



Fife Centre for Equalities 25 June 2018
Equality Briefing

Windrush Generation and Commonwealth Citizens
Statement of Changes in Immigration Rules



Key points

- The House of Commons has passed a 'Statement of Changes to Immigration Rules' (see attached, and online: [HC 1154](#)), known as a new 'Windrush Scheme'
- This can be considered a relaxing of the 'hostile environment' as a result of the equality and human rights issues raised in the treatment of the Windrush Generation.
- While the issue has been highly mediatised, there is still a lack of understanding (by the public and Home Office) that this concerns all British citizens from commonwealth countries
- Emphasis on the Windrush generation has led the Home Office to prioritise British Caribbean citizenship cases resulting in delayed or error-prone decision for other commonwealth citizens or EU 'pre-settled status' applications

Who does this concern?

Windrush Generation: Commonwealth citizens

The 'Windrush Generation' involves not only people of Jamaican descent, but also **all people born in Commonwealth countries** ([Appendix 1](#)) who arrived in the UK before 1971 and were given indefinite leave to remain. They arrived from British colonies that had not achieved independence and came to the UK with the status of UK citizens.

Reports by the Joint Council for the Welfare of Immigrants (JCWI)¹ indicate that British citizens of Indian, Ghanaian and Pakistani descent have received similar treatment to British Caribbean nationals.

The UK's Home Office policy after WWII was from 1948 to 1971 to actively encourage immigration from the Commonwealth to increase labour and help rebuild the country. Through this, 599,078 people came to England and Wales by 1971. Of this group 90% hold a UK passport, however 4% (21,053) have no passport and 1,962 have other non-UK passports. We do not have a further detailed breakdown of passports held by the Commonwealth citizens in Scotland and Fife at this time.

However, the Census 2011 shows that at least 20,938 people born in a range of commonwealth countries came to Scotland before 1971 ([Appendix 2](#)). Assuming similar proportions to the UK average (4%), this gives an estimate of 838 people who might face similar issues of having to prove legal basis for residence and UK citizenship in Scotland.

¹ [Windrush and the Hostile Environment](#). JCWI 26 April 2018



Why did this happen?

The 1948 British Nationality Act gave the status of 'Citizen of the United Kingdom and Colonies' (CUKC status) to all subjects of the country's Empire. This also includes minors who travelled to the UK on their parent's British passport. The issue revolves around a lack of evidence, as the Home Office did not originally issue official leave to remain documentation to individuals for their CUKC status and more recently, the UK Border Agency (UKBA) destroyed millions of records and registry slips (i.e. landing cards).

The UKBA following the Data Protection Act 1998 directive of not to keeping records for longer than necessary, judged in 2009 the landing cards to be of limited value. However, with Immigration Act 2014 (and the 'hostile environment'²), the landing cards would have served as evidence alongside other documents to help someone threatened with deportation to prove their legal basis for residency or citizenship in the UK.

Impact on policy and practice

The Home Office has launched a new Windrush Scheme, offering free citizenship for Commonwealth citizens who arrived before 1973 as well as children who joined their parents before they turned 18. On 21 June 2018, 283 people have been granted UK citizenship³.

Implications for equality in public services:

Windrush generation citizens from across all commonwealth countries should indiscriminately receive assistance from public services and careful attention should be paid to inconsistencies in treatment or in the citizenship application process.

Financial implications for residents:

The decision to waive the ILR fees (around £3420 per application) will relieve the impact on commonwealth citizens living in poverty. In parallel, the 'settled status' for EU citizens is now expected to cost £65 for adult applicants, £32.50 for children under the age of 16 and £0 for those already with indefinite leave to remain, or children in care.

Previous rules:

- Indefinite Leave to Remain (ILR⁴) automatically lapses after two years' absence from the UK.
- Returning residents had to show that they had lived in the UK most of their life.

² [Theresa May interview](#) Telegraph 25 May 2012

³ [Windrush lessons learned review](#). Home Office 21 June 2018

⁴ ILR application: click 'Apply to settle' on the UK Government website at: <https://www.gov.uk/browse/visas-immigration/settle-in-the-uk>



- e.g. the 'Windrush Generation' had to prove continuous residence in the UK since 1973, despite not being required to before the amendments of the Immigration Act in 2014 and 2016.

From Friday 6 July 2018:

- Indefinite Leave to Remain status can be restored if strong ties to the UK can be demonstrated (i.e. years of residence, employment etc), free ILR for the Windrush migrants from the commonwealth
- Clearer rules and distinction between people who have been absent for under two years, and those who have been absent for longer than two years.
 - People who have been absent for longer than two years must apply for leave to enter and must show that they have strong ties to the UK and intend to make the UK their permanent home.

Media Sources:

Windrush generation: Who are they and why are they facing problems?

<https://www.bbc.co.uk/news/uk-43782241> [18 April 2018]

The UK's Windrush generation: What's the scandal about?

<https://www.aljazeera.com/news/2018/04/uk-windrush-generation-scandal-180418074648878.html> [18 April 2018]

Key Resources

- **UK Visas and Immigration**
Statement of changes to the Immigration Rules: HC1154, 15 June 2018
<https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc1154-15-june-2018>
- **Census - COB (UK, Commonwealth, continent) by YR arrival by passport - Nat to region**
[ONS Table CT0801 2011 Census - COB \(UK, Commonwealth, continent\)](https://www.ons.gov.uk/census/2011-census-tables/2011-census-table-ct0801)
- **Scotland's Census 2011 Table AT_632_2011**
<http://www.scotlandscensus.gov.uk/ods-web/data-warehouse.html>
- **Oxford Migration Observatory**
Commonwealth migrants arriving before 1971, England and Wales, 2011 Census
<http://www.migrationobservatory.ox.ac.uk/resources/commentaries/commonwealth-citizens-arriving-before-1971/>



- **Free Movement**

New statement of changes to the Immigration Rules: HC1154

<https://www.freemovement.org.uk/new-statement-of-changes-to-the-immigration-rules-hc1154/>



APPENDIX 1

Commonwealth Countries below are list by the Commonwealth Secretariat (London). On Census day (27th March 2011), the Commonwealth had 54 members. Commonwealth membership changes over time and this grouping does not include those born in countries that may have left the Commonwealth prior to 2011.

Antigua and Barbuda	Mozambique
Australia	Namibia
Bahamas, The	Nauru
Bangladesh	New Zealand
Barbados	Nigeria
Belize	Pakistan
Botswana	Papua New Guinea
Brunei	Rwanda
Cameroon	St Kitts and Nevis
Canada	St Lucia
Cyprus (Non-European Union)	St Vincent and the Grenadines
Dominica	Samoa
Fiji	Seychelles
Gambia, The	Sierra Leone
Ghana	Singapore
Grenada	Solomon Islands
Guyana	South Africa
India	Sri Lanka
Jamaica	Swaziland
Kenya	Tanzania
Kiribati	Tonga
Lesotho	Trinidad and Tobago
Malawi	Tuvalu
Malaysia	Uganda
Maldives	Vanuatu
Malta	Zambia
Mauritius	



APPENDIX 2

Extract from Scotland's Census 2011 - National Records of Scotland
[Table AT 632 2011 - Country of birth by year of arrival in the UK](#)

Note:

Zimbabwe and Hong Kong are not in the current commonwealth country list, however

	Born outside the UK – Living in Scotland in 2011			
	Total	Arrived before 1961	Arrived 1961 - 1970	Arrived 1971 - 2011
Ghana	1,658	60	112	77
Nigeria	9,458	148	214	135
Kenya	2,743	265	739	414
Malawi	818	65	81	130
Mauritius	571	24	130	151
South Africa	10,607	462	427	1,026
Uganda	986	66	158	229
Tanzania	681	119	173	99
Zambia	1,637	82	224	404
Zimbabwe	4,666	173	215	337
Hong Kong	7,586	378	1,026	1,925
Bangladesh	2,231	20	121	190
India	23,489	2,380	2,071	1,204
Pakistan	20,039	626	2,585	2,390
Sri Lanka	1,711	214	95	114
Malaysia	4,721	419	463	267
Singapore	3,039	369	1,003	520
Canada	9,435	1,832	1,114	1,093
Jamaica	564	98	132	61
Trinidad and Tobago	663	80	102	80
Australia	8,279	649	764	937
New Zealand	3,632	207	253	367
	119,214	8,736	12,202	98,276
		20,938		



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