

BRITISH NATIONALITY (REGULARISATION OF PAST PRACTICE) BILL EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM

Summary of the Bill

1. This memorandum addresses issues arising under the European Convention on Human Rights (“ECHR”) in relation to the British Nationality (Regularisation of Past Practice) Bill. It has been prepared by the Home Office. On introduction of the Bill in the House of Commons, the Home Secretary (the Rt Hon Suella Braverman KC MP) will make a statement under section 19(1)(a) of the Human Rights Act 1998 (“HRA”) that, in her view, the provisions of the Bill are compatible with Convention rights.
2. The British Nationality Act 1981 sets out who is a British citizen. Under that Act, an individual who is born in the UK is a British citizen automatically from birth where one of their parents is British or settled here. 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.
3. The British Nationality (Regularisation of Past Practice) Bill will confirm this position in law.
4. This will protect the nationality status 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 on the basis of that policy. This is about protecting the citizenship of individuals we have long considered British already under established Home Office policy.
5. The Bill also clarifies when EU, EEA and Swiss nationals could be considered settled on the basis of exercising a free movement right in Jersey, Guernsey and the Isle of Man.

ECHR Rights engaged by the Bill

Article 14 with Article 8

6. Although Article 8 does not guarantee a right to acquire a particular nationality or citizenship, an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual¹. Moreover, the Courts have held that the impact of denial of citizenship on an applicant’s social identity is such as to bring it within the general scope and article of Article 8². The denial of citizenship, having such an important effect upon a person’s social identity, is sufficiently within the ambit of Article 8 to trigger the application of the prohibition of discrimination in Article 14³.

¹ Karassev v Finland (1999) 28 EHRR CD132

² Genovese v Malta (Application no. [53124/09](#))

³ R (on the application of Johnson) v Secretary of State for the Home Department [2016] UKSC 56

7. Article 14 prohibits discrimination on “any ground such as ... birth or other status”.
8. For the purpose of Article 14, a difference in treatment is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised⁴.
9. The Bill is wholly beneficial to those it affects; it gives a statutory underpinning to the citizenship status to individuals who justifiably considered themselves to be British and whom the Home Office has always considered to be British under its longstanding and published policy. There will, however, be individuals who do not benefit from the Bill who could point to a difference in treatment based on their status within the meaning of Article 14 including place or date of birth. This argument may arise due to the fact that the erroneous practice operated at different times within the UK as defined in the British Nationality Act 1981 (Great Britain, Northern Ireland, Jersey, Guernsey and the Isle of Man) and the “fix” applies at different times across those locations. However, if the clause applied equally across all locations (and therefore equally to people regardless of place of birth within the United Kingdom), it would capture people who would never have been treated as British and could not have believed themselves to be British based on published guidance. On that basis, there is a reasonable justification for any difference in treatment which arises.
10. As such the Government considers the provisions to be compliant with the United Kingdom’s obligations under the ECHR.

Home Office
23 May 2023

⁴ Inze v Austria (1987) 10 EHRR 394, para 41; Genovese v Malta, para 43