

BORDERS, CITIZENSHIP AND IMMIGRATION BILL

BRIEFING ON CITIZENSHIP PROVISIONS FEBRUARY 2009

Migrants' Rights Network

The Migrants' Rights Network (MRN) was established in December 2006. We work to support migrant community organisations and organisations working with migrants, on issues related to employment, the community, access to public services, and on other matters which have consequences for migrants' rights and social justice. We work within a framework of discussion, sharing of experiences, promotion of research, policy analysis and lobbying and campaign activities. Currently over 1800 organisations and individuals participate in MRN's policy discussion and information exchanges.

The Bill in brief

The Borders, Citizenship and Immigration Bill was introduced into Parliament in January 2009. It proposes the introduction of a new naturalisation process for foreign nationals to become British citizens, and additionally includes provisions introducing a new UKBA duty to safeguard the welfare of children in the UK, new border controls related to the Common Travel Area (UK and Ireland), integration of customs and immigration functions within UKBA and enabling the registration of children of foreign nationals serving in the British armed forces.

Our primary concern – and the focus of this briefing paper – is the impact of the Part 2 of the Bill, outlining a reform of the naturalisation process. The changes proposed would introduce significant new barriers to migrants wishing to become British citizens. The time taken to become a British citizen would be lengthened from a standard 5 years to 8 years (and from 3 to 5 years in the cases of spouse/civil partner applications), in a new 'probationary citizenship' period. Migrants would be expected to remain in continuous employment throughout their 'probationary citizenship', despite continuing to have no access to non-contributory public benefits in the UK. The Bill would introduce new restrictions on the types of leave which would qualify in migrants' journey towards citizenship, and restrict the amount of time migrants can spend outside the UK if they want to move towards naturalisation.

MRN has serious concerns about the rationale and impact of the measures proposed in this Bill in relation to citizenship, as detailed below. Consultation and briefings with migrant community groups and campaigning organisations have informed the perspectives referred to in this briefing where possible.

Putting into Practice ‘Earned Citizenship’

The Bill would put into practice the government’s notion of ‘earned citizenship’ – a reworking of the naturalisation process for foreign citizens. This concept was coined by Labour ministers Ruth Kelly and Liam Byrne in 2007¹ during the period of the Lord Goldsmith Review into the meaning and significance of British citizenship². The Home Office Green Paper ‘The Path to Citizenship’, released in February 2008, laid out Government plans for a new ‘earned citizenship’ process which would aim to “reinforce our shared values”³. It proposed, however, pursuing these ‘shared values’ by placing a heavier burden on migrants to “demonstrate a more visible and a more substantial contribution to Britain” and withstand a longer and tougher journey towards naturalisation⁴. The new strategy rested on the introduction of a new ‘probationary citizenship’ period, in addition to making further restrictions to the path to citizenship for migrants. The proposal failed to address the need for Britain to better meet its responsibilities to support and accommodate migrants, undermining Government claims that this would be an even-handed measure.

MRN believes the ‘earned citizenship’ proposals were, and are, misleading and unfair. The rationale behind ‘earned citizenship’ – that it is right to increase the demands on migrants already living and working here – ignores the vital ongoing contributions made by migrants to the UK. Migrants shape at every level the dynamic development of British economy, society and culture, in both visible and invisible, but no less essential, ways. There is no evidence to suggest that they do not value the opportunity to live and work in the UK, or that they lack a sense of belonging and appreciation of the UK, despite the costs and barriers they already face⁵. Through the earned citizenship measures proposed in the Borders, Citizenship and Immigration Bill, we would see many of the most hard-working and committed people living and working in the UK subjected to longer periods of insecurity. We believe that the Government should instead focus on enabling, rather than impeding, migrants’ movement towards citizenship, in order to bring them to a point where they can make long-term plans for their lives in the UK.

Introduction of ‘Probationary Citizenship’

Currently, applicants for naturalisation must be resident in the UK for a minimum of five years before applying for British citizenship, at least 12 months of which the applicant should have held indefinite leave to remain or ‘settlement’. Spouses or civil partners of British citizens must be resident in the UK for a minimum of three years before making a citizenship application. Under the provisions in this Bill, foreign nationals from outside the EEA would be required to be resident in the UK for an **additional temporary period of between one**

¹ Ruth Kelly and Liam Byrne, Free Thinking, 2007

<http://fabians.org.uk/index.php/2007091583/Publications/Freethinking-Papers/A-Common-Place.html>

² Citizenship: Our Common Bond: Lord Goldsmith QC Citizenship Review

<http://www.justice.gov.uk/docs/citizenship-report-full.pdf>

³ Jacqui Smith in ‘The Path to Citizenship’, February 2008:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/pathtocitizenship/pathtocitizenship?view=Binary>

⁴ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/pathtocitizenship/pathtocitizenship?view=Binary>

⁵ See: ‘Immigration and social cohesion in the UK: The rhythms & realities of everyday life’, London

Metropolitan University, July 2008 <http://www.jrf.org.uk/publications/immigration-and-social-cohesion-uk> and

‘Beyond Naturalisation: Citizenship policy in an age of super mobility’ Institute for Public Policy Research,

March 2008 www.justice.gov.uk/docs/beyond-naturalisation.pdf

and three years, called ‘probationary citizenship’⁶; in effect extending their full ‘qualifying period’ for citizenship from a standard five years to eight years. For those applying as a spouse or civil partner of a British citizen, the full qualifying period would be extended from three to five years. As a result, the UK would introduce one of the longest ‘paths to citizenship’ in Europe.

Permanent residence

Under the new provisions it would remain possible for people to move from temporary to permanent residence in the UK without naturalising as a British citizen. However, this would be actively disincentivised, aiming to reduce the numbers of migrants who, for widespread reasons, may settle in the UK but exercise their right not to take up British citizenship. Such migrants are seen by ministers as “*languishing in limbo*”⁷. New provisions would make it **significantly more difficult to become a permanent resident in the UK than a British citizen.**

Currently, migrants can apply for indefinite leave to remain (ILR, or ‘settlement’), usually after between 2 and 5 years residence in the UK, and dependent on the type of temporary visa they have held. The new system, as indicated by Home Office policy papers, would require migrants to pass from temporary residence into probationary citizenship, before applying for permanent residence. In what would appear to be a penance for their decision to become permanent residents rather than citizens, migrants would be required to spend a minimum of **three years** in probationary citizenship, in contrast to the minimum one year as a probationary citizen for those moving towards British citizenship⁸.

Overall, ‘probationary citizenship’ would effectively act as an extension to the current paths to citizenship or settlement, during which migrants would be expected to demonstrate their commitment to the UK according to the ‘earned citizenship’ rationale. Government policy papers have made clear that migrants would be expected to work during this additional period, but would have no access to non-contributory benefits and, if they fall foul of the rules, could be expected to begin the naturalisation process again from the beginning. The Government claims that ‘probationary citizenship’ would act as a test of migrants’ values and commitment to the UK; however the punitive language and rationale behind this measure is likely to generate only resentment and a sense of unfairness, by increasing the insecurity of migrants’ position in the UK. The features of Probationary Citizenship under provisions within the new Bill which most concern us are:

- **‘Continuous employment’ during Probationary Citizenship**

Under the new Bill, applicants for citizenship would be required to show they have been in ‘**continuous employment**’ for the entire period of their ‘probationary citizenship’ – up to three years. This will put intense pressure on all economic migrants and refugees, particularly within the context of ongoing recession and increasingly competitive UK job markets. We are extremely concerned that migrant workers who are made redundant or have a short break between jobs would fall foul of the rules and be required to begin their journey to citizenship again – a possible further eight years. Migrant domestic workers, whose visas are tied to work for specific employers on an annual basis, would find their dependency on employers – and therefore liability to exploitation – severely increased. It is unclear what requirement would be made of refugees here.

⁶ Under these proposals there would be no Indefinite Leave to Remain stage in the journey to citizenship.

Applicants would progress straight from temporary leave to probationary leave, a new temporary category.

⁷ Jacqui Smith, quoted in The Times, 21st February 2008

<http://www.timesonline.co.uk/tol/news/politics/article3405621.ece>

⁸ The Path to Citizenship: Next steps in reforming the Immigration System. Government Response to the Consultation’. July 2008 UKBA,

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/pathtocitizenship/>

Providing proof of continuous employment would provide additional difficulties for many migrants, particularly those who have been exploited or experienced problems with their employers⁹. We would be concerned that, if employers neglected to secure proper contracts of employment or failed to make National Insurance or tax contributions on behalf of their workers, migrants undergoing probationary citizenship might be unable to prove their employment and subsequently penalised. This is an unrealistic and unnecessary requirement which would lead to intense stress on the part of migrants and have no conceivable benefit.

- **‘Activity condition’ during Probationary Citizenship**

The Bill proposes that the probationary citizenship period could be reduced from three years to a minimum of one year (or from two years to one year in the case of spouse/civil partner applications) if migrants fulfil an ‘activity condition’, i.e. *‘participate otherwise than for payment in prescribed activities’*. It is not clear what would qualify as an ‘activity condition’, although it is likely that this would refer to volunteering in local communities according to Government stipulations. We criticised the proposal of **coerced voluntary activity** at the Green Paper stage for being culturally specific and demanding conformity to a prescribed notion of ‘community engagement’, with the potential to penalise against migrants unable to meet the necessary criteria¹⁰.

From the top-earners to those struggling to receive minimum wage in low-paid work, the pressures of working life in the UK make it difficult for many (both migrants and British citizens) to undertake additional voluntary responsibilities. Within the context of financial crisis and increasing instability in the British job market, undertaking additional voluntary activities on top of making ends meet is increasingly difficult for many to do. Despite these barriers, many migrants do contribute locally, whether in formally or on an ad hoc basis such as building positive local relations or providing support to neighbours.

Introducing an incentivised and formal ‘activity condition’ into the naturalisation process would discriminate against those migrants who lack the time, energy or opportunity to do so. For economic migrants, most of whom are required to remain in full-time employment during their time in the UK, it is difficult to find the time and energy to volunteer in a formal manner. Many highly skilled migrants, working long hours in high-pressure and demanding environments as doctors, nurses, architects or accountants, are unlikely to be able to engage in additional voluntary activities. Migrant domestic helpers, on the other hand, typically work at least 16 hours per day within private households, meaning that the time and freedom to volunteer is virtually non-existent. This requirement would additionally disadvantage migrants who are physically impaired or ill, women with children or other dependents, or those who find opportunities to volunteer are limited in their local area.

- **Restricted access to public services and benefits during Probationary Citizenship**

The majority of migrants who currently reach the stage of applying for citizenship have been paying taxes and National Insurance contributions throughout a minimum of the five-year qualifying period, and would be required to continue to do so throughout a new probationary citizenship period. The Bill does not outline details of migrants’ entitlements to public services and benefits during probationary citizenship – however we are aware from previous policy papers that the Government plans that restrictions on accessing non-contributory benefits, social assistance, local authority housing or homelessness assistance will continue throughout probationary citizenship¹¹.

¹⁰ ‘*The Path to Citizenship: Comments on the Home Office Green Paper*’, Migrants Rights Network, 25th March 2008 <http://www.migrantsrights.org.uk/files/briefingpaper/pathtocitizenship.pdf>

¹¹ ‘*The Path to Citizenship: Next Steps in Reforming the Immigration System: Government Response to Consultation*’, Home Office UK Border Agency July 2008.

We are extremely concerned about the implications of an extended period of temporary residence with no access to mainstream benefits. Migrants who become unemployed or suffer a family breakdown during this period could find themselves supported and at risk of illness, destitution and homelessness with no state support. In the context of a national financial crisis, likely to increase the vulnerability and instability of many migrants in the UK, such restrictions will have an even greater impact.

Additional Restrictions on Moving towards Citizenship

In addition to the new ‘Probationary Citizenship’ stage, the Bill would also restrict migrants’ ‘qualifying leave’ for citizenship throughout their temporary residence in the UK, and the amount of time they could spend outside the UK as temporary residents if moving towards citizenship.

Although not specified in the Bill, previous policy papers have made clear the Government’s intention that only highly skilled migrants (under Tier 1 of the Points-Based System), skilled migrants with a job offer (under Tier 2 of the Points-Based System), and refugees will be able to move into probationary citizenship and eventually to citizenship. Leave in the UK as a student, low-skilled or temporary economic migrant would not count towards the ‘qualifying immigration status’. We are concerned that the new measures could demand migrants hold a prescribed ‘qualifying immigration status’ **throughout their full qualifying period** for naturalisation; this could mean that time spent lawfully residing in the UK but without a ‘qualifying immigration status’ (e.g. if a migrant moved from working to studying in the UK) would mean their starting again on the path to citizenship.

Tougher measures dictating what constitutes a ‘qualifying immigration status’ could also affect those skilled economic migrants who are required to undergo training or adjustment periods when beginning a new job. Migrant nurses, for example, coming to the UK on a work permit are required to go through an ‘adaptation period’ of between six months to a year when they arrive in the UK to adjust their skills to the UK context. During this time they are treated as students and paid as auxiliary (untrained) nurses. If this period were not considered as a ‘qualifying immigration status’, migrant nurses could find their path to citizenship only beginning at the end of their adaptation period, putting them at a disadvantage in moving towards citizenship.

Additional restrictions would be placed on the amount of time migrants could spend outside the UK during their full ‘qualifying period’ for citizenship. Currently, migrants applying for citizenship are required to show that they have not spent more than 90 days outside the UK within the 12 months previous to their application, with an overall limit on days they may spend outside the UK during their full qualifying period. Under the new Bill, applicants would need to show that they have not spent more than 90 days outside the UK **in each year of the qualifying period** – if a migrant spent more than three months outside the UK during any one year, they would presumably need to begin their qualifying period again. For those migrants needing to travel overseas for over three months during what could be an eight year period, for example to visit family members at home, to receive medical treatment or to temporarily work or study outside the UK, this limitation would be devastating.

Concerns about retrospective application of measures

As the Bill is still in the early stages, and no secondary legislation has been released, we are not aware of any Government intentions to implement transitional measures, easing the impact on those migrants who have already begun their journey towards citizenship under the

existing framework. In the case of any changes to the naturalisation process, concessions must be made for those migrants currently living and working in the UK, who have already begun their journey towards citizenship under the understanding of the current rules.

Briefings/Consultations:

This briefing draws on briefings/consultations with the following organisations/groups:

- **Kalayaan.** Kalayaan is a charity which works with migrant domestic workers (MDWs) who are in the UK. See their briefing on the Bill at: www.kalayaan.org.uk.
- **Kanlungan Filipino Consortium.** The Kanlungan Filipino Consortium works in London to support Filipino migrants.
- **Highly Skilled Migrants Programme (HSMP) Forum** ‘HSMP Forum’ is a campaign group, formed after the 2006 decision by Government to apply new qualifying criteria for Highly Skilled Migrant Programme (HSMP). See their briefing on the Bill at: www.hsmpforumltd.com/submission_to_jchr.pdf
- **UNISON Overseas Nurses Network (ONN).** The ONN is based in Glasgow, providing support to migrants working in the healthcare sector in Scotland.

Further Reading:

For further information and analysis of the Bill, see the detailed briefing papers produced by:

- the Immigration Law Practitioners Association
(www.ilpa.org.uk/infoservice/18%20Info%20Sheet%20Borders%20Citizenship%20and%20Immigration%20Bill%20-%20January%2020091.pdf)
- Joint Council for the Welfare of Immigrants
(www.immigrationmatters.co.uk/borders,_citizenship_and_immigration_bill_2009_parliamentary_briefing.html).
- Refugee Council (<http://www.refugeecouncil.org.uk/policy/briefings/2009/>)

To view the full Bill and follow its progress through Parliament visit

<http://services.parliament.uk/bills/2008-09/borderscitizenshipandimmigration.html>