

EXPLANATORY MEMORANDUM TO
THE BRITISH NATIONALITY (GENERAL, BRITISH OVERSEAS TERRITORIES
AND FEES) (AMENDMENT) REGULATIONS 2022

2022 No. 602

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 This instrument amends the British Nationality (General) Regulations 2003 (“the 2003 Regulations”), the British Nationality (British Overseas Territories) Regulations 2007 (“the 2007 Regulations”) and the Immigration and Nationality (Fees) Regulations 2018 (“the 2018 Regulations”). The purpose of the amendments to the 2003 Regulations and the 2007 Regulations is to provide for the content of applications for registration as a British citizen or British overseas territories citizen under new provisions of the British Nationality Act 1981 (“the 1981 Act”) inserted by the Nationality and Borders Act 2022 (“the 2022 Act”), and to reflect other changes made by the Nationality and Borders Act 2022 affecting applications under the 1981 Act. The purpose of the amendments to the 2018 Regulations is to set fees for certain applications for registration under new provisions of the 1981 Act inserted by the 2022 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Most provisions of the Regulations come into force on 28 June 2022. However, regulation 1(3) provides for certain provisions to come into force when section 3 of the 2022 Act comes into force. No commencement regulations have yet been made bringing section 3 into force. Section 3 will not be brought into force earlier than 28 June 2022, so these Regulations will not break the 21 day rule.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland, and regulations 1, 2 and 3 also extend to the Channel Islands, the Isle of Man and the British overseas territories.
- 4.2 The territorial application of this instrument is the same as its extent.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Part 1 of and Schedule 1 to the 2022 Act amend the 1981 Act. The amendments create new registration routes for people who had missed out on acquiring citizenship in the past, particularly as a result of historical anomalies.
- 6.2 The nationality provisions in the 2022 Act come into force on 28 June 2022 pursuant to regulation 2 of and Schedule 1 to the Nationality and Borders Act 2022 (Commencement No.1, Transitional and Savings Provisions) Regulations 2022 except for section 3, section 4(2) to the extent it refers to section 17H of the 1981 Act and paragraph 3(4)(d) of Schedule 1 to the 2022 Act.
- 6.3 The Regulations amend the 2003 Regulations, the 2007 Regulations and the 2018 Regulations. The 2003 Regulations deal with, among other things, the required content of applications for registration as a British citizen under the 1981 Act. The 2007 Regulations deal with, among other things, the required content of applications for registration as a British overseas territories citizen under that Act. The 2018 Regulations set fees for, among other things, applications for registration as a British citizen under the 1981 Act.
- 6.4 Part 1 of the 2022 Act adds new sections to the 1981 Act providing for applications for registration as a British citizen or a British overseas territories citizen in various circumstances. The new sections are:
- Section 4L – registration as a British citizen where the person would have been, or would have been able to become, a British citizen, but for historical legislative unfairness, an act or omission by a public body, or exceptional circumstances.
 - Paragraph 3A of Schedule 2 – registration of a stateless child as a British citizen or British overseas citizen. This contains the additional requirement that the child cannot reasonably acquire another nationality.
 - Section 17A - registration as a British overseas territories citizen for someone who would have acquired that status had women been able to pass on citizenship prior to 1 January 1983.
 - Section 17C - registration as a British overseas territories citizen for someone who would have been able to acquire that status by registration if their parents had been married at the time of the person’s birth.
 - Sections 17D-17F - registration as a British overseas territories citizen by someone who would have acquired that status had unmarried fathers been able to pass on citizenship at the time of their birth
 - Section 4K – registration as a British citizen by someone registered as a British overseas territories citizen under sections 17A or 17C-F.
 - Section 17H – registration as a British overseas territories citizen by the direct descendants of those born in the British Indian Ocean Territory or, prior to 8 November 1965, in the islands designated as the British Indian Ocean Territory on that date.
 - Section 17I – registration as a British overseas territories citizen where the person would have been, or would have been able to become, a British overseas territories citizen, but for historical legislative unfairness, an act or omission by a public body, or exceptional circumstances.

- 6.5 Part 1 of the 2022 Act also makes amendments to existing provisions of the 1981 Act relevant to these Regulations. An amendment is made to existing section 4F to allow also for applications under that section by a person who would be entitled to register under existing section 4D. Section 17 is amended to remove an existing time restriction on applications under section 17(2). Other relevant amendments relate to requirements to be of good character.

7. Policy background

What is being done and why?

- 7.1 The amendments made by the Regulations to the 2003 Regulations and the 2007 Regulations largely deal with the information to be included in applications for registration under the new provisions of the 1981 Act mentioned above. They also deal with the way in which parental consent is to be signified for the purpose of applications under new section 17D, and with other matters resulting from the amendments to the 1981 Act described above.
- 7.2 The Regulations also amend the 2018 Regulations. They set fees for certain applications for registration as a British citizen under new section 4L. This is limited to applications under that section made on the basis that the applicant would have been able to become a British citizen but for historical legislative unfairness, an act or omission of a public authority or other exceptional circumstances. This fee is set at the same level for other adult registration applications, which is £1,126. The fee does not apply to an application made on the basis that the applicant would have automatically been a British citizen but for such matters. The amendments also amend the definition of applications under the 1981 act so that it will include applications from stateless minors under new paragraph 3A of Schedule 2 to the 1981 Act. A fee already applies for individuals applying under existing paragraph 3 of Schedule 2, so this amendment ensures a consistent charging approach for stateless minors.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 At present, there is no intention to consolidate the relevant legislation amended by this instrument.

10. Consultation outcome

- 10.1 This instrument has not been the subject of consultation: it introduces amendments necessary to implement the nationality provisions in the 2022 Act. Details of the consultation on the Bill can be found here: [New Plan for Immigration - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/new-plan-for-immigration).

11. Guidance

- 11.1 Home Office guidance will be amended to take account of the changes. The changes set out in the Act will be publicised on the Gov.UK website.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument. (Wider assessments were prepared for the Nationality and Borders Bill).

13. Regulating small business

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

14. Monitoring & review

- 14.1 This change is not subject to review.

15. Contact

- 15.1 Jane Whitehead at the Home Office: Jane.Whitehead@homeoffice.gov.uk can answer any queries regarding the instrument.
- 15.2 Kristian Armstrong, Deputy Director for Passport and Nationality Policy Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kevin Foster, Minister for Safe and Legal Migration at the Home Office can confirm that this Explanatory Memorandum meets the required standard.