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All children born to EU citizens between 1983 to 2000 are British under the British Nationality (Regularisation of Past Practice) Bill 2022-23

Background: The British Nationality Act 1981

Under the British Nationality Act 1981, a person born in the UK on or after 1 January 1983 acquires British Citizenship at birth if at the time of birth his father or mother is:

- a) A British Citizen, or
- b) Settled in the UK

A person is regarded as 'settled' if they are ordinarily resident in the UK without being subject to any restrictions on the period for which they may remain in the UK under the immigration laws.

Home Office policy from 1 January 1983 to 11 October 2022

The Home Office policy from 1 January 1983 to 11 October 2022 was to regard EU citizens resident in the UK before 2 October 2000 pursuant to their free movement rights (for example as a worker) as settled, and not being subject to any restrictions on the period for which they may remain in the UK under the immigration laws. Therefore, children born before 2 October 2000 to EU citizens resident in the UK on this basis were treated as having acquired British citizenship at birth under the British Nationality Act 1981.

Change of Policy on 11 October 2022

In October 2022, the Home Office changed its position. It now understands that this policy was incorrect because EU citizens could not, under the British Nationality Act 1981, have been free of immigration restrictions unless they had indefinite leave or another permanent immigration status.

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

The Home Office change of policy was challenged in the case of *Roehrig* and came before the High Court. The High Court agreed with the Secretary of State

that EU citizens resident in the UK before 2 October 2000 pursuant to their free movement rights were subject under the immigration laws to restrictions on the period for which they may remain in the UK. It follows that they were not settled in the UK.

The High Court found that despite EU citizens deriving their free movement rights from European laws, the European laws made applicable in the UK are immigration laws. Notwithstanding the fact that EU citizens did not need leave to enter or remain in the UK, they were subject, under the immigration laws, to restrictions on the period for which they may remain in the UK, as they could only remain for a period during which they exercised free movement rights and qualified for residence. Although the period for which they could remain was not restricted directly by time, as long as qualifications are needed, the period is restricted as to its duration.

Implications of the decision in Roehrig

After the decision, the HM Passport Office stopped issuing British passports to people affected and who were applying for the first time. The decision in *Roehrig* also calls into question the British Citizenship of people born between 1 January 1983 to 2 October 2000 to an EU citizen parent. If the parent was not settled, and the child did not have a second British or settled parent, the child would not be British under the British Nationality Act 1981. Similarly, if someone in this position has since had children of their own, the British citizenship of those grandchildren is also open to question. According to an equality impact assessment which followed, there were 'in the region of 167,000 children born to EU citizens between 1983 and 2000. Potentially all these people could be affected by the decision.

British Nationality (Regularisation of Past Practice) Bill 2022-23

Considering the number of people who could potentially be affected by the decision in *Roehrig*, the government introduced the British Nationality (Regularisation of Past Practice) Bill 2022-23. The Bill is at present being fast tracked through Parliament and is likely to become law very soon. The intention is to put the citizenship of children born before 2 October 2000 to EU citizens beyond doubt. The Bill contains a single substantive clause. It would amend the British Nationality Act 1981 so that people exercising free movement rights to live in the UK between 1 January 1983 to 1 October 2000 were considered at all times to be settled and not subject to any restriction on

the period for which they may remain in the UK under the immigration laws, with the result that all children born to EU citizens in this position between 1983 to 2000 are British citizens.

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If you would like advice or assistance on any of the issues raised in this note/article, please contact Agnes Lai by email at

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