

EXPLANATORY MEMORANDUM TO

THE BRITISH NATIONALITY (GENERAL) (AMENDMENT) REGULATIONS 2018

2018 No. 851

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations amend the British Nationality (General) Regulations 2003 (“the 2003 Regulations”) in two respects: the method of notifying a person of the intention to deprive them of British nationality and, requesting a waiver from the ‘English language and life in the UK’ requirements for naturalisation.
- 2.2 These changes are being made to address operational concerns, improve processes and responded to feedback from customers. Changes to the ‘English language and life in the UK’ do not affect those covered by the Windrush policy. Whilst it does not specifically exclude them, those eligible for the Windrush scheme are able to demonstrate the ‘English language and life in the UK’ requirement in a different way and will not need to rely on this provision.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure 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 The 2003 Regulations set out the procedure to be followed for applications for registration as a British citizen, a British Overseas citizen or a British subject, or for a certificate of naturalisation as a British citizen. They also set out the procedure by which a person is told about the decision to remove their British citizenship, also known as deprivation.
- 4.2 Under the 2003 Regulations, notification of deprivation of citizenship must be made either in person or by post, or by post to their known or last known whereabouts. These Regulations amend the 2003 Regulations to allow notification to be made by more modern methods such as e-mail. The amendments also allow a deprivation decision to be served by placing a copy of the notice on file in the absence of being able to contact the applicant or his representative by any means.
- 4.3 Under Schedule 1 of the British Nationality Act 1981 people applying to naturalise as British citizens are required to demonstrate that they have sufficient knowledge of English language and life in the UK, unless it would be unreasonable for them to do

so due to their age or physical or mental condition. These Regulations introduce requirements for the manner in which requests must be made for either element of the requirement to be waived on the basis of a physical or mental condition.

5. Extent and Territorial Application

- 5.1 This instrument applies to all of the United Kingdom.
- 5.2 The provisions relating to service of notification of deprivation of citizenship apply to the Islands and all of the British Overseas Territories.

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 There are occasions where due to security concerns or criminal activity the Home Secretary removes British citizenship from an individual. This provision is used sparingly and only in the most serious cases. It is only where the individual holds another nationality in addition to their British citizen status, and will not be made stateless. Allowing additional methods of notifying the intention to deprive British nationality will allow for a prompt communication with the individual and, in cases where the individual is overseas, prevent their re-entry to the UK.
- 7.2 Under the current regulations, a person does not need to be in the UK to be deprived of citizenship. But when the Secretary of State has made the decision for the person to be deprived, that decision must currently be conveyed to the individual by post overseas, and must allow 28 days for this to happen. This does not reflect modern (electronic) ways of communications, and is also anomalous to the ways other immigration and nationality decisions are communicated. Amending Regulation 10 will address these inconsistencies.
- 7.3 Every effort is made to ensure that the person concerned is aware of the deprivation decision. However, the SI also introduces a power to permit service of deprivation notices on file where previous correspondence with the person or their representative has been returned as undelivered, for example ‘addressee gone away’, or ‘representative no longer instructed’. The SI also amends Regulation 10(3) to set out when a notice is deemed served when given by each of the above methods.
- 7.4 A waiver from the ‘English language and life in the UK’ is already permissible, but the regulations have been silent as to the way in which an applicant can request this. Where insufficient information is supplied with the waiver request this can lead to significant delays in deciding a customer’s application. These changes aim to assist customers, who are seeking a waiver on mental or physical health grounds, to supply all the necessary information first time.
- 7.5 The changes in the SI will address the current inefficiencies by requiring such requests to be accompanied by a copy of the specified form that will have been completed by a registered medical practitioner. This provide the information needed by caseworkers to take a decision, reduces the time it takes to consider the applicants request, and avoids subsequent requests to the applicant for more information.

- 7.6 There have also been cases of abuse and exploitation of the waiver for the ‘English language and life in the UK’. In some cases, applicants have been coerced into seeking medical reports from unscrupulous individuals, often at great financial cost. These reports could have been sought from their own practitioner, or a practitioner they have an entitlement to register with, for example a GP. In other cases, applicants have deliberately sought the services of such individuals to avoid having to meet the ‘English language and life in the UK requirement. Limiting the types of medical practitioner who must provide this information to those who are registered with the General Medical Council is intended to limit the potential for abuse. As those applying to naturalise as British citizens will normally be resident in the UK they will normally have an established relationship such a person, or be able to register with a GP if they have not already done so. Nationality caseworkers will consider information and reports supplied by other medical professionals, but only where this is endorsed by a registered medical practitioner and accompanied by the specified waiver request form.

Consolidation

- 7.7 There are no plans to consolidate the 2003 Regulations.

8. Consultation outcome

- 8.1 These changes have not been the subject of consultation because they are designed to improve customer service, and tackle abuse and criminality.

9. Guidance

- 9.1 Guidance will be amended to take account of this change. The change itself will be publicised on the Gov.UK website.

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.

11. Regulating small business

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

12. Monitoring & review

- 12.1 These changes are not subject to review.

13. Contact

- 13.1 Queries should be directed to the Home Office through the ‘Contact UKVI’ section on the visas and immigration pages of GOV.UK website at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>.
- 13.2 Specific written queries relating to this Instrument should be directed to Rebecca.lissaman@homeoffice.gsi.gov.uk. Please note that this mailbox is only for Parliamentary use and specific technical queries regarding the drafting of these changes. It is not a contact point for general enquiries. Queries to this e-mail address

from outside Parliament about other immigration issues, including how these changes affect applications, will not receive a response.