



Home Affairs Committee

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From the Committee Chair

Home Office
2 Marsham Street
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By email only

18 February 2022

Dear Mr Foster

Thank you for your letter dated 24 January regarding amendments made to the Windrush Schemes in order to correct an error in Home Office guidance.

Your letter said that Home Office guidance stating that Commonwealth citizens settled in the UK prior to 1973 were exempt from the two-year rule until 1 August 1988 has been found to be incorrect, and that this erroneous interpretation is the result of a mistake “made in the course of routine updates in 2006”.

We would appreciate further information on the following points:

1. What prompted the Home Office to undertake a review of Section 1(5) of the Immigration Act 1971 and its implications for the two-year rule and Commonwealth citizens?
2. Will you provide this Committee with a full explanation of the basis of the interpretation of Section 1(5) of the Immigration Act 1971 which was included in Home Office updates in 2006, and which has appeared in guidance since?
3. Why has it taken the Home Office 16 years to identify a misinterpretation of immigration legislation stated within its own guidance?
4. Will you provide this Committee with a full explanation of the basis of the Home Office’s finding that Commonwealth citizens settled in the UK prior to 1973 have never been exempt from the two-year rule?
5. How many individuals have been granted compensation on the basis that they were exempt from the two-year rule until 1 August 1988?

6. What is your assessment of the number of future claimants who will be denied compensation on the basis of the updated guidance?
7. How many individuals have been granted status under the Windrush Scheme on the basis that they were exempt from the two-year rule until 1 August 1988?
8. How will the updated guidance affect people with an outstanding application to the Windrush Scheme who are a) currently living in the UK and b) currently living overseas?
9. How will the updated guidance affect future applicants to the Windrush Scheme?
10. What steps is the Home Office taking to ensure that all individuals granted ILR “as a result of the error introduced to guidance in 2006” come forward to regularise their status?
 - Are individuals who do not come forward at risk of any adverse consequences, including hostile/compliant environment sanctions?
11. In the Windrush Lessons Learned Review, Wendy Williams wrote “[The Windrush generation] had no reason to doubt their status, or that they belonged in the UK. They could not have been expected to know the complexity of the law as it changed around them”.¹ What consideration has been given to the findings of the Windrush Lessons Learned Review during the course of the Home Office’s review of Section 1(5) of the 1971 Act, and its subsequent decision to amend its guidance on the Windrush Schemes?

The Committee would appreciate a response on these points by 5 March.

Yours sincerely

A handwritten signature in dark ink, reading "Diana Johnson". The signature is written in a cursive, flowing style.

Dame Diana Johnson MP

¹ Wendy Williams, HC 93, [Windrush Lessons Learned Review](#), March 2020, p7