

The 2011 Amendment of the Finnish Nationality Act

By [Sampo Brander](#)

Background and general goals of the reform

The foundations of the reform of the Finnish Nationality Act were established after the 2007 Parliamentary elections when a new centre-right coalition government was formed. In the Government Programme, it was proclaimed as a kind of general principle in immigration matters that work-related immigration would be promoted, taking into account the demographic trends and the resulting need for labour in Finland and the EU. In this regard, it was further stated that the period of residence required for Finnish citizenship would be shortened and naturalisation facilitated for foreign students settling in Finland.¹

In October 2008, the Ministry of the Interior, which plays a key role in the preparation work of amendments to nationality legislation, started a project in order to implement the goals of the Government Programme and to investigate the need for other major modifications of the Nationality Act which had been in force since 2003.² During the preparation work, 68 different agencies, organisations and interest groups were given a chance to express their opinion on the reform plans.³

The government proposal for the amendment of the Nationality Act was submitted to the Parliament in June 2010. During the parliamentary handling, no fundamental changes were made to the Bill which was accepted in January 2011 with a large majority of 157 votes for and 5 votes against the proposed reform. The amendment of the Nationality Act entered into force on 1 September 2011.⁴

According to the government proposal, the general objective of the amendment is to promote the social integration of aliens living permanently in Finland by making acquisition of citizenship possible in a more flexible way. Naturalisation is thus seen as a means to support the integration of immigrants into society. This can be regarded as an important change, as in the spirit of the original 2003 Nationality Act, acquisition of Finnish citizenship was rather a reward for successful integration that had already taken place. In this regard, a comparison was made in the government proposal on standpoints adopted by different countries on the relationship between integration and

¹ Government Programme (2007) of Prime Minister Matti Vanhanen's Second Cabinet (*Pääministeri Matti Vanhasen II hallituksen ohjelma*): 20–21.

² See also the Country Report on Finland: 36–39.

³ Government proposal (in Finnish *hallituksen esitys*, abbreviation HE) for the amendment of the Nationality Act, hereafter *HE 80/2010*: 26

⁴ 579/2011 Act amending the Nationality Act (*laki kansalaisuuslain muuttamisesta*), entry into force 1 September 2011. – At the time of writing (in November 2011), the Ministry of the Interior of Finland had not yet updated its unofficial English translation of the Nationality Act, a link to which is available in the Finland Country Profile. All the translations in this commentary are therefore made by the author who alone is responsible for their accuracy.

naturalisation, i.e. naturalisation as a means to support integration, naturalisation as a reward for integration and the combination of these two standpoints.⁵

The discussion in the EU was also taken into consideration in the government proposal. References were made to the Tampere European Council Conclusions in 1999 on the endorsement of the objective that long-term legally resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident. The positions taken in the European Commission's Handbook on Integration on the importance of granting citizenship and political rights to long-term resident immigrants were likewise pointed out. Accordingly, one objective of the amendment is to promote active citizenship of permanently resident immigrants by contributing to their participation in different fields in society where they acquire full political rights and duties through naturalisation. It is hoped that the resources of immigrants could thus be put to use in the way which is optimal for both immigrants themselves and for the surrounding society as a whole.⁶

The most important changes

1. Changes to the length of the period of residence and its starting point

In accordance with the Government Programme of 2007, the amendment of 2011 brought an important change to general naturalisation conditions as the required period of residence in Finland was shortened from six to five years. The required period is now five years of continuous residence or seven accumulated years after the age of 15, with the last two years uninterrupted (sect. 13 (1)(2)).

The change means in fact a return to the situation before the adoption of the 2003 Nationality Act, as the required period of residence under the old 1968 Nationality Act was likewise five years. The goal behind the prolongation of the period of residence for one additional year in 2003 was to improve applicants' faculties for full membership in society with related rights and duties. Five years were then regarded as quite a short time to sufficiently familiarize oneself with the Finnish society for naturalisation.

In the government proposal for the amendment of 2011 (HE 80/2010), the previous increase of the required residence was considered not as important as the time lived in Finland as a whole and the question whether the applicant has learned Finnish or Swedish while residing in Finland. It was also considered that enabling an earlier acquisition of citizenship would promote social togetherness of aliens living permanently in Finland. Naturalisation may contribute to the integration of an alien in his or her new home country and encourage participation in societal activities. Integration is seen as a procedure which can often continue after acquisition of citizenship and even in the second or third generation.⁷

Another and, according to the government proposal, even more important change concerned *the starting point of the period of residence*. The traditional standpoint in the administrative practice of the Finnish Immigration Service and in case law had been that residence in Finland had to be *continuous* in nature in order to count towards the period of residence required for naturalisation. The Supreme Administrative Court took a different view in 2007 when it decided that the period of

⁵ HE 80/2010: 1, 4, 14.

⁶ HE 80/2010: 4, 14–15, 19, 24.

⁷ HE 80/2010: 16–17, 29.

residence had started on the date the first *temporary* residence permit had been granted to the applicant. In practice, this decision shortened the required time of residence in Finland considerably and led to an exceptional situation compared with other countries.⁸

The decision of the Supreme Administrative Court was also problematic with regard to the system of residence permits in the Aliens Act.⁹ According to sect. 33 of the Act, *fixed-term residence permits* are issued for a residence of temporary nature or of continuous nature. An alien may be granted a *permanent residence permit* after he or she has resided in Finland for four years with a continuous residence permit (sect. 56 of the Aliens Act). A *long-time resident's EC residence permit* specified in the Council Directive 2003/109/EC¹⁰ may be granted to a third-country citizen after five years of residence in Finland with a continuous residence permit (sect. 56 a). The decision of the Supreme Administrative Court might therefore lead to a curious situation where the period of residence required for naturalisation is met earlier than the period of residence required for a permanent residence permit or a long-time resident's EC residence permit.¹¹

The solution adopted with the amendment of 2011 may be regarded as a compromise between the traditional point of view and the stance taken by the Supreme Administrative Court. It is now expressly mentioned in sect. 14 (1)(2) that the period of residence starts on the date the first *continuous* residence permit is granted if the applicant, when entering Finland, does not have a permit which gives him or her the right to move into the country. However, according to sect. 15 (1), half of the time of residence with *temporary* residence permit is included in the total period of residence. In order to make sure that residence in Finland has become permanent, it is further required that an applicant has resided in Finland at least a year with a continuous residence permit before naturalisation.

As the main objective of the required period of residence in Finland is ensure familiarity with life in Finnish society, the government proposal considered that the nature of residence is not that important in this regard. The time spent with a temporary residence permit may lead to social togetherness in the same way as the time with a continuous residence permit. For example, students are normally residing in Finland with a temporary residence permit, but they may acquire more bonds to Finnish society through traineeships and student contacts than someone who is residing with a continuous residence permit but has little interaction with the surrounding society. The nature of residence permit also has no importance for the development of language skills which are essential for an alien's integration.¹²

2. Shorter period of residence on the basis of language skills

Together with the general shortening of the required period of residence, a new exception to it was also created in the amendment. According to new sect. 18 a of the Nationality Act, citizenship may be granted already after four years of continuous residence or six years of accumulated residence if the applicant meets the language skills requirement of sect. 13 (1)(6) (see more exactly below). An additional requirement is that the applicant has strong ties with Finland and he or she fulfils other conditions of naturalisation.

⁸ KHO:2007:31; see the summary of the decision in the Finnish domestic case law section. See also the Country Report on Finland: 19, 37; HE 80/2010, 5.

⁹ 301/2004, *ulkomaalaislaki*, entry into force 1 May 2004.

¹⁰ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53.

¹¹ HE 80/2010: 5–6, 17, 20.

¹² HE 80/2010: 17, 20, 24, 30.

The object of this new provision is to encourage active studying of Finnish or Swedish, as knowledge of language has been shown to be of vital importance to integration and social togetherness (and, consequently, to employment) of immigrants. According to the government proposal, this new provision may be regarded as an important change as there were no incentives of this kind in the original 2003 Nationality Act.¹³

3. New exemptions from the language skills requirement

The language skills requirement in general had likewise drawn attention in the reform plans. During the preparation work, concerns had been expressed that the required level of language skills, i.e. satisfactory oral and written skills in the Finnish or Swedish language or instead of oral skills similar skills in the Finnish sign language, corresponding to level B1 (independent user) in the Common European Framework Reference for Languages (CEFR), was too strict in general.¹⁴ However, even though the language skills requirement adopted in the 2003 Nationality Act is without dispute more difficult than under earlier legislation, the vast majority – almost 90 per cent – of persons applying for Finnish citizenship have met the requirement.¹⁵ Perhaps because of this fact, not so much attention was finally paid to the general level of the language skills requirement than to exemptions that can be made to the requirement on the basis of particular situation of some applicants.

According to sect. 18 of the 2003 Act, it was possible to grant an exemption from the language skills requirement if an applicant could not meet the requirement due to e.g. his or her old age, illness, sensory handicap or a speech defect. However, also other grounds to deviate from the requirement had been proposed by applicants. An applicant might be aged compared to conditions and life expectancy in his or her country of origin even if he or she had not yet turned 65, the age limit in sect. 18. Learning difficulties and impaired ability to learn caused by insufficient education had also been presented as grounds for exception. On the other hand, mothers with many children and single mothers had often claimed that they were not able to meet the required level of language skills as they had no chance to attend language courses.¹⁶ In this regard, the Ombudsman for Minorities had likewise expressed concerns that language tests were discriminatory against women since there had been situations where all members of the family except for the mother had met the requirement and thus been naturalised.¹⁷

One further problem related to the language skills requirement was that language proficiency could be shown by quite many ways, most of which were not enumerated in the Act but only on the level of decree. There was uncertainty among applicants whether the different kinds of certificates they had acquired would meet the language skills requirement. It was also common that the Finnish Immigration Service had to ask for an opinion of the Finnish National Board of Education about whether the different certificates enclosed by applicants were appropriate to show language skills. This additional procedure delayed the processing of citizenship applications.¹⁸

¹³ HE 80/2010: 20, 24, 26, 34.

¹⁴ Country Report on Finland: 19–21, 38.

¹⁵ HE 80/2010: 7.

¹⁶ HE 80/2010: 7, 17–18.

¹⁷ Country Report on Finland: 20–22, 38

¹⁸ HE 80/2010: 18, 32.

With the amendment of 2011, the exemptions that can be made to the language skills requirement were removed from sect. 18 to new sect. 18 b of the Nationality Act. According to subsection 1(2), it is possible to deviate from the requirement if an applicant is 65 years or older and he or she has refugee status, subsidiary protection status or a residence permit on the basis of humanitarian protection in Finland. This new provision codified the earlier administrative practice which had already been applied by the Finnish Immigration Service.¹⁹

According to subsection 1(4), an exemption from the language skills requirement is possible if there is an extremely weighty reason for that. According to the government proposal, this ground of exception is meant to cover situations where it would be *de facto* impossible for an applicant to meet the required level of language skills. This would concern the grounds of exception mentioned above (e.g. old age on the standards of the country of origin, impaired ability to learn).²⁰

It has been presumed in the government proposal that the ground of exemption on the basis of extremely weighty reason would concern female applicants in particular. Obligations related to childcare may prevent immigrant mothers from attending integration education and language courses which often require eight hours of study per day. On the other hand, fears were also expressed during the preparation work for the amendment that the granting of exemptions from the language skills requirement to mothers with many children might lead to their social exclusion from the Finnish society. Perhaps because of these fears, it is made clear in the government proposal that an exemption according to sect. 18 b (1)(4) should not be granted too easily: an exemption is possible if, on the basis of overall consideration on the applicant's particular situation, learning of the language has been *de facto* impossible due to an acceptable reason. It is therefore not possible to grant an exemption to an immigrant mother solely on the basis of the fact that other members of the family have fulfilled the language skills condition. There are also plans to improve the current system of integration education accessible to immigrants in order to meet the needs of families and special groups better.²¹

According to subsection 2 of sect. 18 b, an exception to the language skills requirement is also possible for illiterate persons and persons who are 65 years or older and have been granted a residence permit on other grounds than those mentioned in subsection 1(2). An additional condition is that these persons have the basic skills of understanding and speaking Finnish or Swedish or that they have regularly attended courses of these languages. Illiteracy and language skills or language course attendance must be attested by a certificate issued by a language teacher.

In accordance with the considerations mentioned above, all possible ways to show language skills are now expressly mentioned in sect. 17 of the Nationality Act. In the government proposal, it is hoped that this change will speed up the processing of citizenship applications considerably in so far as it should make it clearer for applicants what kind of language certificates are acceptable and consequently reduce the need for the Finnish Immigration Service to ask for advice from the Finnish National Board of Education. This goal is probably supported by the fact that the language skills can no longer be assessed by only one person entitled to award national language examination certificates. There are also plans to reform the general language examination – which is currently the most common way to show language skills – by e.g. assessing its different parts (speaking, writing, speech understanding, text understanding) separately. This would give a more accurate picture of an applicant's language skills.²²

¹⁹ HE 80/2010: 34. See also the Country Report on Finland: 21.

²⁰ HE 80/2010: 34–35.

²¹ HE 80/2010: 26, 34–35, 41.

²² HE 80/2010: 20, 31–33.

The possibility of hearing-impaired persons to meet the language skills requirement was also clarified by amending sect. 13 (1)(6). The requirement can now be met, in addition to skills in the Finnish sign language, also by skills in the *Finland-Swedish sign language*. It is noteworthy that before the amendment, skills in the sign language could only replace oral language skills, meaning that written skills in Finnish or Swedish were normally required from hearing-impaired persons. The Constitutional Law Committee which handled the Bill in the Parliament considered that this kind of provision would in fact put applicants who use sign-language in a different position than other applicants, as the former would be required to have skills in two languages, sign language and written Finnish or Swedish.²³ The wording of sect. 13 (1)(6) was therefore further amended in the way that skills in the Finnish or Finland-Swedish sign language alone are now enough to meet the language skills requirement without the further condition to have written skills in the Finnish or Swedish language.

4. Clarification of the waiting period related to the integrity requirement

One change concerned the definition of the *waiting period* which may be imposed if an applicant does not meet the *integrity requirement* of sect. 13 (1)(3), according to which an applicant must not have committed any punishable act nor has a restraining order issued against him or her. When the Finnish Immigration Service rejects the citizenship application for this reason, it may also impose a waiting period during which the applicant is not naturalised without a well-founded reason. The length of the waiting period depends on the severity of the criminal sentence(s) passed on applicant, ranging from one to seven years maximum (sect. 19 (2)).

Sect. 19 (2) of the 2003 Nationality Act originally provided that the Ministry of the Interior might give further instructions on the definition of the waiting period. None of these instructions had nonetheless been given by the Ministry. Instead, the Finnish Immigration Service had issued an internal guideline concerning the application of the integrity requirement, including a table on the definition of the waiting period on the basis of different criminal sentences.²⁴ This internal guideline had had an important effect on the position of applicants regarding the exemptions to the integrity requirement. However, this internal guideline of a civil service department was considered problematic with regard to the Constitution of Finland in so far as the principles governing the rights and obligations of private individuals shall, according to sect. 80 of the Constitution, be governed by Acts.²⁵ The Supreme Administrative Court had also shared this stand. It was therefore considered appropriate that grounds and length of the waiting period should be defined in the Nationality Act.²⁶

Accordingly, the new *sect. 19 a* of the Nationality Act lays down provisions for the length of the waiting period resulting from different kinds of criminal sentences. With regard to fines, the waiting period is 1 – 3 years from the date the crime was committed. With regard to e.g. conditional imprisonment and community service, the waiting period is 2 – 4 years from the date the crime was committed. With regard to unconditional imprisonment, the waiting period is 3 – 7 years from the date the sentence is fully served (i.e. the waiting period starts when the sentence has already been served, not when an alien starts to serve it). If the applicant has committed several punishable acts, the resulting waiting periods are not added up. Instead, the waiting period which ends at the latest

²³ Report of the Constitutional Law Committee, *perustuslakivaliokunnan mietintö*, PeVM 8/2010: 2–3.

²⁴ See the Country Report on Finland: 23–24.

²⁵ 731/1999 *Suomen perustuslaki*.

²⁶ HE 80/2010: 8–9, 18, 36–37.

date is chosen and is extended by two months minimum and one year maximum for each other punishable act. The resulting combined waiting period may however not exceed the maximum length of 3, 4 or 7 years depending on the nature of the punishments. This principle is in conformity with a decision taken by the Supreme Administrative Court in 2008.²⁷

The new sect. 19 a is not as detailed as the earlier internal guideline of the Finnish Immigration Service. It is however very much in conformity with the essential contents of the guideline. As Nordic cooperation has traditionally been of importance to the Finnish Nationality (and other) legislation, a comparison with the Scandinavian legislation with regard to integrity requirement was made in the government proposal (p. 15–16). It was revealed that all Nordic Countries applied a particular table on the basis of which an applicant who has committed punishable acts is imposed a waiting period during which he or she cannot be naturalised. The table used in Sweden was pretty similar to the one used by the Finnish Immigration Service. In other Nordic Countries the application practice was considerably stricter than in Finland. As a result, the grounds and lengths of the waiting periods defined in the table of the Finnish Immigration Service were considered appropriate in the government proposal.²⁸ The above-mentioned problem with the internal guideline of the Finnish Immigration Service was therefore rather formal than material.

5. The complementation of provisions on established identity

Also the provisions on *the requirement of established identity* in sect. 6 of the Act were complemented. According to the particular provision of subsection 3 which was adopted together with the current Act in 2003, an alien's identity is considered to be established if he or she has used an identity registered in the population information system for at least ten years. The objective behind this provision has been to avoid situations where an alien who has at some point used more than one identity could never be naturalised as his or her identity would never be considered established.²⁹

A particular problem in the interpretation of sect. 6 (3) has concerned situations in which an alien who has proclaimed some identity at his or her arrival in Finland later provides *new information* on his or her identity, e.g. by changing his or her date of birth. Should this new information be considered only *a correction* of identity, which does not interrupt the period of ten years, or rather *a change* of identity as a result of which the period of ten years would start again from the beginning? In order to answer this question, sect. 6 has been complemented with a new subsection 4, according to which a change to the person's name, date of birth or citizenship interrupts the period of ten years if the change is not considered minor. Also another kind of change of identity may interrupt the period if the change, on the basis of overall consideration, is considered to create a new identity.

In the assessment of the importance of a change, attention should, according to the government proposal, be paid to the significance of the changed information for the evaluation of the person's identity as a whole, as well as to the length of the period of residence in Finland before new information was provided. A change should normally not be considered minor if e.g. the date of birth is corrected with many years or if an alien has resided in Finland for many years before the

²⁷ KHO:2008:59, see the summary of the decision in the Finnish domestic case law section.

²⁸ HE 80/2010: 15–16, 37.

²⁹ HE 80/2010: 10.

change. On the other hand, changes of name in accordance with the Names Act³⁰ should be considered minor if they have no significance for the assessment of the established identity.³¹

6. One single declaration procedure for former Finnish citizens

One group that drew particular attention in the reform plans of the 2003 Nationality Act was former Finnish citizens. Under the 2003 Act, former citizens could reacquire their Finnish citizenship by one application procedure (sect. 21) and three different declaration procedures. The latter concerned former citizens in general (sect. 29 (1)), former citizens who had lost their citizenship at the age of 22 on the basis of an insufficient connection with Finland (sect. 29 (2)) and former citizens who had become citizens of another Nordic State (sect. 30 (2)). Residence in Finland was required in all these modes of (re)acquisition of citizenship. The Ministry of the Interior considered that several different procedures for reacquisition of Finnish citizenship were not necessary and they complicated the status of former citizens in the Nationality Act.³²

In addition to these permanent ways to reacquire Finnish citizenship, the 2003 Nationality Act also laid down a provisional declaration procedure. As the main novelty of the Act was full acceptance of multiple citizenship, former Finnish citizens who had lost their Finnish citizenship due to the earlier prohibition of multiple citizenship were given a right to reacquire their Finnish citizenship by declaration during the transitional period of five years (sect. 60). The same possibility was also given to descendants of former Finnish citizens even if they had never been Finnish citizens themselves. Residence in Finland was not required in this mode of acquisition which concerned Finnish expatriates.

During the transitional period, which was in force from 1 June 2003 to 31 May 2008, over 19,000 declarations concerning almost 22,000 persons were submitted to the Finnish Immigration Service. However, even though the information campaign on the provisional declaration procedure was quite extensive, it did apparently not reach all former Finnish citizens and their descendants. Ever since the transitional period ended on 1 June 2008, the Finnish Expatriate Parliament had been lobbying for the restitution of the declaration procedure for former Finnish citizens living abroad.³³

In accordance with these different considerations, the amendment of 2011 brought an important change to the status of former Finnish citizens by creating one single declaration procedure available to all former citizens regardless of their country of residence. According to amended sect. 29, a former Finnish citizen may acquire Finnish citizenship by declaration. The four permanent modes of acquisition under the 2003 Act have therefore been reduced to one and the transitional declaration procedure for expatriates has been made permanent. However, unlike the provisional declaration procedure of sect. 60, the amended sect. 29 does not concern descendants of former Finnish citizens, whose status was often very hard to verify during the transitional period.³⁴

In the government proposal it was thought that the permanent possibility for expatriates to reacquire their Finnish citizenship might strengthen their national identity and connection to Finland. Their resources could thus be put to better use and reacquisition of Finnish citizenship might even facilitate their return to Finland as skilled labour. On the other hand, it was thought difficult to

³⁰ 694/1985 *nimilaki*.

³¹ HE 80/2010: 18–19, 28.

³² HE 80/2010: 19.

³³ HE 80/2010: 9–11; Country Report on Finland: 11, 15, 38.

³⁴ HE 80/2010: 21, 38.

estimate how many former Finnish citizens living abroad were actually interested in reacquiring their citizenship. It can be assumed that most former citizens interested in this possibility were aware of the five-year transitional period and its expiration, since almost half of the over 19,000 declarations were submitted during the last five months of the period.³⁵

³⁵ HE 80/2010: 11, 21, 25, 38. See also the Country Report on Finland: 15, 28.