



The Windrush Act

Briefing Document



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This document aims to propose the need for new legislation, presented as 'The Windrush Act', which through its work, Windrush Defenders Legal (WDL) believes is necessary to meaningfully respond to Windrush Lessons Learned Review: Recommendation 1. WDL also believes this action works to best tackle the UK's race disparities and ongoing serious harm to African Caribbean communities through the effects previous policies and legislation giving rise to damaging realities such as the 'hostile environment' and the 'Windrush Scandal'.

Windrush Lessons Learned Review: Recommendation 1

Ministers on behalf of the department should admit that serious harm was inflicted on people who are British and provide an unqualified apology to those affected and to the wider black African-Caribbean community as soon as possible. The sincerity of this apology will be determined by how far the Home Office demonstrates a commitment to learn from its mistakes by making fundamental changes to its culture and way of working, that are both systemic and sustainable.

The Windrush Act creates a duty on the Home Office to provide resources to categories of organisations working to rectify the racial disparities experienced by the Windrush Generation and their descendants, acknowledging that compensation alone cannot heal the damage done to communities and community infrastructure. The act also seeks to disapply Schedule 1 of the British Nationality act and restore registration in cases of all those from the British West Indies and their descendants who had a right to remain in the UK by virtue of section 1(2) of the 1971 Act, and those who, prior to 1 January 1988, could have obtained British nationality by Registration.

WDL believe's in creating a home that supports all who live in it with equal opportunity. And so, part of WDL's journey has been to understand and determine the work communities need to undertake in order to empower themselves, but also what Government need to do to create the environment where this is possible.

"There comes a point where we need to stop just pulling people out of the river. We need to go upstream and find out why they're falling in."
– Desmond Tutu



The Work of Windrush Defenders Legal C.I.C.

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Windrush Defenders Legal C.I.C (WDL) was formed in 2018 when mature law students and community organisers, Anthony Brown and Leonie Brown, and community organiser, Lorna Downer, came together in a time of need to help the Windrush generation and their descendants secure compensation and British status. They provided one-on-one support with navigating Home Office's processes, gathering documents, and supported claimants to complete their forms. They host community events to raise awareness, reveal broader issues of racial disparities beyond citizenship and compensation. Recognizing the need for long-term advocacy, They formally established the "Windrush Defenders" as a Community Interest Company in 2019 to ensure ongoing support for the African and Caribbean community.

- One-on-one Windrush surgeries
- Campaigning for justice & law reform
- Spark Mentorship Programme
- Forging productive relationships with MPs and officials

- Creating awareness through media appearances (BBC One, Channel 4, BBC Radio 5 Live, Legacy Radio, The Guardian, and more)
- Advising on the Windrush Compensation Scheme
- Various projects to further reduce racial disparities



"Floreat Collegium, Fervet Opus in Campis"

"May the College Flourish, Work is Burning in the Field"

- Motto of Jamaica College

"Burning Work" speaks to the proud intergenerational struggle to end the serious harm caused by racial disparities and the 'hostile environment'. It is the additional labour people of African & Caribbean heritage must endure to achieve equality for ourselves and our communities. It is the action needed to wade through the viscous drag of racism and racial disparities that are institutionally engrained into British society.

WDL uses the following five themes to structure its work and discussions to directly address racial disparities:

Community Cohesion

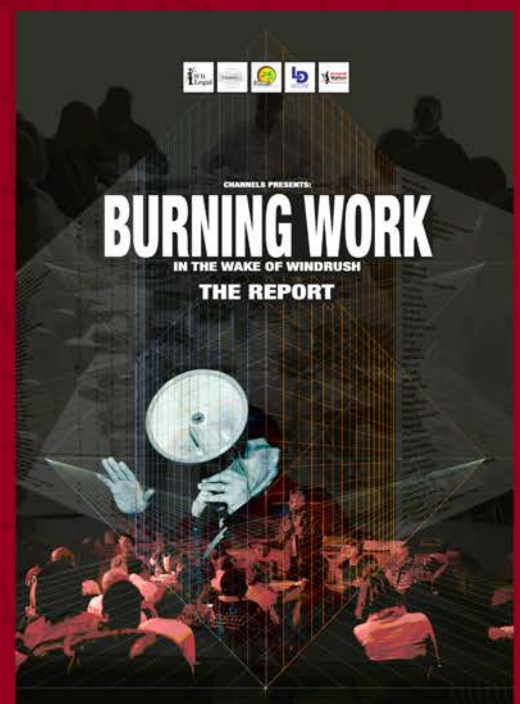
Criminal Justice

Education

Health

Work

In 2020 Channels Research Group hosted the 'Burning Work: In the Wake of Windrush' digital conference - supported by WD Legal, the West Indian Sports and Social Club, Louise Da-Cocodia Education Trust and Arawak Walton Housing Association. The online conference brought together experts, community organisers, academics, lawyers, artists and more to discuss race disparities through the five themes. The conference is documented in the 'Burning Work Report'.



The Burning Work Protocol is a collaborative project between Windrush Defenders Legal C.I.C. and a coalition of community representatives, academics, and social practitioners. The objective is to address racial disparities that disproportionately harm African Caribbean people in Britain.

Aims:

The Protocol pursues three aims when working with our coalition, cross government working groups, and local councils to ensure that African Caribbean people can participate in the design of policies that better serve the needs of the community.

Coalition

Through coalition building, we aim to connect with individuals and organisations to pool our expertise and resources. Windrush Defenders Legal C.I.C. operate nationally with their coalition to develop policy solutions to issues identified in reports such as the Windrush Lessons Learned Review and data evidencing race disparities.

Forum

The Forum creates space to review how immigration and criminal law enforcement has impacted the lives of people within our community network. Windrush Defenders Legal C.I.C. analyse how immigration and criminal law may have unfairly caused harm across five key areas: Criminal Justice, Education, Work, Health, and Community Cohesion.

Windrush Defenders Legal C.I.C. use archival material, journals, data, research, legal text, cultural artefacts and oral testimony to review the complex issues surrounding racial disparities within these areas.

Policy Design

The Protocol creates space for African Caribbean communities to participate in the creation of policy ideas. To achieve this, we seek the commitment of government and local councils to engage in policy design workshops with our coalition of practitioners. These workshops provide an opportunity for engagement and dialogue with policymakers.

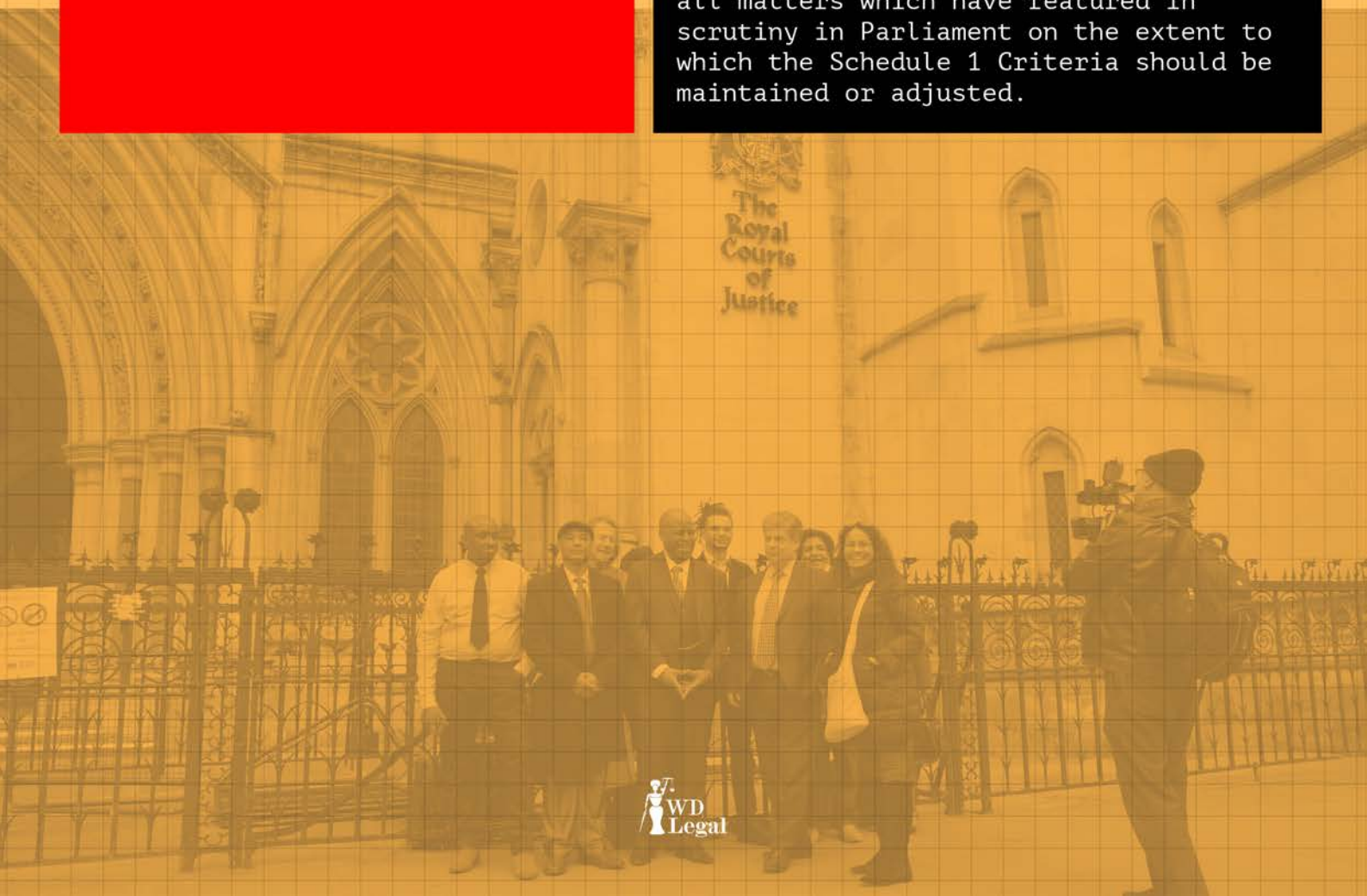
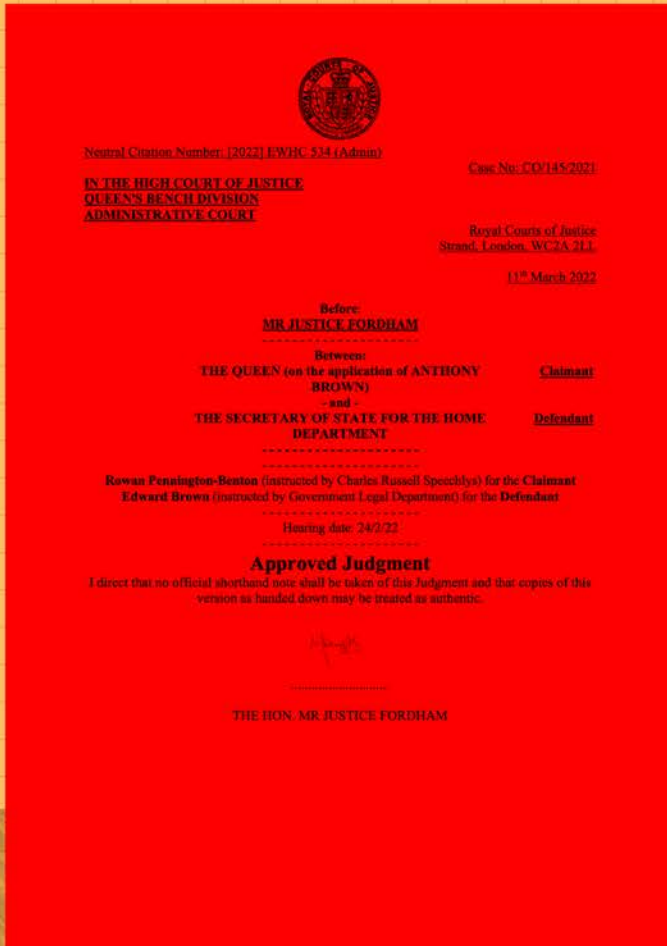
Windrush Defenders Legal C.I.C. believe that the inclusion of diverse perspectives in policy design is essential for policymakers to gain a deeper understanding of African Caribbean experience when working together to develop policy ideas that are inclusive and responsive to urgent needs.

In order to reduce racial disparities, what should be the role of the public and what should be the role of Government?

In February 2022, WDL Director Anthony Brown initiated a Judicial Review questioning whether the application of the Immigration Act 1971 to the Windrush Generation contradicted European Convention on Human Rights.

Following extensive examination of what defined the 'Windrush Generation', counsel for the Secretary of State for the Home Department gave this undertaking that the bill before Parliament addresses Schedule 1 criteria and the question of rigidity and discretion. The following is an extract from the judgement.

28)Mr Brown for the Defendant reminded me - that there has been a Bill before Parliament which addresses the Schedule 1 Criteria, including in the context of the Windrush Scandal, and specifically the 5 Year Rule and the question of rigidity and discretion. This was the Bill which Bourne J noted was "on the horizon" (Vanriel S36). From this, the point can fairly be made that the Windrush Scandal, the Windrush Statement and the Windrush Scheme are all matters which have featured in scrutiny in Parliament on the extent to which the Schedule 1 Criteria should be maintained or adjusted.







Windrush Act 20XX

An Act to provide for the payment out of money provided by Parliament of expenditure incurred by the Secretary of State or a government department under, or in connection with, the Windrush Compensation Scheme. [8th June 2020] and the Burning Work Protocol

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Expenditure on the Windrush Compensation Scheme

- (1) There may be paid out of money provided by Parliament expenditure incurred by the Secretary of State or a government department under, or in connection with, the Windrush Compensation Scheme.
- (2) "The Windrush Compensation Scheme" means the scheme published by the Home Office on 3 April 2019 which provides compensation for certain categories of persons in recognition of difficulties arising out of an inability to demonstrate lawful immigration status (as that scheme is modified from time to time).

2 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This Act comes into force on the day on which it is passed.
- (3) This Act may be cited as the Windrush Compensation Scheme (Expenditure) Act 2020.

3 Repairing serious harm

1. "Burning Work: Protocol" means the scheme published by the Home Office on _ as a modification to the Windrush Compensation Scheme which makes an apology for serious harm and provides funding or land to certain categories of organisations. This is to recompense African Caribbean communities to eliminate or explain disproportionate race disparities in community cohesion, criminal justice, health, education, and work. (as that scheme is modified from time to time).

[i] Disapply schedule 1 of the British Nationality Act 1981 and restore registration in cases of all those from the British West Indies and their descendants who had a right to remain in the UK by virtue of section 1(2) of the 1971 Act

[ii]; those who, prior to 1 January 1988, could have obtained British nationality by Registration.

Changes to legislation: There are currently no known outstanding effects for the Windrush Compensation Scheme (Expenditure) Act 2020. (See end of Document for details)



Windrush Compensation Scheme (Expenditure) Act 2020

2020 CHAPTER 8

An Act to provide for the payment out of money provided by Parliament of expenditure incurred by the Secretary of State or a government department under, or in connection with, the Windrush Compensation Scheme. [8th June 2020]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

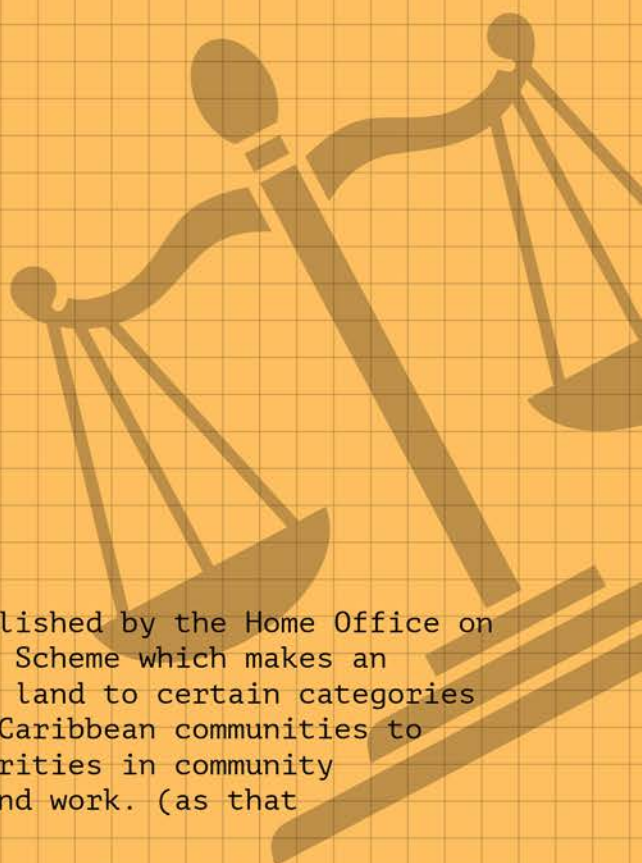
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The Windrush Compensation Scheme (Expenditure) Act 2020 allows for the Secretary of State to draw money for use in connection with the Windrush Compensation Scheme. WDL would like to see the Act amended in the following ways to form a 'Windrush Act' which better protects the Windrush Generation, their descendants and future generations.



Amendments for making fundamental changes

3 Repairing serious harm

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Allows not just individuals but organisations to use funds from the Windrush Compensation Scheme

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[ii]; those who, prior to 1 January 1988, could have obtained British nationality by Registration.

WDL argues that righting the wrongs done to the Windrush Generation by removing their rights without notice requires amending the law.

What the Windrush Act Represents

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WDL recognises that legislators are responsible for enacting legislation. While the draft of the Windrush Act in this document may change in its wording as necessary, the following principles have been identified as markers of what the Act should represent through its progress to Royal Assent.

The Windrush Act is an Act of:

Recognition

...by the United Kingdom that its past actions have unfairly impacted on people of Afro-Caribbean descent both living in the UK and in its former colonies. It is a recognition that this impact has consequences across all aspects of people's lives: citizenship, community cohesion, education, criminal justice, work, health. The Windrush Act places a duty on public bodies to reduce race disparities for outcomes in their work, as exposed by the Government's Race Disparity Audit.

Apology

... for the wrongs that were done historically by the UK to people of Afro-Caribbean descent. These wrongs are clearly defined in the Wendy Williams Lessons Learned review, and it is to the righting of these wrongs that the Windrush Act is addressed. This is not to say that there are not similar wrongs done to other cohorts of people that need to be addressed by similar legislation.

This apology is enacted in law so that it is clearly an apology from the nation rather than from some here today, gone tomorrow politician.

Reparation

... for past wrongs. The reparation that it seeks is to work with those who are today living with the consequences of those past wrongs. It is reparation that goes beyond mere financial compensation to individuals, but instead provides resources to affected people and communities to support them in what they want to do with their lives. To this end, the Windrush Act will establish a Commonwealth community cohesion fund for the development of projects in the UK and the Commonwealth to tackle disparities and rebuild social and economic ties of communities damaged by the Windrush scandal and other historic unfair actions negatively impacting on this cohort.

Restitution

Since 1948 the citizenship of those who arrived on the Windrush, and that of their descendants, has been repeatedly eroded, particularly by the 1971 Immigration Act and by the current “hostile environment”. This erosion leaves many within this Afro-Caribbean cohort finding themselves British in all but name, and therefore having to prove their Britishness when it was Britain that eroded and undermined their Britishness in the first place. The Windrush Act fully restores the Britishness of this cohort.

Remembering

To this day the UK prefers to tell a story about its colonial past that is often unrecognizable to those who lived that past. Only by telling a more honest story about its colonial past can the country show that its citizens of colonial descent are as worthy citizens as any other. The Windrush Act holds the state and its education system to this more honest telling.

The Windrush Act remembers what Great Britain meant to those pioneering men and women who saw in the country a set of ideals and values that led them to board the HMT Windrush in 1948.



The following five case studies demonstrate situations that Windrush community organisations typically find themselves responding to where racial disparities have created the issue or are standing in the way of equal rights and justice.

Situation: An anonymised situation where the Windrush Act could be applied.

Action Required: Some of the actions that are required to resolve the situation.

Windrush Act: How the Windrush Act supports the actions and helps to resolve the situation.

Burning Work Theme(s): The Burning Work theme(s) that align with the case.

CASE001

Situation Mr Johnson was denied British citizenship via the Windrush Scheme due to current 'Good Character Guidance'.

Action required - Individual advocacy and legal support
- Mental Health Support

Windrush Act - Schedule 1 of British Nationality Act to be disapplied negating need for 'Good Character' allowing Mr Johnson to claim status.

Burning Work Theme - Community Cohesion

CASE002

Situation A group of organisations supporting the Windrush community need physical community assets.

Current Action - Sourcing and securing land for development
- Fundraising
- Project development

Windrush Act - Requirement to provide funding and land to categories of organisations expediting the fundraising and development process

Burning Work Themes - Community Cohesion
- Work
- Education
- Health
- Criminal Justice

CASE003

Situation	The family of a 14 year old boy murdered in a racist attack don't believe they have received justice due to the extremely short sentences given to the perpetrators.
Current Action required	<ul style="list-style-type: none"> - Legal support - Mental health support - Policy change - Further education support - More diverse Jurys
Windrush Act	- Brings resources to organisations to create new guidance for jury make up
Burning Work Themes	<ul style="list-style-type: none"> - Criminal Justice - Community Cohesion

CASE004

Situation	Carlton was denied compensation on balance of probability despite living here for 50 years and being made homeless as he could not access housing services.
Current Action required	<ul style="list-style-type: none"> - culturally appropriate advocacy - Housing support - Mental health support - Policy Change
Windrush Act	- Requirement to provide funding to categories of organisations eg. Windrush groups providing culturally appropriate advocacy and support
Burning Work Theme	<ul style="list-style-type: none"> - Community Cohesion - Work

CASE005

Situation	David was expelled from school, however, the school did not follow their protocols correctly.
Current Action required	<ul style="list-style-type: none"> - Individual advocacy and legal support - Additional education requirements
Windrush Act	- Brings resources to organisations to provide sustained intervention to tackle race disparities in the school to prison pipeline
Burning Work Themes	<ul style="list-style-type: none"> - Education - Criminal Justice - Community Cohesion



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