the reach of many children – granted a ‘leapfrog’ certificate under s 12 of the Administration of Justice Act 1969 for the claimants to apply to the Supreme Court for permission to appeal on the basis that there is no such power. However, the Supreme Court has since decided that the matter should nonetheless be considered by the Court of Appeal rather than leapfrog that court. The foundation for that appeal is that the generalised fee-making power granted under the Immigration Act 2014 is insufficient to cut down or render nugatory the specific statutory rights of registration under the Act. Essentially, the courts are being invited to give recognition to that which Parliament has neglected from the mid-2000s – the distinction between, on the one hand, the powers of the Secretary of State to decide on who may enter and stay in the UK and on what basis; and, on the other, the determination by Parliament of who is entitled to British citizenship.

The good character requirement

In similar fashion to the introduction of an above-cost registration fee, a statutory requirement of good character was introduced for registration by the Immigration, Asylum and Nationality Act 2006. The requirement was made to apply to any registration applicant who had attained 10 years of age. Parliament's scrutiny of the power to set fees at above-cost evidences no consideration of registration rights. The debates focused on immigration. However, while scrutiny of the good character requirement on its face appears different in that registration was inevitably the focus of the discussion, understanding of these registration rights was largely absent.

It is poignant that Ministers, when explaining the need to introduce a requirement that would apply to thousands of children born and grown up in the UK, who had never been anywhere else, repeatedly referred to the need to ensure the good character of people

53 Visa Fees Transparency Data, 6 March 2018 (last updated 7 March 2019).

54 Several such Ministerial statements are recorded and considered alongside relevant government publications in *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin), paras 23–34.

55 This position was advanced by the Secretary of State in her evidence (though not her submissions) and rejected in *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin), paras 107–116.

coming to the UK.⁵⁶ Such an explanation might have been apt for a measure being applied to naturalisation. That process had always been subject to such a requirement under the Act (and previously). The distinction between registration and naturalisation was either not understood or overlooked by Ministers.⁵⁷ The former is the means to recognise the citizenship of people who have the requisite connection to the UK as identified by Parliament through the Act. The latter concerns adults who have migrated to the UK, with connection elsewhere, who wish to be permitted to make that connection with this country.

Some of the controversy arising from the failure of Parliament to recall and respect this distinction when introducing a statutory good character requirement for registration is beginning to be recognised. There are four particular areas that have received some attention. Firstly, the provisions to remedy historical discrimination had been undermined. The requirement excluded people from the remedy provided to right the wrong whereby they were not British citizens at birth or commencement even though the requirement would never have applied to them had that wrong never been perpetrated. This resulted in declarations of incompatibility of the requirement in relation to the relevant registration provisions,⁵⁸ an incompatibility that has now been removed by remedial order.⁵⁹

Secondly, the Joint Committee on Human Rights has drawn particular attention to the injustice done by depriving children of their rights to register as British citizens.⁶⁰ In doing so, the Committee has rightly distinguished registration and naturalisation. The former Prisons and Probation Ombudsman has criticised the exercise of deportation powers against people who have grown up in the UK since early childhood.⁶¹ The force of these well-founded criticisms is, however, misunderstood when they are not placed in their proper context, which concerns the rights to registration of British citizenship discussed here and the connection to the UK which these rights are intended to recognise.

The injustice done to people born and growing up in the UK by the introduction of a statutory good character requirement is exacerbated by the guidance adopted by the Secretary of State. That guidance, even after specific criticism from the Independent Chief Inspector of Borders and Immigration,⁶² continues to make scant provision for assessing the character of children in any way different to adults. The guidance also does not distinguish naturalisation and registration; and largely adopts a rigid approach, particularly to offending and sentences, that is likely to deter many people entitled to citizenship from registration and encourage decision-makers to refuse registration on the basis of fixed and general thresholds rather than any proper or reasonable assessment of a person's character.⁶³

56 See eg *Hansard* HL, 19 Jan 2006: Col GC279 per Baroness Ashton of Upholland.

57 Ministers spoke of aligning registration and naturalisation with no appreciation or consideration of the distinction between these provisions: see eg *Hansard* HC, Public Bill Committee, 27 October 2005: Col 270 per Tony McNulty, Immigration Minister.

58 In *R (Johnson) v Secretary of State for the Home Department* [2016] UKSC 56, the Supreme Court gave a declaration relating to ss 4F, 4G, 4H and 4I; and in *(Bangs) v Secretary of State for the Home Department* (CO/1793/2017), the High Court made a declaration relating to s 4C by consent of the parties.

59 British Nationality Act 1981 (Remedial Order) 2019, SI 2019/1164.

60 *Good Character Requirements: Draft British Nationality Act 1981 (Remedial Order) 2019 – Second Report*, Twentieth Report of Session 2017–2019, HC 1943, HL Paper 397, July 2019; the report addresses both the good character requirement and the registration fee as these apply to children.

61 See *Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons*, Cm 9661, July 2018, Stephen Shaw, paragraphs 4.93–4.99 & recommendation 33.

62 *A short inspection of the Home Office's application of the good character requirement in the case of young persons who apply for registration as British citizens, February–April 2017*, July 2017.

63 The relevant guidance is *Nationality: good character requirement*, version 1, January 2019.

Thirdly, race discrimination is now widely acknowledged in the criminal justice system with black, Asian and other ethnic minority people suffering disproportionately from stops, searches, prosecution and sentences.⁶⁴ However, the impact of this on citizenship decision-making receives very little attention. This is despite the fact that acts and decisions of the criminal justice system are specifically relied upon as grounds for excluding people from their registration rights under the Secretary of State's guidance and the Home Office has expressly entered into arrangements with police forces for gathering personal data for the purpose of refusing citizenship.⁶⁵

Finally, there is a less direct relation to a further current controversy. The remedial measures introduced by the government to the Windrush scandal, as discussed above, include the offer of naturalisation without charge. This remedy is apt for people who lost their British nationality and their rights to register as British citizens several decades earlier. However, naturalisation is, as it always has been, subject to a requirement of good character. This remedy, therefore, is being withheld from people who – had they been assisted to understand what had been done to their nationality by the Act and its predecessors and the time-limited registration rights given to them in mitigation of that – would have registered as British citizens impeded by no such requirement.

Withdrawal from the EU

Unlike, the matters previously discussed here, the UK's departure from the EU does not in itself undermine or affect British nationality law. However, it is an event that has caused rights to British citizenship to have a greater and more immediate significance for many people – much in the same way that developments in immigration policy and practice have given especial salience to the loss of citizenship rights suffered by many Commonwealth citizens long settled in the UK. EU citizens have long been secure in the UK by reason of their rights of free movement; their children enjoying the same security and rights. Withdrawal from the EU has thrown this on its head. However, among all the understandable anxiety about access to the Home Office scheme to ensure EU citizens' settled (or pre-settled) status in the UK, little attention has been given to the many EU citizens who are British citizens by birth in the UK to a settled parent or who have rights to register as British citizens. It is a terrible irony that one of the many lessons not learned from the Windrush scandal has been that an immigration status, even that of settlement in the UK, does not provide the security of British citizenship. Those EU citizens, many of them children, who are currently being encouraged to register for an immigration status, despite their having British citizenship or rights to register as British citizens, are essentially being drawn along much the same dangerous path as were Commonwealth citizens so many years ago.

Home Office guidance and practice

PRCBC has experienced many aspects of Home Office guidance and practice which similarly undermine or frustrate Part 1 of the Act. Chief among these are unnecessary and obstructive evidential demands, failure to give any or adequate reasons for refusal of registration, guidance to

64 See eg The Lammy Review, September 2017 and *Investigating the association between an offender's sex and ethnicity and the sentence imposed at the Crown Court for drug offences*, Sentencing Council, January 2020.

65 See eg *Trapped in the Matrix*, Amnesty International, May 2018.

decision-makers that improperly fetters their discretion⁶⁶ and delays.⁶⁷ An example is provided by the practice at the Home Office and Passport Office of refusing to confirm from records available to the Secretary of State the grant of citizenship or settlement given to a parent that would confirm a child's British citizenship at birth or entitlement to register. The Home Office has been similarly intransigent in refusing to act on confirmation available to it or a sister department of a relevant parental relationship. These and other routine practices delay and prevent recognition of rights to British citizenship and show a marked disrespect of these rights and the parliamentary intentions underlying Part 1 of the Act.

C. Conclusions

Section A of this article sets out the rights to British citizenship established by Part 1 of the Act. As that section argues, these rights together comprise a comprehensive assessment of what Parliament intended as constituting the connection of people to the UK that required recognition by automatic acquisition or registration of British citizenship. It is not possible to fully comprehend the nature of the principle that Parliament adopted for recognition of the right to British citizenship without considering the provisions as a whole; and the right to registration under s 3(1) cannot properly be understood and applied if considered in isolation from the other rights in Part I. Section B of the article addresses several significant ways in which the rights to registration have been undermined and frustrated by subsequent decisions and acts of Parliament and the Home Office; and touches on some of the consequences of this.

In December 2019, the High Court gave judgment in *PRCBC, O & A* in response to a claim for judicial review that challenged one of the developments of more recent years that has served to undermine and frustrate the underlying purpose of Part 1 of the Act. That is the introduction of above-cost fees for registration. The claimants in *PRCBC, O & A* challenged, in particular, the fee that applies for children's registration. The judgment constitutes an important step towards reassertion of the original parliamentary intention. It is founded upon a recognition both of the importance of British citizenship to those entitled to it and of the distinction between nationality law and the very different statuses that may be granted to a person by the Secretary of State under powers given to her under the Immigration Act 1971 to regulate who is to be permitted to enter and stay in the UK and on what basis. The claimants' appeal to the Court of Appeal on the ground that 'the level of the fee is incompatible with the statutory scheme under the BNA 1981 in that it renders nugatory entitlements to register and for that reason is not authorised by the vires-creating power conferred by s.68 of the Immigration Act 2014'⁶⁸ provides an opportunity for an authoritative ruling on registration rights and the statutory purpose underpinning them. That would not merely be advantageous for addressing the particular barrier to rights of registration constituted by the fee. It has potential for preparing the ground for further legal and other challenges to many other barriers to those rights, including the various developments discussed in Section B.

66 *Nationality: good character requirement* and the guidance on section 3(1) in *Registration as a British citizen: children*, version 5, January 2020 are particularly problematic. The former is briefly discussed elsewhere in this article. The latter tends to promote an approach that is inappropriate for being both mechanistic and too closely concerned with the circumstances of parents rather than children and the provisions for naturalisation.

67 Some of these obstacles are discussed in *Systemic Obstacles to Children's Registration as British Citizens*, Ealing Law Centre & PRCBC, November 2014.

68 *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin), para 4.

Moreover, the judgment coincides with events that, properly understood, have enhanced other opportunities and emphasised the need to secure changes to law, policy and practice outside the courtroom. The Windrush scandal demands that those interested in law and policy in the areas of nationality and immigration learn the importance of distinguishing these areas. Brexit is an occasion that has suddenly made this distinction important for the security and belonging of many thousands of EU citizen children who were born in the UK or brought to the country at a young age. The recommendation of the former Prisons and Probation Ombudsman in a report on detention provides an opportunity for a similar focus on this important distinction and the citizenship rights of people born and growing up in the UK. Regrettably, beyond the work of PRCBC, there remains very limited attention given to these matters although the report of the Joint Committee on Human Rights on its scrutiny of the draft British Nationality Act 1981 (Remedial) Order 2019 is a very welcome exception. The increasing use of powers of deprivation in recent years also gives cause for recalling the rights to British citizenship and their origin as discussed in this article.⁶⁹

The task, then, for lawyers and others is to urgently revisit and recall the parliamentary intent underpinning Part I of the Act by which British citizenship was introduced; and to ensure that intent is no longer left forlorn and forgotten and that tens of thousands – very possibly a greater number – of people entitled to British citizenship are no more abandoned to the vagaries and injustices of an immigration system that by rights has truly no business in regulating and threatening their lives.

Solange Valdez-Symonds
Solicitor and Volunteer Director, PRCBC

Steve Valdez-Symonds
Refugee and Migrant Rights Programme Director, Amnesty International UK

⁶⁹ A discussion of the powers of deprivation may be found in Alison Harvey, 'Recent Developments on Deprivation of Nationality on Grounds of National Security and Terrorism Resulting in Statelessness' (2014) 28 IANL, 336.