



# Nationality and Borders Act 2022

## 2022 CHAPTER 36

### PART 1

#### NATIONALITY

##### *Powers of the Secretary of State relating to citizenship etc*

#### **8      Citizenship: registration in special cases**

- (1) The British Nationality Act 1981 is amended as follows.
- (2) After section 4K (as inserted by section 4) insert—

##### **“4L Acquisition by registration: special circumstances**

- (1) If an application is made for a person of full age and capacity (“P”) to be registered as a British citizen, the Secretary of State may cause P to be registered as such a citizen if, in the Secretary of State’s opinion, P would have been, or would have been able to become, a British citizen but for—
  - (a) historical legislative unfairness,
  - (b) an act or omission of a public authority, or
  - (c) exceptional circumstances relating to P.
- (2) For the purposes of subsection (1)(a), “historical legislative unfairness” includes circumstances where P would have become, or would not have ceased to be, a British subject, a citizen of the United Kingdom and Colonies or a British citizen, if an Act of Parliament or subordinate legislation (within the meaning of the Interpretation Act 1978) had, for the purposes of determining a person’s nationality status—
  - (a) treated males and females equally,
  - (b) treated children of unmarried couples in the same way as children of married couples, or

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**Changes to legislation:** There are currently no known outstanding effects for the Nationality and Borders Act 2022, Cross Heading: Powers of the Secretary of State relating to citizenship etc. (See end of Document for details)

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- (c) treated children of couples where the mother was married to someone other than the natural father in the same way as children of couples where the mother was married to the natural father.
- (3) In subsection (1)(b), “public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal.
- (4) In considering whether to grant an application under this section, the Secretary of State may take into account whether the applicant is of good character.”
- (3) After section 17H (as inserted by section 3), insert—

**“17I Acquisition by registration: special circumstances**

- (1) If an application is made for a person of full age and capacity (“P”) to be registered as a British overseas territories citizen, the Secretary of State may cause P to be registered as such a citizen if, in the Secretary of State’s opinion, P would have been, or would have been able to become, a British overseas territories citizen but for—
  - (a) historical legislative unfairness,
  - (b) an act or omission of a public authority, or
  - (c) exceptional circumstances relating to P.
- (2) For the purposes of subsection (1)(a), “historical legislative unfairness” includes circumstances where P would have become, or would not have ceased to be, a British subject, a citizen of the United Kingdom and Colonies, a British Dependent Territories Citizen or a British overseas territories citizen, if an Act of Parliament or subordinate legislation (within the meaning of the Interpretation Act 1978) had, for the purposes of determining a person’s nationality status—
  - (a) treated males and females equally,
  - (b) treated children of unmarried couples in the same way as children of married couples, or
  - (c) treated children of couples where the mother was married to someone other than the natural father in the same way as children of couples where the mother was married to the natural father.
- (3) In subsection (1)(b), “public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal.
- (4) In considering whether to grant an application under this section, the Secretary of State may take into account whether the applicant is of good character.”

**Commencement Information**

- I1** S. 8 not in force at Royal Assent, see **s. 87(1)**
- I2** S. 8 in force at 28.6.2022 by **S.I. 2022/590**, regs. 1(2), 2, **Sch. 1 para. 7**

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## 9 Requirements for naturalisation etc

- (1) Schedule 1 amends the British Nationality Act 1981 to allow the Secretary of State to waive the requirement that a person must have been in the United Kingdom or a relevant territory at the start of the relevant period, in relation to an application for citizenship under—
  - (a) section 4 of that Act (acquisition of British citizenship by registration: British overseas territories citizens etc),
  - (b) section 6 of that Act (acquisition of British citizenship by naturalisation), or
  - (c) section 18 of that Act (acquisition of British overseas territories citizenship by naturalisation).
- (2) Schedule 1 also amends the British Nationality Act 1981 to allow the Secretary of State to treat a person who has indefinite leave to enter or remain as meeting certain residence requirements in relation to an application for citizenship under those sections.
- (3) In the Borders, Citizenship and Immigration Act 2009—
  - (a) omit sections 39, 40, 41(1) to (3) and 49(2) and (3) (uncommenced provisions relating to requirements for naturalisation as a British citizen);
  - (b) in section 41(4), for “that section” substitute “section 41 of the British Nationality Act 1981 (regulations)”.
- (4) In the Citizenship (Armed Forces) Act 2014, in section 1, omit subsection (4) (amendments to section 39 of the Borders, Citizenship and Immigration Act 2009).

### Commencement Information

- I3** S. 9 not in force at Royal Assent, see [s. 87\(1\)](#)
- I4** [S. 9\(1\)\(2\)](#) in force at 28.6.2022 for specified purposes by [S.I. 2022/590](#), [regs. 1\(2\), 2](#), [Sch. 1 para. 8](#) (with [Sch. 2 para. 3](#))
- I5** [S. 9\(3\)\(4\)](#) in force at 28.6.2022 by [S.I. 2022/590](#), [regs. 1\(2\), 2](#), [Sch. 1 para. 8](#) (with [Sch. 2 para. 3](#))

## 10 Notice of decision to deprive a person of citizenship

- (1) In this section, “the 1981 Act” means the British Nationality Act 1981.
- (2) In section 40 of the 1981 Act (deprivation of citizenship), after subsection (5) (which requires notice to be given to a person to be deprived of citizenship) insert—
 

“(5A) Subsection (5) does not apply if—

  - (a) the Secretary of State does not have the information needed to be able to give notice under that subsection,
  - (b) the Secretary of State reasonably considers it necessary, in the interests of—
    - (i) national security,
    - (ii) the investigation or prosecution of organised or serious crime,
    - (iii) preventing or reducing a risk to the safety of any person, or
    - (iv) the relationship between the United Kingdom and another country,
 that notice under that subsection should not be given.

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- (5B) In subsection (5A), references to giving notice under subsection (5) are to giving that notice in accordance with such regulations under section 41(1)(e) as for the time being apply.
- (5C) Subsection (5D) applies where—
- (a) the Secretary of State has made an order under subsection (2) and, in reliance on subsection (5A), has not given the notice required by subsection (5), and
  - (b) the person in respect of whom the order was made makes contact with the Secretary of State for the Home Department.
- (5D) The Secretary of State must, as soon as is reasonably practicable, give the person written notice specifying—
- (a) that the Secretary of State has made the order,
  - (b) the reasons for the order, and
  - (c) the person’s right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997.
- (5E) Schedule 4A makes provision for the Special Immigration Appeals Commission to consider a decision of the Secretary of State—
- (a) not to give notice to a person before depriving them of a citizenship status on the grounds mentioned in subsection (2) (deprivation conducive to the public good), or
  - (b) not to give late notice to a person who has been deprived of a citizenship status on those grounds without having been given prior notice.”
- (3) In section 40A of the 1981 Act (appeals against deprivation of citizenship)—
- (a) for subsection (1) substitute—
 

“(1) A person—

    - (a) who is given notice under section 40(5) of a decision to make an order in respect of the person under section 40, or
    - (b) in respect of whom an order under section 40 is made without the person having been given notice under section 40(5) of the decision to make the order,

may appeal against the decision to the First-tier Tribunal.”
  - (b) after subsection (2) insert—
 

“(2A) In the case of an order made as described in subsection (1)(b), for the purposes of any rule or other provision limiting the time within which an appeal under this section may be brought, time does not start to run unless and until the person is given notice of the fact that the order has been made (see section 40(5D) and Schedule 4A).”
- (4) After Schedule 4 to the 1981 Act insert the Schedule 4A set out in Schedule 2.
- (5) In the British Nationality (General) Regulations 2003 (S.I. 2003/548), in regulation 10 (notice of proposed deprivation of citizenship), omit paragraph (4).
- (6) A failure to comply with the duty under section 40(5) of the 1981 Act in respect of a pre-commencement deprivation order does not affect, and is to be treated as never having affected, the validity of the order.

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**Changes to legislation:** There are currently no known outstanding effects for the Nationality and Borders Act 2022, Cross Heading: Powers of the Secretary of State relating to citizenship etc. (See end of Document for details)

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- (7) In subsection (6), “pre-commencement deprivation order” means an order made or purportedly made under section 40 of the 1981 Act before the coming into force of subsections (2) to (5) (whether before or after the coming into force of subsection (6)).
- (8) A person may appeal against a decision to make an order to which subsection (6) applies as if notice of the decision had been given to the person under section 40(5) of the 1981 Act on the day on which the order was made or purportedly made.

#### Commencement Information

- I6** S. 10(1)(6)-(8) in force at Royal Assent, see [s. 87\(3\)\(a\)](#)
- I7** [S. 10\(2\)-\(5\)](#) in force at 10.5.2023 by [S.I. 2023/450](#), [reg. 2\(a\)](#)

**Changes to legislation:**

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