

**EXPLANATORY MEMORANDUM TO  
THE BRITISH CITIZENSHIP (DESIGNATED SERVICE) (AMENDMENT) ORDER  
2008**

**2008 No. 135**

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 The Order amends the British Citizenship (Designated Service) Order 2006 No. 1390, which designates certain “descriptions of service” under section 2(3) of the British Nationality Act 1981.
  - 2.2 The effect of designation is that a British citizen who is engaged in designated service outside the United Kingdom and qualifying territories (for which he was recruited in the United Kingdom or a qualifying territory), is able to pass on British citizenship to children born to him during such service. A further consequence is that his foreign spouse or civil partner may, at the discretion of the Secretary of State, be naturalised as a British citizen without satisfying the usual requirements as to residence in the United Kingdom.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Background**
  - 4.1 Section 2(1) of the British Nationality Act 1981 (the 1981 Act), as amended by the British Overseas Territories Act 2002, provides that a person born outside the United Kingdom and the qualifying territories after 1 January 1983 will be a British citizen in certain circumstances, including where at the time of the birth his father or mother is a British citizen “by descent” and is serving in designated service, recruitment for that service having taken place in the United Kingdom or a qualifying territory. Section 2(3) of the 1981 Act enables the Secretary of State to designate for these purposes (by order made by statutory instrument) “any description of service which he considers to be closely associated with the activities outside the United Kingdom of Her Majesty’s government in the United Kingdom or in a qualifying territory”.
  - 4.2 The Order amends a previous Order under section 2(3) of the 1981 Act by adding a further category of service – service under the Welsh Assembly Government – to the types of service that have previously been designated for this purpose.
5. **Extent**

- 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 The purpose of section 2(3) of the British Nationality Act 1981, under which the Order is made, is to ensure that British citizens engaged in certain types of activity outside the United Kingdom and the qualifying territories are not thereby disadvantaged in terms of the ability of their children and spouses or civil partners to acquire British citizenship. It accordingly enables the Secretary of State to designate such activities (or “descriptions of service”), with the consequences set out in paragraph 2.2 above.
- 7.2 Changes made by the Government of Wales Act 2006, effective from 25 May 2007, mean that officials in the Welsh Assembly Government now have equivalent status to that of officials in the various Whitehall departments and in the Scottish Administration. However, pending amendment of the definition of “Crown service under the government of the United Kingdom” in section 50(1) of the British Nationality Act 1981, they do not enjoy parity of treatment with their Whitehall and Scottish Administration counterparts *for nationality purposes*. (Amendment of that definition will be achieved, subject to Parliamentary time becoming available, either by further primary legislation or by an affirmative order under s.160 of the Government of Wales Act.) In the meanwhile, most of the benefits of such an amendment can be secured for Welsh Assembly Government officials through designation of their service by order under s.2(3) of the 1981 Act.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is nil.

## **9. Contact**

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