EXPLANATORY MEMORANDUM TO THE

BRITISH NATIONALITY (GENERAL) (AMENDMENT) REGULATIONS 2004

2004 No. 1726

1. This Explanatory Memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations amend the British Nationality (General) Regulations 2003 (S.I. 2003 No. 548) to make provision for determining whether a person has sufficient knowledge of the English language for the purpose of an application for naturalisation as a British citizen under section 6 of the British Nationality Act 1981.

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

3.1 None

4. Legislative Background

4.1 One of the requirements that an applicant for naturalisation as a British citizen under section 6(1) of the British Nationality Act 1981 must fulfil is that he has "sufficient knowledge" of the English language (or Welsh or Scottish Gaelic), this is set out in paragraph 1(c) of Schedule 1 to that Act. From 28 July, an applicant for naturalisation as a British citizen under section 6(2) of that Act will also have to fulfil this requirement (by virtue of amendments to paragraph 3 of Schedule 1 to that Act made by section 2(1) of the Nationality, Immigration and Asylum Act 2002). Section 1(3) and (4) of the Nationality, Immigration and Asylum Act 2002 amends the Secretary of State's powers under section 41 of the British Nationality Act 1981 by inserting a new section 41(1)(ba) and (1A) which enable the Secretary of State by regulations to make provision for determining whether a person has sufficient knowledge of a language for the purpose of an application for naturalisation.

4.2 These new Regulations made under section 41 of the 1981 Act (as amended by the 2002 Act) specify the level of achievement in the English language which will be accepted as demonstrating sufficiency of knowledge for the purposes of an application for naturalisation as a British citizen under section 6 of the 1981 Act. The new Regulations amend existing Regulations namely the British Nationality (General) Regulations 2003 (S.I. 2003 No. 548), which make general provision relating to applications for British nationality. No provision is made in these new Regulations in respect of applicants for naturalisation who seek to qualify by virtue of their knowledge of the Welsh or Scottish Gaelic language.

4.3 This is the first time that the new powers under section 41(1)(ba) and 41(1A), to make provision for determining whether a person has sufficient knowledge of a language for the purpose of an application for naturalisation, have been exercised. The

instrument is being made to give effect to the policy decision that language testing should be done more objectively and consistently.

4.2 Regulation 3 adds a new Regulation 5A to the 2003 Regulations. Essentially this will require applicants to provide documentary evidence that they have achieved the required level of competence in English. The required level is specified as Entry 3 of the English for Speakers of Other Languages (ESOL) Core Curriculum. This curriculum is devised, and approved, by the Department for Education and Skills.

4.4 The new Regulations 5A also provides for the Secretary of State to designate a person who may certify that a person who does not possess an ESOL Entry 3 certificate, but who possesses a different qualification which he claims to be equivalent to, or exceed, ESOL Entry 3 level, has sufficient knowledge of the English language for these purposes.

4.5 Regulation 4 makes an amendment to the 2003 Regulations consequential on the extension of the language requirement to section 6(2) applicants. Such applications will now have to contain information showing that the applicant possesses the requisite qualifications in respect of knowledge of language.

5. Extent

5.1 This instrument applies to all of the United Kingdom, the Islands and the British Overseas Territories.

6. Policy background

6.1 The Government wishes to ensure that people seeking British citizenship have some understanding of one of the native languages of this country (English, Welsh or Scottish Gaelic) and of life in the United Kingdom. Schedule 1 to the British Nationality Act 1981, requires that an applicant must have "a sufficient knowledge of the English, Welsh, or Scottish Gaelic language", but in practice this requirement has not been rigorously tested to date, it is now desired to do so. This Statutory Instrument deals with knowledge of the English language only; it is intended that further Regulations will be made as to knowledge of life in the United Kingdom when an appropriate body of knowledge and testing regime are in place.

6.2 Before implementing this legislation the Government sought independent and authoritative advice on the way in which this should be done from the Life in the UK Advisory Group, chaired by Sir Bernard Crick, which reported in September 2003. The key recommendations of the report, which deals in detail only with the English language and not with Welsh or Scottish Gaelic, are that English language attainment should be measured by reference to the ESOL (English for Speakers of Other Languages) standards set out by the Department for Education and Skills. Any person who has achieved English language skills at ESOL entry 3 (which is described as enabling a person to conduct a conversation and get detailed information from a timetable) should be regarded as satisfying the requirement for English language attainment.

6.3 The over-riding policy intention behind these measures is to promote integration and to equip new citizens with the necessary language skills they will need in order to be economically, socially and culturally integrated, to be politically aware, and to be full and active members of society. These proposals are liable to attract

some public interest, especially from those likely to be directly affected by them and from bodies working with and representing migrants. But the changes are considered to be important in order to further the Government's objective to develop more cohesive communities.

7. Impact

7.1 This instrument has no direct impact on business, charities or voluntary bodies. It may however stimulate some demand for the services of private as well as public sector colleagues offering language courses.

7.2 The impact on the public sector is confined largely to the Home Office and to the Department for Education and Skills (DfES).

7.3 The Home Office will modify its naturalisation decision making procedures in order to satisfy itself that any certification of language competence provided in support of a naturalisation application meets the requirements of these Regulations. DfES may experience an increase in demand for ESOL courses provided at Adult, Further Education or Community Colleges.

8. Contact

Jonathan Duke-Evans at the Social Policy Unit of the Immigration and Nationality Directorate (Tel: 0208 760 8705 or e-mail: jonathan.duke-evans@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.