Commentary on Parliament's intention in introducing registration provisions for children in the British Nationality Act 1981 as this relates to fees:

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1. The British Nationality Act 1981, which took effect on 1 January 1983, introduced British citizenship into UK nationality law. In doing so, it removed the principle of *jus soli* – the principle by which citizenship is acquired by being born on the territory – from the operation of that nationality law. From that date, persons born in the UK acquired British citizenship, under section 1(1) of the Act, only if one of their parents was a British citizen or settled in the UK. This, together with other provisions in the Act by which British citizenship could be acquired (registration and naturalisation), was intended to confer citizenship upon persons on the basis of their connection to the UK.

2. In making this change from *jus soli* to connection as the basis for citizenship, Parliament recognised the need to ensure British citizenship for many children growing up in the UK who would in future not be born British. It legislated for various entitlements to be available to these children. As this commentary examines, the statutory recognition of an entitlement is important and deliberate. It is intended to ensure that all children growing up in the UK, connected to this country, can and do acquire British citizenship independent of the status and circumstances of their parents. Parliament clearly did not intend that these nationality law entitlements under the Act would be cut down, impeded, delayed or negated by future immigration policy.

3. The key consideration for this commentary is the relevance of Parliament's intentions in passing the 1981 Act to the charging of fees for children's registration. On the commencement of the Act, that fee

was £35. Today, it is £1,012, only £372 of which is attributed by the Home Office to the administrative cost of registration.[1]

Connection to the UK:

4. The Government introduced the British Nationality Bill following the publication of a White Paper, *British Nationality Law: Outline of Proposed Legislation*, July 1980, Cmnd. 7987. The White Paper set out the Government's intention that:

> "*37. ...British Citizenship will be the status of people closely connected with the United Kingdom.*"

5. This intention was confirmed by Ministers during the passage of the Bill. Thus, at Report stage, Mr Timothy Raison, Minister of State, Home Office, said:

> "*...as I think the House knows by now, what we are looking for in the creation of our new scheme of British citizenship is real connection. We are looking for citizens who have a real connection with the United Kingdom.*" (*Hansard* HC, 3 June 1981 : Cols 979-980)

6. The British Nationality Act 1981, therefore, removed *jus soli* from British nationality law. The reason for this was set out by the Minister:

> "*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 to acquire British citizenship. The more one thinks about that fundamental point... the*

[1] Further discussion and information concerning the fee is provided by the joint PRCBC and Amnesty International UK briefing (last updated in June 2018): https://prcbc.files.wordpress.com/2018/06/fees_briefing_revised_june_2018.pdf

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." (*Hansard* HC, 3 June 1981: Col 980)

7. A particular concern was the prospect that persons born in the UK, but resident here only shortly, should not later be able to pass on British citizenship to their children born in another country and with no connection here (*Hansard* HC, 12 February 1981: Col 41). However, it was recognised that there was a need to provide for the registration as British citizens of many children born in the UK, who would not in future by reason of the removal of *jus soli* be born British. As the noble Lord, Lord Belstead confirmed in Committee, referring to what became section 1(3) and (4):

"*The Government accept that a child born here to a parent who has no connections with this country should be able to secure citizenship if real links with this country can be said to develop. We have, therefore, provided in Clause 1(3) that such a child will, while a minor, be entitled to British citizenship if either the mother or the father becomes a British citizen or becomes settled here. We have also provided in the subsection… for the 10-year period.*" (*Hansard* HL, 7 July 1981: Col 662)

Integration and race relations (and relevance to Windrush Scandal):

8. The intention to ensure British citizenship reflected connection to the UK was supplemented by further policy aims of promoting integration and securing good race relations. As Mr Raison explained at Committee:

"*It is the Government's view that it is in the interests of good race relations in this country that children born here to settled parents should be British citizens. We said this in paragraph 42 of the White Paper, which stated:*

'The Government considers that a move to the complete adoption of ius sanguinis would have a serious effect on racial harmony. It would mean that children born in this country to parents who had settled here would not have our citizenship, and this could hinder their integration into the community.'

That was the Government's formal position in the White Paper on this matter. It was fundamental to our position that the decision that the children of those who are lawfully settled here should be entitled to citizenship has to do with good community relations in this country." (*Hansard* HC, 24 February 1981: Col 177)

9. There is no basis for distinguishing this latter position in respect of children born in the UK to settled parents and the entitlement to register given under section 1(3) to those children whose parents settle during their childhood. Moreover, the Minister's further elucidation emphasises the importance of integration and security for all children with entitlements to register:

"*This is the fundamental position that we have adopted. 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.*" (*Hansard* HC, 24 February 1981: Col 177)

"*We have to say that we are now living in a country where there are all sorts of different colours, ethnic backgrounds and minority communities. I believe profoundly that that is a fact of our society and we have got to make it work. We shall make it work by encouraging people to feel secure in this country rather than by*

encouraging their apprehensions. That is fundamental to our position." (*Hansard* HC, 24 February 1981: Col 179)

10. It clearly was not Parliament's intention that anyone, least of all children, entitled to British citizenship should be content with either limited or indefinite leave to remain as a substitute, which would leave them potentially liable to immigration control and powers to which it was intended they should be free and would not fulfil the clear intention that they register as British citizens.

11. These concerns are no less relevant today. The Government's recent decision to offer citizenship by naturalisation for free to members of the Windrush Generation recognises not only a strong moral obligation to facilitate the acquisition of British citizenship of people subjected to appalling mistreatment by the Home Office failure and refusal to recognise their settled status in the UK. It also recognises the depth of their connection to the UK, and the need to fulful a duty arising from the failure of previous Governments to secure the intention of Parliament when passing the British Nationality Act 1981. It had then been intended that the Commonwealth citizens who had settled in the UK in the post-War period should be strongly encouraged to register their entitlement to British citizenship given by what became section 7 of that Act. That entitlement, however, was restricted to registration within five years of the Act's commencement.[2]

Section 1(4) and entitlement:

12. Section 1(4) was introduced during Commons' Committee stage. It was much discussed in both Houses, and the debates emphasise the importance of ensuring British citizenship for children growing up in

[2] Section 7 included discretion for the Secretary of State to extend this period for a further three years in "*the special circumstances*" of any particular case.

the UK where the child's connection was established, whatever the status of her or his parents. At Report, Mr Raison recalled the amendment to the Bill at Committee stage:

> "*We have also moved the important amendment to clause 1 that was accepted by the Standing Committee and is now incorporated as subsection (4). It provides that a child born here who does not become a British citizen through his parents' British citizenship or settled status shall have an entitlement to registration 10 years later if he has resided here continuously since birth.*" (*Hansard* HC, 3 June 1981: Col 984)

13. The purpose behind what is section 1(4) of the Act was explained by the Minister during the Standing Committee F debates as acknowledging the strength of connection with the UK that such a child will have, recognising 'connection' to be the underlying intention in replacing *jus soli*. The Minister there explained when speaking to Amendment No. 115, by which subsection (4) was introduced:

> "*We feel that, after the passage of time, those children will be so deeply rooted in this country that it would be harsh to deprive them of citizenship for all time.*" (*Hansard* HC, 24 February 1981: Col 183)

14. As the Minister made express, this provision was to secure the British citizenship of children "*whose parents are not lawfully settled in this country*" (*Hansard* HC, 24 February 1981: Col 183). The children to be protected included children of parents who were illegal entrants, including those who had wrongly secured leave by deception and were later stripped of that leave (*Hansard* HC, 24 February 1981: Col 184). As the Minister later emphasised:

"*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.*" (*Hansard* HC, 26 February 1981: Col 230)

15. It was generally assumed, as Ministers confirmed, that in most cases any questions concerning the status of the child's parents would have been resolved within ten years. At Committee, the noble Lord, Lord Belstead said:

"*If the child's parents were here subject to conditions of stay or in breach of immigration control, those problems would normally have been resolved one way or another during the 10-year period.*" (*Hansard* HL, 7 July 1981: Col 666)

16. The basis for that expectation has been radically altered by relatively recent changes to immigration rules and policy, which have greatly extended the period before someone with lengthy residence in the UK can apply for settlement. In making those changes, no regard was had to Parliament's expectation and intention in passing the 1981 Act. The effect of this is dramatic and harmful. Many children, whom Parliament expected to be born British, are not born British. This is because the child's parents are not settled at the time of her or his birth, despite having lived in the UK for long periods that Parliament had expected would lead to their being settled. This includes parents who previously would have become settled during their own childhoods in the UK.[3]

[3] Many of the relevant changes, particularly those directly affecting children, are explained in an article by Solange Valdez and Declan O'Callaghan for Legal Action Group: https://www.lag.org.uk/article/202656/children-pay-the-price-of-tough-immigration-policies

17. In any event, it was emphasised in 1981 that children growing up in the UK should be recognised as British. Mr Raison confirmed:

> "*...as the Committee well knows by now, we have recognised that there has been concern about one particular aspect of our proposal. This concern was expressed on Second Reading and it has been expressed by people outside the House. The concern is about the problem of children who might grow up here knowing no other country and unaware that they have no right to citizenship because of their parents' status...*
> "*We have chosen the tenth birthday as the cut-off point because we would not wish to insist on the deportation*[4] *of a child born here who had lived here for 10 years. If his parents were here subject to conditions of stay or in breach of the immigration control at the time of the birth, 10 years seems to the Government to be a long enough period in which to expect these problems to have been resolved.*
> "*Furthermore, the first 10 years of a child's life clearly are the formative years. By the age of 10, we believe, the child's roots could be regarded as being firmly set in this country.*" (*Hansard* HC, 26 February 1981: Col 221)

18. Elsewhere the Minister confirmed that after ten years a child would have such "*substantial ties to this country*" that "*irrespective of his situation under immigration control... it would be wrong to create a position whereby the child might be removed.*" (*Hansard* HC, 26 February 1981: Col 223).[5]

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[4] Note that at this time, under the Immigration Act 1971, deportation was the means by which persons subject to immigration control could be expelled from the country for overstaying or breaching a condition of leave.
[5] The noble Lord, Lord Belstead gave further context for the 10 years' period at Lords' Report (*Hansard* HL, 6 October 1981 : Col 32): "*…the view which normally has been taken in the past, that parents who have been here for 10 years have ties to this country which are substantial enough to justify allowing them to remain with any children irrespective of their situation under immigration control…*"

The importance of entitlement:

19. The importance of having an "*entitlement*" was emphasised in the debates in several ways. Mr William Whitelaw, Secretary of State for the Home Department, did so in making clear at Report stage the difference between registration and naturalisation:

> "*I say 'naturalisation' because the case is different with 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.*" (*Hansard* HC, 2 June 1981: Col 855)

20. It was emphasised by the Minister of State in rejecting a proposal for a quota system for section 1(4) put forward in Committee. A quota would fundamentally undermine the entitlement and, therefore, fail to satisfy the clear intention behind section 1(4) in providing "*justice*" for the children concerned:

> "*I do not believe that I could accept that suggestion because ultimately we are talking about a matter of some sort of justice for the children concerned. To have a quota, as it were, for justice of that sort would not be acceptable.*" (*Hansard* HC, 3 March 1981: Col 353)

21. Ultimately it was emphasised by the Government's decision to bring forward an amendment at Lords' Report to remove the need to satisfy the Secretary of State of an entitlement. The noble Lord, Lord Mackay of Clashfern, Lord Advocate explained:

> "*This is the first of a series of amendments that we have brought forward which remove the references in the Bill which stipulate that*

applicants for citizenship as an entitlement must satisfy the Secretary of State that they have met various requirements… If the criteria are met, then the Government agree that the entitlement should obtain and that it should not be expressed as depending on the satisfaction of the Secretary of State." (*Hansard* HL, 6 October 1981: Col 36)

22. When the Bill returned to the Commons, Mr Raison invited acceptance of that Lords' amendment to "*...remove the stipulation in the Bill that applicants for citizenship as an entitlement must satisfy the Secretary of State that they have met the various requirements...*":

"*...If the criteria are met, the entitlement should obtain even if the Secretary of State is not satisfied.*" (*Hansard* HC, 27 October 1981: Col 728)

Statelessness and entitlement:

23. There is particular significance to be derived from the clear intention that the Act would comply with the 1961 Convention on the reduction of Statelessness. The removal of *jus soli* from British nationality law meant that Article 1(1)(a) of the Convention would no longer be met and hence Article 1(1)(b) would have to be satisfied (*Hansard* HC, 6 May 1981: Col 1730). That provision is mandatory as is emphasised by repetition of the word "*shall*" and the stipulation:

"*Subject to the provision of paragraph 2 of this Article, no such application may be rejected.*"

24. Ministers repeatedly emphasised full compliance with the Convention (e.g. *Hansard* HC, 6 May 1981: Col 1726 & 1735; 3 June 1981: Col 986). The Minister of State said:

"*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.*" (*Hansard* HC, 6 May 1981: Col 1730)

25. Paragraph 3 of Schedule 2 to the Act provides for registration by entitlement of any person born stateless in the UK at any time before she or he turns 22, if at the time of registration she or he has lived in the UK continuously for the previous five years and has never ceased to be stateless. These requirements are taken from those exclusively permitted by Article 2 of the Convention.

Revenue-raising fees neither contemplated nor compatible with Parliament's intention:

26. During the parliamentary debates, Ministers declined to provide a free service, but accepted that registration should not be deterred "*by setting the fees at a totally impossible level*" (*Hansard* HC, 12 May 1981: Cols 1883-1884).[6]

27. It is instructive that the statutory language to achieve compliance with the 1961 Convention by providing for an entitlement is expressed in no different terms to other entitlements by registration under the 1981 Act. The consistent language adopted in the Act is that 'a person shall be entitled to be registered'.

28. The statelessness cases cannot permit of a prohibitive fee as this would offend the Convention and its mandatory stipulation and

[6] The debates and Act predated the 1989 UN Convention the Rights of the Child, which the UK ratified in December 1991 albeit at that time entering a reservation in respect of nationality and immigration, which was not withdrawn until 2008. Now, the best interests of the child coupled with the child welfare duty under section 55 of the Borders, Citizenship and Immigration Act 2009 are important new considerations on the application of any fee.

intention. A fee may, in any event, be impermissible, since to require a fee is to make a requirement that is not within the exclusive requirements permitted by the Convention; *a fortiori* it is not a permissible requirement to impose a revenue-raising or unaffordable fee.

29. Parliament clearly intended that by legislating for an entitlement by registration, paragraph 3 of Schedule 2 to the Act would comply with the Convention. Thus, Parliament must have intended that entitlements would be mandatory and impermissible requirements would not be imposed to defeat or prevent the entitlement by registration. Yet, Parliament legislated for entitlements in the same way, using the same terminology, for other cases including under section 1(3) and 1(4). While Parliament did anticipate a fee (see above), it did not anticipate raising revenue above the administrative cost (*Hansard* HC, 12 May 1981 : Col 1884). It follows that it cannot have intended by the statutory language – said to be fully compliant in the statelessness example – to permit revenue-raising fees. (It is noteworthy, that the purpose of securing citizenship for those connected to the UK was the intention behind the registration entitlement in paragraph 3 of Schedule 2 just as it was with the other registration provisions: *Hansard* HC, 6 May 1981: Cols 1735 & 1737).

Discretion:

30. Whereas registration under section 3(1) of the Act is in form distinct since it is by discretion, the retention of this discretion by the Act was, in part, to deal with "*hard*", "*obscure*" or "*compassionate*" cases where a child was not recognised as British either by acquisition at birth or registration by entitlement (*Hansard* HC, 24 February 1981: Col 186). Section 3(1) is, therefore, the means for children to be registered as British citizens in recognition of their connection to the UK by growing up here, even though born elsewhere. It may also be relied upon

where a child faces an evidential barrier to proving the citizenship or entitlement which she or he has under the Act.

31. Another important distinction concerning section 3(1) is that, unlike the discretion concerning adult naturalisation, there is no statutory requirement of indefinite leave to remain or link to the immigration system as is to be found for naturalisation in the requirements stipulated by section 6 and Schedule 1. Section 3(1) includes no requirement for the child to have any leave to remain.

32. All the objectives concerning integration, security and justice for the child that were emphasised in relation to registration by entitlement, apply in relation to section 3(1) discretion if and where the child has arrived in the UK at a young age and is long resident here including the concern, raised in relation to section 1(4):

> "*The concern is about the problem of children who might grow up here knowing no other country and unaware that they have no right to citizenship because of their parents' status...*" (*Hansard* HC, 26 February 1981: Col 221)

33. A further important distinction is that section 3(1) solely concerns children whereas naturalisation concerns adults. The significance of this increased after the 1981 Act following the UK's ratification of the 1989 UN Convention on the Rights of the Child, its withdrawal of its reservation concerning nationality and immigration and its adoption in domestic law of section 55 of the Borders, Citizenship and Immigration Act 2009 (also section 71 of the Immigration Act 2014).

Children in local authority care:

34. The responsibility of local authorities to ensure the citizenship rights of children in their care was recognised while the Act was being

passed. The Minster of State, acknowledged this responsibility, in response to a Written Question:

> "*Normally a local authority responsible for the child's care should have the details necessary to establish citizenship but where it does not application may be made for the registration of the child under the Secretary of State's discretionary power to register any minor. Each case would be judged on its merits but obviously a major aspect would be whether the child's future lay in the United Kingdom.*" (*Hansard* HC, 6 July 1981 : Col 12WA)

Conclusion:

35. When passing the British Nationality Act 1981, Parliament recognised it was making a significant change by introducing British citizenship and abandoning *jus soli*. It intended to ensure that children born and growing up in the UK, who would be connected to the UK just as those children born British citizens by virtue of section 1(1), should also be recognised as British citizens. This was for the benefit of the children and wider community, and in furtherance of the general aim that connection to the UK be recognised by citizenship.

36. To achieve the result, Parliament legislated for entitlement to British citizenship by registration. That this citizenship entitlement was a statutory right bestowed by Act of Parliament, not subject to the Secretary of State's discretion, was emphasised in the debates and by the statutory language adopted. Parliament did not intend this entitlement to be undercut, impeded, delayed or negated by way of a fee, still less a revenue-raising fee.