

EXPLANATORY MEMORANDUM TO
THE BRITISH NATIONALITY (GENERAL)
(AMENDMENT No. 3) REGULATIONS 2015

2015 No. 1806

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

2. **Purpose of the instrument**
 - 2.1 This Order amends the British Nationality (General) Regulations 2003 (“the 2003 Regulations”) to change the authority to whom registration or naturalisation applications and declarations of renunciation should be made where the applicant or declarant is in Hong Kong, specify that a naturalisation applicant must have passed a Home Office approved English language test, and require a person relying upon an EU right of has permanent residence in the United Kingdom to provide a document confirming that status.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None

4. **Legislative Context**
 - 4.1 Section 41(1) of the British Nationality Act 1981 provides for the Home Secretary to make Regulations for prescribing the manner in which registration or naturalisation applications and declarations of renunciation must be made, and for determining whether a person has sufficient knowledge of a language for naturalisation purposes.

5. **Territorial Extent and Application**
 - 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**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Regulation 4(1)(d) of the 2003 Regulations currently provides that, where a person in Hong Kong at the time of making an application to register or naturalise as a British citizen, the application should be sent to any consular officer, established officer in the Diplomatic Service, or person authorised by the Home Secretary. Regulation 9(d) makes similar provision in respect of declarations of renunciation. Following a change in consular functions in Hong Kong, the 2003 Regulations need to be changed to require applications to be made directly to the Home Office. This is consistent with other applications made outside of the Islands and British overseas territories.

7.2 Unless exempt, those applying for naturalisation as a British citizen are required to demonstrate their knowledge of language and life in the UK. As part of meeting the requirement they must demonstrate English speaking and listening skills at an intermediate level, equivalent to level B1 on the Common European Framework of Reference for Languages. This change will now require applicants wishing to demonstrate the required level of English with an English language qualification to pass a test specified as a recognised English language test in Schedule 2A of the 2003 Regulations, and removes the option of using an alternative English language qualification regulated by one of the UK's statutory regulatory bodies.

7.3 The recognised English language tests in Schedule 2A have all met the criteria specified by the Home Office for recognition as Secure English Language Tests for immigration and nationality purposes. An open tender exercise for recognition as a Secure English Language Test for these purposes was conducted in 2014. As part of the tender exercise, bidders were required to incorporate additional security features into their booking, administration and invigilation procedures. The changes now made to the 2003 Regulations will ensure that the same security features apply to English language qualifications used for citizenship as apply to applications for leave to remain in United Kingdom.

7.4 The intention to make these changes was announced on 23 March 2015. An announcement was included on relevant pages of the gov.uk website in April 2015. Thus potential applicants have had eight months notice of the impending changes.

7.5 All those applying for naturalisation as a British citizen are required to be free of immigration time restrictions before applying, and those who are not married to or the civil partner of a British citizen are additionally required to have been free of immigration time restrictions for 12 months before applying. EEA nationals and their non-EEA family members become free of immigration time restrictions after being resident in the UK for a continuous period of five years in accordance with the Immigration (European Economic Area) Regulations 2006.

7.6 An EEA national can obtain evidence that they are permanently resident in the UK by applying for a document certifying permanent residence.

Their non-EEA national family members can apply for a permanent residence card as evidence of their status.

7.7 This change will require applicants for registration or naturalisation who are relying on an EU right of permanent residence to meet the requirement to be free of immigration time restrictions to provide evidence of that right in the form of a permanent residence card, a document certifying permanent residence or a residence permit or document endorsed to show permission to remain in the United Kingdom. This will mean that consideration of permanent residence will be completed prior to the citizenship process, thus reducing the complex consideration and additional time needed to currently consider a citizenship application from an EEA national or family member.

- Consolidation

7.8 There are no plans to consolidate the British Nationality Act 1981.

8. Consultation outcome

8.1 These changes have not been the subject of consultation. However, the Gov.UK website and other published documentation on the way in which the English language requirement for naturalisation can be demonstrated have always been clear that this was subject to change. The possibility of requiring applicants for naturalisation to have a Secure English Language Test, that is a test included as a Recognised Qualification in Schedule 2A, rather than an alternative English language qualification was discussed during the 2014 procurement process for Secure English Language Tests, including at industry days open to all those test providers who wished to attend.

9. Guidance

9.1 UKVI guidance will be amended to take account of this change. The change itself will be publicised on the Gov.UK website.

10. Impact

10.1 The impact on, charities or voluntary bodies is nil. The changes to the English language requirement may have some limited impact on businesses offering English language tests which are not Secure English Language tests as these tests will no longer be taken for nationality purposes. However, individuals will continue to take these tests for reasons unconnected with nationality applications.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These changes are not subject to review.

13. Contact

Jane Whitehead at the Nationality Policy team Tel: 0151 213 4442 or email: Jane.Whitehead@homeoffice.gsi.gov.uk for answers to any queries regarding the instrument.