EXPLANATORY MEMORANDUM TO

THE BRITISH NATIONALITY (PROOF OF PATERNITY) REGULATIONS 2006

2006 No. 1496

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 prescribe how paternity is to be proved for the purposes of the British Nationality Act 1981 in cases where the woman who gave birth to the child was not married at the time of the child's birth and no person is treated as the father of the child under section 28 of the Human Fertilisation and Embryology Act 1990.

2.2 In such cases the Regulations provide that paternity is proven by either a near-contemporaneous birth certificate which identifies the child's father or such other evidence –for example, DNA test reports or court orders- as may satisfy the Secretary of State on this point.

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

3.1 None.

4. Legislative Background

4.1 As originally enacted, and subject to the provision made by section 47 (for legitimation following the parents' marriage), the British Nationality Act 1981 did not confer any nationality status or entitlement on the basis of the relationship between a father and his illegitimate child. Amendments made to the British Nationality Act 1981 by section 9 of the Nationality, Immigration and Asylum Act 2002 with effect from 1 July 2006 will enable such benefits to flow to the child where either the father is identified as such by section 28 of the Human Fertilisation and Embryology Act 1990 or he satisfies prescribed requirements as to proof of paternity. In the latter case, the requirements to be satisfied are those prescribed by regulations made by the Secretary of State under new section 50(9A) and (9B) of the British Nationality Act 1981.

4.2 These Regulations are the first use of the new power to prescribe requirements as to proof of paternity.

4.3 Section 9 of the 2002 Act will come into force substantively on 1 July 2006, and the modifications of the 1981 Act for which it provides have effect in relation to children born on or after that date (being the appointed date under section 162(5) of the 2002 Act).

5. Extent

5.1 This instrument applies to all of the United Kingdom.

5.2 It additionally applies to the Islands and all of the British overseas territories (the legislatures of which have not been consulted since they have no competence in matters relating to nationality and citizenship).

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 Traditionally it has not been possible to acquire British nationality or an entitlement to such nationality on the basis of illegitimate descent in the male line. Evidential difficulties and consequent uncertainty for the child have usually been cited as the reason for this. (Where sufficient evidence of paternity has been forthcoming the Secretary of State has normally been prepared to use his discretionary powers under the British Nationality Act 1981 to confer citizenship by registration in circumstances where this would have accrued to the child automatically but for his or her illegitimacy.)

7.2 Section 9 of the Nationality, Immigration and Asylum Act 2002 seeks to address these difficulties by inserting a new definition of "father" in the British Nationality Act 1981 so that a father who was not married to the child's mother at the time of the birth and who is not identified as such by section 28 of the Human Fertilisation and Embryology Act 1990 may prove his relationship to the child and thus pass on automatically, in accordance with the provisions of the 1981 Act, the benefits of his own status under that Act.

7.3 The expectation is that, in practice, a person whose claim or entitlement under the 1981 Act is subject to satisfaction of the prescribed requirements as to proof of paternity will submit the requisite proof with his or her application for a United Kingdom passport or, as the case may be, with his or her application for registration by entitlement under the 1981 Act.

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

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