



Windrush Compensation Scheme (Expenditure) Bill HL Bill 111 of 2019–21

On 21 April 2020, the second reading of the Windrush Compensation Scheme (Expenditure) Bill is scheduled to take place in the House of Lords.

In late 2017, the *Guardian* published a series of articles drawing attention to certain immigration cases. These articles highlighted the cases of longstanding UK residents who were facing deportation because of difficulties proving their lawful immigration status. Over the following months, continued coverage told stories of individuals who had lost jobs and homes, as well as their access to healthcare and the welfare state, because of these issues. This group is often referred to as the Windrush generation, named after the Empire Windrush, one of the first ships that brought workers from the Caribbean to the UK to fill labour shortages following the second world war. As a result, the problem became known as the Windrush scandal. However, individuals from non-Caribbean countries were also affected.

In April 2018, the Government acknowledged that members of the Windrush generation, and other Commonwealth citizens, had been treated unfairly. To address the issues, it announced the creation of the Windrush compensation scheme in addition to other actions. The purpose of the scheme is to compensate claimants for their losses and impacts suffered.

The Windrush Compensation Scheme (Expenditure) Bill would give parliamentary authorisation for Windrush compensation scheme expenditure. Until the bill is passed, a ministerial direction is providing authority for payments.

The bill received cross-party support at second reading in the House of Commons on 10 February 2020. However, concerns were raised about the scheme itself. During committee stage on 24 March 2020, MPs tabled and debated amendments to the bill, but no amendments were voted on. Because no amendments were made at committee stage, the bill was not debated at report stage. At third reading—which took place on the same day as committee—the opposition parties set out their continued support of the bill in principle, despite issues with the scheme. The bill passed without division.

The bill is a ‘money bill’. This means it can receive royal assent without being passed by the House of Lords, and also that the House of Commons is not obliged to consider any amendments made by the Lords. It is normal practice for such bills not to be committed to a committee stage in the Lords, instead going directly from second to third reading.

Nicole Winchester | 15 April 2020

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‘Windrush scandal’

What was the problem?

In late 2017, the *Guardian* published a series of articles drawing attention to certain immigration cases.¹ These articles highlighted the cases of longstanding UK residents who were facing deportation because of difficulties with proving their lawful immigration status. Over the following months, the paper continued to publish stories of individuals who had lost jobs and homes, as well as their access to healthcare and the welfare state, as a result of these issues.² Some had been detained in the UK or at the border, while others had been removed from the country or denied re-entry following trips abroad.

Although the number of people affected by such issues is not known, initially the focus was on individuals from Caribbean Commonwealth countries who had come to the UK as children to join family members who had migrated. This group is often referred to as the Windrush generation, named after the Empire Windrush, one of the first ships that brought workers from the Caribbean to the UK to fill labour shortages following the second world war.³ As a result, the problems became known as the ‘Windrush scandal’. However, individuals from non-Caribbean countries were also affected.

What caused the problem?

The Immigration Act 1971—which came into force in 1973—gave Commonwealth immigrants already settled in the UK indefinite leave to remain.⁴ However, many were not issued with any documentation and the Home Office did not keep records confirming these individuals’ status. As a result, many people have been living in the UK for decades without documentary proof of their immigration or nationality status.⁵

This became an issue over time as immigration policies under successive governments changed. Over the past decade, the Government reformed immigration policies based on the principle that the right to live, work and access services in the UK should only be available to those migrants who are eligible.⁶ This became known as a ‘hostile environment’ and is now known as a compliant environment.⁷

The 2014 and 2016 Immigration Acts were part of this policy. They introduced a range of checks and controls on migrants’ access to services, including welfare benefits, driving licences and bank

¹ Amelia Gentleman, ‘[I can’t eat or sleep: the woman threatened with deportation after 50 years in Britain](#)’, *Guardian*, 28 November 2017.

² Nadia Khomami and Goda Naujokaityte, ‘[How the Windrush scandal led to fall of Amber Rudd—timeline](#)’, *Guardian*, 30 April 2018; and *Guardian*, ‘[It’s inhumane: the Windrush victims who have lost jobs, homes and loved ones](#)’, 20 April 2018.

³ HM Government, [The Windrush Compensation Scheme](#), March 2020, p 1.

⁴ National Audit Office, [Handling of the Windrush Situation](#), 5 December 2018, HC 1622 of session 2017–19, p 5.

⁵ House of Commons Library, [Windrush Generation: Government Action to ‘Right the Wrongs’](#), 24 March 2020, p 4.

⁶ National Audit Office, [Handling of the Windrush Situation](#), 5 December 2018, HC 1622 of session 2017–19, p 5.

⁷ *ibid.*

accounts.⁸ Such controls were designed to:

- prevent illegal immigration;
- remove incentives for illegal immigrants to enter or remain in the UK; and
- encourage them to leave.

Both public bodies and private individuals and businesses were required to enforce these rules, for example by checking an individual's right to rent or work in the UK.⁹

In practice, these controls caused issues as some people, including members of the Windrush generation, were lawfully resident in the UK, but did not have documentary proof of their rights.¹⁰ The measures therefore incorrectly included them. Whilst in theory they could resolve the problem by applying to the Home Office for confirmation of their status, issues such as the application fee and the amount of supporting evidence the department required posed obstacles for some.¹¹

How did the Government react?

In April 2018, the Government acknowledged that the Windrush generation should not have been treated in this manner.¹² Since then, successive home secretaries have apologised for the harm caused.¹³

In addition to recognising the problem, in April 2018 the Home Office announced measures it would be taking to address the Windrush generation's situation. These included:¹⁴

- conducting reviews of historical Caribbean cases the Home Office wrongly included for detention/removal or a compliant environment sanction;
- establishing a 'Windrush scheme' to issue confirmation of status documents (and in some cases, grants of British citizenship) free of charge to eligible applicants;
- creating a Windrush taskforce to assist people who may be eligible under the Windrush scheme;
- initiating an independent lessons-learned review; and
- suspending aspects of the hostile/compliant environment policy and amending related guidance.

It also announced the creation of a Windrush compensation scheme for those affected.¹⁵

⁸ National Audit Office, [Handling of the Windrush Situation](#), 5 December 2018, HC 1622 of session 2017–19, p 5.

⁹ *ibid*, p 6.

¹⁰ House of Commons Library, [Windrush Generation: Government Action to 'Right the Wrongs'](#), 24 March 2020, p 4.

¹¹ *ibid*.

¹² National Audit Office, [Handling of the Windrush Situation](#), 5 December 2018, HC 1622 of session 2017–19, p 6; and [HC Hansard, 16 April 2018, cols 27–38](#).

¹³ [HC Hansard, 19 March 2020, cols 1155 and 1159](#); and [HC Hansard, 16 April 2018, cols 27–38](#).

¹⁴ [HC Hansard, 23 April 2018, cols 619–22](#); Home Office, '[Free citizenship for the Windrush generation](#)', 23 April 2018; and House of Commons Library, [Windrush Generation: Government Action to 'Right the Wrongs'](#), 24 March 2020, p 4.

¹⁵ [HC Hansard, 23 April 2018, cols 619–22](#).

Windrush compensation scheme

In April 2019, the Government launched the Windrush compensation scheme following a consultation process.¹⁶ The purpose of the scheme is to compensate claimants for the losses and impacts suffered because they were unable to prove their lawful immigration status in the UK.

The scheme is not limited to those who originally came from the Caribbean Commonwealth. Rather, it is open to:

- anyone from any nationality who has the right to live or work in the UK without any restrictions or is now a British citizen, and arrived in the UK before 31 December 1988;
- anyone from a Commonwealth country who arrived and settled in the UK before 1973;
- children and grandchildren of Commonwealth citizens in certain circumstances;
- the estates of those who are now deceased but who would have otherwise been eligible to claim compensation; and
- close family members of eligible claimants where there has been a significant impact on their life or where there is evidence of certain direct financial costs.¹⁷

Under the scheme, compensation is available for losses related to:

- employment;
- immigration fees;
- housing;
- health;
- education;
- driving licences;
- banking;
- impact on normal daily life (for example, missed key family events or inability to travel); and
- detention and removal.¹⁸

Further information on the scheme can be found in the Government's scheme rules and associated casework guidance.¹⁹

The Government has committed to providing Parliament with regular updates on the scheme, including number of applications received; number of claims paid; and overall amount paid out under the scheme.

¹⁶ Home Office, '[Guidance: Windrush compensation scheme](#)', 3 April 2019; and '[Consultation outcome: Windrush compensation scheme](#)', 6 February 2020.

¹⁷ Home Office, '[Guidance: Windrush compensation scheme](#)', 3 April 2019.

¹⁸ *ibid.*

¹⁹ HM Government, [The Windrush Compensation Scheme](#), March 2020; and Home Office, '[Guidance: Windrush compensation scheme casework guidance](#)', 5 March 2020.

On 27 February 2020, it published data on claims and payments made under the scheme.²⁰ It showed that as of 31 December 2019, 1,108 claims had been made. Of these, 36 payments had been made totalling £62,198. However, the Government has stated that many of these payments are provisional and that claimants may receive further awards.²¹ Commenting on this amount, the then shadow Home Secretary, Diane Abbott, stated that “the amount and the quantity of the payments are pitifully small” and argued it showed poor administration of the scheme by the Government.²²

What recent changes have been made to the scheme?

In February 2020, the Government announced alterations to the scheme. Writing to Yvette Cooper, chair of the House of Commons Home Affairs Committee, Kevin Foster, the Minister for Future Borders and Immigration, set out these changes.²³

Deadline extended

The Windrush compensation scheme is time-limited and was initially due to run for two years until April 2021. However, the Government has extended the deadline for applying to 2 April 2023.²⁴ Mr Foster stated that was to provide certainty to individuals who may be thinking about making a claim that they have time to do so. He also said that it would provide more time to reach people who are not yet aware of the scheme.

Mitigation policy

The Government also announced amendment of the scheme’s mitigation policy. This means that a wider range of circumstances and actions taken by individuals to resolve their immigration status, or mitigate losses or impacts, are considered when deciding awards.²⁵ Commenting on this change, Mr Foster said:

Whilst we consider it still reasonable to expect individuals would have tried to resolve problems evidencing their lawful right to be in the UK, these changes will enable the Home Office to apply a more flexible consideration in relation to the steps someone took to resolve their situation.²⁶

Independent advisor

The Government also announced the recruitment of a permanent independent advisor to the scheme and the launch of a procurement tender for an organisation to provide ongoing independent advice

²⁰ Border Force, UK Visas and Immigration and Immigration Enforcement, ‘[Transparency data: Windrush compensation scheme data: February 2020](#)’, 27 February 2020.

²¹ Home Office, ‘[Letter to the Chair of the House of Commons Home Affairs Select Committee](#)’, 6 February 2020.

²² [HC Hansard, 10 February 2020, col 626](#).

²³ Home Office, ‘[Letter to the Chair of the House of Commons Home Affairs Select Committee](#)’, 6 February 2020.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ *ibid.*

and support for claimants.²⁷

A revised impact assessment was published to go with these changes.²⁸ It estimated total compensation payments would cost between £20.5 million and £301.3 million, with operational costs estimated to be in the range of £15.4 million to £23 million.²⁹

The Home Secretary, Priti Patel, announced further changes to the scheme on 19 March 2020.³⁰ These included:

- the establishment of a new cross-government working group to develop programmes to improve the lives of those affected; and
- the creation of a £500,000 fund for grassroots organisations to promote these programmes.

What reactions have there been to the scheme?

Several aspects of the scheme have been criticised. For example, one aspect that has received criticism from both Labour and the Scottish National Party (SNP) is the limits on the amount of compensation that can be awarded for certain categories of loss. In April 2019, the then Shadow Home Secretary, Diane Abbott, argued that the amounts offered were too low and that “the opposition believe that the Home Office must pay for losses actually incurred”.³¹ Using healthcare as an example, she argued:

There is only £500 for denial of access to free healthcare. It is easy to quantify how much people had to spend when they had to access private healthcare. Why cannot they get that money back?³²

Responding, Caroline Nokes, the then Minister of State for Immigration, said:

With regard to caps on payments, this scheme is both tariff and actuals-based. The right hon. Lady raised the issue of those who might have been denied NHS care, where the tariff scheme involves an award of £500. However, if an individual incurred private healthcare costs, the actuals will of course be repaid.³³

Joanna Cherry, the home affairs spokesperson for the SNP, echoed the criticism made by Ms Abbott. She said that internal caps were “introduced through the back door” and that some of the pay-outs

²⁷ Home Office, ‘[Letter to the Chair of the House of Commons Home Affairs Select Committee](#)’, 6 February 2020.

²⁸ Home Office, [Windrush Compensation Policy: Impact Assessment](#), 29 January 2020.

²⁹ *ibid.*, p 2.

³⁰ [HC Hansard, 19 March 2020, col 1156.](#)

³¹ [HC Hansard, 9 April 2019, col 194.](#)

³² *ibid.*

³³ *ibid.*, col 195.

under the scheme are “wholly unacceptable”.³⁴ Ms Cherry also spoke on the exclusion of many legal costs, arguing that:

The Government must fully compensate those of the Windrush generation who had to pay out of their own pockets to defend themselves against that state injustice.³⁵

Recipients of compensation under the scheme have also been critical.³⁶

In February 2020, the *Guardian* published an editorial setting out its view.³⁷ The paper highlighted concerns with delays in claimants receiving compensation under the scheme, saying that some had died before receiving payment. It also noted the length and complexity of the claim form as well as the psychological challenges some claimants face in completing it. However, it welcomed the extension of the scheme’s deadline.

Windrush Compensation Scheme (Expenditure) Bill

What would the bill do?

The Windrush Compensation Scheme (Expenditure) Bill would give parliamentary authorisation for expenditure under the Windrush compensation scheme. It does not seek to change any of the details underpinning the design or operation of the scheme. These can be changed without primary legislation. Until the bill is passed, a ministerial direction is providing authority for payments.³⁸

The Windrush Compensation Scheme (Expenditure) Bill is a money bill.³⁹ The Speaker of the House of Commons certifies a bill as a money bill if in his opinion it contains only provisions dealing with national taxation, public money or loans or their management.⁴⁰ A money bill can be presented for royal assent without the consent of the House of Lords if the Lords does not pass it without amendment within a month of receiving it from the Commons. The House of Lords *Companion* notes that this “does not debar the Lords from amending such bills”, but the House of Commons “is not obliged to consider the amendments”.⁴¹

Provisions of the bill

The bill consists of two clauses:

- Clause 1 would provide parliamentary authority for expenditure under or in connection with the Windrush compensation scheme, which is defined as the scheme published by the

³⁴ [HC Hansard, 9 April 2019, col 196.](#)

³⁵ *ibid.*

³⁶ Amelia Gentleman, ‘[Windrush victim rejects ‘insulting’ offer of £22,000 payout](#)’, *Guardian*, 17 December 2019.

³⁷ *Guardian*, ‘[The Guardian’s view on Windrush compensation: why the delay?](#)’, 10 February 2020.

³⁸ Home Office, ‘[Letter to the Permanent Secretary to the Home Office](#)’, 4 July 2019; and [Explanatory Notes](#), p 3.

³⁹ Government Whips’ Office House of Lords, [Forthcoming Business](#), 26 March 2020, p 1.

⁴⁰ House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2017, p 142.

⁴¹ *ibid.*

Home Office on 3 April 2019.

- Clause 2 would provide for the bill’s territorial extent (the whole of the UK). It would also provide for its commencement—it would come into force on the day on which it is passed—and short title.

What happened in the Commons stages?

The bill was introduced in the House of Commons on 8 January 2020 and completed its Commons stages on 24 March 2020.

Second reading

The bill received second reading on 10 February 2020. It received cross-party support. However, opposition parties raised concerns over aspects of the scheme itself.

Introducing the bill, the Home Secretary, Priti Patel, set out its purpose:

We need to ensure that the scheme is underpinned by the necessary financial parliamentary authority, which is exactly what the bill is designed to provide. Payments are currently made under the ministerial direction that was issued in July last year, but the bill offers Parliament the opportunity to give its legislative authority for expenditure under the compensation scheme.⁴²

She also spoke on the purpose of the scheme itself, stating that nothing can “ever wipe out the hurt and loss that should never have been suffered in the first place”. She hoped the scheme “can go some way towards easing the financial burden endured as a result”.⁴³

Speaking for the Opposition, the then Shadow Home Secretary, Diane Abbott, said that Labour would be supporting the bill.⁴⁴ However, she raised objections to the scheme itself, stating:

We are completely opposed to the way the Government are going about this. It is shoddy and inefficient and it adds insult to injury.⁴⁵

Focusing on her objections to the scheme, Ms Abbott criticised the Government’s administration of it and described the amounts being paid out as “pitiful”.⁴⁶ She argued that the scheme should be placed on a statutory footing and drew comparisons to compensation for criminal injuries, asking why the amounts offered under the scheme are lower. Ms Abbott also questioned the Government on its efforts to advertise the scheme.⁴⁷

⁴² [HC Hansard, 10 February 2020, col 623.](#)

⁴³ *ibid*, col 624.

⁴⁴ *ibid*, col 626.

⁴⁵ *ibid*, col 625.

⁴⁶ *ibid*, col 626.

⁴⁷ *ibid*, col 627.

Stuart McDonald, SNP immigration, asylum and border control spokesperson, gave his support to the bill.⁴⁸ However, Mr McDonald also raised concerns about the scheme itself. For example, although he welcomed the changes made in February 2020, he said that other changes were required. These included simplification of the application form, the availability of legal aid to claimants, and reconsideration of the time limit.⁴⁹

Sarah Olney, Liberal Democrats business, trade and transport spokesperson, stated her party would not oppose the bill. She also said, however, the party had concerns about the scheme.⁵⁰

MPs also raised several other issues. For example, both Diane Abbott and Stuart McDonald called on the Government to look again at the introduction of a special hardship scheme.⁵¹ Yvette Cooper, the chair of the House of Commons Home Affairs Committee, supported this request, arguing that the existing scheme would take too long for “many people who are in urgent need of compensation”.⁵² She noted the cases of four people the committee highlighted in a 2018 report,⁵³ stating:

Shockingly, two of them have still had nothing, despite facing great hardship, and the other two died before they could get any compensation or hardship support at all.⁵⁴

Responding, Ms Patel said that she would look into those cases. She added that an exceptional payments scheme “should stop anybody falling through”.⁵⁵

Another area of cross-party agreement concerned ownership of the scheme. Various MPs, including Ms Abbott, Mr McDonald and David Lammy (Labour MP for Tottenham) argued that the Home Office should not be administering the scheme as many of the claimants’ previous dealings with the department would mean that they lacked trust in it and would potentially not wish to engage with the officials.⁵⁶

Committee stage, report stage and third reading

Committee stage took place in committee of the whole house on 24 March 2020. Several amendments were tabled and discussed by MPs; however, none were divided on.

Stuart McDonald tabled amendments that together would have:⁵⁷

- made the scheme independent of the Home Office;

⁴⁸ [HC Hansard, 10 February 2020, col 631.](#)

⁴⁹ *ibid*, col 632.

⁵⁰ *ibid*, col 653.

⁵¹ *ibid*, cols 621 and 631.

⁵² *ibid*, col 621.

⁵³ House of Commons Home Affairs Committee, [Windrush: the Need for a Hardship Fund](#), 13 June 2018, HC 1200 of session 2017–19, pp 3–4.

⁵⁴ [HC Hansard, 10 February 2020, col 621.](#)

⁵⁵ *ibid*, col 664; and Home Office, [Windrush Scheme: Support in Urgent and Exceptional Circumstances](#), 17 December 2018.

⁵⁶ *ibid*, cols 627, 632 and 639.

⁵⁷ [HC Hansard, 24 March 2020, cols 301–4.](#)

- created an independent appeal route using a tribunal system;
- led to further consultation on the scheme's tariffs and caps;
- launched a consultation on the application process;
- allowed reimbursement of the costs of legal support for making applications;
- removed the time limit attached to the scheme;
- removed restrictions that deny compensation because of a criminal conviction;
- removed restrictions that reduced pay-outs on the grounds that an individual failed to contact the Home Office at an earlier stage; and
- applied a civil standard of proof to claims made under the scheme.

Speaking to his amendments, Mr McDonald said that he would not be pressing any of them to a vote, but that he hoped the minister would engage with the ideas.

The amendments tabled by Ms Abbott would have provided for an explicit statement that the scheme is not only for individuals who travelled from the Caribbean, but from other Commonwealth countries. They would have also made the scheme take into account the impact on family life of those affected. Commenting on her amendments, she argued that it was important that it was made clear that the scheme is not for only those from the Caribbean and called for a national campaign to encourage engagement.⁵⁸ However, as with Mr McDonald, she did not push for a vote.

Because no amendments were made at committee stage, the bill was not debated at report stage.⁵⁹ At third reading, the opposition parties set out their continued support of the bill in principle, and the bill passed without division.⁶⁰

Further Information

- Wendy Williams, [Windrush Lessons Learned Review](#), March 2020, HC 93 of session 2019–21

⁵⁸ [HC Hansard, 24 March 2020, col 304.](#)

⁵⁹ *ibid*, col 311.

⁶⁰ *ibid*, cols 311–14.