EXPLANATORY MEMORANDUM TO THE BRITISH NATIONALITY (GENERAL AND HONG KONG) REGULATIONS 2007

2007 No. 3137

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 The Regulations amend existing procedures for applying to acquire or renounce forms of British nationality other than British overseas territories citizenship under the British Nationality Act 1981 and the information which is to be included in a certificate to be issued in the event that an application for naturalisation is successful. The Regulations amend the British Nationality (General) Regulations 2003 (S.I. 2003/548) and the British Nationality (Hong Kong) Regulations 1986 (S.I. 1986/2175).

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

3.1 None.

4. Legislative Background

4.1 Section 41 of the British Nationality Act 1981 ("the 1981 Act") enables provision to be made by regulations made by statutory instrument for carrying into effect the purposes of the Act. The existing regulations made under section 41 prescribe, in particular, the information to be included in applications made under the Act. In doing so, they reflect the conditions for acquisition and renunciation of British nationality specified in the primary legislation.

4.2 The changes provided for in the Regulations reflect changes to the primary legislation made by the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act"). Section 49 of the 2006 Act has inserted a new section 44A into the 1981 Act, enabling the Secretary of State to waive the requirement for certain applicants to be "of full capacity" if he thinks it would be in their best interests to do so. Section 58 of the 2006 Act requires the Secretary of State to be satisfied that persons aged 10 or over are "of good character" before their applications under certain provisions may be granted. The requirements as to the information which such applicants are to include in their applications are modified accordingly in these Regulations.

4.3 The changes also omit earlier provision which specified the form which a certificate of naturalisation is to take and instead specify the information which is to be included in such a certificate, which no longer includes the recipient's name at birth if different from present name. The removal of that information from a certificate of naturalisation is due to the Gender Recognition Act 2004 which prohibits the disclosure of information acquired in an official capacity about a person's gender history if he or she has been the recipient of a gender recognition certificate under section 1 of that Act.

5. Extent

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

6. European Convention on Human Rights

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

7. Policy background

7.1 One of the main purposes of section 41 of the British Nationality Act 1981, and of the regulations made under that section, is to ensure that applications are received in a "decision-ready" state, in other words, with all the necessary background information provided at the outset. The section 41 regulations help to achieve this aim by specifying the information required to support each category of application. As the requirements in the primary legislation for the grant and renunciation of British nationality change, so, too, should the regulations.

7.2. The regulations additionally prescribe the information which is to be included in a certificate to be issued to successful applicants for naturalisation, ensuring the inclusion of such particulars as are necessary to identify the recipient of the certificate. Traditionally, the recipient's name at birth has been included where this differs from his or her name at the date of issue. This practice now sits uneasily alongside restrictions in the Gender Recognition Act 2004 on disclosure of information about a person's gender history where he or she has been given a gender recognition certificate under section 1 of that Act. The requirement that the recipient's name at birth be included on a naturalisation certificate is therefore omitted from the 2007 Regulations. We are satisfied that this omission will not lead to any uncertainty about the identity of the recipient or increase the risk of fraud.

7.3 Advice has been sought from the former Department for Constitutional Affairs and from a:gender (a support network for civil servants who have changed or need to change permanently their perceived gender or who identify as intersex) on the restrictions on disclosure of personal information in the

Gender Recognition Act 2004. It was not considered necessary to consult more widely on the content of the Regulations.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is nil.

9. Contact

Anthony Pilgrim at the Home Office Tel: 0151 237 5312 or e-mail: Anthony.pilgrim@ind.homeoffice.gsi.gov.uk can answer any queries regarding the instrument.