



GLOBAL BRITONS

A fairer pathway to British citizenship

By Henry Hill and Andrew Yong

BRIEFING PAPER

EXECUTIVE SUMMARY

- There is widespread public support for long-term British residents to become citizens. Citizenship is seen as part of successful integration into British society.
- However, Windrush migrants, armed forces veterans, residual British nationals and other long-term United Kingdom (UK) residents are all victims of immigration and nationality requirements and fees that are inflexible, over-prescriptive and extortionate.
- Excessively rigid physical residence requirements, which have no bearing on whether or not an applicant settled in the UK is suitable for citizenship, and which cannot be waived, are the biggest reason for the rejection of citizenship applications.
- Immigration and nationality fees, first introduced in 2003, have gone up at a rate of almost 20% per annum, or over 15-fold. The application fees—totalling up to nearly £15,000 for a family of four—can be as much as ten times the Home Office’s processing costs.
- Residual classes of British nationals—namely, British Overseas citizens (BOCs), British Nationals (Overseas) (BN(O)s), British subjects, and British protected persons—continue to be treated as second-class citizens and denied the automatic right to live in the UK.
- This treatment violates basic precepts of international law and degrades the concept of British nationality, leaving some British nationals who gave up or lost their non-UK citizenships after 2002 to be effectively stateless and stuck in limbo in the UK.
- British nationality law is in need of a comprehensive overhaul. There are also reforms that can be carried out immediately to facilitate the acquisition of citizenship by those who are already part of our nation.
- If the Government wants to fulfil the United Kingdom’s historic duties and better facilitate integration, they should:
 - Make physical residence requirements for citizenship simpler and more flexible—nationality law should not duplicate pre-settlement residence tests that can be adequately addressed in the Immigration Rules;
 - Reduce immigration and nationality fees, including abolishing fees for armed forces veterans, NHS key workers, residual British nationals and children; and
 - Provide British citizenship to all residual classes of British nationals, who should be privileged over foreign nationals in all pathways to British citizenship.

Henry Hill is a freelance writer and News Editor of ConservativeHome.

Andrew Yong is a human rights lawyer and director of [GlobalBritons](http://www.globalbritons.org), who advocate for equal citizenship rights for all British nationals.¹

¹ <http://www.globalbritons.org>

The law governing British citizenship is out of date. Time and again, individuals with long-standing bonds of nationality or service are unable to make a permanent home in this country.

Windrush migrants whose Britishness should never have been in question have been locked out of the country by the Home Office, and then had the fact of that exile used to refuse the normalization of their citizenship. Commonwealth veterans who have won medals in Afghanistan, Bosnia and Iraq are forced to spend their life's savings trying—and often failing—to win the right to live here. And holders of so-called 'residual' forms of British nationality face an onerous path to citizenship which does not reflect their strong bonds to the UK.

This is the ideal moment to address these injustices. Brexit has given the UK the opportunity to rebuild the immigration system around its own history and priorities. More significantly still, the Government's decision to lay a pathway to citizenship for hundreds of thousands of Hong Kongers (and potentially millions more) means there is no compelling case not to do the same for the much smaller number of people with other forms of 'residual' citizenship.²

It has been four decades since the last British Nationality Act (1981). There has since been a thicket of piecemeal reforms. The legislation would benefit from a comprehensive overhaul. But there is no need to wait for that to make necessary and urgent reforms. This paper outlines a series of positive, practical steps ministers could take at once to make the immigration and nationality system deal faster, kindlier, and more effectively with those who are, in every important sense, already British.

CITIZENSHIP IN THE UK

Citizenship is the legal bond that joins an individual to the state to which he or she belongs. It carries with it rights and obligations on the part of both citizen and state. In most countries, citizenship carries the right to live in one's country of citizenship and, in democratic societies, the right to vote and to stand for public office. Citizenship also carries with it a duty of loyalty and a corresponding right to protection by the state, both at home and abroad.

In the UK, British citizens have all the key rights and obligations of citizenship. However, due to Britain's complex imperial history, each of these rights also extends to various other groups:

² Henry Hill, 'We need a 'Hong Kong doctrine' for Britain's overseas nationals', CapX (online, 11 January 2021) <<https://capx.co/we-need-a-hong-kong-doctrine-for-britains-overseas-nationals/>>.

- **Right of abode in the UK:** British citizens and certain Commonwealth citizens who held this right before 1973 (Irish citizens in the UK have automatic settled status but not the right of abode);³
- **Right to vote in parliamentary elections:** British citizens, Irish citizens and Commonwealth citizens lawfully resident in the UK.⁴
- **Right to stand for election to Parliament:** British citizens, Irish citizens and Commonwealth citizens settled in the UK.⁵
- **Duty of allegiance, right to consular protection and eligibility for a British passport:** British citizens and other categories of British nationals.⁶

There is widespread support for the proposition that long-term UK residents should in due course become British citizens. An ICM poll commissioned by British Future in 2020 showed that 67% of respondents agreed that ‘if someone decides to live in Britain long-term, it is a good thing if they have an opportunity to become British by taking citizenship’.⁷

Another 2020 poll by Opinium for Bright Blue found that 60% of respondents (including 63% of Conservative and 67% of Labour voters) agreed that ‘it is important for immigrants living permanently in the UK to become citizens’. The most common reasons selected in support of this position were that citizenship either was an important symbol of successful integration or led to higher levels of integration into British society (37% & 31% respectively).⁸

CRITERIA FOR CITIZENSHIP

As British citizenship carries with it the right of abode and the right to vote and stand for public office in the UK, there are and ought to be statutory controls on the persons to whom citizenship may be granted. However, statutory requirements should not be unduly rigid or disproportionate.

Historically, statutory provisions on naturalization have required a number of years of residence, service to the Crown, or other relevant connection to the UK. It has also become usual to impose requirements of good character, adequate knowledge of the English or other national languages and, more recently, knowledge of life in the UK.

FIVE YEARS’ RESIDENCE IN THE UK

³ Immigration Act 1971 (c 77) (‘1971 Act’) s 2 & 3ZA.

⁴ Representation of the People Act 1983 (c 2) s 4.

⁵ Electoral Administration Act 2006 (c 22) s 18.

⁶ British Nationality Act 1948 (11 & 12 Geo 6 c 56) (‘1948 Act’) s 3; British protected persons do not, per se, owe allegiance to the Crown, but will do if they hold a British passport; ‘British Passport Eligibility’, GOV.UK <<https://www.gov.uk/british-passport-eligibility>>.

⁷ Barriers to Britishness: Report of the Alberto Costa Inquiry into Citizenship Policy (British Future, 10 December 2020) 25 <<https://www.britishfuture.org/citizenship-inquiry-report/>> (‘Barriers to Britishness’).

⁸ Phoebe Arslanagić-Wakefield, A Better Reward? Public Attitudes to Citizenship (12 November 2020) <<http://brightblue.org.uk/a-better-reward-public-attitudes-to-citizenship/>>.

Since at least 1870, applicants for naturalization have been required to have at least five years' residence or service to the Crown.⁹ However, the application of this requirement has become steadily more restrictive over time. Whereas the 1870 Act did not specify when the relevant residence had to take place, the subsequent 1914 and 1948 Acts required that the five years' residence be within the last eight years before the application and include one year immediately preceding the application.¹⁰

The current legislation requires an applicant for naturalization to have been physically present in the UK on the day exactly five years (three years in the case of a spouse or civil partner of a British citizen) before the date of the application and to be resident thereafter for the following five (or three) years, of which the last year must be with settled status.¹¹ An applicant is settled in the UK if he is ordinarily resident in the UK with no time limit on the length of time he can remain here.¹²

While the Secretary of State has discretion to disregard absences during the five- or three-year residence period before a citizenship application, she has no general discretion to naturalize an applicant who was not physically present in the UK on the day exactly five (or three) years before the date of the application.¹³ This peculiar inflexibility is the biggest reason for the rejection of naturalization applications.¹⁴ The requirement has led to seemingly perverse decisions that have caused unnecessary hardship in a number of cases.

CASE STUDY: WINDRUSH VICTIM REFUSED BRITISH CITIZENSHIP

Ken Morgan, 70, moved from Jamaica to Britain in 1960 at the age of ten. Jamaica was then a British colony and Morgan was a Citizen of the UK & Colonies (CUKC) until Jamaica gained independence in 1962.¹⁵ While he could then have re-registered as a CUKC with only 12 months' residence in the UK, like many other Windrush migrants, his family believed themselves already to be British and did not do so.

Morgan continued to live and to work in the UK until 1994, when he returned to Jamaica for a relative's funeral. On his return journey, Morgan's British passport was confiscated and he was denied the right to re-enter the UK.

⁹ Naturalization Act 1870 (33 & 34 Vict c 14) ('1870 Act') s 7.

¹⁰ British Nationality and Status of Aliens Act 1914 (4 & 5 Geo 5 c 17) ('1914 Act') s 2; 1948 Act (n 6) s 10 & Sch 2, para 1.

¹¹ British Nationality Act 1981 (c 61) ('1981 Act') s 6 & Sch 1, para 1.

¹² Ibid s 50(2).

¹³ Ibid Sch 1, para 2. However, see below for armed forces applicants.

¹⁴ Home Office, 'Guide AN – Naturalisation Booklet: The Requirements' (December 2020) 7 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/946152/guide-an_december_20.pdf> ('Guide AN').

¹⁵ Jamaica Independence Act 1962 (10 & 11 Eliz 2 c 40) s 2.

After the Windrush scandal broke in 2018, Morgan was contacted by British diplomats and issued a visa to return to the UK. As a Commonwealth citizen lawfully settled in the UK for over three decades, he should never have been denied re-entry to the UK.

On his return, Morgan submitted an application for naturalization as a British citizen. However, in 2020, despite his wrongful treatment at the hands of UK authorities and his 34 years' prior residence in the UK, Morgan's application was rejected because he had been outside the UK throughout the five years immediately preceding his application—a time when he had wrongfully been prevented from returning to the UK.¹⁶

Perversely, British nationality law treats Morgan no differently from a fresh immigrant who first set foot in the UK in 2018. As it stands, he will therefore not be eligible for British citizenship until at least 2023.

SERVICE TO THE CROWN

The 1981 Act provides for service outside the UK in Crown service under the UK Government as an alternative to the five-year residence requirement for naturalization.¹⁷ However, in practice, naturalization is only granted under this provision in cases of 'outstanding service, normally over a substantial period', and 'not... merely on completion of satisfactory service'.¹⁸

The majority of applicants with a record of Crown or other service must therefore apply under the normal five-year residence route. However, up to six months of absences from the UK per year will normally be disregarded if they were due to overseas deployments or postings or due to the unavoidable nature of the applicant's work (e.g., due to service in the armed forces or the Merchant Navy). Absences in excess of this amount will only 'very rarely' be disregarded.¹⁹

There is special provision for the Secretary of State to disregard an armed forces applicant's absence from the UK on the day exactly five years (three years in the case of a spouse or civil partner) before the date of his or her application, which can be exercised where that absence is due to the applicant's service in the armed forces.²⁰

¹⁶ Amelia Gentleman, 'Windrush Victim Refused British Citizenship despite Wrongful Passport Confiscation', *The Guardian* (online, 22 November 2020) <<https://www.theguardian.com/uk-news/2020/nov/22/windrush-victim-refused-british-citizenship-despite-wrongful-passport-confiscation>>.

¹⁷ 1981 Act (n 11) Sch 1, para 1(3).

¹⁸ Home Office, 'Guide AN' (n 14) 36.

¹⁹ *Ibid* 11–13.

²⁰ 1981 Act (n 11) Sch 1, paras 2(2) & (3); inserted by Citizenship (Armed Forces) Act 2014 (c 8) s 1.

Members of the home forces are exempt from immigration control while serving,²¹ and do not therefore need to apply for settlement in the UK before applying for naturalization, so long as they apply for naturalization before leaving the armed forces.

CASE STUDY: FIJIAN BRITISH ARMY VETERANS FIGHTING FOR A LIFE IN THE UK

Taitusi Ratucaucau joined the British Army from Fiji in 2000, serving for 11 years in the Royal Logistics Corps, during which time he served three operational tours in Iraq and Afghanistan. In 2011, Ratucaucau was given four weeks' notice that his military service would be terminated, but was not properly advised that he needed to apply for citizenship before his discharge from the Army (or for settlement after his discharge). On discharge, Ratucaucau was asked to leave his married quarters, and lived for a time in a car park in Abingdon. He worked in the railways before his lack of immigration status prevented further employment. After spending his savings to bring his wife and three daughters to the UK, Ratucaucau could not afford the legal and application fees to apply for settlement for his family.

Veterans discharged from the armed forces after at least four years' service have two years within which to apply for settlement in the UK (at a current cost of £2,389 per person, or £11,945 for a family of five, not including legal fees). The Royal British Legion has campaigned for these fees to be abolished completely for ex-servicemen and women.²² Veterans who apply for settlement more than two years after their discharge may be granted leave outside the rules in certain circumstances.²³

Ratucaucau subsequently collapsed from a brain tumour in 2020 and was hospitalized and successfully treated by the NHS. However, as an overseas patient with no right to live in the UK, he was presented with a £27,000 hospital bill at the end of his treatment. In December 2020, Ratucaucau and seven other Fijian British Army veterans facing similar plights were refused permission to apply for judicial review of the Government's actions in their cases on the grounds that they were out of time.²⁴

²¹ 1971 Act (n 3) s 8(4).

²² 'Commonwealth Personnel Visa Fees', The Royal British Legion <<https://www.britishlegion.org.uk/get-involved/things-to-do/campaigns-policy-and-research/campaigns/commonwealth-personnel-visa-fees>>.

²³ Home Office, 'HM Forces: Applications on Discharge' (14 May 2015) 11–12 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/488255/Armed_Forces_apps_discharge_V3.0.pdf>.

²⁴ Sheldon Chanell and Ben Doherty, "'Where Is the Fairness?' Fiji's British Army Veterans Fight for a Life in UK", The Guardian (online, 4 December 2020) <<https://www.theguardian.com/world/2020/dec/05/where-is-the-fairness-fijis-british-army-veterans-fight-for-a-life-in-uk>>.

Until the mid-20th century, subjects of the British Crown throughout the Empire and Commonwealth shared a common and undivided nationality as British subjects.

When the new status of Citizen of the UK & Colonies (**CUKC**) was introduced in 1949, British subjects from other parts of the Commonwealth could apply to be registered as CUKCs after 12 months' ordinary residence in the UK or any colony, protectorate or trust territory, or if they were in UK Crown service.²⁵

In 1962, immigration control was imposed on CUKCs and other British subjects without a close connection to the UK and Islands.²⁶ From 1973, a CUKC without the right of abode required permission to live and work in the UK, but gained the right of abode upon being granted settlement following five years' ordinary residence in the UK.²⁷ A British subject who was not a CUKC was required to have five years' residence in the UK, UK Crown service or other relevant employment immediately before his or her application for registration as a CUKC.²⁸

Since 1983, CUKCs have been divided into British citizens (who automatically have the right of abode in the UK), British Dependent Territories citizens, now known as British Overseas Territories citizens (**BOTCs**) (who have the right of abode in a British Overseas Territory), and British Overseas citizens (who have no right of abode). Since 2002, the vast majority of BOTCs (with the exception of those connected only to the Sovereign Base Areas of Dhelekia and Akrotiri) are also British citizens.²⁹

Over time, Parliament has chosen not to consolidate the various classes of British nationals and has instead created new ones. The various classes of British nationals without an automatic right of abode—known as 'residual' classes, because the legislative intention is that they will die out over time—are currently the following:

- British Overseas citizens (**BOCs**);
- British Nationals Overseas (**BN(O)s**);
- British subjects (formerly 'British subjects without citizenship'); and
- British protected persons.

Most residual classes of British nationals consist of minority groups in various parts of the former Empire who, due to fears of discrimination or ill-treatment following the end of British rule, campaigned to be permitted to retain their British nationality on decolonization—for instance, British East African Asians, the so-called 'Queen's Chinese' in Malaya and, most recently, Hong Kongers hand-

²⁵ 1948 Act (n 6) s 6.

²⁶ Commonwealth Immigrants Act 1962 (10 & 11 Eliz 2 c 21) Pt I.

²⁷ 1971 Act (n 3) s 2.

²⁸ *Ibid* s 2 & Sch 1.

²⁹ British Overseas Territories Act 2002 (c 8) s 3.

ed over to Communist Chinese rule. In too many cases, the promised protection of continued British nationality has proved hollow, as in the case of East African Asian CUKCs fleeing ‘Africanization’ policies in Kenya, who were deliberately shut out of the UK by the passing of the *Commonwealth Immigrants Act 1968* amidst a wave of anti-‘coloured’ immigrant hysteria (an action later held to be racially-motivated ‘degrading treatment’ contrary to the European Convention on Human Rights (**ECHR**)).³⁰

In 2002, the Home Office estimated that there were 3.3 million BN(O)s from Hong Kong and another 300,000 other residual British nationals, mostly BOCs (although the latter estimate was thought to be unreliable).³¹ Of the 300,000 estimated other residual British nationals, around half with no other citizenship at the time (e.g., East African Asians who never gave up their British nationality to acquire local citizenship) were given the right to register as British citizens.³²

However, the Home Office at the same time made it more difficult for other residual British nationals to gain settled status in the UK, abolishing the special voucher scheme by which various residual British nationals with a connection to East Africa and Aden could apply for settlement in the UK, as well as concessions by which residual British nationals other than BN(O)s who had valid work permits or who were classed as retired persons of independent means could be granted immediate settlement in the UK without the (then) usual four years’ residence.³³

In July 2020, the Home Office announced a new five-year visa leading to settlement for up to 3 million BN(O)s, following China’s imposition of a national security law on Hong Kong in breach of the Sino–British Joint Declaration.³⁴ This new visa gives BN(O)s, who form the vast majority of residual British nationals, a route to British citizenship, but does not cover other residual classes of British nationals.

BN(O)s and other residual British nationals are entitled to be registered as British citizens if they are physically present in the UK on the day exactly five years before the date of their application for citizenship and are resident in the UK during those five years, of which the last year must be with settled status.³⁵ This means in practice that the new path to British citizenship for BN(O)s will take at least six years (five years to settlement and one year with settled status).

³⁰ *Commonwealth Immigrants Act 1968* (c 9); *East African Asians v United Kingdom* [1973] 3 EHRR 76 (14 December 1973). Fortunately, British East African Asians fleeing Idi Amin’s Uganda in 1972 were allowed to resettle in the UK.

³¹ Director INPD, ‘British Overseas Citizens – Nationality, Immigration and Asylum Bill’ (Letter to Home Secretary and Beverley Hughes, 19 June 2002) <<https://publications.parliament.uk/pa/ld200506/ldlwa/60503wa1.pdf>>.

³² 1981 Act (n 11) s 4B; inserted by *Nationality, Immigration and Asylum Act 2002* (c 41) (‘NIA Act 2002’) s 12; *Borders, Citizenship and Immigration Act 2009* (c 11) s 44.

³³ Home Office, ‘Immigration Directorates Instructions, Ch 22 s 2: United Kingdom Passports’ (November 2004) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/262961/22section2.pdf> paras 4.1 & 4.2.

³⁴ ‘Home Secretary Announces Details of the Hong Kong BN(O) Visa’, GOV.UK <<https://www.gov.uk/government/news/home-secretary-announces-details-of-the-hong-kong-bno-visa>>.

³⁵ 1981 Act (n 11) s 4.

CASE STUDY: BRITISH NATIONALS IN THE UK 'STATELESS' AND 'IN LIMBO'

Liew Teh arrived in the UK in 2001 at the age of 20 to pursue a degree in engineering. After completing his master's degree, and in the hope of staying in the UK, Teh applied for a BOC passport in 2005 and, on the advice of solicitors, renounced his Malaysian citizenship to apply for British citizenship a year later.

As a descendant of CUKCs known as the 'Queen's Chinese', who were permitted to retain their citizenship when the British settlements of Penang and Malacca were transferred to the newly-independent Federation of Malaya in the 1950s, Teh is a residual British national. However, having renounced his Malaysian citizenship after the 2002 cut-off date set by UK law, he was not eligible to be registered as a British citizen, and his application for British citizenship was rejected by the Home Office.³⁶

Since then, Teh and an estimated 1,000 or more other BOCs in a similar situation have found themselves effectively stateless, unable to live and work legally in the UK or in any other country. Many BOCs have been detained for weeks before being released, while others are forced to report monthly to the Home Office, unable to work legally in the UK or elsewhere. As British nationals with no other citizenship, BOCs whom the Home Office have forcibly deported to Malaysia have immediately been sent back to the UK by Malaysian authorities, which refuse to accept British nationals except on temporary residence passes.

Despite spending more than a decade in 'limbo', the Home Office has refused to allow Teh to regularize his status in the UK. In 2018, the High Court held that Teh was 'stateless' for the purpose of the Immigration Rules, but declined to order the Home Office to regularize his status.³⁷

RECOMMENDATIONS

British nationality law is long past time for a comprehensive review and overhaul, the product of which should be a new British Nationality Act. These overhauls have previously taken place at approximately 33-year intervals, with comprehensive British Nationality Acts enacted in 1915, 1948 and 1981. The 1981 Act is now nearly 40 years old and, with four decades of cumulative amendments, has become increasingly complex and unwieldy.

³⁶ 1981 Act (n 11) s 4B; inserted by NIA Act 2002 (n 32) s 12.

³⁷ May Bulman, 'Hundreds of People Forced into Hardship and Exploitation in "Windrush-Style" Scandal', *The Independent* (11 September 2019) <<https://www.independent.co.uk/news/uk/home-news/windrush-home-office-citizenship-visa-immigration-malaysian-stateless-scandal-latest-a9092971.html>>; Liew Teh, '"Everything Is Stuck": Left in Limbo and Stateless as a British Overseas Citizen', *European Network on Statelessness* <<https://www.statelessness.eu/updates/blog/everything-stuck-left-limbo-and-stateless-british-overseas-citizen>>.

We do not believe, however, that it would be acceptable for those currently suffering hardship as a result of deficiencies in British nationality law to wait for a complete overhaul of the 1981 Act for corrective measures to be taken. We set out below a number of simple measures that can and should be implemented immediately.

If the Government wants to fulfil the United Kingdom's historic duties and better facilitate integration they should:

1. SIMPLIFY RESIDENCE REQUIREMENTS

The current provision for naturalization on the basis of five (or three) years' residence, the last year of which has to be with settled status, were based on immigration rules that allowed most immigrants to obtain settled status after four years (and spouses of British citizens after two). With the extension of both periods to five years since 2006, the path to citizenship (including for spouses and civil partners) requires at least six years' residence in the UK. We express no view on whether the current period is, in general, too long or too short.

We do believe, however, that the statutory residence requirements in the 1981 Act are needlessly over-prescriptive, with specific requirements (such as the requirement to be physically present in the UK on the day exactly five years before an application) that have no bearing on whether or not an applicant is a suitable candidate for British citizenship.

As a matter of process, it does not make sense for an applicant who has already demonstrated five years' residence (or even ten or 20 years' residence in the case of applicants under the long residence rule) when applying for settlement to have to go through a different version of the same test when applying for citizenship. It is also absurd that Windrush migrants who have been resident in the UK since the 1960s must prove to the day their whereabouts during the past five years.

Pre-settlement residence requirements should be outlined in the Immigration Rules and be assessed at the point of application for settlement. Nationality law should only specify in general terms a minimum period of residence (or Crown service or other relevant employment), which should be treated as met wherever an applicant has been granted settlement under an appropriate immigration rule. The Secretary of State should have discretion to shorten or dispense with the residence requirement in special cases. Only the last year of residence with settled status should ordinarily be required to take place immediately before an application for naturalization.

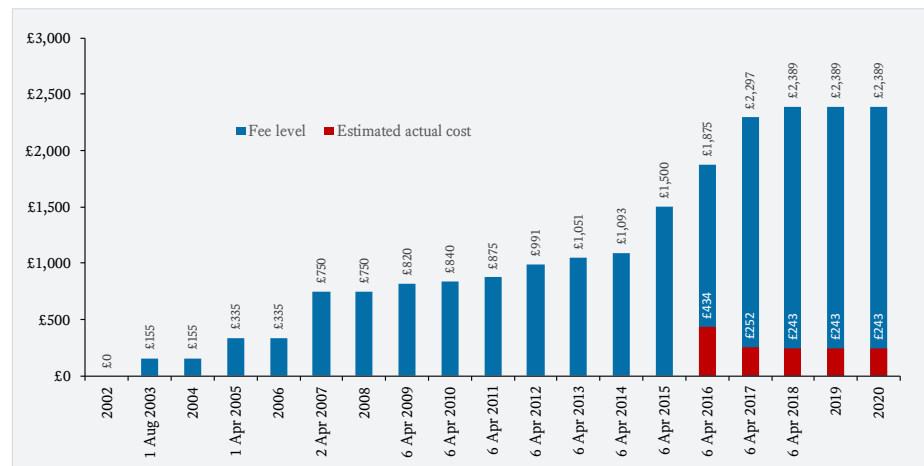
Rather than counting the number of days an applicant has been physically present or absent over the past five years, officials dealing with citizenship applications should instead focus on post-settlement requirements that have a real bearing on suitability for British citizenship and integration into British society, such as good character, English language competency, understanding of life in the UK and other indicia, such as contribution to British society, etc., that are not considered at

the time of settlement.³⁸ Good character requirements should only be applied to exclude applicants who are genuinely unsuitable for citizenship, and not veterans who simply have a few points on their driving licences.³⁹

2. REDUCE IMMIGRATION AND NATIONALITY FEES

Application fees for in-country immigration applications were first introduced in 2003. Since then, the application fee for settlement has gone up from £150 in 2003 to £2,389 in 2018–20, an average rate of increase of nearly 20% per annum, or over 15-fold. These are astonishing figures, considering that the Home Office’s 2020 estimated unit cost of processing a settlement application is only £243.⁴⁰

FIGURE 1. FEE AND ACTUAL COST FOR INDEFINITE LEAVE TO REMAIN



Fee level for an application for indefinite leave to remain (ILR) in the UK, 2002 to 2020, and the actual cost to the government to process and ILR application, 2016 to 2020. Source: The Migration Observatory and UK Government.⁴¹

Following settlement, an applicant seeking naturalization will have to pay a further £1,330, against an estimated unit cost of £372 to process a citizenship application.⁴²

Since 2014, dependants (spouses and children) applying together with the main applicant have been charged the same as individual applicants, even though the additional cost of processing their applications is considerably less.⁴³

³⁸ See, e.g., the activities envisaged by the Borders, Citizenship and Immigration Act 2009 (c 11) s 41.

³⁹ For instance, the armed forces veteran whose citizenship application was rejected for having three points on his driving licence: ‘Ex-Soldier from Neyland “neglected” over UK Visa Rejection - BBC News’ (25 June 2017) <<https://www.bbc.com/news/uk-wales-south-west-wales-40388477>>.

⁴⁰ Home Office, ‘Visa Fees Transparency Data’, GOV.UK <<https://www.gov.uk/government/publications/visa-fees-transparency-data>>.

⁴¹ The Migrant Observatory at the University of Oxford, ‘Migrant Settlement in the UK’ (Briefing, 26 August 2020) <<https://migrationobservatory.ox.ac.uk/resources/briefings/migrant-settlement-in-the-uk/>>

⁴² Home Office (n 40).

⁴³ Home Office, ‘Explanatory Memorandum to the Immigration and Nationality (Fees) Regulations 2014 (2014 No 922)’.

An armed forces veteran with a spouse and two children applying for settlement followed by citizenship will thus pay nearly £10,000 in application fees for settlement, followed by nearly £5,000 in application fees for naturalization (a total of nearly £15,000). This excludes the substantial cost of legal assistance, where this is required. In 2003, when fees were first introduced, the same family would have paid less than £500 for both applications, meaning that the current fees are roughly 30 times what they were when first introduced.

It is clear to us that charging immigration and nationality application fees that are ten times the cost of processing those applications (and even more in the case of dependants) is wholly indefensible. This is especially so when applicants are armed forces veterans, NHS key workers, and others who have made and who continue to make an indispensable contribution to British society.

The recent Opinium survey for Bright Blue suggests that the British public consider fees to be too high in general (43% too high; 28% just right; 16% too low) and that clear majorities support reduced fees for key frontline workers (78%), skilled workers in shortage areas (75%), immigrants who have paid UK taxes for more than five years (75%), immigrants who are long-term (>10 year) UK residents (71%), Commonwealth citizens (62%), and immigrants earning less than £30,000 a year (66%).⁴⁴

Immigration and nationality application fees for all applicants should be reviewed on the criteria of fairness and affordability and significantly reduced, and fees for serving/retired members of the armed forces and NHS key workers should be waived completely. Application fees for British citizenship by registration (e.g., of children born in the UK, residual British nationals, etc.) should be abolished.⁴⁵

3. EASE THE REGISTRATION OF BRITISH NATIONALS AS BRITISH CITIZENS

The UK government's continued failure to grant the right of abode to all its nationals, some of whom are thus effectively stateless, demeans the concept of British nationality and brings Her Majesty's name, which is invoked at the front of every British passport held by such nationals, into disrepute.

This failure also runs counter to basic principles of international law, as set out in the International Covenant on Civil and Political Rights, which provides that "[n]o one shall be arbitrarily deprived of the right to enter his own country".⁴⁶ It also contradicts the Fourth Protocol to the ECHR, which provides that "[n]o one shall be deprived of the right to enter the territory of the State of which he is a national".⁴⁷

⁴⁴ Arslanagić-Wakefield (n 8).

⁴⁵ See Barriers to Britishness (n 7) 9.

⁴⁶ International Covenant on Civil and Political Rights (999 UNTS 171) (Adopted 16 Dec 1966, in force 23 Mar 1976; ratified by the UK with reservations) Art 12(4).

⁴⁷ Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms Other than Those Already Included in the Convention and in the First Protocol Thereto (ETS 46) (Adopted 16 September 1963, in force 2 May 1968; signed but not yet ratified by the UK) Art 3(2).

British nationality law should aim to assimilate the various residual classes of British nationals as British citizens as soon as possible, and not simply to leave these nationals to die out over time. This can be done either by automatically conferring British citizenship on various residual classes of British nationals (as was done for Falkland Islanders in 1983 and for nearly all other BOTCs in 2002), or by making it easier for residual British nationals to register as British citizens.

Historically, the Foreign & Commonwealth Office has been resistant to any automatic extension of British citizenship to BN(O)s in particular, because of the understandings recorded in memoranda exchanged between the UK and Chinese governments at the time of the Sino–British Joint Declaration.⁴⁸ In 2020, the UK government avoided breaching these understandings by merely introducing a visa leading to settlement, rather than conferring British citizenship or the right of abode on all BN(O)s.

However, in view of the grave human rights situation in Hong Kong, the UK should not consider itself to be bound indefinitely by what is primarily a political or diplomatic rather than a legal commitment.⁴⁹ It should keep open the option of extending an entitlement to British citizenship to BN(O)s in the event of further grievous breaches by China of its commitments in respect of Hong Kong.

For now, there are a number of immediate steps that can be taken to make registration easier for all residual British nationals, including BN(O)s, who are on a ‘pathway’ to British citizenship.

First, there is no policy justification for requiring a British national who is settled in the UK to meet the same residence requirements as a foreign national seeking naturalization. Every British national who has the right of abode or right of re-admission, or who has been granted settled status in the UK, should immediately be entitled upon application to be registered as a British citizen.⁵⁰

Second, the removal of the current five-year residence requirement for residual British nationals seeking registration as British citizens can be used as an opportunity to amend the Immigration Rules to privilege British nationals over non-British nationals. As a matter of principle, every residual British national should have a

⁴⁸ ‘Memoranda Exchanged Between the Two Sides in Connection with the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the People’s Republic of China on the Question of Hong Kong’ (19 December 1984) <<https://www.cmab.gov.hk/en/issues/jd6.htm>>.

⁴⁹ Lord Goldsmith QC, ‘Legal Clarification on the Rights of BNO Passholders’ (Letter to Home Secretary, 14 February 2020); Laurie Fransman QC, ‘Endorsement by Laurie Fransman QC of the Observations Accompanying a Letter of 14 February 2020 from the Rt Hon Lord Goldsmith QC to the Home Secretary, the Rt Hon Priti Patel, on the Subject of British Nationals (Overseas) (BN(O)s)’ (18 April 2020) <<https://www.hongkongwatch.org/all-posts/2020/5/24/new-legal-advice-blows-apart-uk-government-claim-that-sino-british-joint-declaration-prohibits-extension-of-rights-of-bnos>>.

⁵⁰ Most British subjects connected to Éire have the right of abode; residual British nationals with UK passports endorsed with the right of readmission have a non-expiring entitlement to settlement in the UK: Home Office, ‘Immigration Directorates Instructions, Ch 22 s 2: United Kingdom Passports’ (n 33).

pathway to British citizenship that is quicker and more advantageous than those available to non-British nationals.

This can be done, for instance, by:

- extending the new BN(O) visa to all residual British nationals;
- treating British nationality as a qualification entitling an applicant to additional points when applying for existing points-based visas;
- enabling British nationals who are on visas leading to settlement to apply for settled status after a shorter period than non-British nationals (e.g., two years instead of five); and
- amending the long residence rule to grant settlement to British nationals who have five years' lawful residence or ten years' continuous residence of any description in the UK (instead of ten & 20 years respectively).

CONCLUSION

It is the right of any nation to set a high bar for citizenship. But it is wrong to subject harsh tests to people who, by right or by service, are already part of its national community.

The system can be refocused on measures which genuinely reflect on whether an individual is deserving of citizenship and the system made much easier for the overwhelming majority of deserving cases. This would mean cutting or waiving usurious processing fees, relaxing excessive physical residence requirements, and equalizing the status of everyone whose Britishness the UK has acknowledged.

These reforms would help to ensure that our public services and armed forces can attract the talent they need, demonstrate the Government's commitment to honouring our obligations to the worldwide community of British nationals, and ensure the injustices inflicted on the Windrush generation are never repeated.

The Prime Minister has promised to deliver a 'Global Britain'. Doing our duty for these global Britons would be the best possible start.