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ILPA



British Nationality (Regularisation of Past Practice) Bill

House of Lords
19 & 21 June 2023

On Monday, 19 June, the Lord Privy Seal will move that this Bill have all its remaining stages on Wednesday, 21 June; and that no amendments shall be moved at Third Reading of this Bill. We provide this briefing to indicate and explain our support for this Bill and the Lord Privy Seal's exceptional motion.

This Bill is primarily concerned with the British citizenship rights of children born in the UK between 1 January 1983 and 1 October 2000 (inclusive) to parents exercising EU free movement rights.

We have benefited directly from Home Office consultation prior to this Bill's introduction. Notwithstanding our concerns and disagreements over wide issues concerning successive Government's treatment of British citizenship and nationality law, as indicated in this briefing, we welcome this Bill's introduction. It is to provide fast and clear assurance to people whom the UK has regarded as its citizens by right for more than two decades. That assurance is made necessary because, in October 2022, the citizenship of these people was called into question by arguments advanced by the Home Secretary and accepted by the High Court in ongoing litigation.¹

What the Bill does:

The Bill has retrospective application. This is to protect citizenship rights. That protection is to guarantee the British citizenship of a large, but unknown, number of people born in the UK on or before 1 October 2000 to parents at that time exercising EU free movement rights.² It will also guarantee the British citizenship of the children of these people. The Bill is intended to do no more than guarantee the position of these people, so that there is no doubt that they hold and held British citizenship in the manner that had been stated consistently and publicly over nearly four decades prior

¹ Background information and updates for people affected are available on PRCBC's website: <https://prcbc.org/news-updates/>

² The Home Office Equality Impact Assessment indicates their assessment that as many as 167,000 people may have been born in the UK during this period to parents in these circumstances: <https://publications.parliament.uk/pa/bills/cbill/58-03/0313/IA%20.pdf>

to October 2022 by the Home Office. Most of the people affected will have been issued with British passports, very possibly on multiple occasions.

How the need for this Bill arises:

Up until October 2022, the Home Office's public position had been that the meaning of "*settled*" as defined in the British Nationality Act 1981 meant that people exercising EU free movement rights in the UK up to and including 1 October 2000 were settled if the UK was their place of ordinary residence.³ It publicly maintained, however, that on 2 October 2000 the position had changed. This was linked to the making of the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 ("the 2000 Regulations"), which purported to affect the meaning of "*settled*" in the British Nationality Act 1981.⁴

Accordingly, the Home Office publicly stated and acted on a position that someone was born a British citizen if born in the UK on or before 1 October 2000 to a person exercising EU free movement rights and ordinarily resident here. This was on the basis that the parent was settled. Subsequent generations were therefore to be treated as born to British citizens and their citizenship rights would arise accordingly.

Someone born in the same circumstances, but after 1 October 2000 was, however, treated differently. The Home Office required other conditions to be met for the parent to be considered settled.⁵ If those conditions were not met, the Home Office treated the person as not born a British citizen.

Ongoing litigation:

In December 2020, a young man applied for a British passport on the basis that, at his birth in the UK on 20 October 2000, his mother was exercising EU free movement rights and ordinarily resident in the UK. He drew the Home Secretary's attention to the different approach adopted between persons born before and after 1 October 2000. In doing so, he challenged the lawfulness of what had long been presented as the legal basis for the difference – the 2000 Regulations.⁶ The Home Secretary had no power to amend the meaning of the British Nationality Act 1981 by making these (or any) regulations. Relying on the 2000 Regulations, the Home Secretary refused him a passport. That refusal ultimately led to his application for judicial review, which the High Court heard in October 2022.

The Home Secretary no longer contends that the 2000 Regulations changed the law. Nonetheless, she sought to maintain her position that people born on or before 1 October 2000 are to be treated differently to people born after 1 October 2000. At the High Court hearing in October 2022, the Home Secretary announced a pause on some

³ Section 50(2) of the British Nationality Act 1981.

⁴ Regulation 8 of the Immigration (European Economic Area) Regulations 2000 SI 2000/2326 set out various conditions that were said to be required for a person to be in the United Kingdom without being subject under the immigration laws to any restriction on the period for which they may remain, and thus, if ordinarily resident, to meet the definition of "*settled*" for the purposes of the British Nationality Act 1981, notwithstanding that the Act contained its own definition in section 50(2) to (4).

⁵ As set out in regulation 8 of the 2000 Regulations.

⁶ *ibid.*

passport applications of people born on or before 1 October 2000. She ultimately argued there was no difference between the position in law of people born before and after 1 October 2000. However, her argument now was that she had been right to treat people, such as the claimant in these proceedings, born after 1 October 2000 as not born British citizens, but had been wrong to treat people born in identical circumstances on or before that date as British citizens. The High Court accepted this in January 2023.⁷ An appeal hearing before the Court of Appeal is pending.

Conclusion:

The legal proceedings are pending before the Court of Appeal. However, the lives of many thousands of people are now potentially thrown into confusion. They and their descendants, all of whom were clearly and consistently informed that they are British citizens over periods of years and decades, have effectively been told they are and were not. The Home Office has rightly recognised that this is entirely unconscionable. This Bill is intended to ensure that the confusion is quickly and firmly resolved so that the people affected may rest assured that their British citizenship is not in question. The Bill will do this whatever the ultimate outcome of the legal proceedings.

We are grateful to the Home Office for consulting with us immediately prior to this Bill's introduction. Nonetheless, the history of this matter provides a further example of our concerns that British citizenship, and British nationality law from which the right to citizenship is derived, has been badly mistreated by successive Governments over a period of some decades. This is but one stark example. There are several others.⁸ Many British people remain wronged by an unjust deprivation of their rights to British citizenship by reason of flawed understanding of and respect for British nationality law. This Bill, and what has led to it, should emphasise the many concerns upon which the Project for the Registration of Children as British Citizens (PRCBC), in particular, has long worked and advocated upon, and continues to do so. This Bill does not, however, provide the opportunity to address these.

Nonetheless, we draw attention to the Illegal Migration Bill currently before the Lords. That Bill provides further example of our longstanding concerns about successive Governments' mistreatment of British citizenship.⁹ Lord Moylan and Baroness Lister, among others, have spoken powerfully about this, the misconceptions that underpin it and the dreadful consequences both for many British people thereby deprived of their citizenship rights, many of whom children, and for British citizenship itself.¹⁰

⁷ *R (on the application of Roehrig) v Secretary of State for the Home Department* [2023] EWHC 31 (Admin).

⁸ Several of these concerns were the subject of debate on an amendment in the names of Lord Moylan (Con) and Baroness Lister of Burtsett (Lab) during the passage of the Nationality and Borders Act 2022, including fees, good character requirements, deprivation powers etc. See *Hansard* HL, 10 February 2022 : Col 1986; and the joint PRCBC and Amnesty briefing for that debate here: <https://www.amnesty.org.uk/resources/joint-amnesty-uk-and-prcbc-briefing-amendment-184-citizenship-consultation-lords>

⁹ See e.g. the joint PRCBC and Amnesty briefing for Lords' Committee: <https://www.amnesty.org.uk/resources/amnesty-international-uk-prcbc-british-citizenship-briefing-house-lords-committee>

¹⁰ We draw particular attention to the speeches of Lord Moylan in Committee and Second Reading of the Illegal Migration Bill (*Hansard* HL, 12 June 2023: Col 1746ff and 10 May 2023 : Col 1907ff respectively), Baroness Lister in Committee on that Bill (*Hansard* HL, 12 June 2023 : Col 1750ff) and their speeches on British citizenship during the passage of the Nationality and Borders Act 2022 (e.g. *Hansard* HL, 10 February 2022 : Col 1986ff).