



## **British Nationality (Regularisation of Past Practice) Bill**

### **HL Bill 144 of 2022–23**

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On 19 June 2023, second reading of the [British Nationality \(Regularisation of Past Practice\) Bill](#) is scheduled to take place in the House of Lords. It is a government bill and it has completed its passage through the House of Commons.

The bill would deal with a legal issue that has come to light which casts doubt on the British citizenship of some people born in the UK to European Economic Area (EEA) or Swiss nationals between 1 January 1983 and 1 October 2000. A recent court case has brought into question whether EEA or Swiss nationals living in the UK during this period should have been considered “settled” for nationality purposes, and therefore whether children born in the UK to them at that time could be considered British citizens under the British Nationality Act 1981. Home Office guidance and government policy across the years had stated that people born to these nationals were British citizens and this was relied upon. However, since the judgment, the Home Office has had to pause any first-time passport applications from this group.

The government has committed to dealing with the situation as quickly as possible and is fast-tracking the legislation. The bill passed all its House of Commons stages on 6 June 2023 and it received cross-party support.

#### **I. What are the details of the current situation?**

The bill seeks to resolve a citizenship issue that has come to light following recent court proceedings.

Between 1 January 1983 and 1 October 2000, EEA and Swiss nationals exercising a free movement right to live in the UK were considered to be “settled” in the UK for nationality purposes.<sup>1</sup> This meant that any children born to those individuals during that time could be considered British citizens under the British Nationality Act 1981 and could apply for British passports. The explanatory notes to the bill explain further, and specify that this concept was set out in guidance available at the time and subsequently:

The British Nationality Act 1981 sets out the criteria for the acquisition and attainment of citizenship. Its most notable change for automatic acquisition by birth in the UK was to move away from a jus soli (birth on soil) approach. Instead, at the time of a birth, at least one parent needs to be British themselves or settled here. As well as residing here, a key part of the definition of settled is that the person is doing so free from any immigration time restrictions.

From 1 January 1983 to 1 October 2000 inclusive, and where a person was lawfully exercising any type of free movement right in the UK mainland (for example as a worker), they were accepted by the Home Office as not being subject to any immigration time restrictions. This meant they could also be treated as “settled” in the UK for nationality purposes. Any children born in the UK to them at that time were also considered to be British citizens. The Home Office confirmed this approach in policy documents such as published applicant guidance, internal caseworker instructions and, later, relevant gov.uk pages.

Different rules applied to EEA and Swiss nationals in the UK after 1 October 2000. For example, following the Immigration (European Economic Area) Regulations 2000, children born to EEA nationals and Swiss citizens in the UK between 2 October 2000 and 29 April 2006 would need their parents to have had “indefinite leave to remain” to apply for British citizenship.<sup>2</sup>

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<sup>1</sup> [Explanatory notes](#), p 2.

<sup>2</sup> Government website, [‘Check if you’re a British citizen’](#), accessed 31 May 2023.

The high court case of [R\(Roehrig\) v Secretary of State for Home Department \[2023\] EWHC 31 \(Admin\)](#) brought the guidance about those born in the UK between 1 January 1983 to 1 October 2000 into doubt. Although the case concerned an applicant born after 2 October 2000, in making its judgment the court implied that it was incorrect to treat EEA nationals exercising a right of residence before 2 October 2000 as “settled”. As a result, it brought into question the citizenship and passports of those born to EEA nationals and Swiss citizens during that time.<sup>3</sup>

Following the judgment, the Home Office has suspended British citizenship/passport applications from the cohort affected.<sup>4</sup> It said it was doing this while the legal issues were assessed. However, it has said that those who already have passports should be unaffected.

It is unclear how many people are affected. In its impact assessment for the bill, the Home Office stressed that there were no official statistics on the cohort affected.<sup>5</sup> It did estimate that around 167,000 children in the UK were born to EEA mothers during this time; however, it then noted that they could have had an “alternative claim to citizenship, for example, via a British citizen father”.

## **2. What would the bill do?**

### **2.1 Government statement**

The bill has been introduced to rectify the issue and place the citizenship of those that relied on the previous guidance on a statutory footing. Introducing the bill on 24 May 2023, Robert Jenrick, the minister for immigration, stated:

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<sup>3</sup> For a summary of the case, see: Kingsley Napley, ‘[Born in the UK to a European parent and think you’re British? Time to think again](#)’, 1 February 2023; and Freeths, ‘[Roehrig v Secretary of State for the Home Department](#)’, 17 February 2023.

<sup>4</sup> Home Office, ‘[British citizenship: Automatic acquisition](#)’, 23 March 2023, p 3.

<sup>5</sup> Home Office, ‘[Equality impact assessment](#)’, 24 May 2023, p 4.

[The bill] will confirm in statute a long-standing historical policy under which EU, EEA and Swiss nationals living in the UK in the relevant period and exercising free movement rights here were considered to be settled. This will protect the nationality rights of people born in the UK to parents who were considered settled on the basis of that policy, and who were treated as British automatically, and those who registered or naturalised as British citizens on that basis.

The bill also clarifies when EU, EEA and Swiss nationals could be considered settled on the basis of exercising an equivalent right in Jersey, Guernsey and the Isle of Man, which are considered part of the UK for nationality purposes.

We want to be clear that we are not creating ‘new’ British citizens, but rather confirming the citizenship of individuals we have long considered, and treated as, British already under established Home Office policy.

The introduction of the bill was preceded by consultation with the Channel Islands and the Isle of Man, with relevant officials in these locations having confirmed their support for the measures the UK government is looking to introduce.<sup>6</sup>

The bill is also being fast-tracked. The government has said that this is important to quickly resolve the citizenship status of the cohort affected. The bill’s explanatory notes state:

The government is acting quickly and proactively to place in statute the position of people who successive governments have believed to be British and who also regard themselves to be British on the basis of the previous policy. The citizenship status of this cohort, and of their children and grandchildren, who are also potentially affected by the

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<sup>6</sup> House of Commons, [‘Written statement: British Nationality \(Regularisation of Past Practice\) Bill’](#), 24 May 2023, HCWS805.

technical issue identified with the legality of that policy, will be placed beyond doubt.

There is currently no legal basis on which to issue a passport to a first-time applicant seeking to rely on the previous policy to support their claim to British citizenship. Applications from this cohort have been paused since October 2022 but can be progressed once the bill is passed.<sup>7</sup>

## 2.2 Provisions of the bill

The bill has two clauses. Clause 1 amends the British Nationality Act 1981 to confirm the citizenship of the cohort affected, as set out by the government in its statement, inserting the text:

A person exercising a freedom of movement right at any time falling within the remedial period is treated for the purposes of this act as not subject at that time under the immigration laws to any restriction on the period for which they may remain in the United Kingdom.

Differing “remedial periods” apply to those who were living in the UK, Jersey, Guernsey or the Isle of Man at the time, to reflect the different policies in those places. For the UK, it applies to those living in the UK between 1 January 1983 and 1 October 2000.

Clause 1 also states that the provisions will have retrospective effect.

Clause 2 specifies that the legislation would apply to England and Wales, Scotland, Northern Ireland, the Channel Islands, the Isle of Man, and the British overseas territories.

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<sup>7</sup> [Explanatory notes](#), p 6.

### 3. What was said about the bill in the House of Commons?

All House of Commons stages were taken on 6 June 2023. No amendments were tabled or discussed at committee stage and there was no report stage. The bill received full cross-party support and all the Commons proceedings were concluded in under an hour. There were no votes on the bill.

Introducing the bill at second reading, Robert Jenrick, the minister of state for immigration, stressed that the bill dealt with a “technical legal issue” brought about by the recent court judgment.<sup>8</sup> He said it was important to deal with the issue quickly to bring certainty for those affected:

[L]egislating quickly and proactively to provide reassurance is the right thing to do. The bill will operate by confirming in law the previous policy position. This will protect the nationality rights of people born in the UK to parents who were considered settled on the basis of exercising a free movement right and those who registered or naturalised as British citizens based on that policy. The bill also clarifies when EEA nationals could be considered settled on the basis of exercising an equivalent right in Jersey, Guernsey or the Isle of Man, which are part of the United Kingdom for nationality purposes.<sup>9</sup>

He also stressed that it was not about “creating new British citizens”. He said:

These are people who have always considered themselves to be British, and whom successive governments have also considered as such. They may have lived here, worked here, had children here and organised their lives based on policy published under both Conservative and Labour governments confirming that they are British. It is essential that we provide them with legal certainty as to their citizenship status as

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<sup>8</sup> [HC Hansard, 6 June 2023, col 694.](#)

<sup>9</sup> [HC Hansard, 6 June 2023, col 695.](#)

soon as possible, so they can continue their lives in our country with the same rights and entitlements they have always enjoyed.<sup>10</sup>

Labour and the SNP both indicated their full backing for the bill. However, Stephen Kinnock, Labour's shadow minister for immigration, and Alison Thewliss, the SNP's home affairs spokesperson, did query the number of people affected and how they would be supported or communicated with.<sup>11</sup>

Responding to these points, Robert Jenrick said there was no new information on the size of the cohort affected, but did say that, as at 26 May, 95 passport applications had been paused.<sup>12</sup> He said the Home Office was updating these people on the situation and that their claims would be expedited once the legislation had passed. He confirmed that no compensation would be paid to those affected, stressing that the situation was unexpected and that the government was addressing it as rapidly as possible. He also stressed that there should be no other impact on the affected cohort.

Summing up the government's stance at third reading, Mr Jenrick reiterated the importance of dealing with the situation quickly so that the affected group are not "disadvantaged and can continue their lives with the same rights and entitlements they have always enjoyed".<sup>13</sup> He thanked officials and MPs across the House for their help with this.

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<sup>10</sup> [HC Hansard, 6 June 2023, col 696.](#)

<sup>11</sup> [HC Hansard, 6 June 2023, cols 696–99.](#)

<sup>12</sup> [HC Hansard, 6 June 2023, cols 699–700.](#)

<sup>13</sup> [HC Hansard, 6 June 2023, cols 702–3.](#)

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