EXPLANATORY MEMORANDUM TO

THE BRITISH NATIONALITY (GENERAL) (AMENDMENT No. 2) REGULATIONS 2015

2015 No. 681

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[1] ("the 2003 Regulations"). They amend the existing provisions for determining whether a person has sufficient knowledge of language and about life in the United Kingdom for the purpose of an application for naturalisation as a British citizen under section 6 of the British Nationality Act 1981 ("the 1981 Act") and amend the list of specified English language tests in Schedule 2A.

2.2 Additionally these Regulations make amendments to the 2003 Regulations in connection with section 65 of the Immigration Act 2014, which comes into force on 6 April 2015 and inserts into the 1981 Act new sections 4E to 4J, which make provision for persons born before 1 July 2006 to unmarried parents to register as British citizens. Specifically, these Regulations amend Schedule 2 to the 2003 Regulations by setting out the requirements for applications for registration as a British citizen under sections 4F to 4I of the 1981 Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Paragraphs 1 and 2 of Schedule 1 to the 1981 Act set out the requirements to be met for naturalisation as a British citizen under section 6 of that Act. These include the requirement that an individual has sufficient knowledge of English, Welsh or Scottish Gaelic. The Schedule was amended by the Nationality, Immigration and Asylum Act 2002 to include an additional requirement that individuals have sufficient knowledge about life in the United Kingdom[2]. Regulation 5A of the 2003 Regulations sets out how applicants can demonstrate this[3].

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[1] S.I. 2003/548

[2] See paragraph 1(c) and (ca) of Schedule 1 to the 1981 Act.

[3] Regulation 5A was added by S.I. 2004/1726 and substituted by S.I. 2005/2578 and S.I. 2013/2541. .

4.2 These Regulations amend regulation 5A by the inclusion of a provision enabling the Secretary of State to require an applicant to take a new test or qualification where the Secretary of State has reasonable grounds to believe that the applicant used deception in relation to a test or qualification on which they are relying to demonstrate knowledge of language or about life in the UK.

4.3 Under regulation 5A, one of the ways in which applicants can demonstrate their knowledge of the English language is by passing a test specified in Schedule 2A to the 2003 Regulations. These Regulations update the list of tests in that Schedule to reflect recent changes in the list of English language tests approved by the Secretary of State.

4.4 These Regulations also amend Schedule 2 which prescribes the manner in which applications for registration must be made. The amendments specify the requirements for the new registration provisions for children whose British fathers were not married to their mothers at the time of the child's birth, that is applications under sections 4F,4G,4H and 4I of the 1981 Act.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

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

7. Policy background

7.1 The Government wishes to ensure that people seeking to naturalise as British citizens have an understanding of language and about life in the United Kingdom. The intention behind this policy is to ensure that migrants to the United Kingdom are equipped with the necessary knowledge and skills for integration. Applicants for naturalisation are therefore required to demonstrate that they have attained specified qualifications which are set out in regulation 5A of the Regulations.

7.2 There are a number of ways in which the required level of language can be demonstrated, including by passing one of the tests specified in Schedule 2A. Following a tender exercise in 2014, new licences to operate English language tests are being issued and the list of approved tests in Schedule 2A has been amended accordingly.

7.3 The new Schedule 2A is implemented with effect from 6 April 2015 for all English language tests taken after that date. We are conscious that many individuals take the required English language test in advance of their immigration application and may therefore be taking a

test before 6 April 2015 from one of the existing approved English language providers with the intention of using it in a subsequent application. We are therefore including transitional measures to allow individuals who took an English language test approved for naturalisation purposes before 6 April 2015 to use the result in support of a naturalisation application made before 6 November 2015. This seven month transitional period is considered to give sufficient time for an application to be made in reliance on a test taken before 6 April 2015 or for alternative arrangements to be put in place for demonstrating the required English language ability.

7.4 As part of the tender exercise, bidders were required to incorporate additional security features into their booking, administration and invigilation procedures. Full on line verification systems were also a requirement. It is therefore important that all English language tests taken for naturalisation purposes are taken at test centres where there are adequate security features in place. The Regulations now specify that Schedule 2A tests must be taken at a test centre approved by the Secretary of State for these purposes. Approved test centres will be available in areas of demand throughout the world, including the UK, and details of all approved test centres will be published on the GOV.UK website.

7.5 There are occasions where there is reasonable suspicion that a qualification or test presented by an applicant for naturalisation may not have been obtained legitimately, for example where applicants present a qualification or test suggesting a level of English not borne out on interview. To help ensure the robustness of the system, and to ensure that individuals are given every opportunity to establish the authenticity of their applications, the amendments introduce a new power to require a further test in such cases.

7.6 It is also important that applications contain all the necessary information to enable a decision to be made. This is in the interest of both caseworkers and the applicant. These Regulations therefore set out the requirements which applications under a number of new registration routes, which are to be commenced on 6 April, must meet.

8. Consultation outcome

8.1 The changes to Schedule 2A follow a procurement exercise, the details of which were advertised. The process included a number of briefing sessions for prospective bidders.

9. Guidance

9.1 Guidance on the new Regulations will be posted on the Home Office website and in written guidance provided to naturalisation applicants.

10. Impact

10.1 There is potential for impact on businesses involved in the provision of English language tests. However, the procurement process for the new English language test

providers complied with relevant regulatory requirements and all relevant bodies had the opportunity to bid for inclusion in the list of approved English language tests.

10.2 The impact on the public sector is confined largely to the Home Office.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The effect of these changes will be monitored by the Home Office.

13. Contact

Ann Robertson at the Home Office (Tel: 020 7035 3446 or email: Ann.Robertson@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.