EXPLANATORY MEMORANDUM TO THE

BRITISH NATIONALITY (GENERAL) (AMENDMENT) REGULATIONS 2005

2005 No. 2785

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) ("the 2003 Regulations") to make provision for determining whether a person has sufficient knowledge of language and of life in the UK 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 ("the 1981 Act") 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 the 1981 Act. An additional requirement, to be commenced on 1st November 2005 (and on 1st May 2006 in the Channel Islands and Isle of Man) is that an applicant has "sufficient knowledge of life in the United Kingdom" (this will be set out in paragraph 1(ca) of Schedule 1 to the Act). Section 1(3) and (4) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") amended the Secretary of State's powers under section 41 of the 1981 Act by inserting new sections 41(1)(ba) and 41(1)(bb) which enable the Secretary of State by Regulations to make provision for determining whether a person has sufficient knowledge of a language and of life in the United Kingdom 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) will amend the 2003 Regulations to substitute a new regulation 5A which will specify the means by which applicants can demonstrate sufficiency of knowledge of both the English language, and of life in the United Kingdom, for the purposes of an application for naturalisation as a British citizen under section 6 of the 1981 Act. The new Regulations replace the existing regulation 5A (which makes provision only for language testing). No provision is made 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 power to make provision for determining whether a person has sufficient knowledge of life in the United Kingdom for the purpose of an

application for naturalisation, has been exercised. The instrument is being made to give effect to the policy decision that, in addition to knowing one of the United Kingdom languages, applicants for naturalisation should also develop, and demonstrate, knowledge of the United Kingdom. Tests and course programmes will be based on the core materials contained in the publication "Life in the UK: A Journey to Citizenship" published by TSO.

4.4 New regulation 5A will require applicants to demonstrate their knowledge of the English language and life in the United Kingdom by:

(a) completing a course of language study that incorporates specified materials on citizenship at an appropriate level and leads to an accredited ESOL qualification; or
(b) passing a test known as the "Life in the UK Test". This test will be taken in English and is pitched at a level that ensures the applicant has attained the required level of competence in English for naturalisation purposes (Entry 3 level of the English for Speakers of Other Languages (ESOL) "Skills for Life" Curriculum). This is the level of achievement required under the existing language testing provisions; or
(c) in respect of applicants who are ordinarily resident outside of the United Kingdom, the Secretary of State may designate a person who may certify that such a person has sufficient knowledge of the English language and of life in the United Kingdom for these purposes.

4.5 Introduction of the new provisions in respect of the Channel Islands and Isle of Man is being delayed by 6 months so as to enable the authorities there to make the necessary arrangements for testing mechanisms and language course programmes there. The unique status of the Islands means that many test questions, and course programme materials, will have to be adapted for their particular situation.

5. Extent

5.1 This instrument applies to all of the United Kingdom, the Islands and the British Overseas Territories. The Regulations will not come into force in respect of the Channel Islands and Isle of Man until 1 May 2006 and therefore existing provision for testing knowledge of English language will continue to apply there until that date.

6. 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 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. The intention behind this policy is to seek to ensure that migrants to the United Kingdom have better opportunities to become fully integrated into the UK way of life. Schedule 1 to the 1981 Act requires that an applicant must have "a sufficient knowledge of the English, Welsh, or Scottish Gaelic language". Until July 2004 when the existing Regulations came into force, this requirement was not rigorously tested. Since that date, a variety of different qualifications were acceptable for the purposes of naturalisation, provided they were deemed to be of an equivalent standard to ESOL Entry 3. These Regulations will

remove the need for applicants who are at, or above, this level of competence in English to provide separate evidence of this. The testing regime outlined in the new Regulation 5A(1)(b) is pitched at a level that will confirm this without recourse to a separate test or evidence.

7.2 Before implementing this legislation the Government sought independent and authoritative advice 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. The report also recommended that, because many applicants for naturalisation have had limited educational opportunities that might inhibit them from ever achieving the recommended level of competence in English (ESOL Entry 3 level), there should be an alternative route to citizenship. This was described as successful completion of a specially designed "language with citizenship" programme. This will require commitment on the part of the applicant to attendance on a course, which, in accordance with good teaching practice, will be pitched at an appropriate level for the needs of the learner. Having undertaken a course, applicants will then have to take an examination invigilated by an accredited awarding body and, if successful, will receive a nationally-recognised ESOL qualification.

7.3 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.

7.4 The "Life in the UK Test" mentioned in the new Regulation 5A(1)(b) will be taken on-line at a number of Test Centres around the United Kingdom. The cost to applicants at the start will be £34. Information about the tests is available on the Home Office website and via a dedicated helpline number.

8. Impact

8.1 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 with a citizenship context.

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

8.3 The Home Office will modify its naturalisation decision making procedures in order to satisfy itself that any certification of language competence and/or citizenship knowledge 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.

8.4 The Islands have indicated that they foresee no problems in delaying implementation there. In particular, they are satisfied that their residence requirements will not allow applicants ordinarily resident elsewhere in the United Kingdom a means of avoiding the new requirements.

9. Contact

9.1 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.