

BRITISH NATIONALITY (REGULARISATION OF PAST PRACTICE) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the British Nationality (Regularisation of Past Practice) Bill as brought from the House of Commons on 7 June 2023 (HL Bill 144).

- These Explanatory Notes have been provided by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the British Nationality (Regularisation of Past Practice) Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the British Nationality (Regularisation of Past Practice) Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the British Nationality (Regularisation of Past Practice) Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the British Nationality (Regularisation of Past Practice) Bill. They are not, and are not intended to be, a comprehensive description of the British Nationality (Regularisation of Past Practice) Bill.

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These Explanatory Notes relate to the British Nationality (Regularisation of Past Practice) Bill as brought from the House of Commons on 7 June 2023 (HL Bill 144).

Overview of the Bill

- 1 The purpose of the Bill is to place in statute a longstanding policy on British nationality. It amends the British Nationality Act 1981 for EEA and Swiss nationals living in the UK, confirming how and when their residential status meant they could be considered settled. This, in turn, affects whether their children born in the UK acquired British citizenship automatically.
- 2 In accordance with the British Nationality Act 1981, references to the UK also include Jersey, Guernsey and the Isle of Man.
- 3 The Bill sets out who, for nationality purposes, can be considered settled and when, thereby placing beyond doubt the citizenship of children born to “settled” parents during that period.

Policy background

- 4 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.
- 5 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. This interpretation is now understood to have been incorrect, and EEA nationals exercising Treaty Rights at that time were not in fact “settled”. This is because their residence at that time should have been considered to be subject to immigration time restrictions. Legislating through this Bill will put the citizenship of this group of children beyond doubt and restore the earlier approach.
- 6 The issue the Bill seeks to address came to light in the context of a High Court case about a person born in the UK to an EEA national parent after 2 October 2000. The Home Office successfully defended the case but, in responding to the challenge, identified a potential issue with the longstanding policy that was in place before 2 October 2000. The case is ongoing, but the Home Office intends to legislate to put the citizenship status of those affected beyond doubt.
- 7 The impact of this Bill will be that those treated as “settled” in line with our previous policy will be defined as such in law. People who were recognised as British because their parents were treated as settled in the UK will have that status confirmed in law.
- 8 Research into this issue also highlighted that there were historical discrepancies as to how a person was considered to be not “subject to immigration time restrictions” across the mainland UK and the Crown Dependencies (Jersey, Guernsey and the Isle of Man).
- 9 The Bill therefore provides that a person is not to be treated as subject to an immigration time restriction:
 - From 1 January 1983 to 1 October 2000 in Great Britain or Northern Ireland
 - From 1 August 1993 to 30 September 2004 in Guernsey

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- From 1 January 1983 to 8 February 2004 in Jersey
- From 1 October 1994 to 1 October 2000 in the Isle of Man.

This will ensure that all those who were accepted as British citizens under the previous policy are covered.

- 10 A small number of cases have come to light where a person born in the UK mainland between 1 January 1983 and 1 October 2000 inclusive has applied for a first-time passport. Once this legislation is passed, their British citizenship will be placed beyond doubt and they can be issued a passport.
- 11 These provisions will operate retrospectively. This means that a person born in the UK to an EEA national exercising a Treaty right between the dates set out at paragraph 9 will have always been a British citizen. This means that the status of their children or grandchildren which relied on that also will not change.

Legal background

- 12 The Bill amends the British Nationality Act 1981 (the “1981 Act”). British citizenship under that Act can be acquired through a connection with the UK mainland or the Crown Dependencies.
- 13 Section 50(2) of the 1981 Act sets out who is “settled” for the purposes of that Act. This is where the person is ordinarily resident and “without being subject under the immigration laws to any restriction on the period for which he may remain” (referred to in this document as not being subject to “immigration time restrictions” for ease).
- 14 Section 1(1)(b) of the Act states that a child born in the UK will be a British citizen automatically if, at the time of the birth, either parent is British or settled in the UK.
- 15 A registration provision at section 1(3) of the Act allows a child born in the UK to register as a British citizen if their parent becomes settled (or British) in the UK after their birth.
- 16 Section 6 provides for naturalisation as a British citizen. The specific requirements for naturalisation are set out in Schedule 1 to the Act. One of the residence requirements is that the person is free from immigration time restrictions on the date of application and, if they are not the spouse or civil partner of a citizen, for 12 months before applying.
- 17 Accordingly, the circumstances in which a person may be considered to be free from immigration time restrictions may have a bearing on both the nationality of their children and further descendants, but also their own ability to become British.

Territorial extent and application

- 18 The Bill extends and applies to England and Wales, Scotland, Northern Ireland, the Channel Islands, and the Isle of Man. It also extends to the British Overseas Territories.

Fast-track legislation

- 19 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards¹, the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked.

Why is fast-tracking necessary?

- 20 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 technical issue identified with the legality of that policy, will be placed beyond doubt.
- 21 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.

What is the justification for fast-tracking each element of the bill?

- 22 This is a short, 2 Clause Bill that preserves the previous policy position. It has no financial or devolution implications and operates solely to confirm in statute an approach already adopted in practice. Fast-tracking the Bill to obtain Royal Assent as soon as practicable, and commencing Clause 1 immediately upon Royal Assent, will confirm the citizenship status of a large group of individuals long considered British citizens.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

- 23 The Government has sought to introduce the Bill as soon as the parliamentary timetable allows. It is a short Bill which is proposed to be debated in Committees of the Whole House in both Houses of Parliament.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

- 24 As British nationality legislation extends to the Channel Islands and the Isle of Man, and the British Overseas Territories, officials from these locations have been engaged as the Bill was developed and have confirmed their support for the measures the Government is seeking to introduce. As nationality and immigration are reserved matters, the Government has not deemed it necessary to involve the Devolved Administrations in the formulation of the policy. Home Office officials have also liaised with external stakeholder groups and given them the opportunity to provide feedback on the Bill's drafting.

Does the bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

- 25 The Bill does not include a sunset clause. It seeks to regularise, retrospectively, the policy adopted in past operational practice and so is not a time-limited provision.

¹ the 3 House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I: <https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/116.pdf>

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

- 26 The issue in question has arisen because existing nationality legislation does not clarify when an individual is to be considered free from immigration time restrictions in the relevant period. Primary legislation is required to amend the 1981 Act to preserve the previous policy position as the 1981 Act does not have wide enough source powers for an adequate amendment to be introduced by secondary legislation.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

- 27 Parliamentary committees have not scrutinised the legislation. It is a simple Bill that will preserve policy that has been operating in practice for up to 4 decades.

Commentary on provisions of Bill/Act

Clause 1: Immigration restrictions to be disregarded in certain cases

- 28 Subsection (1) inserts new section 50B into the British Nationality Act 1981. That section sets out that a person who was in the UK exercising a freedom of movement right at any point during the remedial period (see paragraph 29 below) is to be treated as not being subject to immigration time restrictions for the purpose of that Act.
- 29 It also defines a freedom of movement right by virtue of the legislation under which it would have been exercised. These are:
- a. a right to reside in Great Britain and Northern Ireland established under the European Communities Act 1972 following our membership of the European Economic Community
 - b. a similar right to reside in Guernsey, Jersey and the Isle of Man as established in their domestic legislation.
- 30 The remedial periods are defined with reference to when the previous policy was in operation in the various locations affected. These are:
- a. in Great Britain and Northern Ireland from 1 January 1983 to 1 October 2000 inclusive;
 - b. in the Bailiwick of Guernsey, from 1 August 1993 to 30 September 2004 inclusive;
 - c. in the Bailiwick of Jersey, from 1 January 1983 to 8 February 2004 inclusive;
 - d. in the Isle of Man, from 1 October 1994 to 1 October 2000 inclusive.
- 31 The provision inserted by subsection (1) is treated as always having had effect.

Clause 2: Extent and short title

- 32 This clause sets out the extent of the Bill. It extends to England and Wales, Scotland, Northern Ireland, the Channel Islands, the Isle of Man, and the British Overseas Territories. As an alternative commencement date has not been specified, the Bill will come into force on Royal Assent.
- 33 This Act may be cited as the British Nationality (Regularisation of Past Practice) Act 2023.

Commencement

34 The Bill will commence on Royal Assent.

Financial implications of the Bill

35 This Bill will formally recognise as British those who have been treated as such in previous policy. This will therefore have no financial impact.

36 This Bill is also expected to have no impact on the public sector, business, charities, or voluntary bodies and, as such, no Impact Assessment has been prepared.

Parliamentary approval for financial costs or for charges imposed

37 The Bill does not require a money resolution or a ways and means resolution. A money resolution is required where a bill authorises new charges on the public revenue – broadly speaking, new expenditure. A ways and means resolution is required where a bill authorises new charges on people – broadly speaking, new taxation or other similar charges. Neither of these apply to this Bill.

Compatibility with the European Convention on Human Rights

38 In accordance with section 19 of the Human Rights Act 1998, Lord Murray of Blidworth, Parliamentary Under Secretary at the Home Office, has made the following statement: “In my view, the provisions of the Bill are compatible with the Convention Rights.”

Consideration of the Environment Act 2021

39 Lord Murray of Blidworth, Parliamentary Under Secretary at the Home Office, is of the view that the Bill as introduced into the House of Lords does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Related Documents

40 The following documents are relevant to the Bill and can be read at the stated locations:

- Factsheet on gov.uk: <https://www.gov.uk/government/publications/british-nationality-regularisation-of-past-practice-bill-factsheet/british-nationality-regularisation-of-past-practice-bill-factsheet>
- Equalities Impact Assessment on parliament.uk: <https://publications.parliament.uk/pa/bills/cbill/58-03/0313/IA.pdf>
- ECHR Memorandum on parliament.uk: <https://publications.parliament.uk/pa/bills/cbill/58-03/0313/ECHRMemo.pdf>

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Annex A – Territorial extent and application in the United Kingdom

| Provision | England | Wales | | Scotland | | Northern Ireland | |
|-----------|--|--|---|----------------------------------|---|--|---|
| | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Legislative Consent Motion process engaged? | Extends and applies to Scotland? | Legislative Consent Motion process engaged? | Extends and applies to Northern Ireland? | Legislative Consent Motion process engaged? |
| Clause 1 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 2 | Yes | Yes | No | Yes | No | Yes | No |

Subject matter and legislative competence of devolved legislatures

- 41 The provisions of the Bill relate to nationality which are reserved matters in Scotland (section B6 of Schedule 5 to the Scotland Act 1998) and Wales (paragraphs 28 and 29 of Schedule 7A to the Government of Wales Act 2006) and excepted matters in Northern Ireland (paragraph 8 of Schedule 2 to the Northern Ireland Act 1998).

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