

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Nationality

Section 1: Naturalisation: knowledge of language and society

18. **Section 1** amends the provisions in the BNA 1981 which set out the requirements that an applicant for naturalisation as a British citizen must satisfy. (There is already a requirement, in paragraph 1(1)(c) of Schedule 1 to the BNA 1981, for certain applicants to have a sufficient knowledge of English, Welsh or Scottish Gaelic.)
19. Subsection (1) adds to Schedule 1 of the BNA 1981 a requirement for the applicant to demonstrate sufficient knowledge about life in the United Kingdom.
20. Subsection (2) enables the Secretary of State to waive the requirement that an applicant must have sufficient knowledge about life in the United Kingdom where he considers that, because of the applicant's age or physical or mental condition, it would be unreasonable to expect him or her to fulfil it.
21. Subsection (3) enables provision to be made by regulations for determining whether a person has a sufficient knowledge of a language and whether a person has sufficient knowledge about life in the United Kingdom for the purpose of an application for naturalisation.
22. By subsection (4) the regulations may make provision about how those requirements of sufficient knowledge of language and about life in the United Kingdom are met (for example, by reference to a specified qualification or attendance on a specified course).

Section 2: Naturalisation: spouse of citizen

23. **Section 2** extends the requirement to have sufficient knowledge of a relevant language to those applying for naturalisation on the basis of marriage to a British citizen or a British overseas territories citizen. This section also requires those applying for naturalisation on the basis of marriage to a British citizen to have sufficient knowledge about life in the United Kingdom.

Section 3: Citizenship ceremony, oath and pledge

24. **Section 3** introduces Schedule 1, which amends the current provisions in the BNA 1981 about naturalisation and registration procedure.
25. Paragraph 1 of Schedule 1 replaces section 42 of the BNA 1981 with provision requiring persons, except minors, who are naturalised or registered as British citizens, to attend citizenship ceremonies and make a citizenship pledge as well as the existing oath. It also extends to applicants for British overseas territories citizenship the requirement to make

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a pledge. The Secretary of State is given a discretion to disapply these requirements in particular cases.

26. Paragraph 2 of Schedule 1 replaces Schedule 5 to the BNA 1981. It introduces a new “citizenship oath and pledge” which is to be taken by applicants for registration or naturalisation as British citizens and British overseas territories citizens. The citizenship oath and pledge consists of the existing oath of allegiance with the addition of a pledge. The pledge for those becoming British citizens states that the person will respect the rights and freedoms of the United Kingdom, and will uphold its democratic values, observe its laws and fulfil the duties and obligations of citizenship. Applicants becoming British overseas territories citizens will instead pledge loyalty to the relevant British overseas territory.
27. Paragraph 4 of Schedule 1 amends the existing regulation-making power in subsection 41(1)(d) of the BNA 1981 to enable regulation of the timing of attendance at a citizenship ceremony and the taking of the citizenship oath and pledge, the content and conduct of the citizenship ceremony, the completion and grant of a certificate of registration or naturalisation, and certain other related matters.
28. Paragraph 7 of Schedule 1 enables the Secretary of State to make regulations about the persons who shall be authorised to conduct citizenship ceremonies and to require local authorities in England, Wales and Scotland to provide facilities for the conduct of such ceremonies.
29. [Paragraph 8](#) allows the Secretary of State to reimburse local authorities for the cost of carrying out citizenship ceremonies.

Section 4: Deprivation of citizenship

30. [Section 4](#) makes new provision about the deprivation of British nationality or status.
31. Subsection (1) replaces existing section 40 of the BNA 1981 and inserts a new section 40A.
32. New section 40(1) of the BNA 1981 lists the categories of persons who are liable to deprivation under the Act. These are British citizens, British overseas territories citizens, British Overseas citizens, British Nationals (Overseas), British subjects and British protected persons.
33. New section 40(2) provides that a person may be deprived of his citizenship status if he has done anything seriously prejudicial to the vital interests of the United Kingdom or a British overseas territory.
34. New section 40(3) provides that a person may be deprived of his citizenship status if the registration or naturalisation by virtue of which the status was acquired was obtained by means of fraud, false representation or by concealment of a material fact.
35. New section 40(4) provides that a person may not be deprived of their citizenship status on the ground mentioned in subsection (2) if this would make him stateless.
36. New section 40(5) provides that before making a deprivation order the Secretary of State must give the person written notice specifying that a decision has been made to make the order and the reasons for it. The notice must also advise the person of his right to appeal.
37. New section 40(6) repeats the provision made by subsection (3) in respect of fraudulently obtained registrations and naturalisations effected or granted before 1983.
38. New section 40A confers a right of appeal to an adjudicator (in the first instance) on a person in respect of whom a decision to deprive him of his citizenship status has been made. There is also provision for both parties to appeal to the Tribunal from the adjudicator on a point of law. From the Tribunal there is a further appeal, again on a

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point of law, to the Court of Appeal, or the Court of Session (if the adjudicator's decision was in Scotland). Where, however, the Secretary of State has certified that the decision to deprive was based wholly or partly in reliance on information which he believes should not be made public for one of the reasons specified in new section 40A(2), the appeal at first instance will instead be heard by the Special Immigration Appeals Commission. New section 40A(6) prevents the making of an order under section 40 at any time when an appeal against this is pending, or could be brought, under section 40A or under section 2B of the Special Immigration Appeals Commission Act 1997 ("SIAC 1997").

39. Subsections (2) and (3) make consequential amendments to SIAC 1997.
40. Subsection (4) makes it clear that, in deciding whether there were grounds for deprivation under new section 40 of the 1981 Act, the Secretary of State would be entitled to have regard to events occurring before the commencement of that section if those events would have justified deprivation under section 40 of the Act as then in force.

Section 5: Resumption of citizenship

41. **Section 5** removes the words "if a woman" from sections 10 and 22 of the BNA 1981, thus allowing either a woman or a man who renounced their United Kingdom and Colonies citizenship before 1983 to qualify for registration on the basis of a connection with the United Kingdom (or a British overseas territory) through marriage.

Section 6: Nationality decision: discrimination

42. **Section 6** repeals the exemption from the general prohibition on discrimination in section 19B of the Race Relations Act 1976 ("the 1976 Act")(as amended by the Race Relations (Amendment) Act 2000), in so far as it applies to discrimination on the grounds of nationality, ethnic or national origins in the exercise of nationality functions. The "nationality functions" are functions exercisable by virtue of the BNA 1981, the British Nationality (Falkland Islands) Act 1983, the British Nationality (Hong Kong) Act 1990, the Hong Kong (War Wives and Widows) Act 1996 and the British Nationality (Hong Kong) Act 1997.
43. Subsection (2) removes "nationality functions" from the scope of the exemption in subsection 19D(1) of the 1976 Act.
44. Subsection (3) inserts into section 19D of the 1976 Act new definitions of "immigration functions" and "Immigration Acts", consequent upon the removal from that section of references to nationality functions and statutes relating to nationality.
45. Subsection (4) removes references to nationality functions from provisions in section 19E of the 1976 Act relating to the review by the Race Monitor of the use of the exemptions from discrimination, since this is made redundant by the other provisions in this section.
46. Subsection (5) adds a new subsection (1A) to section 71A of the 1976 Act, defining "immigration and nationality functions" for the purpose of that section. The effect is to maintain the present exemption from the duty, under section 71(1)(b) of the Act, to promote equality of opportunity in relation to the carrying out of such functions.

Section 7: Nationality decision: reasons and review

47. **Section 7** repeals the provisions in section 44(2) of the BNA 1981 and corresponding provision in section 1 of the British Nationality (Hong Kong) Act 1990 which exempt the Secretary of State from having to give reasons for granting or refusing applications under the BNA 1981, where these decisions are at his discretion, and which restrict the ability of the courts to review such decisions.

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48. This section also repeals section 44(3) of the BNA 1981 since this is made redundant by the other provisions in this section.

Section 8: Citizenship: registration

49. **Section 8** removes the minimum age restriction for applicants seeking to acquire British citizenship or British overseas territories citizenship by registration on the grounds that they were born stateless in either the United Kingdom or a British overseas territory.

Section 9: Legitimacy of child

50. **Section 9** removes from the nationality legislation the present distinctions between legitimate and illegitimate children and inserts a new definition of “father” into section 50 of the BNA 1981.
51. Subsection (1) provides that, for the purposes of the BNA 1981, a child’s mother is the woman who gives birth to the child. A child’s “father” is (a) the husband at the time of the child’s birth of the woman who gives birth to the child, (b) a person who falls to be treated as the child’s father by virtue of section 28 of the Human Fertilisation and Embryology Act 1990 or (c) any person who satisfies prescribed requirements as to proof of paternity. The Secretary of State may set out in regulations how, in circumstances where proof is required, paternity must be proven.
52. Subsection (2) amends section 3(6) of the BNA 1981 to allow registration as a British citizen of an illegitimate minor born outside the United Kingdom on the basis of a connection through his father as well as through his mother.
53. Subsection (3) makes similar provision as subsection (2) but in respect of registration as a British overseas territories citizen under section 17 of the BNA 1981.
54. Subsection (4) repeals section 47 of the BNA 1981. This enables an illegitimate child of a British citizen father to be legitimated by the subsequent marriage between his mother and father. In view of the prospective abolition of distinctions between the legitimate and the illegitimate in this context, section 47 will be redundant so far as children born after the appointed commencement date are concerned.
55. Subsection (5) amends paragraph 1(1)(b) of Schedule 2 to the BNA 1981, which provides that an illegitimate child born in the United Kingdom after 1st January 1983 whose parents hold different British nationality statuses under the BNA 1981, can only acquire the status of the mother. By this subsection, the position of illegitimate children is brought into line with that of legitimate children, who can acquire citizenship or status through either parent.

Section 10: Right of abode: certificate of entitlement

56. **Section 10** enables regulations to be made in relation to the issue of a certificate of entitlement to the right of abode in the United Kingdom. The procedure is currently unregulated, except in regard to the level of fee and procedure for appealing against a refusal to issue such a certificate. A certificate of entitlement is currently defined as a certificate stating that a person has the right of abode in the United Kingdom. Section 2 of the Immigration 1971 Act (“the 1971 Act”) sets out who has the right of abode.
57. Regulations are to be made by statutory instrument. The regulations may specify such matters as the person to whom the application must be made, the form of the application and the documents which are to accompany it. They may also make provision for certificates to be revoked in certain circumstances, for example, where obtained by the provision of false information, and for the certificate to cease to have effect after a specified time.
58. Subsection (5) defines “certificate of entitlement”, for the purposes of the 1971 Act by reference to the new provision.

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59. Subsection (6) enables regulations made under this section to preserve the effect of any certificate issued in accordance with the existing procedures.

Section 11: Unlawful presence in United Kingdom

60. **Section 11** makes provision for construing the expression “in the United Kingdom in breach of the immigration laws” where it occurs in section 4 of, and Schedule 1 to, the BNA 1981 (registration and naturalisation) and in subsection 50(5) of that Act (meaning of “ordinary residence”).
61. Subsection (2) provides that a person is “in the United Kingdom in breach of the immigration laws” at any time when he was here without leave or other entitlement, for example under Community law.
62. Subsection (3) ensures that a person is *not* treated as being in the United Kingdom at any time when he had not “entered the United Kingdom” within the meaning of section 11 of the 1971 Act. (Section 11 provides that a person is deemed not to have entered the United Kingdom before disembarkation, while in a controlled area at a port or while under immigration control. This includes periods of detention and “temporary admission” under the 1971 Act.)
63. Subsection (4) states that the provisions in this section should be treated as having always had effect, except in relation to certain European Economic Area nationals and their family members.
64. Subsection (5) states that the rule of construction in subsection (2) is without prejudice to the meaning of “in breach of the immigration laws” where it occurs in other contexts.

Section 12: British citizenship: registration of certain persons without other citizenship

65. **Section 12** inserts a new provision into the BNA 1981, conferring an entitlement to registration as a British citizen on those British Overseas citizens, British subjects and British protected persons who have no other nationality and who have not, since 4 July 2002, given up any other nationality.
66. Subsection (2) provides that any person registered under the new provision will be a British citizen “by descent” for the purposes of the 1981 Act.

Section 13: British citizenship: registration of certain persons born between 1961 and 1983

67. **Section 13** inserts a new provision into the BNA 1981, conferring an entitlement to registration as a British citizen on persons born between 7 February 1961 and 1 January 1983 who, but for the inability (at that time) of women to pass on their citizenship, would have acquired British citizenship automatically when the BNA 1981 came into force on the latter of those two dates.
68. Subsection (2) provides that any person registered under the new provision will be a British citizen “by descent” for the purposes of the 1981 Act.

Section 14: Hong Kong

69. **Section 14** re-enacts the substance of section 42(6) of the BNA 1981, by preventing registration as a British overseas territories citizen on the basis of a connection with Hong Kong.

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Section 15: Repeal of spent provisions

70. **Section 15** introduces Schedule 2, which repeals certain sections of the BNA 1981 which are now spent. Paragraph 2 of Schedule 2 provides that the status of people who were registered under any of these sections is unaffected by the repeals.