

EXPLANATORY MEMORANDUM

THE BRITISH NATIONALITY (GENERAL) (AMENDMENT NO. 2) REGULATIONS 2004 No. 2109

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 These Regulations amend the British Nationality (General) Regulations 2003 (S.I. 2003 No. 548) to make additional provision for determining whether a person has sufficient knowledge of the English language for the purpose of an application for naturalisation as a British citizen under Section 6 of the British Nationality Act 1981.

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

3.1 None

4. **Legislative Background**

4.1 Under Section 6(1) of the British Nationality Act 1981 an applicant for naturalisation as a British citizen must show that he has "sufficient knowledge" of the English language (or Welsh or Scottish Gaelic). Since 28 July an applicant under Section 6(2) of that Act has also had to fulfil this requirement (by virtue of amendments to paragraph 3 of Schedule 1 to that Act made by Section 2(1) of the Nationality, Immigration and Asylum Act 2002.) Sections 1(3) and 1(4) of the Nationality, Immigration and Asylum Act 2002 amended the Secretary of State's powers under Section 41 of the British Nationality Act 1981 by inserting new Sections 41(1)(ba) and (1A). These enable the Secretary of State by Regulations to make provision for determining whether a person has sufficient knowledge of a language for the purpose of an application for naturalisation.

4.2 The British Nationality (General) Regulations 2003, as amended with effect from 28 July by S.I.2004 No. 1726, specify in Regulation 5A the level of achievement in the English language required to demonstrate a sufficient knowledge. An applicant has sufficient knowledge of English if he possesses a certificate showing that he has attained an English for Speakers of Other Languages (ESOL) Entry 3 qualification, or if a person designated by the Secretary of State determines that he has sufficient knowledge where a different qualification is held which the applicant claims to be equivalent to, or to exceed, the level of proficiency reflected in ESOL Entry 3.

4.3 These new Regulations amend regulation 5A to extend the ways in which sufficiency of knowledge of English can be demonstrated. Under the new provision, a person designated by the Secretary of State will be able to certify, on

the basis of an interview with an applicant, that the applicant has knowledge of the English language to the level that is reasonably to be expected of a person of full age and capacity whose native language is English. Essentially, this means that applicants who are fluent in English do not have to produce an educational qualification to prove this, but can do so by means of an interview with a designated person.

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

Not applicable

7. Policy background

7.1 The Government wishes to ensure that anyone seeking British citizenship has an understanding of one of the native languages of this country (English, Welsh or Scottish Gaelic) and of life in the United Kingdom. The policy aims behind these proposals are to ensure that new citizens have had opportunities to facilitate their effective integration and also to test their knowledge of one of the UK languages more objectively than has hitherto been the case.

7.2 As in the case of S.I. 2004 No. 1726, this Statutory Instrument deals with knowledge of the English language only. It is intended to introduce further Regulations in respect of knowledge of life in the UK and of knowledge of the other UK languages when appropriate programmes and assessment regimes are in place

7.3 Following representations and further consideration since S.I. 2004 No. 1726 was made in early July, it has been recognised that those Regulations may actually work against these policy aims in respect of some people. Some applicants for naturalisation are from Anglophone countries and others will have obtained a degree of fluency in English that is at the level that might reasonably be expected of a native English speaker. However, it is possible that a number of such applicants may have no relevant educational qualifications that they can pray in aid. It would, we believe, be an unfair burden to expect such persons to undertake a course of study in English simply to provide the certification required. These Regulations therefore open up a new avenue for them to demonstrate that they have sufficient language skills for naturalisation.

7.4 The mechanism now available to applicants who believe themselves to have a level of proficiency in English that equates to that which could reasonably be expected of a native English speaker is to undertake an interview with a person designated for this purpose and satisfy him that he has this level of knowledge. It is proposed to designate Members of Parliament, local councillors, Justices of the Peace and other persons of similar standing for this purpose.

8. Impact

8.1 This Instrument has no direct impact on business, charities or voluntary bodies. It may however stimulate additional demand for the services of those persons designated under its provisions.

8.2 The impact on the public sector is largely confined to the Home Office and to the Department for Education and Skills.

8.3 The Home Office will modify its naturalisation decision making procedures, including its published instructions to staff, in order to satisfy itself that any certification of language competence provided in support of a naturalisation application meets the requirements of these Regulations.

9. Contact

9.1 Chris Hedges at the Social Policy Unit of the Immigration and Nationality Directorate (Tel: 0208 760 8236 or e-mail: chris.hedges2@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.