



PRCBC note for practitioners on the British Nationality (Regularisation of Past Practice) Act 2023:

1. On 29 June 2023, the British Nationality (Regularisation of Past Practice) Act 2023 (c.27) was given Royal Assent. It has immediate and retrospective effect.

Summary effect:

2. The British Nationality (Regularisation of Past Practice) Act 2023 confirms the British citizenship of tens of thousands of people,¹ whose citizenship has been recognised, including by the Secretary of State, on the basis of an understanding and application of the meaning of ‘settled’ over almost forty years since the commencement on 1 January 1983 of the British Nationality Act 1981.
3. The 2023 Act is particularly important to people whose British citizenship depends on their or their parent having been settled for the purposes of the 1981 Act by reason of exercising free movement rights in the UK before 2 October 2000. The Secretary of State has long regarded people as settled in these circumstances. Accordingly, she has, for example, recognised the British citizenship of people born in the UK before 2 October 2000 to someone exercising free movement rights; and has recognised the British citizenship of the children subsequently born to these people.
4. In October 2022, in submissions to the High Court, the Secretary of State put in doubt whether she had been right in law to have regarded someone as settled by reason of their exercising free movement rights in the UK (during the period 1 January 1983 to 1 October 2000, inclusive). In January 2023, the High Court accepted her submissions.²
5. Notwithstanding the judgment of the High Court, which remains under appeal, the 2023 Act ensures that people – many of whom long possessing British passports – can be reassured that the Secretary of State’s submissions to the court, and its acceptance of these, do not in any way undermine their status as British citizens.

Purpose and effect of the new Act:

6. The purpose of the British Nationality (Regularisation of Past Practice) Act 2023 is to confirm that – notwithstanding what the Secretary of State now says about the meaning of settled given in section 50(2) of the British Nationality Act 1981 – a person was not “*subject under the immigration rules to any restriction on the period*

¹ In material prepared in support of the Bill that has become the British Nationality (Regularisation of Past Practice) Act 2023, the Secretary of State has, for example, estimated there to be around 167,000 people born in the UK in circumstances to which the Bill relates.

² *R (Roehrig) v Secretary of State for the Home Department* [2023] EWHC 31 (Admin)



for which he may remain” when exercising free movement rights during the periods (called ‘remedial periods’) established by section 1(1) of the 2023 Act.³

- 5.1. Those periods differ according to the particular territory – Great Britain and Northern Ireland, the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man – in which the person was residing at the time.
 - 5.2. The period relating to residence in Great Britain and Northern Ireland is from 1 January 1983 to 1 October 2000 (inclusive). This period reflects the Secretary of State’s previous understanding and application of the legal position between these two dates – i.e., that a person exercising free movement rights in the UK was not subject to any restriction for the purposes of section 50(2) of the 1981 Act. If ordinarily resident in the UK, the person was therefore settled for the purposes of that Act.
 - 5.3. The periods relating to Guernsey, Jersey and Isle of Man reflect slightly different periods during which it was understood by the authorities in these territories that a person exercising free movement rights was not subject to any restriction for the purposes of section 50(2) of the 1981 Act.
7. The British Nationality (Regularisation of Past Practice) Act 2023 achieves its purpose by two provisions. First, section 1(1) of that Act inserts section 50B into the British Nationality Act 1981.
- 6.1. Section 50B(1) provides:

“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.”
 - 6.2. Section 50B(2) defines “*freedom of movement rights*” and “*the remedial period*”.
8. Second, section 1(2) of the 2023 Act expressly states that this new provision (i.e., section 50B) “*is treated as always having had effect.*”
9. Accordingly, if the Secretary of State was previously wrong in law (as she now says she was) as to her interpretation and application of section 50(2) of the 1981 Act on the meaning of ‘settled’, the British Nationality (Regularisation of Past Practice) Act 2023 has by its retrospective effect made her correct in law in that interpretation.⁴ If,

³ Section 50(2) together with (3) and (4) establishes the meaning of ‘settled’ for the purposes of the British Nationality Act 1981.

⁴ If the Secretary of State’s previous understanding is found to have been legally correct, the Act will have had no effect upon the law. However, it will nonetheless have served its purpose in the immediate term by providing security to people whose citizenship might otherwise be in doubt following the decision of the High Court in *R (Roehrig) v Secretary of State for the Home Department* [2023] EWHC 31 (Admin).



on the other hand, the Secretary of State's original, and long applied, interpretation of section 50(2) was correct in law, the 2023 Act has merely confirmed what has always been the position.

Further background:

10. The Home Office Factsheet on the 2023 Act states that:

“Between 1 January 1983 and 1 October 2000, EU, EEA and Swiss nationals were considered settled if they were living in England, Scotland, Wales or Northern Ireland and exercising a free movement right there.

“The British Nationality (Regularisation of Past Practice) Act 2023 confirms this position in law.

“This protects the nationality rights of people born in the UK to a parent who was considered settled on the basis of exercising a free movement right, and those who registered or naturalised as British citizens on the basis of that policy.

“This change does not create ‘new’ British citizens.”

11. The Factsheet goes on to say:

“The Home Office identified a technical issue with the legality of the previous policy.

“This suggested that EU, EEA and Swiss nationals should not have been considered settled solely on the basis of living in the UK and exercising a free movement right here. We wanted people who have been considered British by successive governments based on that policy to be reassured that they would not lose that status. The act confirms they are British citizens in law and have always been so (or since the date of their naturalisation or registration, if applicable).”

12. The Factsheet provides the explanations of the Home Office. It does not, however, explain how the Home Office came to, in its words, identify a ‘technical issue’; or why it took more than two decades since October 2000 for it to do so.

13. The immediate circumstances that led the Home Office to introduce the 2023 Act and promote its fast track through Parliament arose from judicial review litigation that remains outstanding. That litigation is awaiting a hearing in the Court of Appeal on appeal from a judgment of the High Court: *R (Roehrig) v Secretary of State for the Home Department* [2023] EWHC 31 (Admin). Following the judgment, the Home Office contacted the Project for the Registration of Children as British Citizens (PRCBC) concerning what it describes in its Factsheet as the ‘technical issue’. PRCBC convened meetings with the Home Office, to which the Immigration Law Practitioners’ Association, the 3million and Amnesty International UK were invited. The purpose of these meetings was to secure a swift and positive resolution of the doubt created by the Secretary of State’s submissions to the High Court concerning the British citizenship of people, whose citizenship had not previously been in question.



14. At the hearing before the High Court of *R (Roehrig) v Secretary of State for the Home Department*, the Secretary of State announced a pause on her processing new passport applications from anyone whose claim to British citizenship depended on the question of whether exercising free movement rights in the UK before 2 October 2000 was sufficient for a person to be settled if ordinarily resident. That pause has now been lifted. In correspondence with PRCBC, the Home Office has also confirmed that it will now seek to quickly resolve the outstanding passport applications which it had paused.

15. *R (Roehrig) v Secretary of State for the Home Department* is to be heard by the Court of Appeal in January 2024. The immediate question this litigation will resolve is whether, and in what circumstances, a person exercising free movement rights in the UK on or after 2 October 2000 is settled for the purposes of the British Nationality Act 1981. However, in addressing this question, the Court of Appeal may need to consider argument that the submissions of the Secretary of State made to, and accepted by, the High Court were wrong; and the understanding and application of the meaning of settled that had prevailed for nearly 40 years was always and remains correct.

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