

EXPLANATORY MEMORANDUM TO
THE BRITISH NATIONALITY (GENERAL) (AMENDMENT) REGULATIONS 2010
2010 No. 785

1. This explanatory memorandum has been prepared by the UK Border Agency and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations amend the British Nationality (General) Regulations 2003 (S.I. 2003 No. 548) (“the 2003 Regulations”) to amend existing provisions for determining whether a person has sufficient knowledge of language and of life in the United Kingdom for the purpose of an application for naturalisation as a British citizen under section 6 of the British Nationality Act 1981 (“the 1981 Act”).

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

3.1 None

4. Legislative Context

4.1 The 2003 Regulations were amended by the British Nationality (General) (Amendment) Regulations 2005 (‘the Amendment Regulations’). The Amendment Regulations replaced existing Regulation 5A (which was inserted into the 2003 Regulations by the British Nationality (General) (Amendment) Regulations 2004 (‘The 2004 Regulations’)) and which made new provision for determining whether a person had sufficient knowledge of the English language for the purposes of an application for naturalisation as a British citizen. The 2004 Regulations also made provision for the first time for determining whether an applicant had sufficient knowledge about life in the United Kingdom.

4.2 These Regulations amend Regulation 5A to alter the requirements for those taking ESOL courses for the purposes of naturalisation as a British citizen.

4.3 These Regulations also insert into Regulation 5A(1) a provision which ensures that those who have previously demonstrated sufficient knowledge of language and life in the United Kingdom for the purpose of an application for Indefinite Leave to Remain which was successful prior to the commencement of these Regulations will be accepted as having such knowledge for the purposes of any future naturalisation application.

4.4 These Regulations insert into Regulation 5A(1) an express requirement to require relevant qualifications for the purposes of naturalisation as a British citizen to be undertaken at an accredited college.

4.5 These Regulations also insert into Regulation 5A(1) a new requirement for an initial assessment of an applicant's language skills prior to his commencing a course of study leading to a relevant qualification to be undertaken by a suitably qualified person, with a suitably qualified person being deemed as such by the accredited college where the assessment is being undertaken.

4.6 These Regulations also further insert into Regulation 5A(1) an express requirement to demonstrate progress in knowledge of language dependent upon the applicant's level on initial assessment.

4.7 These Regulations also amend regulations 5A(2)(b) of the 2003 Regulations in order to change the qualification requirements imposed on applicants undertaking courses under Scottish ESOL provisions following a review of ESOL there.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom, the Channel Islands, the Isle of Man and the British Overseas Territories (the qualifying territories).

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 The Government wishes to ensure that people seeking to naturalise as British citizens have some understanding of language (English, Welsh or Scottish Gaelic) and of life in the United Kingdom. The intention behind this policy is to seek to ensure that migrants to the United Kingdom have better opportunities to become fully integrated into the UK way of life. Applicants for naturalisation are therefore required to demonstrate a sufficient knowledge of language and of life in the United Kingdom by showing that they have attained specified qualifications which are set out in Regulation 5A of the Regulations.

7.2 There is evidence that there has been some misinterpretation and abuse by unaccredited private sector language schools of the requirements of Regulation 5A. The policy intent is to make explicit that in order to meet the requirements for naturalisation it is necessary to make progression by at least one level following initial assessment by a suitably qualified person working within an accredited college.

7.3 The Government is also introducing a new requirement that ESOL studies for the purpose of naturalisation must be undertaken at an accredited college. Accreditation bodies for this purpose are outlined in new Regulation 5A(5)(a). Publicly funded colleges are already subject to inspection regimes but whilst many private sector colleges are members of accreditation schemes, some are not. At present, applicants intending to study at a private college are recommended in application guidance to enrol at an accredited college but this is not a requirement. This new requirement is consistent with the new requirements for language students seeking to enter the UK under the Points Based System.

7.4 Following changes made to the Scottish qualifications structure which have been introduced since the 2004 Regulations came into force, applicants in Scotland are now required to undertake a more onerous test than those in England, Wales and Northern Ireland. These Regulations rectify this position.

7.5 We also wish to ensure the Regulations reflect anticipated changes to the English for Speakers of Other Languages (ESOL) curriculum in England and the transfer of functions from the Qualifications and Curriculum Authority to the Office of the Qualifications and Examination Regulator with effect from 1 April 2010.

7.6 Similar changes are being made to the Immigration Rules in respect of the English language and knowledge of UK life requirements for indefinite leave to remain. This is because applicants who satisfy the language and knowledge of life criteria when they seek indefinite leave to remain ('ILR') currently do not have to do so again when applying for naturalisation. These Regulations insert a provision to this effect because it is recognised that in cases where the Secretary of State has already accepted that an applicant has fulfilled the knowledge of language and life in the UK requirement for ILR purposes they should not be expected to undertake further studies under the parameters of these revised Regulations.

8. Consultation outcome

8.1 The amendments in respect of Scottish ESOL requirements have been the subject of consultation with the Scottish Executive and the Scottish Qualifications Authority who have expressed themselves satisfied with the proposed form of words. The authorities in the Channel Islands and the Isle of Man have agreed the references to the accreditation processes in place in their respective jurisdictions. British Overseas Territories have not been consulted, as naturalisation as a British citizen is based on a period of residence in the United Kingdom, and so the Knowledge of Language and Life requirements are UK-based.

8.2 The issues being addressed by the proposed amendments to Regulation 5A have been raised by several reputable public sector colleges who are concerned about exploitation and of possible damage to the reputation of the ESOL "Skills for Life" programme. UK Border Agency has consulted ESOL experts on this issue and also members of the former Advisory Board for Naturalisation and Integration and the Department for Business Innovation and Skills.

9. Guidance

9.1 Guidance on the new Regulations will be posted on the UK Border Agency website and in written guidance provided to naturalisation applicants.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument.

10.2 The impact on the public sector is confined largely to the Home Office and to the Department for Business Innovation and Skills in England and to the Scottish Executive in Scotland.

10.3 An impact assessment on accreditation of private education institutions involved in recruiting international students under Tier 4 of the Points Based System was published in July 2007 and can be found at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdocs/>. As the same accreditation system is being utilised for the purposes of these Regulations a further assessment is considered unnecessary.

11. Regulating small business

11.1 The legislation does apply to small business. The private education sector has a number of unaccredited small providers, who will be affected by the requirement to be accredited by a United Kingdom Border Agency-approved accreditation body in order to provide ESOL programmes for persons wishing to apply for indefinite leave to remain or citizenship. However, the main providers already have accreditation systems in place. It is likely, therefore, that the extra costs of accreditation will be passed onto students in smaller schools. This, however, will be balanced by the greater protection against exploitation provided by accreditation. An analysis of the responses to the consultation mentioned above showed that many students are prepared to pay more to attend an institution which has been independently quality assured.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, the UKBA has taken into account the impacts of accreditation. It is not possible to have an exemption to the accreditation requirement for small education providers as this would undermine the robustness of the control for a route which has been subject to abuse from bogus institutions. However the UKBA approved accreditation bodies charge a range of fees which ensure that those recruiting smaller numbers of students are charged reduced rates compared to larger providers.

11.3 The introduction of a mandatory accreditation requirement was the subject of consultation with the education sector and was supported by 85% of respondents including a large number of small providers who had already voluntarily sought accreditation.

12. Monitoring & review

12.1 The effect of these changes will be monitored by the UK Border Agency with, the assistance of the Scottish Executive and the Scottish Qualifications Authority. The amendments will be reviewed should they cause particular difficulties to applicants.

13. Contact

13.1 Jonathan Devereux at the UK Border Agency Tel: 0151 213 1871 or email: jonathan.devereux2@ukba.gsi.gov.uk can answer any queries regarding the instrument.