



Equality Impact Assessment [EIA]

Demonstrating Compliance with the Public Sector Equality Duty (PSED)

Due regard must be shown:

- ✓ Decision-makers must be made aware of their duty to have ‘due regard’ and to the aims of the duty
- ✓ Due regard is fulfilled before and at the time a particular policy or operational activity, that will or might affect people with protected characteristics is under consideration, as well as at the time a decision is taken. It is not a box ticking exercise.
- ✓ Due regard involves a conscious approach and state of mind. The duty must be exercised with rigour and an open mind.
- ✓ The duty cannot be delegated to another body and will always remain on the body subject to it.
- ✓ The duty is a continuing one.
- ✓ It is good practice for the public body to keep an adequate record showing that they have considered their equality duties and considered relevant questions.

1. Name and outline of policy proposal, guidance or operational activity

1. Section 1 of the British Nationality ((Regularisation of Past Practice)) Bill amends the British Nationality Act 1981 (“BNA 1981”) to clarify which European Economic Area (EEA nationals), in the UK in exercise of a Treaty right, may be taken to be ‘without restriction on the period for which they could remain’.
2. A Treaty right is a right under the law of Great Britain and Northern Ireland (or the comparable domestic legislation introduced in the Crown Dependencies) that is recognised and available by virtue of section 2(1) of the European Communities Act 1972 or conferred by provision made under section 2(2) of that Act.
3. Individuals who are not subject to immigration time restrictions will meet the definition of settled for nationality purposes, as defined at section 50(2) of the BNA 1981, where they are also ordinarily resident in the UK.
4. Whether an individual is settled in the UK has an impact on the nationality rights of their children. Under section 1(1)(b) of the BNA 1981, a child born in the UK to a settled parent is British automatically from birth. Where a UK-born child isn’t British

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from birth, an application can be made to register them as such under section 1(3) of the BNA 1981 where their parent becomes settled after their birth, but whilst the child was still a minor.

5. Being free from immigration time restrictions is also a statutory requirement for those seeking to naturalise as a British citizen under sections 6(1) and 6(2) of the BNA 1981, or to register under section 4(2).

Background:

6. The BNA 1981 sets out the requirements for a child born in the UK or an Overseas Territory to acquire British citizenship and/or British Overseas Territories citizenship automatically. This requires that at least one of the parents was, at the time of the birth, both free from immigration time restrictions and ordinarily resident in the relevant location (referred to as 'settled' when both conditions are met).
7. From 1 January 1983 to 1 October 2000 inclusive, and where a person was lawfully exercising any type of Treaty 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 that where they were also ordinarily resident¹, they could also be treated as "settled" in the UK for nationality purposes. They could naturalise as British on this basis if they wished, and any children born in the UK to them at that time were also considered to be British citizens. This approach was placed in published Home Office policy.
8. In successfully defending the challenge brought in a High Court case about a person born in the UK to an EEA national parent *after* 2 October 2000, the Home Office identified a potential issue with the longstanding policy that was in place before that date, which we now understand to have been incorrect. EEA nationals exercising Treaty Rights at that time were not in fact "settled" as their residence at that time should have been considered to be subject to immigration time restrictions.
9. The legislative change at section 1 will put the citizenship of this group of people beyond doubt by providing a legal basis for the previous policy position. People who were thought to be British because their parents were treated as settled will have that status confirmed in law, as will those who registered or naturalised on the basis of the previous approach.

¹ A person is ordinarily resident if they are living in the UK lawfully, voluntarily and for settled purposes as part of the regular order of their life for the time being

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10. 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, the Crown Dependencies (Jersey, Guernsey and the Isle of Man), despite the Act having equal extent.² The Crown Dependencies adopted the equivalent of free movement provisions in their own domestic legislation, so that an EEA national could reside in the Crown Dependencies on the same basis as they could in the UK.

11. Section 1 therefore confirms the approach adopted in the Crown Dependencies as well as the UK mainland, consequently ensuring that all those who were accepted as British citizens under the previous policy are covered.

2. Summary of the evidence considered in demonstrating due regard to the Public-Sector Equality Duty.

UK legislation and policy:

British Nationality Act 1981: <http://www.legislation.gov.uk/ukpga/1981/61>

UK Immigration Rules : www.gov.uk/guidance/immigration-rules

[Windrush Lessons Learned Review by Wendy Williams](#)¹

Independent report:

Windrush Lessons Learned Review by Wendy Williams³

Published stats

² The BNA 1981 extends to the Crown Dependencies (referred to in the BNA as the ‘Islands’ and overseas territories (section 53(5)).

³ <https://www.gov.uk/government/publications/windrush-lessons-learned-review>

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We have confirmed that no official figures exist to highlight the scale of the cohort impacted. However, we have combined data from two sources to reach the conclusion that there were in the region of 167,000 children born to EEA mothers between 1983 and 2000:

- i. ONS figures on the number of births to non-UK born mothers [ONS Births Tables](#) These averaged at 83,176 births per annum
- ii. ONS figures on net migration from the period [ONS Migration Tables](#) These suggest that an average of 11.2% of migrants were from the EEA during that period

That gives a suggestion of:

Total births: $83,176 \times 18 \times 11.2\% = 167,683$

Annual births: $167,683/18 = 9,316$

These are people who could have been affected by this issue, although not all might have been if they had an alternative claim to citizenship, for example, via a British citizen father.

Based on official statistics published at the time, we further estimate that around 33,000 individuals would have been relying on the previous definition of 'free from immigration time restrictions' went onto register or naturalise between 1983 and 2000. The figures are not exact as we do not believe the statistics have been drawn together previously to be published as a volume over such an extensive period.

Stakeholder engagement

Nationality Policy is holding ongoing round table consultations with representatives from the Crown Dependencies to gather relevant information and ensure that all opinions are considered.

Nationality Policy has also held sessions with external stakeholders including nationality law experts to canvass concerns and to seek out how the proposed change might impact on service users.

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The change we are making was well received at these consultations, as the central aim of all stakeholders was to restore the previously accepted position, so no one 'lost' citizenship rights to which they had held the reasonable expectation, based on the previously published Home Office policy, they were entitled.

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Public Sector Equality Duty:

12. The public-sector equality duty under s149 of the Equality Act 2010 requires that in exercising their functions public authorities must have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

13. Under s149 the eight specified protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race (including ethnic or national origins, colour, or nationality); religion or belief; sex; and sexual orientation.

3a. Consideration of limb 1 of the duty: Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act.

The proposal to legislate to change a statutory requirement so that it applies differently to this specific cohort may lead to a perception of them receiving more favourable treatment, even though we do not share that assessment. We would argue that at section 1 we are merely guaranteeing the previous, accepted position and that the unique nature of this group, having been recognised as British for up to 40 years already, is justification for what we consider to be a proportionate approach to achieve a legitimate aim.

Age

It is not possible to determine the age of individuals exercising a Treaty right in the relevant period who will, as a result of this legislation, be confirmed as having been without restrictions on the period for which they may remain. However, the main beneficiaries of the change will be the children of this cohort, who must, by default, have been born between 1 January 1983 and 30 September 2004 inclusive to benefit, meaning the changes will predominately apply to those between the ages of 18 and 40.

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If we did not legislate to provide legal certainty and consistency for this cohort, they would arguably be in a less advantageous position than people born subsequently who will be out of scope. Children born in the UK to EEA national parents after The Immigration (European Economic Area) Regulations 2006 came into force, for example, have clear criteria for determining their citizenship status, as the Regulations explicitly state at Schedule 2, Paragraph 2(1) that a person with a permanent right of residence shall be regarded as a person who is in the United Kingdom without being subject under the immigration laws to any restriction on the period for which they may remain. Thus, this group has certainty with regard to their legal citizenship status. Legislating will ensure that those born in the UK between the relevant dates will have the same certainty as those in other age brackets.

We further consider that any age discrimination that *may* arise from the proposed approach can be justified. Our primary aim is to ensure that everyone who has been treated as a British citizen can continue to be treated as such. The cohort of people who will benefit from this legislation by having their citizenship status confirmed as British are in a unique position because they have been treated as British despite the lack of a legal basis to do so. Their position is materially different from those who are not affected by this legislation.

The cut off points stated in the legislation reflect what has been happening in practice over several decades and are a proportionate way of achieving our aim for consistency, and therefore compatible with our ECHR obligations. The changes we are introducing do not amend or replace existing registration or naturalisation routes under which an individual could still be granted citizenship should they not qualify under Section 1 of this Act.

Disability

No direct or indirect negative impacts foreseen on our current system or our policy proposal.

We do not consider the Bill gives rise to direct or indirect discrimination on grounds of a person's disability. However, we realise it is possible that there are disabled persons who may find it more difficult than non-disabled persons to navigate the criteria for citizenship. By making the change at section 1, we are ensuring the relevant cohort has their status confirmed in law and does not need to take any additional action to restore or reclaim it, which might have posed additional challenges for disabled persons.

We have further considered reasonable adjustments which may be made depending upon the nature of the person's disability, such as by providing guidance to applicants, and directing them to relevant UK pages. We can also seek to ensure that guidance is in

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clear and accessible language, as well as being accessible at the source where applicants may first explore applying under this route. (Information on accessibility can be found in the [Gov.UK accessibility statement](#), and there is a page telling people how they can [get help making an online application](#).)

Gender Reassignment

No direct or indirect negative impacts foreseen on our current system or our policy proposal.

Marriage and Civil Partnership

Marriage/civil partnership is not a protected characteristic for the purposes of the limbs (b) and (c) of the PSED but is a protected characteristic in relation to eliminating discrimination (limb (a)) in the context of Part V (work). As this policy change does not relate to employment it is not necessary to address this characteristic. Notwithstanding this, there are no direct or indirect negative impacts foreseen in respect of individuals whose parents were married or in a civil partnership; rather, the clause has been worded in such a way as to ensure those who wouldn't have become British automatically under the previous policy position, due to unmarried fathers being unable to pass on citizenship, retain the entitlement to register under existing fee free registration routes, as would have been the case under the previous policy position. This ensures children of fathers who were not married/in a civil partnership with the mother at the time of the child's birth, are not disadvantaged.

Pregnancy and Maternity

No direct or indirect negative impacts foreseen on our current system or our policy proposal

Race

The legislative changes we are proposing are trying to achieve the legitimate aim of reinstating the previous policy position by amend the definition of 'free from immigration time restrictions' in primary legislation to include individuals exercising a Treaty right at the relevant times.

As such, we think it is justifiable that the change must, by default, apply only to those individuals entitled to reside on the basis of exercising such a right. This will primarily be nationals of EU member states, but this is not exclusively the case. It is possible that a

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child of a relative of an EEA national, who was residing in the UK on the basis of their EEA family member exercising a Treaty Right, may also benefit under these provisions.

We think that any discrimination on the grounds of race is justifiable in that the group whose rights we are looking to protect is sufficiently unique and distinct as to justify this approach.

Religion or Belief

Direct Discrimination – No direct negative impacts foreseen on our current system or our policy proposal

Indirect Discrimination – We foresee predominantly persons of Christian denominations indirectly benefitting from this provision due to the prevalence of Christianity across EEA member states. However, this is as a result of the religious profile of the countries whose nationals were members of the EU and EEA at the time and does not exclude or disadvantage people of other faiths who will equally benefit if they meet the relevant criteria. We therefore do not anticipate any indirect negative impacts associated with these legislative changes.

Sex

The policy changes introduced at Section 1 do not distinguish between male and female children of EEA parents.

A child born to a ‘settled’ mother is able to acquire British citizenship in certain circumstances. At the time period relevant to this legislative change, however, the ability of a ‘settled’ man to pass on his status, was dependent on his relationship with the child’s mother.

There is a potential disadvantage in that children of these settled men need to register, rather than benefitting from automatic acquisition. But this would have been the case prior to the introduction of this legislation – the retrospective legislative change is merely restoring the previous understanding of how an EEA national can demonstrate freedom from immigration time restrictions. Where the child would have had a claim via their ‘settled’ father had the father been married to their mother, the child can register under an existing fee free registration route, just like all children born to unmarried fathers before the law change on 1 July 2006, irrespective of whether they fall within the scope of this particular legislative change. The existence of that registration route for children of unmarried fathers can be objectively justified by the legitimate policy aim (as recognised by the Court in “K”) that the registration route is a proportionate way to address past unfairness.

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Sexual Orientation

No direct or indirect negative impacts foreseen on our current system or our policy proposal

3b. Consideration of limb 2: Advance equality of opportunity between people who share a protected characteristic and people who do not share it.

The purpose of the change is to ensure that the previous and long-standing policy interpretation of 'free from immigration time restrictions' is protected in statute, thus ensuring that all individuals who became British, or had an entitlement to do so, on the basis of this policy position retain this status. Since the change will apply to all individuals in the specified cohort notwithstanding any protected characteristics they hold, the change will arguably advance equality of opportunity between applicants who share a protected characteristic and those who do not.

The change at section 1 will advance equality of opportunity for the intended cohort by ensuring they have the same certainty as to their citizenship status as those born to parents of other nationalities and in different circumstances.

Age – N/A

Disability – N/A

Gender Reassignment – N/A

Maternity and Pregnancy – N/A

Race – N/A

Religion or Belief – N/A

Sex – N/A

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Sexual Orientation – N/A

3c. Consideration of limb 3: Foster good relations between people who share a protected characteristic and persons who do not share it.

The change at section 1 will help ensure continuity and stability and help foster good relations between this group and others by ensuring that children of EEA nationals have the same certainty as to their citizenship status as those born to parents of other nationalities in different circumstances. Should we not take action to provide legal certainty, this could lead to their feeling disenfranchised and excluded.

Although making provision only for individuals born in the relevant time period and to EEA nationals may be seen as their receiving favourable treatment, we do not share this assessment. The cohort who will benefit under section 1 are in a unique position in that they have always been recognised as British anyway and there is substantial precedent in our continuing to treat them as such. They have not been able to avail themselves of other existing routes to register or naturalise as British, or to otherwise regularise their status under the Immigration Rules in the way open to other cohorts, as our published policy indicated they were already British and so were not eligible to do so. Section 1 will restore the previous position and ensure this group is not unduly disadvantaged as a result of errors in Home Office policy. We consider this a proportionate approach given the unique nature of their situation.

4. Summary of foreseeable impacts of policy proposal, guidance or operational activity on people who share protected characteristics

Protected Characteristic Group	Potential for Positive or Negative Impact?	Explanation	Action to address negative impact
Age	Potential for Negative Impact	We have considered the impact on the basis of someone's age. The nature of the policy means it will, by default, benefit primarily those born between 1 January 1983 and 30 September 2004	If we did not legislate for this cohort, they would actually be in a less advantageous position than those in other age brackets, as they would lack certainty as to their citizenship status.

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		inclusive, meaning the changes will predominately apply to those between the ages of 18 and 40.	Given we are legislating to restore the previous policy position, we consider the cohort we wish to benefit to be sufficiently distinct that any justification that may arise on the grounds of age is a proportionate means of achieving our legitimate aim.
Disability	Nil	We have considered the impact on the basis of someone's disability. We are not aware of any evidence which indicate that these proposals will have differential impacts on the basis of this protected characteristic.	
Gender Reassignment	Nil	We have considered the impact on the basis of gender reassignment. We are not aware of any evidence which indicate that these proposals will have differential impacts on the basis of this protected characteristic.	
Marriage and Civil Partnership	Nil	We are not aware of any evidence which indicates that these proposals will have differential impacts on the basis of this protected characteristic.	
Pregnancy and Maternity	Nil	We are not aware of any evidence which indicate that these proposals will have differential impacts on the basis of this protected characteristic.	
Race	Potential for negative impact	We have considered the impact on the basis of someone's race. The nature of the change we are introducing means it will, be default, apply only to those	The legislative changes we are proposing are trying to achieve the legitimate aim of reinstating the previous policy position by amend the definition of 'free from

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		entitled to reside on the basis of exercising a treaty right, which is predominately, though not exclusively, EEA nationals.	immigration time restrictions' in primary legislation to include individuals exercising a Treaty right at the relevant times. As such, we think it is justifiable that the change must, by default, apply only to those individuals entitled to reside on the basis of exercising such a right. We consequently consider the cohort we wish to benefit to be sufficiently distinct that any justification that may arise on the grounds of race is a proportionate means of achieving our legitimate aim.
Religion or Belief	Nil	We have considered the impact on the basis of someone's religion or belief. We are not aware of any evidence which indicates that these proposals will have differential impacts on the basis of this protected characteristic.	
Sex	Nil	We have considered the impact on the basis of someone's sex. We are not aware of any evidence which indicates that these proposals will have differential impacts on the basis of this protected characteristic.	
Sexual Orientation	Nil	We have considered the impact on the basis of someone's disability. We are not aware of any evidence	

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		which indicates that these proposals will have differential impacts on the basis of this protected characteristic.	
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5. In light of the overall policy objective, are there any ways to avoid or mitigate any of the negative impacts that you have identified above?

We do not envisage negative impacts as these changes seek to restore the previous policy position that was set out in Home Office guidance for many years. This ensures that no one who had a reasonable expectation of being British on this basis, is seen to 'lose' rights to which they have always thought they were entitled.

Although there is the possibility of challenge from those who may have been British had their parent been exercising a Treaty Right in a different location within the territorial extent of the BNA at that time, we think the difference in approach is justified in that they never had any expectation of being British, and so are not disadvantaged as a result of the change we are introducing. Rather, they are in the same position as they have always been. The changes we are introducing do not amend or replace existing registration or naturalisation routes under which an individual could still be granted citizenship should they not qualify under Section 1 of this Act.

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