



## Border Security, Asylum and Immigration Bill, HL Bill 101

### House of Lords Committee, June 2025 Nationality Guidance: Good Character Requirement

THE LORD BISHOP OF CHELMSFORD  
BARONESS LISTER OF BURTERSETT  
LORD GERMAN  
LORD KERR OF KINLOCHARD

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After Clause 48, insert the following Clause—

**“Good character requirement for citizenship**

- (1) Part 5 of the British Nationality Act 1981 is amended as follows.
- (2) After section 41A, insert—

**“41B Good character requirement**

- (1) The good character requirement must not be applied in a manner contrary to the United Kingdom’s obligations under international law relating to immigration and asylum.
- (2) When considering whether a person (P) meets the good character requirement, the Secretary of State may not take into account P’s illegal entry to or arrival in the United Kingdom—
  - (a) if P was under the age of 18 at the time of such entry or arrival, and
  - (b) except to the extent specified in guidance on the good character requirement published at the time of such entry or arrival.
- (3) In this section "the good character requirement" refers to the provision regarding a person being of good character in section 41A (Registration: requirement to be of good character), section 4L (Acquisition by registration: special circumstances), and paragraphs 1 and 5 of Schedule 1 to the British Nationality Act 1981.”

## **Introduction**

This New Clause concerns changes to the Secretary of State’s policy guidance: [Nationality: good character requirement](#) (“the guidance”), which were made around the time of this Bill’s Second Reading in the other place on 10 February 2025. In essence, the changes (“the February changes”) reintroduce in policy what the bill will repeal from statute.<sup>1</sup> Importantly, this will remove the absolute nature of a statutory bar, but it retains the basic error at the heart of what the Illegal Migration Act 2023 did.

We support the motivations behind the New Clause and welcome the opportunity to consider principled objections to the February changes, which have wider application to matters of ‘good character’ in British nationality law. Mere revision or withdrawal of the February changes is, therefore, inadequate. More radical reconsideration and revision of law, policy and practice concerning character is required.

## **Conflation of registration and naturalisation**

The most fundamental error concerning the approach to ‘good character’ is the conflation of entirely distinct means by which British citizenship is acquired. As PRCBC and Amnesty have repeatedly emphasised, registration and naturalisation are different in nature and purpose, and in relation to the people to whom they apply. Disturbingly, the changes to guidance – as did the Illegal Migration Act 2023 – repeat and further entrench this categorical error.<sup>2</sup>

**Registration of British nationality** was made a feature of British nationality law in the British Nationality Act 1948; and retained in the British Nationality Act 1981. Its purpose is to provide the means for people who are of this country or connected to this country to formally secure their membership of it.<sup>3</sup> Contrary to ministers’ repeated statements, securing British citizenship by registration is not a mere privilege.<sup>4</sup> Those who acquire their citizenship by registration are as much citizens by right and connection to the UK as any of their peers who acquire citizenship at birth. The impact of degrading the significance of registration is to undermine the UK’s nationality and promote racial inequality because the need for registration by people with a right to British citizenship falls disproportionately upon people who are not white.<sup>5</sup>

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<sup>1</sup> This will be done by repeal of sections 31ff of the Illegal Migration Act 2023.

<sup>2</sup> The speeches of Lord Moylan on the Illegal Migration Act 2023 in opposing its impact on registration of British citizenship succinctly describe and show the vice of this categorical error, see *Hansard* HL, Committee, 12 June 2023 : Col 1746ff; Report, 3 July 2023 : Col 1054ff.

<sup>3</sup> PRCBC’s booklet *Children and their rights to British citizenship* explains the key provisions relating to the rights to British citizenship, at birth or by registration later, of children born in the UK and of children born outside the UK.

<sup>4</sup> Most recently, the present Home Office Minister of State repeated this error in response to questions on the changes to guidance, see *Hansard* HL, 12 February 2025 : Col 1254. By contrast, in a clear statement of distinction by the then Minister for Security and Immigration, when explaining the Government’s position on seeking an extension of its powers to strip people of British citizenship, James Brokenshire at least recognized as ‘privilege’ only the seeking of naturalisation and expressly not the registration of British citizenship, see *Hansard* HC, 11 February 2014 : Col 262WH.

<sup>5</sup> Further analysis is provided in our [joint briefing to a cross-party amendment](#) in the names of Lord Moylan, Lord Hodgson of Astley Abbots, Lord Blunkett and Baroness Lister of Burtersett to the Nationality and Borders Bill 2021-2022.

**Naturalisation as a British national** has a far longer history. It concerns how an adult migrant to this country may be permitted to become a British citizen. It has always concerned how someone regarded as of some other territory or country may be made British.

Registration – unlike naturalisation – relates to children and adults with rights to British citizenship. In most cases registration is by express statutory entitlement.<sup>6</sup> This reflects its distinct nature and purpose. When Parliament has made British Nationality Acts it has, accordingly, not included any requirement of good character for any person identified as a citizen by right – whether their citizenship is to be acquired, for example, at birth or by registration. By contrast, a statutory requirement of good character has long been a feature of naturalisation and was retained when the British Nationality Act 1981 was passed.

Governments have since made various piecemeal amendments to the British Nationality Act by various Immigration Acts. This method of legislating has frequently obscured the distinct nature and purpose of the nationality law that is being interfered with. An example of this was the Nationality, Immigration and Asylum Act 2006, which first introduced a good character requirement for registration.<sup>7</sup> The provision received little attention in debate. Ministerial statements during the Act's passage reveal a fundamental misunderstanding of the purpose of registration and the circumstances of the people affected – including a failure to recognise that most of the people affected are children and adults born in the UK.<sup>8</sup>

**Ultimately, what is needed is repeal of what is now section 41A of the British Nationality Act 1981. That provision wrongly discriminates between people with the right to British citizenship by requiring some of them to prove themselves to be 'good' merely because their right requires the formality of registration. Pending repeal, the guidance and practice at the Home Office require fundamental revision. This must ensure that the application of a requirement of 'good character' for registration of a person's right to British citizenship is not treated as if it is simply the same as the requirement of 'good character' that is a precondition for consideration of a migrant adult's request to be naturalised.**

### **Children's rights**

A further longstanding failing of the guidance is its general lack of care for the distinct circumstances of children. Almost the sole exception to that has been a recognition that children are not generally culpable for the means by which they are sent or brought to the UK. The February changes have raised the concern that this important though nonetheless seriously inadequate consideration of children would be compromised. This is because these changes did not expressly take account of children and so threatened to override the pre-existing limited recognition of children's circumstances.

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<sup>6</sup> e.g., section 1(3) and (4), British Nationality Act 1981

<sup>7</sup> Section 58 of the Nationality, Immigration and Asylum Act 2006 was commenced in December of that year. Since then, section 49 of the Borders, Citizenship and Immigration Act 2009 effected a consolidation by replacing section 58 of the 2006 with what is now section 41A of the British Nationality Act 1981.

<sup>8</sup> We have previously explained this history in [submission to the Joint Committee on Human Rights](#) when that committee considered the draft British Nationality Act 1981 (Remedial) Order 2019.

In response to a Written Question, the Minister of State has since confirmed:

*“When assessing good character, it is normally appropriate to disregard immigration breaches if it is accepted this was outside of the applicant’s control. Given illegal entry is normally considered outside a child’s control, most children would not be held accountable for their immigration breach. The 10 February 2025 amendments to the good character policy did not alter this position.”<sup>9</sup>*

This is helpful clarification, and we gratefully acknowledge that the Minister for Migration and Citizenship has since provided similar reassurance in writing to the Chair of the Home Affairs Committee.<sup>10</sup> However, it is the guidance that officials see and apply and which applicants, their lawyers and even judges will more readily find and refer to more usually. **Ministers should be invited to revise the guidance so that it clearly reflects the positive statements they have made.**

### **Character assessment**

A third fundamental error in the guidance – which is repeated in the February changes – is to treat a requirement of ‘good character’ as providing discretion or opportunity to pursue some separate aim.<sup>11</sup> This error is especially acute in relation to the requirement that applies to registration by entitlement because there is no element of discretion about the fulfilment of what is a statutory right. In such circumstances, a requirement of ‘good character’ cannot provide any legitimate vehicle for either penalising past conduct (whether this concerns breaches of criminal law or immigration rules) or deterring others from such conduct.

A related error of the guidance is to simply treat past conduct as a proxy for current assessment of character. It is to assume both that the commission of the earlier conduct in itself is sufficient to show the person’s character to be ‘bad’ at that time and to assume that assessment must apply some time, even years or decades, later. This error is especially acute in relation to children and young people, who are at a stage of life now clearly recognised – but not in Home Office guidance or practice in applying a ‘good character’ requirement – to be one of fundamental development, including of the brain, personality and capacity for moral reasoning, taking responsibility and exercising self-control.<sup>12</sup>

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<sup>9</sup>Hansard HL, [31 March 2025 : UIN HL5846](#)

<sup>10</sup>[Letter of 3 April 2025](#)

<sup>11</sup>Such as the policy aims that were expressly the purpose of the Illegal Migration Act 2023 (see section 1(1) of that Act) and those more recently expressed to be the purpose of the February changes, see e.g., Hansard HL, 12 February 2025 : Cols 1252, 1254 and 1255 *per* the Home Office Minister of State.

<sup>12</sup> e.g., *R v ZA* [2023] EWCA Crim 596, where the Court of Appeal recalled at paragraph 52: “*It has been recognised for some time that the brains of young people are still developing up to the age of 25, particularly in the areas of the frontal cortex and hippocampus. These areas are the seat of emotional control, restraint, awareness of risk and the ability to appreciate the consequences of one’s own and others’ actions; in short, the processes of thought engaged in by, and the hallmark of, mature and responsible adults. It is also known that adverse childhood experiences, educational difficulties and mental health issues negatively affect the development of those adult thought processes. Accordingly very particular considerations apply to sentencing children and young people who commit offences. It is categorically wrong to set about the sentencing of children and young people as if they are “mini-adults”. An entirely different approach is required.*”