EXPLANATORY MEMORANDUM TO

THE NATIONALITY AND BORDERS ACT 2022 (CONSEQUENTIAL AMENDMENTS) (NO. 2) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 Section 10 and Schedule 2 of the Nationality and Borders Act 2022 introduce a requirement for the Secretary of State to make an application to the Special Immigration Appeals Commission in cases where there is a decision to deprive a person of British citizenship on the ground it is conducive to the public good without first giving notice.

2.2 This instrument is the first stage in establishing that process by making the required amendments to the Special Immigration Appeals Commission Act 1997 to give the Lord Chancellor powers to make procedure rules for these applications.

2.3 Once the procedure rules are made, the process for the Secretary of State to make applications to the Special Immigration Appeals Commission can commence.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 The Parliamentary Under-Secretary of State for Illegal Immigration has made the following statement regarding Human Rights:

"In my view the provisions of the Nationality and Borders Act 2022 (Consequential Amendments) (No.2) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends the Special Immigration Appeals Commission Act 1997 as a consequence of section 10 and Schedule 2 of the Nationality and Borders Act 2022, which in turn amend the British Nationality Act 1981 to enable the Secretary of State to deprive an individual of their British citizenship without prior notice, subject to certain conditions.

6.2 In such cases, the Secretary of State must apply to the Special Immigration Appeals Commission ("the Commission") which is required to determine whether, in respect of each condition on which the Secretary of State relies in order to disapply the notice requirement, the Secretary of State's view is obviously flawed. These conditions will be set out in a new section 40(5A) of the British Nationality Act 1981 as inserted by section 10(2) of the Nationality and Borders Act 2022.

6.3 This instrument will give the Lord Chancellor powers to amend the Special Immigration Appeals Commission (Procedure) Rules 2003 to provide for these applications. The process will be set out in the procedure rules and once these amendments are made (subject to the affirmative parliamentary procedure) commencement of section 10(2) to (5) of and Schedule 2 to the Nationality and Borders Act 2022 can follow.

7. Policy background

What is being done and why?

7.1 Maintaining our national security and keeping the public safe are the government's top priorities. Removing someone's British citizenship, also known as deprivation of citizenship, is used against those who obtained citizenship by fraud and against the most dangerous people, such as terrorists, extremists and serious organised criminals. The power to remove British citizenship has existed for over a century, since the 1914 British Nationality and Status of Aliens Act. It is currently in section 40 of the British Nationality Act 1981.

7.2 Section 10 of the Nationality and Borders Act 2022 amends section 40 of the British Nationality Act 1981 to allow for the Secretary of State to deprive someone of their citizenship without prior notification but only in exceptional circumstances set out in the legislation. Although the Home Office will always try to tell an individual that they are to be deprived of British citizenship, it might not be possible. It is vital, including to our national security, that just because the Home Office cannot immediately tell a person they are to be deprived of British citizenship, it does not prevent the deprivation order being made.

7.3 The manner of giving notice of a deprivation decision is set out in the British Nationality (General) Regulations 2003. Regulation 10(4) provides that where a person's whereabouts are not known or no contact details are held, then notice is deemed to have been given by placing a copy of it on the person's Home Office file.

7.4 Section 10 and Schedule 2 of the Nationality and Borders Act 2022, once commenced, will omit regulation 10(4), and provide for alternative grounds on which a deprivation order can be made without notice. The amendments will also require the Secretary of State to make an application to the Special Immigration Appeals Commission when seeking to deprive an individual of their British citizenship on grounds that deprivation is considered conducive to the public good, without giving notice. The Special Immigration Appeals Commission will then be required to determine whether in respect of each condition in section 40(5A) on which the Secretary of State relies to not give notice, the Secretary of State's view is obviously flawed.

7.5 This independent judicial oversight of cases where a notice of deprivation is not given will provide an additional safeguard to ensure that such decisions are only taken when absolutely necessary to preserve the safety and security of the UK.

8. European Withdrawal and Future Relationship

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument does not consolidate existing legislation, nor does it give rise to a need for future consolidation.

10. Consultation outcome

10.1 Given the technical nature of this instrument, the Home Office has not conducted a formal consultation.

11. Guidance

11.1 Guidance will be published on commencement of section 10(2)-(5) and Schedule 2 of the Nationality and Border Act 2022.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As the Home Secretary decides each case personally and due to the very low number of cases expected to be affected by these provisions, no specific monitoring or review of these measures will be undertaken.

15. Contact

15.1 Veronica Zaki at the Home Office Telephone: 07776808368 or email: Veronica.Zaki@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Matthew Bligh, Deputy Director for Enforcement and Criminality Policy Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Tom Pursglove MP, Minister for Immigration can confirm that this Explanatory Memorandum meets the required standard.