



Nationality, Immigration and Asylum Act 2002

2002 CHAPTER 41

PART 1

NATIONALITY

1 Naturalisation: knowledge of language and society

- (1) The following shall be inserted after the word “and” after paragraph 1(1)(c) of Schedule 1 to the British Nationality Act 1981 (c. 61) (requirements for naturalisation)

—
“(ca) that he has sufficient knowledge about life in the United Kingdom; and”.

- (2) In paragraph 2(e) of that Schedule (waiver)—

- (a) for “the requirement specified in paragraph 1(1)(c)” there shall be substituted “either or both of the requirements specified in paragraph 1(1)(c) and (ca)”, and
(b) for “expect him to fulfil it” there shall be substituted “expect him to fulfil that requirement or those requirements”.

- (3) The following shall be inserted after section 41(1)(b) of that Act (regulations)—

- “(ba) for determining whether a person has sufficient knowledge of a language for the purpose of an application for naturalisation;
(bb) for determining whether a person has sufficient knowledge about life in the United Kingdom for the purpose of an application for naturalisation;”.

- (4) The following shall be inserted after section 41(1) of that Act—

“(1A) Regulations under subsection (1)(ba) or (bb) may, in particular—

- (a) make provision by reference to possession of a specified qualification;

- (b) make provision by reference to possession of a qualification of a specified kind;
- (c) make provision by reference to attendance on a specified course;
- (d) make provision by reference to attendance on a course of a specified kind;
- (e) make provision by reference to a specified level of achievement;
- (f) enable a person designated by the Secretary of State to determine sufficiency of knowledge in specified circumstances;
- (g) enable the Secretary of State to accept a qualification of a specified kind as evidence of sufficient knowledge of a language.”

2 Naturalisation: spouse of citizen

- (1) Paragraphs 3 and 4 of Schedule 1 to the British Nationality Act 1981 (c. 61) (requirements for naturalisation as British citizen: spouse of citizen) shall be amended as follows—
- (a) in paragraph 3(e) for “requirement specified in paragraph 1(1)(b)” substitute “requirements specified in paragraph 1(1)(b), (c) and (ca)”, and
 - (b) in paragraph 4(c) omit “and (e)”.
- (2) Paragraphs 7 and 8 of that Schedule (requirements for naturalisation as British overseas territories citizen: spouse of citizen) shall be amended as follows—
- (a) in paragraph 7(e) for “requirement specified in paragraph 5(1)(b)” substitute “requirements specified in paragraph 5(1)(b) and (c)”, and
 - (b) in paragraph 8(c) omit “and (e)”.

3 Citizenship ceremony, oath and pledge

Schedule 1 (which makes provision about citizenship ceremonies, oaths and pledges) shall have effect.

4 Deprivation of citizenship

- (1) The following shall be substituted for section 40 of the British Nationality Act 1981 (deprivation of citizenship)—

“40 Deprivation of citizenship

- (1) In this section a reference to a person’s “citizenship status” is a reference to his status as—
- (a) a British citizen,
 - (b) a British overseas territories citizen,
 - (c) a British Overseas citizen,
 - (d) a British National (Overseas),
 - (e) a British protected person, or
 - (f) a British subject.
- (2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that the person has done anything seriously prejudicial to the vital interests of—

- (a) the United Kingdom, or
 - (b) a British overseas territory.
- (3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—
- (a) fraud,
 - (b) false representation, or
 - (c) concealment of a material fact.
- (4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.
- (5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying—
- (a) that the Secretary of State has decided to make an order,
 - (b) the reasons for the order, and
 - (c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).
- (6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—
- (a) fraud,
 - (b) false representation, or
 - (c) concealment of a material fact.

40A Deprivation of citizenship: appeal

- (1) A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against the decision to an adjudicator appointed under section 81 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal).
- (2) Subsection (1) shall not apply to a decision if the Secretary of State certifies that it was taken wholly or partly in reliance on information which in his opinion should not be made public—
- (a) in the interests of national security,
 - (b) in the interests of the relationship between the United Kingdom and another country, or
 - (c) otherwise in the public interest.
- (3) A party to an appeal to an adjudicator under subsection (1) may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator's determination on a point of law.
- (4) A party to an appeal to the Immigration Appeal Tribunal under subsection (3) may bring a further appeal on a point of law—
- (a) where the decision of the adjudicator was made in Scotland, to the Court of Session, or

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- (b) in any other case, to the Court of Appeal.
- (5) An appeal under subsection (4) may be brought only with the permission of—
 - (a) the Tribunal, or
 - (b) if the Tribunal refuses permission, the court referred to in subsection (4)(a) or (b).
- (6) An order under section 40 may not be made in respect of a person while an appeal under this section or section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68)—
 - (a) has been instituted and has not yet been finally determined, withdrawn or abandoned, or
 - (b) could be brought (ignoring any possibility of an appeal out of time with permission).
- (7) Rules under section 106 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal: rules) may make provision about an appeal under this section.
- (8) Directions under section 107 of that Act (practice directions) may make provision about an appeal under this section.”
- (2) The following shall be inserted before section 3 of the Special Immigration Appeals Commission Act 1997 (jurisdiction: bail)—

A person may appeal to the Special Immigration Appeals Commission against a decision to make an order under section 40 of the British Nationality Act 1981 (c. 61) (deprivation of citizenship) if he is not entitled to appeal under section 40A(1) of that Act because of a certificate under section 40A(2).”
- (3) In section 5(1)(a) and (b) and (2) of that Act (procedure) after “section 2” there shall be inserted “or 2B”.
- (4) In exercising a power under section 40 of the British Nationality Act 1981 after the commencement of subsection (1) above the Secretary of State may have regard to anything which—
 - (a) occurred before commencement, and
 - (b) he could have relied on (whether on its own or with other matters) in making an order under section 40 before commencement.

5 Resumption of citizenship

In the following provisions of the British Nationality Act 1981 (c. 61) the words “, if a woman,” shall cease to have effect—

- (a) section 10(1) and (2) (registration as British citizen following renunciation of citizenship), and
- (b) section 22(1) and (2) (registration as British overseas territories citizen following renunciation of citizenship).

6 Nationality decision: discrimination

- (1) Section 19D of the Race Relations Act 1976 (c. 74) (discrimination by public authority: permitted cases) shall be amended as follows.

- (2) In subsection (1) for “immigration and nationality functions” substitute “immigration functions”.
- (3) For subsections (4) and (5) substitute—
- “(4) In subsection (1) “immigration functions” means functions exercisable by virtue of any of the enactments mentioned in subsection (5).
- (5) Those enactments are—
- (a) the Immigration Acts (within the meaning of section 158 of the Nationality, Immigration and Asylum Act 2002) excluding sections 28A to 28K of the Immigration Act 1971 (c. 77) so far as they relate to offences under Part III of that Act;
 - (b) the Special Immigration Appeals Commission Act 1997 (c. 68);
 - (c) provision made under section 2(2) of the European Communities Act 1972 (c. 68) which relates to immigration or asylum; and
 - (d) any provision of Community law which relates to immigration or asylum.”
- (4) Section 19E of the Race Relations Act 1976 (monitoring of use of section 19D) shall be amended as follows—
- (a) in subsection (3)(a) for “immigration and nationality functions” substitute “immigration functions”, and
 - (b) omit subsection (7).
- (5) In section 71A of that Act (general statutory duty: special cases)—
- (a) in subsection (1) the words “(within the meaning of section 19D(1))” shall be omitted, and
 - (b) the following shall be inserted after subsection (1)—
- “(1A) In subsection (1) “immigration and nationality functions” means functions exercisable by virtue of—
- (a) the Immigration Acts (within the meaning of section 158 of the Nationality, Immigration and Asylum Act 2002) excluding sections 28A to 28K of the Immigration Act 1971 so far as they relate to offences under Part III of that Act;
 - (b) the British Nationality Act 1981;
 - (c) the British Nationality (Falkland Islands) Act 1983 (c. 6);
 - (d) the British Nationality (Hong Kong) Act 1990 (c. 34);
 - (e) the Hong Kong (War Wives and Widows) Act 1996 (c. 41);
 - (f) the British Nationality (Hong Kong) Act 1997 (c. 20);
 - (g) the Special Immigration Appeals Commission Act 1997 (c. 68);
 - (h) provision made under section 2(2) of the European Communities Act 1972 (c. 68) which relates to the subject matter of an enactment within any of paragraphs (a) to (g); or
 - (i) any provision of Community law which relates to the subject matter of an enactment within any of those paragraphs.”

7 Nationality decision: reasons and review

- (1) Section 44(2) and (3) of the British Nationality Act 1981 (c. 61) (no requirement to give reasons for discretionary decision, and no right of appeal) shall cease to have effect.
- (2) Section 1(5) of the British Nationality (Hong Kong) Act 1990 (c. 34) (no requirement to give reasons for discretionary decision, and no right of appeal) shall cease to have effect.

8 Citizenship: registration

In paragraph 3(1)(b) of Schedule 2 to the British Nationality Act 1981 (application by person born in United Kingdom or overseas territory for registration as citizen: age requirement) the words “had attained the age of ten but” shall cease to have effect.

9 Legitimacy of child

- (1) The following shall be substituted for section 50(9) of the British Nationality Act 1981 (interpretation: child)—
 - “(9) For the purposes of this Act a child’s mother is the woman who gives birth to the child.
 - (9A) For the purposes of this Act a child’s father is—
 - (a) the husband, at the time of the child’s birth, of the woman who gives birth to the child, or
 - (b) where a person is treated as the father of the child under section 28 of the Human Fertilisation and Embryology Act 1990 (c. 37) (father), that person, or
 - (c) where neither paragraph (a) nor paragraph (b) applies, any person who satisfies prescribed requirements as to proof of paternity.
 - (9B) In subsection (9A)(c) “prescribed” means prescribed by regulations of the Secretary of State; and the regulations—
 - (a) may confer a function (which may be a discretionary function) on the Secretary of State or another person,
 - (b) may make provision which applies generally or only in specified circumstances,
 - (c) may make different provision for different circumstances,
 - (d) must be made by statutory instrument, and
 - (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
 - (9C) The expressions “parent”, “child” and “descended” shall be construed in accordance with subsections (9) and (9A).”
- (2) In section 3(6) of that Act (registration of minor as British citizen)—
 - (a) after paragraph (a) insert “and”,
 - (b) the word “and” after paragraph (b) shall cease to have effect, and
 - (c) paragraph (c) (illegitimate child) shall cease to have effect.

- (3) In section 17(6) of that Act (registration of minor as British overseas territories citizen)—
- (a) after paragraph (a) insert “and”,
 - (b) the word “and” after paragraph (b) shall cease to have effect, and
 - (c) paragraph (c) (illegitimate child) shall cease to have effect.
- (4) Section 47 of that Act (legitimated children) shall cease to have effect.
- (5) In Schedule 2 to that Act (persons otherwise stateless)—
- (a) in paragraph 1(1)(b) (person born in United Kingdom), the words “he is born legitimate and” shall cease to have effect, and
 - (b) in paragraph 2(1)(b) (person born in British overseas territory), the words “he is born legitimate and” shall cease to have effect.

10 Right of abode: certificate of entitlement

- (1) The Secretary of State may by regulations make provision for the issue to a person of a certificate that he has the right of abode in the United Kingdom.
- (2) The regulations may, in particular—
- (a) specify to whom an application must be made;
 - (b) specify the place (which may be outside the United Kingdom) to which an application must be sent;
 - (c) provide that an application must be made in a specified form;
 - (d) provide that an application must be accompanied by specified documents;
 - (e) require the payment of a fee on the making of an application;
 - (f) specify the consequences of failure to comply with a requirement under any of paragraphs (a) to (e) above;
 - (g) provide for a certificate to cease to have effect after a period of time specified in or determined in accordance with the regulations;
 - (h) make provision about the revocation of a certificate.
- (3) The regulations may—
- (a) make provision which applies generally or only in specified cases or circumstances;
 - (b) make different provision for different purposes;
 - (c) include consequential, incidental or transitional provision.
- (4) The regulations—
- (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The Immigration Act 1971 (c. 77) shall be amended as follows—
- (a) in section 3(9)(b) (proof of entitlement to right of abode) the words “issued by or on behalf of the Government of the United Kingdom certifying that he has such a right of abode” shall cease to have effect, and
 - (b) in section 33(1) for the definition of “certificate of entitlement” substitute—

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““certificate of entitlement” means a certificate under section 10 of the Nationality, Immigration and Asylum Act 2002 that a person has the right of abode in the United Kingdom;”.

- (6) Regulations under this section may, in particular, include provision saving, with or without modification, the effect of a certificate which—
- (a) is issued before the regulations come into force, and
 - (b) is a certificate of entitlement for the purposes of sections 3(9) and 33(1) of the Immigration Act 1971 as those sections have effect before the commencement of subsection (5) above.

11 Unlawful presence in United Kingdom

- (1) This section applies for the construction of a reference to being in the United Kingdom “in breach of the immigration laws” in section 4(2) or (4) or 50(5) of, or Schedule 1 to, the British Nationality Act 1981 (c. 61).
- (2) A person is in the United Kingdom in breach of the immigration laws if (and only if) he—
- (a) is in the United Kingdom,
 - (b) does not have the right of abode in the United Kingdom within the meaning of section 2 of the Immigration Act 1971,
 - (c) does not have leave to enter or remain in the United Kingdom (whether or not he previously had leave),
 - (d) is not a qualified person within the meaning of the Immigration (European Economic Area) Regulations 2000 (S.I. 2000/2326) (person entitled to reside in United Kingdom without leave) (whether or not he was previously a qualified person),
 - (e) is not a family member of a qualified person within the meaning of those regulations (whether or not he was previously a family member of a qualified person),
 - (f) is not entitled to enter and remain in the United Kingdom by virtue of section 8(1) of the Immigration Act 1971 (crew) (whether or not he was previously entitled), and
 - (g) does not have the benefit of an exemption under section 8(2) to (4) of that Act (diplomats, soldiers and other special cases) (whether or not he previously had the benefit of an exemption).
- (3) Section 11(1) of the Immigration Act 1971 (person deemed not to be in United Kingdom before disembarkation, while in controlled area or while under immigration control) shall apply for the purposes of this section as it applies for the purposes of that Act.
- (4) This section shall be treated as always having had effect except in relation to a person who on the commencement of this section is, or has been at any time since he last entered the United Kingdom—
- (a) a qualified person within the meaning of the regulations referred to in subsection (2)(d), or
 - (b) a family member of a qualified person within the meaning of those regulations.
- (5) This section is without prejudice to the generality of—

- (a) a reference to being in a place outside the United Kingdom in breach of immigration laws, and
- (b) a reference in a provision other than one specified in subsection (1) to being in the United Kingdom in breach of immigration laws.

12 **British citizenship: registration of certain persons without other citizenship**

- (1) The following shall be inserted after section 4A of the British Nationality Act 1981 (c. 61) (registration as British citizen)—

“4B Acquisition by registration: certain persons without other citizenship

- (1) This section applies to a person who has the status of—
- (a) British Overseas citizen,
 - (b) British subject under this Act, or
 - (c) British protected person.
- (2) A person to whom this section applies shall be entitled to be registered as a British citizen if—
- (a) he applies for registration under this section,
 - (b) the Secretary of State is satisfied that the person does not have, apart from the status mentioned in subsection (1), any citizenship or nationality, and
 - (c) the Secretary of State is satisfied that the person has not after 4th July 2002 renounced, voluntarily relinquished or lost through action or inaction any citizenship or nationality.”
- (2) In section 14(1) of that Act (meaning of British citizen “by descent”), in paragraph (d) for “section 5” there shall be substituted “section 4B or 5”.

13 **British citizenship: registration of certain persons born between 1961 and 1983**

- (1) The following shall be inserted after section 4B of the British Nationality Act 1981 (registration as British citizen)—

“4C Acquisition by registration: certain persons born between 1961 and 1983

- (1) A person is entitled to be registered as a British citizen if—
- (a) he applies for registration under this section, and
 - (b) he satisfies each of the following conditions.
- (2) The first condition is that the applicant was born after 7th February 1961 and before 1st January 1983.
- (3) The second condition is that the applicant would at some time before 1st January 1983 have become a citizen of the United Kingdom and Colonies by virtue of section 5 of the British Nationality Act 1948 (c. 56) if that section had provided for citizenship by descent from a mother in the same terms as it provided for citizenship by descent from a father.

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- (4) The third condition is that immediately before 1st January 1983 the applicant would have had the right of abode in the United Kingdom by virtue of section 2 of the Immigration Act 1971 (c. 77) had he become a citizen of the United Kingdom and Colonies as described in subsection (3) above.”
- (2) In section 14(1) of that Act (meaning of British citizen “by descent”), in paragraph (d) after the words “section 4B” (as substituted by section 12(2) of this Act) there shall be inserted “, 4C”.

14 Hong Kong

A person may not be registered as a British overseas territories citizen under a provision of the British Nationality Act 1981 (c. 61) by virtue of a connection with Hong Kong.

15 Repeal of spent provisions

Schedule 2 (which repeals spent provisions) shall have effect.