EXPLANATORY MEMORANDUM TO

THE BRITISH NATIONALITY (GENERAL) (AMENDMENT) REGULATIONS 2020

2020 No. 1141

1. Introduction

1.1 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 This instrument amends the British Nationality (General) Regulations 2003 ("the 2003 Regulations") to make changes to the ways in which individuals applying to naturalise as British citizens demonstrate that they have sufficient knowledge of the English language and of life in the UK. Specifically, this instrument amends the 2003 Regulations in relation to applications for British citizenship under the Windrush Scheme, such that:

- migrants from specified countries who had indefinite leave to enter or remain in the UK on 1 January 1973 ("relevant pre-1973 entrants"), who subsequently lost and re-acquired that leave ("returned residents"), are considered to have sufficient knowledge of the English language and knowledge of life in the UK for the purpose of an application for naturalisation as a British citizen.
- children of returned residents are considered to have sufficient knowledge of the English language and knowledge of life in the UK, provided that they meet the eligibility criteria for children of relevant pre-1973 entrants as set out in the 2003 Regulations. These are, that the children of relevant pre-1973 entrants must have arrived in the UK on or after 1 January 1973, have been under the age of 18 when they arrived and have lived in the UK continuously since their arrival.
- the eligible children of relevant pre-1973 entrants are considered to have sufficient knowledge of the English language and knowledge of life in the UK where the parent subsequently loses indefinite leave to remain.

2.2 This instrument also amends the 2003 Regulations by adding Malta to the list of majority English-speaking countries, whose nationals are considered to meet the requirement to have sufficient knowledge of the English language for the purpose of an application for naturalisation as a British citizen. Adding Malta to the list will also allow applicants for naturalisation as a British citizen who possess an academic qualification deemed to meet the standard of a UK Bachelor's, Master's degree or PhD, taught or researched in Malta, to meet the English language requirement without having to provide further evidence that the qualification was taught or researched in English.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The amendments made by this instrument to the 2003 Regulations have the same extent as the 2003 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 amendments made by this instrument to the 2003 Regulations have the same territorial application as the 2003 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).

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 The British Nationality Act 1981 (as amended) sets out the requirement that in order to be naturalised as a British citizen, applicants must have sufficient knowledge of language and knowledge of life in the UK.

6.2 The 2003 Regulations (as amended) set out the manner in which these requirements can be met.

6.3 The Immigration and Nationality (Requirements for naturalisation and fees) (Amendment) Regulations 2018 amended the 2003 Regulations to add a route for a Windrush Scheme applicant to satisfy both aspects where they have been continuously settled in the UK since 1st January 1973 and on entry were a national or citizen of specified countries or territories which have strong historical and institutional connections to the UK. This provision also applies to the children of this group, where they arrived in the UK before the age of 18 and have remained continuously resident since.

6.4 These Regulations will amend the existing provision so that it will not be necessary for an otherwise eligible migrant, who is now settled in the UK, to have been continuously resident in the UK since 1 January 1973. The existing provision will be extended to apply to the children of such people. These Regulations will further amend the existing provision so that the child of a relevant pre-1973 entrant that fulfils the criteria to meet both aspects will continue to do so where their parent subsequently loses their indefinite leave to remain.

6.5 The British Nationality (General) (Amendment) Regulations 2013 amended the 2003 Regulations to allow nationals of specified English-speaking countries to meet the knowledge of English language requirement by virtue of their nationality. These Regulations will amend the existing list of specified English-speaking countries at Schedule 2A of the 2003 Regulations, by adding Malta to the list of 17 countries.

7. Policy background

What is being done and why?

7.1 The Windrush Scheme enables persons of any nationality who came to the UK before the end of 1988, and who are now lawfully settled, to apply for documentation confirming their immigration status free of charge. Commonwealth citizens that originally came to and settled in the UK prior to 1 January 1973, as part of the 'Windrush generation', may apply for British citizenship free of charge. The Windrush Scheme also enables the children of this latter group to apply for British citizenship free of charge, provided that they arrived in the UK before the age of 18 and have been continuously resident since.

7.2 The Windrush Scheme was amended in June 2019 such that Commonwealth citizens who were settled in the UK prior to 1 January 1973, lost settled status after a period of time living outside of the UK, and subsequently regained settled status, may also apply for British citizenship free of charge under the Scheme. The children of individuals in this group may also apply for British citizenship free of charge, provided that they arrived in the UK before the age of 18 and have been continuously resident since.

7.3 These Regulations amend the 2003 Regulations such that it will no longer be necessary for Commonwealth citizens that were settled in the UK on 1 January 1973 to have remained continuously resident in order to satisfy the knowledge of language and knowledge of life in the UK requirements. Individuals must continue to meet the remaining requirements set out in the 2003 Regulations, including the requirement to currently hold settled status. In accordance with the existing provision, children of such people will also meet both aspects of the requirement provided that they arrived in the UK before the age of 18 and have lived in the UK continuously since their arrival.

7.4 Further, these Regulations amend the 2003 Regulations such that a child of a migrant who came to the UK from a specified country and was settled on 1 January 1973 meets the knowledge of language and life in the UK requirements where that parent no longer has settled status, provided that the child arrived in the UK before the age of 18 and has lived in the UK continuously since their arrival. The Home Office recognises that a change in the status of an individual's parent should not negatively impact on their child where the child has remained continuously resident in the UK and would otherwise meet the knowledge of language and life in the UK requirements.

7.5 Since 2013, nationals from a small number of English speaking countries have not been required to provide evidence of qualifications to meet knowledge of language requirements for immigration and naturalisation application purposes. This policy recognises that nationals of some countries are more likely than not to have grown up speaking English as their first language and that degree-level qualifications awarded by institutions in English-speaking countries will normally be taught in English. These Regulations update the list of countries already in the 2003 Regulations to include Malta as a recognised English speaking country.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 The Home Office has not consulted on the specific matters addressed by this instrument.

11. Guidance

11.1 A document setting out the details of the Windrush Scheme is published on GOV.UK and available at: https://www.gov.uk/government/publications/windrush-scheme. Hard copies can be obtained from the Home Office, Access to Work Services and Windrush Policy Unit, 2 Marsham Street, London SW1P 4DF.

11.2 Guidance for Home Office staff dealing with applications from persons eligible to apply under the Scheme is also published on GOV.UK and available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807365/windrush-scheme-casework-guidance-v3.0-ext.pdf

11.3 Guidance for applicants applying for naturalisation as a British citizen is available at: https://www.gov.uk/government/publications/form-an-guidance

11.4 Guidance for Home Office staff about the knowledge of language and life requirement for those applying for indefinite leave to remain or naturalisation as a British citizen is available at: https://www.gov.uk/government/publications/knowledge-of-life-and-language-in-the-uk

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no significant impact on the number of paid British citizenship applications is foreseen. This instrument relates to British citizenship applications only, and is not anticipated to have a wider impact.

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 Home Office report to the Home Affairs Select Committee on a regular basis to update on progress against commitments made to Parliament in relation to the Windrush Scheme.

15. Contact

15.1 Ben Shotnes at the Home Office can be contacted with any queries regarding the instrument. Telephone: 07717569645 or email: ben.shotnes@homeoffice.gov.uk

15.2 Alison Samedi, Deputy Director for Access to Work, Benefits and Services and Windrush Policy at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for the Home Office can confirm that this Explanatory Memorandum meets the required standard.