

EXPLANATORY MEMORANDUM TO

THE BRITISH NATIONALITY (ESWATINI, GABON AND TOGO) ORDER 2023

2023 No. 1219

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Nationality Team and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This Order amends the British Nationality Act 1981 so that Gabon and the Togolese Republic (referred to as “Togo” in that Act) are added to Schedule 3, which is a list of “Countries whose citizens are Commonwealth citizens”. This Order further amends the British Nationality Act 1981 so that the name of the Kingdom of Eswatini (referred to as “Eswatini” in that Act) is updated from its previous name of Swaziland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom. It additionally extends to the Isle of Man, the Bailiwick of Jersey, the Bailiwick of Guernsey and the British Overseas Territories (the legislatures of which have not been consulted as nationality and citizenship are reserved matters).
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the UK, the Isle of Man, the Bailiwick of Jersey, the Bailiwick of Guernsey and the British Overseas Territories (the legislatures of which have not been consulted as nationality and citizenship are reserved matters).

5. European Convention on Human Rights

- 5.1 The Minister of State for Immigration, the Rt. Hon Robert Jenrick, has made the following statement regarding Human Rights:

“In my view the provisions of the British Nationality (Eswatini, Gabon and Togo) Order 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Schedule 3 to the British Nationality Act 1981 lists all those countries whose citizens are regarded as Commonwealth citizens. Gabon and Togo joined the Commonwealth on 25 June 2022. This instrument is therefore being made in order to amend the list in Schedule 3 to allow citizens of the Gabon and the Togolese Republic to be regarded as Commonwealth citizens under United Kingdom law. On 19 April 2018 Swaziland was renamed the Kingdom of Eswatini. As a result, this instrument further amends Schedule 3 to reflect this name change.

7. Policy background

What is being done and why?

- 7.1 The Commonwealth admitted Gabon and the Togolese Republic on 25 June 2022 after their applications were approved by Heads of Government at the 2022 Commonwealth Heads of Government Meeting held in Kigali, Rwanda. On 19 April 2018, King Mswati III announced that the African nation of Swaziland had been renamed the Kingdom of Eswatini. The addition of Gabon and the Togolese Republic to the Commonwealth means that citizens of these countries in the UK will, if qualified, have the right to vote in Parliamentary and local elections, to stand for election to Parliament and sit in the House of Lords as a Peer or Bishop. They may also be eligible to hold certain posts, including: judge, magistrate, minister, police constable, member of the armed forces or civil servant. Commonwealth citizens are also eligible to enter the United Kingdom under the Immigration Rules on an ancestry visa (<https://www.gov.uk/ancestry-visa>). The name change of the Kingdom of Eswatini will not impact those rights that had been previously conferred.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 Schedule 3 of the BNA 1981 lists those countries regarded as members of the Commonwealth for the purposes of British law and policy.

Why is it being changed?

- 7.3 Following the admission of Gabon and the Togolese Republic (referred to as “Togo”) to the Commonwealth on 25 June 2022, the list of Commonwealth countries in Schedule 3 of the British Nationality Act 1981 (BNA 1981) requires amending to reflect this. A further amendment to the BNA 1981 should occur so that the name of the Kingdom of Eswatini (referred to as “Eswatini”) can be updated from its previous name of Swaziland.

What will it now do?

- 7.4 The update will give voting rights to Gabonese and Togolese nationals in the UK and will also affect eligibility for right of abode and the UK Ancestry immigration route.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 There are no plans to consolidate Schedule 3 to the British Nationality Act 1981.

10. Consultation outcome

- 10.1 This change has not been the subject of consultation: it is a consequential amendment following the decision of the Commonwealth Heads of Government Meeting to allow the admission of Gabon and the Togolese Republic to the Commonwealth. This Order further amends the British Nationality Act 1981 so that the name of the Kingdom of Eswatini (referred to as “Eswatini” in that Act) is updated.

11. Guidance

- 11.1 Home Office guidance (entitled “UK Ancestry” and “Right of Abode”) will be amended to take account of this change. The change itself will be publicised on the UK Visas and Immigration section of the Gov.uk website.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the changes are minimal. This instrument is simply made to amend the list of Commonwealth countries in Schedule 3 of the British Nationality Act 1981 (BNA 1981) to reflect the admission of Gabon and the Togolese Republic (referred to as “Togo”) to the Commonwealth on 25 June 2022. It also updates the name of the Kingdom of Eswatini to “Eswatini”, from its previous name of “Swaziland”, in Schedule 3.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Queries should be directed to the Home Office as per the ‘Contact UKVI’ section on the visas and immigration pages of GOV.UK website at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>.
- 15.2 Specific written queries relating to this Order should be directed to nationalitypolicy@homeoffice.gov.uk. Please note that this mailbox is only for Parliamentary use and specific technical queries regarding the drafting of these changes. It is not a contact point for general enquiries. Queries to this e-mail address from outside Parliament about other immigration issues, including how these changes affect applications, will not receive a response.
- 15.3 Kristian Armstrong, Border, Immigration, Citizenship System and Europe Group, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Rt Hon Robert Jenrick MP, Minister of State for Immigration, can confirm that this Explanatory Memorandum meets the required standard.