

MRN Briefing Paper

THE PATH TO CITIZENSHIP

COMMENTS ON THE HOME OFFICE GREEN PAPER

The Home Office Green Paper, *The Path to Citizenship: Next steps in reforming the immigration system*, was published in February and is currently the subject of a public consultation procedure which runs until 14th May.

The Home Office believes that migrants should be required “to demonstrate a more visible and more substantial contribution to Britain” as they pass through the various stages of integration.

The Green Paper intends that the immigration control system should be more closely aligned with procedures for obtaining citizenship, with “newcomers with the right values” being ‘encouraged’ to become British citizens rather than permanent residents. This will mean that selection for the admission of workers under tiers 1 and 2 of the Points-Based System (PBS), as well as members of their family, will be required to demonstrate their potential for becoming full British citizens at the earliest stages of visa procedures.

Monitoring the path to citizenship will require a transformation of the way the immigration control system is policed. This Green Paper says that this will involve “locking down the identity of newcomers before they come”, and “compulsory ID cards for foreign nationals so that public services and employers can be sure about the identity and rights of people who stay:”.

The measures proposed to make this to happen include:

- an ‘architecture’ which involves “three routes to citizenship and three stages to the journey” ;
- “earning a right to stay” through learning English, paying taxes, obeying the law, and “joining in with the British way of life”;
- limiting the impact of migration on public funds and services by restricting access to benefits and raising additional revenue from newcomers through extra charges and taxes;
- the establishment of cross-departmental teams to scrutinise the ways in which EEA nationals might be induced to “contribute fully to our society”
- a simplification of immigration rules and procedures to bring about a clearer, more consistent framework for the control of borders and the management of migration.

The Green Paper proposes a new architecture for the integration of migrants into settlement and British citizenship.

The intention is that migrants will be expected to “demonstrate a more visible and substantial contribution as they pass through successive stages.”

After completing an initial period of “temporary residence” migrants will be required to undergo a “probationary citizenship” which will lead to either British citizenship, or a settled immigration status without citizenship.

The probationary citizenship period could be completed in 12 months, but this could be extended to 3 years if the applicant does not demonstrate involvement in ‘active citizenship’, or is seeking permanent residence rather than citizenship, or 5 years if they have a minor criminal record to expunge.

Public funds limitations, restricting access to benefits and public services, will apply until the applicant acquires either British citizenship or permanent residence status.

Consideration will be given to the levying of new taxes and charges on migrants to meet the costs of the public services they receive.

The comprehensive character of the Green Paper's proposals means that these proposals merit the most detailed scrutiny possible by all organisations concerned with the rights of migrants and basic civil liberties across society. The following comments set out the MRN's view of the issues which ought to be considered by civil society associations concerned with these issues when they consider making submissions to the consultation.

Comment One: The Green Paper strategy is one-sided in considering only the demands to be placed on migrants to assimilate into British society. No consideration is given to the responsibilities and obligations of British society towards migrants.

The Green Paper itself reiterates what is known about the positive contribution which migrants make to British society. These include:

- migrants making a greater contribution to the provision of public services than the average non-migrant, already paying 10% more in tax than they receive back in services;
- working in public sector jobs in the NHS and other services, and creating new businesses and jobs;
- providing labour market flexibility, increasing productivity, and making the native population more prosperous as a consequence;
- contributing to around 15-20% trend growth to the British economy, and adding around £6 billion to output;
- increasing the diversity of British society and adding to the range of cuisine and cultural experiences available to all.

Yet its entire argument is structured around demanding more from migrants, and inflicting harsher penalties on those who do not cross the hurdles which are to be erected along the path to integration.

No attempt is made to evaluate the processes already underway as migrants adapt to their new circumstances in British society, their success in learning English and establishing their places within the labour market.

Whilst great regard is held for the views of people contributing to the Home Office's "public listening sessions" during the course of 2007, the Green Paper gives no consideration to the views expressed by expert bodies working intensively with migrants communities, and which consistently report a strong commitment to learning and improving English standards, and integrating into all aspects of the labour market.¹

Instead of working with community organisations to find ways of adding further value to the investments already being made by migrants in achieving integration, the Green Paper proposes to put in place an 'architecture' made up of new stages extended over a longer period of time, with less rights available to migrants as they journey across 'temporary residence, 'probationary citizenship', and eventually full citizenship or permanent residence.

Each stage is marked a plethora of tests to establish the extent to which migrants have assimilated the values of Britishness, and a level of surveillance, through ID cards and the enrolment of employers and public services in checking immigration status, which many feel encroaches on basic civil liberties.

Though the consultation procedures contained in the Home Office's official response form² does not appear to be intended to facilitate comment on these fundamental aspect of the proposals, the MRN feels it is important to use these opportunity to comment on the Green Paper's basic approach to the issues it raises.

¹ For a review of the viewpoints of civil society organisations on these issues, see the evidence submitted to the House of Lords Inquiry on the Economic Impact of Immigration at <http://www.publications.parliament.uk/pa/ld/ldeconaf.htm#evid>

²The pro forma response form can be downloaded from <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/pathtocitizenship/citizenshipproforma1?view=Binary>

Comment Two: Prolonging the route to integration will increase insecurity and the vulnerability of migrants.

The Green Paper proposed measures that will extend the path to citizenship or permanent residence by between one and five years. During this time the migrant will be scrutinised at each significant step by a wide range of bodies, from the Border and Immigration Agency itself, through to employers, public service providers, and the police, to determine whether he or she will be permitted to continue along the route to eventual rights and security.

Conditional immigration residence statuses, which can be revoked by the authorities at any point, are known to be associated with higher risks to the individual migrant. This will affect family dependents living with domestic violence, feeling powerless to protest against abuse because of fear of loss of residence rights, or the work permit employer, subject to lower wage rates and required to work longer hours, and feeling unable to resist because dismissal would similarly lead to a revocation of permission to remain.

The new status of probationary citizen is likely to prolong the stress suffered by partners in violent relationships, since the continuation of family life with an abusive partner will be expected to be tested up to the point of an application for citizenship or permanent residence - a period between three to seven years after the date of entry. Migrant workers, after completing typically five years on temporary residence face the prospect of a least a further one year on probationary citizenship, quite possibly extending for three to five years. With a new regime in place requiring employers to check the immigration status of their workers and identify those with conditions attached to their stay, it can be expected that the longer period will increase job insecurity and expose more to the risk of exploitative employment.

The MRN believes that progress towards a secure immigration or citizenship status should be reasonably rapid, and certainly drawn out no longer than the current two years for family dependents and five years for migrant workers. In our view a stronger case exists for a reduction in these time scales rather than an extension, with migrants being brought more rapidly to the point when they can plan their future lives in Britain with more confidence and in more security.

Comment Three: The power to refuse further leave to remain to people failing to cross the various hurdles set down under the new architecture will involve removing people in breach of legitimate expectations of justice and basic human rights.

Those not able to pass the language test at the earlier point of progress from temporary residence to probationary citizenship, as well as a test of knowledge of British society, will be required to leave the UK. If the categories exempted from the test at this point do not pass at the stage of probationary to full citizenship or permanent residence, they will also be required to leave.

For the avoidance of any doubt, the MRN strongly supports all means of a voluntary nature to encourage the learning of English by migrants. Our concern over these proposals is that, in their present form, they will produce actions on the part of the immigration authorities which violate the basic human rights of migrants.

Foremost among the groups at risk of a human rights violation are the partners of British citizens or people with permanent residence. They are currently tested after two years residence in the country for the ESOL entry 3 level to progress to a settled status ('Indefinite Leave to Remain'). Under the present system, those failing the test are permitted to remain on an extended temporary basis and given the opportunity to take the test again. The Green Paper proposals suggest that this will not be the case in the future, and that those failing tests at the stage of probationary citizenship *will be required to leave*.

The Green Paper does not discuss the possibility of an extension of temporary residence to allow further attempts at the Knowledge of Life in the UK or English tests. The Home Office should be asked to clarify its

intentions on this point as a matter of urgency.

It can be assumed that, after two years of marriage or civil partnership, a sizeable proportion of these partnerships will have produced children who will be British citizens by birth. The proposals appear to consider it reasonable that these relationships be disrupted and that children be threatened with the prospect of deprivation of family life with both parents in order to enforce the principle of a requirement of adequate English from all persons resident in the UK.

The Government's response is likely to be that its plans, outlined in a separate policy paper, to require a standard of English from all people admitted or allowed to remain in the UK as partners of UK citizens or permanent residents, thereby reducing the number likely to be refused at the temporary residence/probationary citizenship border. But if this is the case, the dilemma is shifted to the very earliest stage of the relationship, when any British citizen/permanent resident finding herself involved in a relationship with a non-EEA national foreigner will have to consider the adequacy of their standard of English if they have a long-term future together in the UK. For many this will be an intolerable dilemma, with the policy and laws of the UK amounting to a gross interference in their private life and right to marry and found a family. Both of these rights are protected by the European Convention of Human Rights. The Government must be made to understand that legislation which erodes their enjoyment will be fiercely resisted by civil society in the UK.

Comment Four: The concept of 'active citizenship' is poorly developed in these proposals. As it exists in the Green Paper it will disadvantage too many candidates for secure residence status.

The Green Paper proposes that the path to citizenship be shortened at the stage of probationary citizenship for those who demonstrate an activity that can be counted as 'active citizenship'. Those meeting this criterion will be able to become citizens after 12 months: those without being required to complete a period of three years. People wanting permanent resident status rather than citizenship would be granted this on demonstrating three years of active citizenship activity, or five years without it.

What is anticipated as being included within the range of active citizenship activities includes volunteering with a recognised organisation, employer supported volunteering, volunteering to support UK international development objectives, running playgroups, fundraising for charities or schools, serving on community bodies such as a school governor, or running or helping to run a local sports team.

There are reasons to be concerned that the integration of community volunteering into the formal structure of citizenship procedures will be counter-productive. The already considerable amount of volunteering activity which migrants engage in could come to be viewed by critical parts of local communities as motivated by self-interest rather than genuine concern for the quality of communal life. It is also likely to penalise migrants working unsociable shift patterns, or who have responsibilities to young children or the care of elderly family members, whose free time for active citizenship is likely to be limited. Individuals lacking in self-confidence, or living with poor health or disabilities might also feel impeded from volunteering. Because these issues are unlikely to be satisfactorily addressed, the Home Office should not proceed with plans for tests of active citizenship.

Comment Five: Because the impact of migration on benefits and services is already positive, further restrictions on access should not be considered

The Green Paper acknowledges the positive contribution of migrants to the public services, but argues that because this is not clearly recognised by the public opinion, further efforts need to be made to increase contributions and reduce impacts.

This argument should be firmly rejected. One of the foremost tasks of responsible government is to work for an accurate understanding of the issues that affect the public life of a community, and for a proper

appreciation of the policies which are needed to advance the common good. If migrants are already net contributors to public services it would be unjust to increase even further the burden they are currently required to carry.

The Green Paper argues that such an increase is justifiable because the impact of migration is uneven across the country, with some regions facing greater challenges than others to provide the services which migrants are able to share. In our view this argument is disingenuous. The unevenness of the impact of migration arises principally because central government has failed to devise a mechanism for redistributing revenues gathered nationally to local regions, in particular need of expenditure and investment. The government should be required to address this issue before it advances policies aimed at either restricting access to services or raising additional revenue from migrant specific taxes or charges.

Comment Six: EEA nationals

The Green Paper's proposals on EEA nationals are sparse because scope for action is severely restricted by the legal effect of the European Union treaties. These require equality of treatment between EEA nationals and citizens of the host member states. Because of this the architecture of the path to citizenship, through its stages of temporary residence and probationary citizenship will not apply to EEA nationals. They will continue to acquire unrestricted rights of residence and citizenship on the basis of simpler and clearer rules and procedures.

The Green Paper describes the plans of the Government to establish "two cross-departmental teams" to look at access to benefits for EEA nationals and to "disincentivise and punish criminality". It will be necessary to closely monitor the work of these teams to ensure that proposals do not emerge which infringe the rights guaranteed to EEA nationals by EC law.

Comment Seven: Simplifying the system and reforming the law

The Green Paper finishes with a final chapter on simplifying the immigration management system. Stating that the aim is greater transparency, user-friendly efficiency, clarity and predictability across the system, the proposals are too vague at this moment to allow specific comment.

The framework for immigration control is expected to contain three tiers, which will consist of primary legislation, ideally consolidated into a single act of Parliament; immigration rules guiding the practical work of immigration officials; and operational guidance where this is necessary.

The Green Paper states that the legislation which will put simplification into effect will "continue the process, begun with the Points-Based System [PBS], of spelling out more clearly and transparently the routes to the UK and the criteria for our decisions." Some concern should be registered about the use of the PBS as a model for simplification. There is very little evidence to support the view that the new system is producing clearer and more understandable procedures. The complexity of immigration control as it has developed since the advent of managed migration has grown significantly, producing high levels of confusion over a wide range of issues amongst both officials and the users of the system.

If simplification is to become a driving force for the next period of immigration reform we would suggest the need for a review of the claims made for the achievement of greater transparency and user-friendly efficiency, etc, which are being made for the PBS. This should include the views of all the parties expected to understand at least the basic elements of the system, including migrants, legal advisors, employers, public service providers, local government, and the law enforcement agencies. A review exercise would assist the simplification project in moving beyond its current extremely vague stage of development in which it has been

stuck ever since the Home Office's first attempt at a consultation procedure on the issue in the summer of 2007.

Responding to the Green Paper

The Home Office has requested that submissions to the Green Paper be made using a pro forma response which can be found on the BIA website on its current consultations page. They should be sent no later than **14th May**.

The MRN believes that the issues raised in this Green Paper are of such fundamental importance to virtually every aspect of migration that every effort should be made on the part of migrant associations and groups working in support of migrant rights to consider the issues and make a submission.

The MRN will be organising a number of roundtable discussions on the Green Paper in different parts of the country over the course of the spring. Details of these will be found on our website at <http://www.migrantsrights.org.uk>. We would be pleased to provide speakers to other local meetings during this period to groups considering making submissions. Contact us at info@migrantsrights.org.uk if you would like to invite us to provide a speaker.

Migrants' Rights Network
Union Club House
253-254 Upper Street
London N1 1RY

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