

Draft Order laid before Parliament under paragraph 2(a) of Schedule 2 to the Human Rights Act 1998 (c. 42) for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

NATIONALITY

The British Nationality Act 1981 (Remedial) Order 2019

Made - - - - - ***
Coming into force - - - - - ***

The good character test in section 41A of the British Nationality Act 1981(1) has been declared(2) under section 4 of the Human Rights Act 1998(3) to be incompatible with a Convention right(4), in so far as it applies to applications for registration as a British citizen under sections 4C(5) and 4F to 4I(6) of the British Nationality Act 1981.

The Secretary of State considers that there are compelling reasons for proceeding by way of a remedial order(7) to make such amendments to the British Nationality Act 1981 as are necessary to remove that incompatibility.

In accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, a draft of this instrument was laid before Parliament and was approved by resolution of each House of Parliament, a document containing a draft of this instrument having previously been laid before Parliament in accordance with paragraph 3(1) of that Schedule.

Accordingly, the Secretary of State makes the following Order, in exercise of the powers conferred by section 10(2) of, and paragraph 1(1)(a) and (d), (2) and (3) of Schedule 2 to, the Human Rights Act 1998.

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- (1) 1981 c. 61. Section 41A was inserted by section 47(1) of the Borders, Citizenship and Immigration Act 2009 (c. 11) and amended by section 73(6) of, and paragraph 70(1) and (3) of Schedule 9 to, the Immigration Act 2014 (c. 22).
 - (2) By the Supreme Court in the case of *Johnson v Secretary of State for the Home Department* [2016] UKSC 56, in relation to sections 4F to 4I of the British Nationality Act 1981; and by way of a consent order in the case of *R (on the application of David Fenton Bangs) v Secretary of State for the Home Department* (claim number CO/1793/2017), in relation to section 4C of that Act.
 - (3) 1998 c. 42.
 - (4) Section 1(1) of the Human Rights Act 1998 defines “the Convention rights” and section 21(1) of that Act defines “the Convention”.
 - (5) Section 4C was inserted by section 13(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) and amended by section 45 of the Borders, Citizenship and Immigration Act 2009.
 - (6) Sections 4F to 4I were inserted by section 65 of the Immigration Act 2014.
 - (7) Section 21(1) of the Human Rights Act 1998 defines “remedial order”.

Citation, commencement and extent

1.—(1) This Order may be cited as the British Nationality Act 1981 (Remedial) Order 2019 and comes into force the day after the day on which it is made.

(2) The amendments made by this Order have the same extent as the provisions which they amend.

Amendments to the British Nationality Act 1981

2.—(1) Section 41A of the British Nationality Act 1981 (registration: requirement to be of good character) is amended as follows.

(2) In subsection (1), omit “4C,” and “4F, 4G, 4H, 4I,”.

(3) After subsection (1), insert—

“(1A) An application for registration of an adult or young person as a British citizen under section 4F, so far as the relevant registration provision (as defined in section 4F(2)) is section 1(3), 3(2) or 3(5), must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.”.

Amendment to the Immigration Act 2014

3. In paragraph 70 of Schedule 9 to the Immigration Act 2014⁽⁸⁾ (transitional and consequential provision), omit sub-paragraph (3).

Amendments to the British Nationality (General) Regulations 2003

4.—(1) Schedule 2 to the British Nationality (General) Regulations 2003⁽⁹⁾ (particular requirements as respects applications) is amended as follows.

(2) In paragraph 11 (application under section 4C of the Act)—

(a) at the end of sub-paragraph (b), insert “and”;

(b) at the end of sub-paragraph (c), omit “and”;

(c) omit sub-paragraph (d).

(3) In paragraph 11B (application under section 4F of the Act), in sub-paragraph (b), after “aged 10 or over” insert “and the provision under which the applicant would be entitled to be registered as a British citizen (as mentioned in section 4F(1)(b) of the Act) is section 1(3), 3(2) or 3(5) of the Act”.

(4) In paragraph 11C (application under section 4G of the Act)—

(a) at the end of sub-paragraph (a), omit “and”;

(b) omit sub-paragraph (b).

(5) In paragraph 11D (application under section 4H of the Act)—

(a) at the end of sub-paragraph (a), insert “and”;

(b) at the end of sub-paragraph (b), omit “and”;

(c) omit sub-paragraph (c).

(6) In paragraph 11E (application under section 4I of the Act), in sub-paragraph (1)—

(a) at the end of paragraph (a)(iii), omit “and”;

(b) omit paragraph (b).

⁽⁸⁾ 2014 c. 22.

⁽⁹⁾ S.I. 2003/548. Relevant amending instruments to Schedule 2 are S.I. 2009/3363, 2015/681.

Date

Name
Minister of State for Immigration
Home Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the British Nationality Act 1981 (c. 61) (“the 1981 Act”) to remove incompatibilities with a right under the European Convention of Human Rights.

Section 41A(1) of the 1981 Act provides that an application for registration as a British citizen under certain provisions of that Act, by a person aged 10 or older, must not be granted unless the Secretary of State is satisfied that he or she is of good character. Declarations of incompatibility in relation to section 41A have been made by the courts in two cases due to unlawful discrimination against various categories of people who would have automatically become UK citizens (or had a route to apply for citizenship) had their parents been married to one another at the time of their birth.

In the case of *Johnson v Secretary of State for the Home Department* [2016] UKSC 56, the Supreme Court made a declaration of incompatibility in relation to paragraph 70 of Schedule 9 to the Immigration Act 2014 (c. 22), which amended section 41A(1) of the 1981 Act to apply a good character test to applications for registration under sections 4F to 4I of the 1981 Act.

In the case of *R (on the application of David Fenton Bangs) v Secretary of State for the Home Department* (claim number CO/1793/2017), the Administrative Court agreed a consent order by which a declaration of incompatibility was made in relation to section 47(1) of the Borders Citizenship and Immigration Act 2009 (c. 11), insofar as it introduced into the 1981 Act a new section 41A applying a good character test to applications for registration under section 4C of the 1981 Act.

In *Johnson*, the Supreme Court held that that it was unlawfully discriminatory to impose a good character test upon persons who would, but for their parents’ marital status, have automatically acquired citizenship at their birth.

In *Bangs*, it was agreed that applying the good character test to applications for registration under section 4C of the 1981 Act was also unlawfully discriminatory.

In order to remove the incompatibility identified in these two cases, article 2(1) and (2) amends section 41A of the 1981 Act, with the effect that a good character test no longer applies to an application for registration as a British citizen made under section 4C or 4G to 4I of the 1981 Act.

In contrast to sections 4G to 4I, section 4F does not concern persons who would have automatically acquired UK citizenship at their birth, but for their parents’ marital status. Rather, it provides a registration route for persons who would have a current entitlement to be registered as a British citizen under sections 1(3), 3(2) or 3(5) of, or paragraphs 4 or 5 of Schedule 2 to, the 1981 Act, had their parents been married to one another at their birth. Registration under sections 1(3), 3(2) and 3(5) is subject to the good character requirement. The effect of article 2(3) is that a good character test applies only to section 4F applications where the provision under which the person would be entitled to be registered as a British citizen, but for their parents’ marital status, is section 1(3), 3(2) or (5).

The Order also makes consequential amendments to the Immigration Act 2014 (c.22) and the British Nationality (General) Regulations 2003 (S.I. 2003/548).

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.