

EXPLANATORY MEMORANDUM TO
THE BRITISH NATIONALITY (BRITISH OVERSEAS TERRITORIES)
(AMENDMENT) REGULATIONS 2023

2023 No. 1104

1. Introduction

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

2. Purpose of the instrument

- 2.1 The Nationality and Borders Act 2022 created provisions to correct historical legislative unfairness which included establishing routes for individuals, who missed out on acquiring British Overseas Territories citizenship (BOTC) and British citizenship at birth, to register for both nationalities; and a similar route for the direct descendants of Chagos Islanders. The British Nationality (General) Regulations 2003 (No. 548) state that a citizenship oath and pledge must be administered by a SR (or equivalent) at a ceremony in England and Wales. This applies to British citizenship ceremonies. However, the 2007 Regulations, which apply to BOTC ceremonies, include the following “(a) in England and Wales or Northern Ireland, any justice of the peace, commissioner for oaths or notary public; (b) in Scotland, any sheriff principal, sheriff, justice of the peace or notary public.” This means SRs do not currently have the authority to administer the oath and pledge for BOTCs.
- 2.2 Amending the British Nationality (British Overseas Territories) Regulations 2007 (2007 Regulations) so that the oath and pledge can be administered by a registrar for a BOTC in England, Wales and Scotland, and by an authorised person in Northern Ireland, is a simple and long-term solution. It would allow a full ‘joint ceremony’ process, where applicants would make the two oaths and pledges (as a BOTC and as a British citizen) at the same time.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the same as the 2007 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).
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is in England, Wales, Scotland and Northern Ireland.

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 In England and Wales or Northern Ireland, the 2007 Regulations only permit a ‘justice of the peace, commissioner for oaths or notary public’ to administer a citizenship oath or pledge where a person is registering as a British Overseas Territories citizen. In Scotland, the 2007 Regulations only permit a ‘sheriff principal, sheriff, justice of the peace or notary public’ to administer the same. This instrument will amend the 2007 Regulations to additionally enable a registrar to administer a citizenship oath or pledge for BOTCs in England, Wales and Scotland and, in the case of a ceremony held in Northern Ireland, by a person authorised to do so by the Secretary of State. Where someone is registering or naturalising as a British citizen, the British Nationality (General) Regulations 2003 require the oath and pledge at a ceremony to be administered by a registrar or, if the ceremony is in Northern Ireland, by a person authorised by the Secretary of State. The amendments made by this instrument will enable someone who is registering as a BOTC and British citizen to make both oath/pledges to the same official at a ceremony.

7. Policy background

What is being done and why?

- 7.1 The Nationality and Borders Act 2022 created provisions to correct historical legislative unfairness. This included routes for individuals who missed out on acquiring BOTC and British citizenship at birth (because women and unmarried fathers could not pass on citizenship at the time) to register for both nationalities. There is also a similar route for the direct descendants of Chagos Islanders. People registered as a BOTC under these provisions will be able to register as a British citizen at the same time if they wish. This reflects the fact that they will also have missed out on acquiring that status under the British Overseas Territories Act 2002.
- 7.2 Given the historical legislative unfairness encountered by these cohorts, which has, in some cases, prevented their acquisition of citizenship for many years, the Home Office publicly committed to making the application as simple and user-friendly as possible. We have established a single, fee-free, application process which requires only one application, directly to the Home Office, to acquire both statuses.
- 7.3 However, for applicants who are in the UK, the 2007 Regulations, only permit a ‘justice of the peace, commissioner for oaths or notary public’ (in England and Wales or Northern Ireland) or a ‘sheriff principal, sheriff, justice of the peace or notary public’ (in Scotland) to administer the BOTC oath and pledge. For those registering as British citizens, the oath and pledge at the citizenship ceremony must be made to a registrar or, if a ceremony is held in Northern Ireland, by a person authorised by the Secretary of State. In order to comply with the oath and pledge requirements, an applicant in the UK who wishes to register as both a BOTC and a British citizen would therefore need to first find one of the authorised officials to administer the oath/pledge as a BOTC, then separately attend a citizenship ceremony to make another oath/pledge, this time to register as a British citizen. This instrument will amend the 2007 Regulations, so a registrar or a person authorised by the Secretary of State can administer the oath and pledge at a ceremony for a BOTC in England, Wales, Scotland and Northern Ireland. The customer could then make both oath/pledges at the same ceremony.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 There is no plan to consolidate the legislation.

10. Consultation outcome

10.1 This change has not been the subject of consultation as it helps simplify the necessary steps and access to citizenship for individuals who missed out on acquiring BOTC and British citizenship at birth.

11. Guidance

11.1 The following Home Office guidance will be amended to take account of this change:

- [BOTC \(F\) Registration as a British Overseas Territories citizen and/or a British citizen – A guide for certain persons born before July 2006 to unmarried fathers connected to a British overseas territory;](#)
- [Registration as a British overseas territories citizen and/or a British citizen – A guide for certain persons born before 1983 to mothers connected to a British overseas territory;](#)
- [Registration as a British overseas territories citizen and British citizen: Chagossian descendant.](#)

11.2 The change itself will be publicised on the UK Visas and Immigration section of 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 A full Impact Assessment has not been prepared for this instrument because the changes are minimal and not expected to have any significant impact on relevant bodies.

13. Regulating small business

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

14. Monitoring & review

14.1 The instrument does not include a statutory review clause. There are no plans for monitoring and review as it helps simplify the necessary steps and access to citizenship for individuals.

15. Contact

15.1 Queries should be directed to the Home Office as per 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>.

- 15.2 Specific written queries relating to this instrument should be directed to nationalitypolicy@homeoffice.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.
- 15.3 Kristian Armstrong, Border, Immigration, Citizenship System and Europe Group, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Lord Murray, Parliamentary Under Secretary of State, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.