
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.