



Law Society
of Scotland

Written Submission

British Nationality Act 1981 (Remedial) Order 2018

April 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Immigration and Asylum sub-committee welcomes the opportunity to consider and respond to the Joint Committee on Human Rights inquiry into the British Nationality Act 1981 (Remedial) Order 2018. The sub-committee has the following comments to put forward for consideration.

Terms of the draft order

We agree that the draft order would address the issues raised in the two declarations of incompatibility by removing the good character requirement from situations where, either due to the unmarried status of a person's parents, or to the fact that citizenship could not be passed on by mothers, citizenship was not automatically acquired. This puts these individuals on the same footing as those who were able to automatically acquire citizenship at birth.

Remedial order procedure

We agree that it is appropriate in this situation to use the fast-track remedial order procedure to address the incompatibilities identified by the courts in *Johnson v Secretary of State for the Home Department*¹ and *R (on the application of David Fenton Bangs) v Secretary of State for the Home Department*. The issues identified are a clear breach of Convention rights, and should be remedied swiftly. Given the current pressures on parliamentary time, we agree that proceeding by remedial order is an appropriate step.

We do question the decision to use the non-urgent procedure. The government has indicated that it does not anticipate the provisions of the draft order coming into effect until early 2019. The incompatibilities were

¹ [2016] UKSC 56



identified in 2016 and 2017, and the government is currently aware of 16 cases on hold.² However, it is not possible to know how many people are actually affected, as it is likely many may not pursue their cases while the issue remains outstanding.

² Home Office, *Incompatibility under the Human Rights Act 1998: A Remedial Order to amend the good character requirement at section 41A(1) of the British Nationality Act 1981* (2018)



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