

EXPLANATORY MEMORANDUM TO

**THE IMMIGRATION AND NATIONALITY (REQUIREMENTS FOR
NATURALISATION AND FEES) (AMENDMENT) REGULATIONS 2018**

2018 No. 618

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to introduce the necessary powers for the Secretary of State to waive the payment of fees, currently specified in the Immigration and Nationality (Fees) Regulations 2018 (“the 2018 Regulations”), in connection with certain immigration and nationality applications made by persons eligible to be considered under the Home Office’s Windrush scheme.
- 2.2 This instrument also amends the British Nationality (General) Regulations 2003 (“the 2003 Regulations”) to provide that migrants from specified countries who came to and settled in the UK before 1 January 1973, meet the Knowledge of Life and Language in the UK requirement without having to take a formal test, when applying for British citizenship under the Windrush scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These regulations contain a new power to enable the Secretary of State to waive the payment of any fee specified in the 2018 Regulations, which would otherwise be payable in relation to an application made under the Home Office’s Windrush scheme.
- 3.2 The Windrush scheme has been introduced to enable persons who originally came to and settled in the UK prior to 1 January 1973, as part of the ‘Windrush generation’ and their children, to obtain evidence of their immigration status, or apply for British citizenship free of charge. These are people who are, or have, in the past been lawfully present in the UK, but because of the law applying at the time of their arrival, did not need a formal grant of leave and may not have, since then, obtained evidence of their status.
- 3.3 The scheme also allows for certain persons:
 - of any nationality who came to and settled in the UK before 31 December 1988, who are not British citizens, and no longer hold documentary evidence of their status, to make an application free of charge for a document to confirm their status (where their status remains lawful).

- who were Commonwealth citizens settled in the UK prior to 1 January 1973, but subsequently moved overseas, to apply free of charge for the necessary document to enable them to return to the UK either permanently, or to visit.
- 3.4 The Prime Minister has committed to ensuring that all persons covered by this new scheme will be able to make the necessary application to obtain documentary evidence of their status, or (for eligible groups) to apply for British citizenship, free of charge and that this should be made available as quickly as possible. Therefore, this instrument is being laid on 24 May 2018, and will come into force on 30 May 2018.
- 3.5 The Home Office takes parliamentary scrutiny very seriously and always aims to abide by House conventions, and comply with the 21 day rule. Following a breach of the 21 day rule in respect of the Immigration and Nationality (Fees) Regulations 2015, and the Immigration and Nationality (Fees) Regulations 2017, the Home Office reviewed its planning process in respect of delivering further immigration fees regulations to ensure more time was allowed for agreeing the policy and for drafting and pre-laying scrutiny to avoid further breaches. However, while this process remains appropriate for routine changes to the Regulations, due to the nature of the issues these Regulations are seeking to address, the Home Office was not in a position to follow the usual timescales.
- 3.6 The Home Office has given serious consideration to whether it should breach the 21 day rule in respect of this instrument. In the circumstances, while it regrets not complying with the rule, it has decided to bring this instrument into force on 30 May to avoid any further delay for persons who have already come forward and for others who need evidence of their status as quickly as possible.

Other matters of interest to the House of Commons

- 3.7 As this instrument is subject to the negative resolution process, and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 68(10)(b) of the Immigration Act 2014 enables the regulations setting immigration and nationality fees to provide for any specified fee to be reduced, waived or refunded. These regulations will insert a broad provision conferring discretion on the Secretary of State to waive any fee payable under the 2018 Regulations for, or in connection with, an application made under the Windrush scheme.
- 4.2 The 2018 Regulations contain certain existing waivers which could have been used in connection with some (but not all) applications under the scheme. Therefore one alternative option would have been to provide a power for the Secretary of State to waive a fee for the purposes of the scheme where no provision currently exists.
- 4.3 However, the Home Office was concerned that, were that approach to be taken, a potential applicant under the scheme with no prior knowledge of the 2018 Regulations, may have felt they were being deliberately denied the benefit of a waived fee, and that this may have caused unnecessary alarm. The Home Office wishes to make it as easy as possible for those within the scheme to understand their position under it. Therefore, the better approach is to introduce a broad provision bespoke to the Windrush scheme to ensure that a single power to waive fees can be

applied in all cases in relation to applications made under this scheme, even though existing waivers may overlap with the new provision.

- 4.4 The 2003 Regulations set out the methods by which an applicant can demonstrate proficiency in English language and Life in the UK. There is already a route to demonstrate proficiency in English by coming from a specified country. These regulations will add in a route to satisfy both aspects where the applicant has been settled since 1st January 1973 and on entry was a national or citizen of specified countries or territories who have strong historical and institutional connections to UK. The provision will also apply to children of such people.

5. Extent and Territorial Application

- 5.1 The amendments made by this instrument to the 2018 Regulations, extend and apply to the whole of the UK and, for the purpose of issuing entry clearance, to the Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey.
- 5.2 The amendments made by this instrument to the 2003 Regulations have the same territorial extent and application as the 2003 Regulations (namely the whole of the UK, the Isle of Man, the Bailiwick of Jersey, the Bailiwick of Guernsey and the British overseas territories) (see Schedule 6 to the British Nationality Act 1981).

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 On 1 January 1973, with the commencement of the Immigration Act 1971, persons who were in the UK and settled (the ‘Windrush Generation’), were granted indefinite leave to remain under section 1(2) of that Act. They did not require documentation to attest their status.
- 7.2 More recent changes to UK immigration policies now mean that some individuals are encountering difficulties in obtaining access to work, housing and public services, and in returning to the UK, due to their inability to provide documentary proof of their status. Therefore, the Home Office is introducing the Windrush scheme to enable such persons to obtain the evidence they need to document their status. The broad groups of potential applicants under this new scheme are:
- specified Commonwealth citizens who came to and settled in the UK prior to 1 January 1973 and have lived continuously in the UK since their arrival,
 - specified Commonwealth citizens who came to and settled in the UK before 1 January 1973, but whose status has lapsed because they left the UK for a period of more than two years,
 - children born to specified Commonwealth citizens who themselves were settled in the UK before 1 January 1973, where they (the children) were born in the UK, or arrived in the UK before the age of 18 and have lived in the UK continuously since their arrival, and

- persons of any nationality who arrived in the UK and had settled status before 31 December 1988 and have been continuously, lawfully resident in the UK since being granted settled status.

- 7.3 The Home Office recognises that people arriving in the UK between 1 January 1973 and 31 December 1988 are not in the same position as those who arrived before 1973, because they would have had a documented status to be able to enter the UK. Many of those who arrived during that period would have been given indefinite leave to enter or have since acquired indefinite leave to remain, or become British citizens. However, there are a number of individuals, often those who arrived shortly after 1973, who have struggled to demonstrate their status. The Immigration Act 1988 changed the position for Commonwealth citizens such that they could lose their indefinite leave to remain if they left the UK for more than two years, placing them in a comparable position to non-commonwealth nationals. Accordingly, 1988 marks the end point of the availability of the scheme. In addition, anyone who has been in the UK since before that date has been here for at least 30 years; this time period is consistent with requirements of the private life visa route which is available for those who have been in the UK for 20 years, who can qualify for settlement after completing 10 years' temporary leave to remain.
- 7.4 The amendments to the 2018 Regulations will enable the Secretary of State to waive application fees, otherwise payable by applicants, for documents issued under the scheme, which confirm that a person:
- has indefinite leave to remain in the UK,
 - is a British Citizen, or has the right of abode in the UK (where appropriate), or
 - is permitted to return to the UK either temporarily or permanently.
- 7.5 The amendments to the 2018 Regulations will also enable any eligible person considered under the scheme to apply for British citizenship free of charge. In the case of such applications, the 2003 Regulations (as amended) set out the requirements that in order to be naturalised as a British citizen, applicants must show that they have sufficient knowledge of the language and knowledge of life in the United Kingdom. The British Nationality (General) Regulations 2003 (as amended) sets out the manner in which these requirements can be met.
- 7.6 These regulations amend the 2003 Regulations such that migrants from specified countries who came to and settled in the UK before 1 January 1973 (or their children in certain circumstances) can, through their nationality of a specified Commonwealth country or other specified territory which has strong historical links with the UK, combined with their extended residence in the UK, demonstrate that they have shown sufficient knowledge of the language and life.

Consolidation

- 7.7 There are currently no plans to consolidate the relevant legislation.

8. Consultation outcome

- 8.1 The Home Office has not consulted on the specific matters addressed by this instrument.

9. Guidance

- 9.1 A document setting out the details of the Windrush scheme will be published on GOV.UK when this instrument is laid. Guidance is being prepared for Home Office staff dealing with applications from persons eligible to apply under the scheme, this will also be published on GOV.UK.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument. This is because this instrument solely seeks to remove the requirement to pay a fee in respect of applications made under the Windrush scheme.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Home Office has committed to reporting to the Home Affairs Select Committee on a regular basis to update on progress against commitments made to Parliament in relation to the Windrush scheme.

13. Contact

- 13.1 Annie Wattam at the Home Office, fees and Income Planning team, Financial Planning Unit, Telephone: 07557 205215 or email: annie.wattam@homeoffice.gsi.gov.uk, can answer any queries regarding the instrument.