



THE BORDERS, CITIZENSHIP AND IMMIGRATION BILL
PARLIAMENTARY BRIEFING IN SUPPORT OF TABLED
AMENDMENTS 77 and 79

House of Lords

Committee stage

1. Amendments

Clause 39

Page 31, line 28, leave out from "period" to end of line 29 and insert "is—

- (a) 6 years in a case within paragraph 1
- (b) 3 years in a case within paragraph 3

Page 31, leave out lines 30 to 42

2. Summary

These amendments are designed to:

- Delete the activity condition and;
- The associated lengthier qualifying periods for naturalisation of 8 years (residence) and 6 years (family) in circumstances where the activity condition is not fulfilled.

3. Our purpose for supporting the amendment

Our purpose of supporting this amendment is to;

- Facilitate integration and citizenship as opposed to hindering and discouraging it;
- Avoid potential human rights inconsistency;
- Avoid diversion of 'skilled wealth generating labour' to the *many* competing economies with more generous settlement/naturalisation schemes;

3. Detailed reasons for opposing a potential increase in the qualifying periods and a scheme for volunteering

1. Integration and Citizenship

The rationale for the ‘earned citizenship’ scheme in Part 2 of the Bill is to facilitate ‘integration’ and enhance ‘citizenship.’¹The way in which the above clauses seek to do this is through:

- The imposition of longer qualification periods for naturalisation (and therefore when viewed in the context of the proposed citizenship/settlement structure, longer periods to which migrants are to possess insecure status) with the ability to reduce this through as yet unspecified community service (the activity condition);²
- The byproducts of the above are that:
 - Full access to the welfare state is to be delayed for a corresponding period until British citizenship or permanent residence is acquired;
 - Restrictions on access to the labour market and switching employer/occupation are to be applied for a corresponding and therefore extended period;
 - Both of the above will have implications for the migrant workers and family members to enforce other civil, human and labour rights.³

In its Green paper and associated policy documents it is notable that the Government has not advanced any rational explanation, research, or examples from state practice which would support the notion that introducing what is effectively a compulsory ‘volunteering requirement’, extending the duration of insecure status overall (together with its associated by-products) will do anything at all to facilitate integration or citizenship. We believe that the weight of evidence suggests that these proposals will if anything positively harm integration and the prospect of active citizenship for the following reasons:

1. *The Path to Citizenship: Next Steps in Reforming the Immigration System*, UK Borders Agency, February 2008, para.186, p.55

2. Even however if the activity condition is fulfilled the effect of the structure is to delay the acquisition of secure status which is ordinarily available to migrants workers after 5 years, spouses after 2 years, and other family members on arrival

3. See connected and attached JCWI briefings on welfare and continuous employment

a. Insecure status as one of the key factors militating against democratic/community participation by migrants

One measure of integration and citizenship is the level of participation in the political sphere. The Working Lives Institute has recently been conducting focus group based research into the reasons for low participation rates by migrants within this sphere. More specifically, they have examined trade union participation and have noted how insecure status militates against this.

'Many of those in the focus groups felt that it was difficult for those who did not have citizenship to be active in a trade union because they are worried about immigration status'. One of the focus group members summarised the position in this way:

'Once you've had your indefinite [leave to stay], or become a citizen, then that obviously changes the whole picture. So it is very hard, I will struggle to see a situation where you have somebody who is still in a work permit, actively campaigning and representing people without looking over their shoulders'⁴

It is of course also difficult for migrants to actively participate and integrate into communities until they are assured of some stability. Quite apart from the practical difficulties that insecure status presents for their participation in communities (see attached briefings on continuous employment/access to welfare), there is a general tendency to 'freeze' their lives up until this point. A migrant worker at a recent forum told us:

"I think this bill is making it harder for us to get involved in anything, not the other way round! You have to work and make sure nothing goes wrong with your work.. because everything depends on you keeping that job. And then, you never know what will happen next. You always feel like they could send you home, so you don't really want to get involved in anything, because it doesn't feel like this is definitely going to be 'home' until you've got some kind of settled status".⁵

Establishing any scheme therefore which increases the length of time for which migrants possess *insecure* status in cases *both where the activity condition is fulfilled and cases where it is not*, is not likely to aid integration.

4. E mail correspondence from Sian Moore, author of the research to Hina Majid JCWI 02.11.09

5. Forum arranged by UNISON, 13.12.09, Belfast. The participants do not wish to be named.

b. Poverty as a key factor militating against citizenship and integration

One can reasonably assume that in some cases given the corresponding restriction on access to public funds pending acquisition of either British citizenship or permanent residence, this will at least result in some degree of poverty. Two results might be expected to arise from this. Firstly, the absence of benefits like Housing Benefit and homelessness housing for example will push migrants into more affordable areas where they can rely upon community based support networks. This will lead to migrant clustering which is presumably what the Government seeks to avoid. Secondly however, poverty will impact upon civic participation. This is already well documented. As the Joseph Rowntree Trust note in their recent research on poverty and social exclusion '*people in poverty find it hard to participate in society, because they lack the resources to do so.*'⁶ Although this research did not focus specifically on migrants, it is reasonable to extrapolate from this that poverty will affect migrants in an identical way.

c. Generation of feelings of resentment, injustice and exclusion

Requiring migrants to undertake community service through the 'activity condition' (and in so doing, demanding far more from them than we ask of ourselves), subjecting them to status insecurity and preventing them from accessing welfare provision to which they contribute is unlikely to build the sense of membership that integration requires. Some of the feedback we received about this from the forum⁷ referred to above and from concerned migrants contacting JCWI appears below:

"I work in a nursing home and couldn't believe my ears when I heard that migrant workers could be asked to do voluntary work to 'earn' our citizenship. It made me feel really angry. Surely my work should qualify for this! I don't see why I should have to do voluntary work on top of this. And how will I fit this in given that I already work very long hours with changing shifts in a care home! And what about some of the other workers with children, how will they cope?!"

'I find this all very demeaning. I am an educated and highly skilled individual working 50-60 hour weeks in the City. I have never made any claim for welfare, have worked hard, contributed to the general well being of this country, and routinely undertake voluntary activities to help out my neighbours. Why should I now be required to give up time with my own family on weekends and undertake work that is likely to be entirely unsuitable to my own skills base in order to secure some stability. How will this make me any more integrated?'⁸

6. D Hirsch, *Where Poverty Interacts With Social Exclusion Evidence and Features of Solutions*, Joseph Rowntree Foundation, September 2006, p.4

7. Forum arranged by UNISON, 13.12.09, Belfast. The participants do not wish to be named.

8. Call to JCWI on 14.02.09 from a migrant who does not wish to be named.

'I understand that the Government needs to do what is right for the country... but it doesn't seem fair. We came here on the understanding that we could settle after five years and now the Government is moving the goal post. How could this help us integrate?! Sometimes I think that the Government has just found another way of making us pay taxes for longer. It's ok for us to pay but we won't be entitled to any support if we need it!'

d. Generating hostility in the host community towards migrants

Integration of migrants is a two way process involving not only migrants, but their acceptance by the *host* community itself. What these measures do is to indirectly communicate to the host community that:

- Migrants are failing to integrate and participate in communities and are not doing enough to justify their ongoing residence in the UK;
- The responsibility for integration lies exclusively with migrants; Consequently they must complete a series of increasingly strenuous tests which is to now include 'the activity condition';⁹
- The host community and the state have no role to play in aiding their integration.

We believe that this unlikely to be a successful in integrating migrants. If anything, setting up a system which *requires* migrants to volunteer to secure status and preventing them from accessing welfare is likely affirm and harden ill-informed views about their willingness to voluntarily contribute to British society. This is particularly dangerous in the midst of an economic down turn. Indeed, as the UK's EU trade commissioner, and former head of the House of Lords, Baroness Ashton, points out

*'In any kind of economic downturn, it is incumbent on us all to be putting across exactly the same message about the value and importance of having... diversity in communities; about the value and benefit of people from different countries coming and creating wealth.'*¹⁰

This scheme appears to adopt an antithetical approach.

9. The above requirements are superimposed upon a scheme already requiring migrants to demonstrate language/cultural knowledge, good character, and compliance with immigration laws (together with a new requirement to show continuous employment).

10. The Observer 22.02.09

e. Particular categories of migrants

We can think of a number of different categories of migrant who may potentially struggle with an ‘activity condition’ including:

- Migrants with health problems (including mental health problems)
- Disabilities;
- Migrants with learning difficulties;
- The elderly;
- Migrants with personality disorders;
- Migrants who work long hours;
- Migrants who undertake shift work;
- Migrants on low incomes;
- Migrants who undertake shift work;
- Single parents and other migrants with caring responsibilities;

At least some of these categories e.g. those with learning difficulties, the disabled will already have low participation rates in society, and will already experience particular difficulties in ‘integrating’ into political, economic and social spheres. In the absence of their ‘being treated as though they have participated’ in these activities, one can expect that that they will encounter difficulties in fulfilling the activity condition, and will be subject to lengthier waiting times for naturalisation. The effect of this will be to compound the difficulties that they already experience through subjecting them to status insecurity and the problems associated with this for an even longer period of time (for which see the attached briefing about continuous employment and welfare and also see below). This is likely to diminish their societal participation and integration.

2. Human Rights and discrimination

The activity condition

Article 14 of the European Convention on Human Rights (ECHR) prohibits ‘discrimination’ including indirect discrimination¹¹ in relation to matters falling within its ambit on various grounds including ‘other status’. Immigration

11. See for example *Thlimmenos v Greece* (2000) 31 EHRR 411

status, and therefore conferral of citizenship are arguably within the ambit of Article 8 ECHR.¹² Article 4 ECHR also prohibits ‘compulsory’ labour save for in limited circumstances set out within the Article. Given the propensity for the scheme to potentially disproportionately impact on the ability of certain categories of migrant to naturalise, this raises the possibility that the activity condition could arguably constitute indirect discrimination on grounds of status against the above groups in relation to citizenship. Additionally, from the perspective of Article 4 ECHR, the volunteering requirements *may*, depending on their ultimate shape, generate inconsistency here too.¹³ The absence however of regulations setting out the nature of the scheme however makes difficult any clear conclusions about this.

3. Enhancing international competitiveness/reflecting competitor norms

There is today political consensus that migration can be beneficial to the economy. Naturalisation and settlement schemes are increasingly viewed in a global economy by would-be migrants as ‘relocation packages’.¹⁴ Accordingly, the scheme in part 2 of the Bill should be seen as a tool to attract to the UK, and prize away from other competitor states in the global market the ‘best and brightest’ labour with a view to enhancing British competitiveness in a global market. It is notable that roughly half of the states within the EU operate a naturalisation scheme requiring 5 years or less residence.¹⁵ The USA requires five years residence for naturalisation purposes.¹⁶ Australia permits naturalisation after four years and Canada permits naturalisation after 3 years. We believe that an 8 year or possibly longer¹⁷ period for naturalisation with a volunteering ‘requirement’ built into it, is unlikely to be an attractive proposition for the migrant labour that the UK seeks to attract. If anything we believe that the scheme risks diverting the labour to competitor states offering a far more generous and certain package on offer.

12. The proposition that status engages Article 8 was accepted by the Government in *S and Others v Secretary of State for the Home Department* [2006] EWCA Civ 1157. See also the Grand Chamber judgment in *Sisojeva v Latvia* App. NO 60654/00. See also admissibility decisions in *Slivenko and others v Latvia* App. No. 48312/99 and *Karrashev and Family v Finland* App. No 31414/96 confirming that arbitrary denial of citizenship may breach Article 8 ECHR.

13. Voluntary service may be considered ‘compulsory’ and ‘against the will of an applicant’ given that the Government’s intention to withhold access to social entitlements until the point of naturalisation, it is arguably not part of the specified exclusions i.e. normal civic obligation.

14. A Shachar, *The Race for Talent Highly Skilled Migrants and Competitive Immigration Regimes*, 2006 Research Paper No. 883739 University of Toronto Legal Studies Series available at <http://ssrn.com/abstract=8837>

15. See Baubock et al *Acquisition and Loss of Nationality Volume 1: Comparative Analyses Policies and Trends in European Countries*, 2006, Amsterdam; Amsterdam University Press, p.447

16. See US Visa Bureau at www.visabureau.com/America/citizenship.aspx

17. It could be longer for a range of reasons including the operation of clause 37(2)(b) or due for example to not having previously been in possession of a qualifying status.

4. Assurances

If the activity condition is to remain part of the Bill we seek the following assurances about future regulations:

1. It should be capable of being undertaken at any point during the qualifying period;

2. If it is not to operate in a discriminatory manner, child care, travelling, and all other costs associated with the volunteering requirement should be funded by the UK Borders Agency;

3. Given that employees are *statutorily* entitled to a minimum of 24 days leave entitlement, it should in no circumstances indirectly operate in a way that reduces this legal entitlement (through for example the requirement to devote large amounts of time to it);

4. Employers should *be required* to offer migrant workers time off to complete the 'activity condition'. Failure to implement this may leave some categories of migrant e.g. live in domestic workers in tied accommodation, in a vulnerable position as they may be prohibited from undertaking voluntary work and reducing the qualification periods;

5. Those migrants who are 'incapable of fulfilling the volunteering requirement for whatever reason' should be exempt from it by clause 39(5)(b). This should include but not be limited to those incapable of undertaking this due to:

- Disabilities;
- Learning difficulties;
- Personality disorders;
- Caring responsibilities;
- Old age;
- Health including mental health;
- Financial circumstances/ working commitments/ child -care responsibilities/ are unable to undertake this;
- Other reasons- We are aware of cases involving female migrants where spouses for example have found it objectionable for their partners to be in the labour market and who have been 'allowed out' in very restricted circumstances. See also the position of domestic workers referred to above.

