

ILPA Briefing on Presumed Purposes of Amendments

Part 2, Borders, Citizenship and Immigration Bill

June 2009

Mr Damian Green
 Mr Crispin Blunt

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★ Clause 39, page 29, line 7, after ‘any person’, insert ‘who came to the UK under the Highly Skilled Migrants Programme’.

Mr Damian Green
 Mr Crispin Blunt

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★ Clause 39, page 29, line 9, after ‘any person’, insert ‘who came to the UK under the Highly Skilled Migrants Programme’.

Presumed Purpose

The Amendments would restrict the transitional protections inserted by peers to those who came to the UK on the now-withdrawn Highly Skilled Migrant Programme (HSMP). The Amendments will allow Members to probe the Government as to its commitment to those on the HSMP, whom the Courts have required must be treated in line with the original promise as regards their route to settlement – see [2008] EWHC 664 (Admin) and [2009] EWHC 711 (Admin).

Briefing Note

At Report stage in the Lords, the Lord Brett said: “*Migrants with a pending application for ILR that is submitted but not decided before the Immigration Rules are changed following commencement of the earned citizenship provisions will have their applications considered under the existing rules. This is also the case for those who have a pending human rights or humanitarian protection claim or who have applied for asylum... [but he continued] This means that when the provisions of the Bill come into force, all migrants with limited leave will have to progress through the earned citizenship architecture to obtain British citizenship or permanent residence.*” [Hansard, HL 25 Mar 2009 : Column 708]

The Minister’s statements are not clear. However, it appears the Government’s position is that some element of transitional protection should extend beyond merely those on the HSMP. Members have an opportunity to seek greater clarity from the Government as to the commitment intended to be given – which from Lord Brett’s statement appears to be that anyone on ILR at

the commencement of the new path to citizenship will be able to continue to citizenship under existing provisions, anyone who has made an ILR application at that time will also be able to continue under existing provisions and that those with outstanding human rights, humanitarian protection and asylum claims at that time will be able to continue under existing provisions. The need for transitional protection, and the propriety of Parliament seeking and Government providing for this now in the Bill or by way of the clearest of assurances, has been significantly accentuated by the out of the blue announcement by the former Home Secretary at Second Reading that the Government intends to publish proposals for a points-based system for citizenship.

Mr Phil Woolas

30

Page 29, line 4, leave out Clause 39.

Presumed Purpose

The Government simply seeks to reverse its defeat in the Lords. See further Amendment Nos. 43 and 44 (above).

Mr David Anderson
Mr David Hamilton

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Clause 40, page 29, leave out lines 32 to 36.

Presumed Purpose

The Amendment would remove the requirement for ‘continuous employment’ from the date on which probationary citizenship is granted to the date an application for citizenship is made in respect of those who have been granted leave to enter and remain in the UK for the purpose of employment.

Briefing Note

During the Bill’s passage through the Lords, the Government singularly failed to explain why this requirement was necessary. It is already a requirement that the person must not be in breach of immigration laws during the whole of their qualifying period, not merely during the period of probationary citizenship. It is already a requirement under the Immigration Rules that someone who is granted leave to enter or remain for the purpose of employment must continue to be here for that purpose; and it is set out in the accompanying guidance the periods for which someone may lawfully be out of work when looking for new employment (e.g. in circumstances where they may be made redundant) – e.g. under Tier 2, such a break must be for no longer than 60 days. The current provisions, therefore, provide that to be able to proceed to citizenship a person, on a work-related route to citizenship, will have to stay in work. The ‘continuous employment’ requirement is, therefore,

either otiose or it seeks to introduce some more stringent requirement that any break in employment, or shorter breaks in employment, will preclude or seriously delay (by requiring someone to being the qualifying period all over again) someone from progressing to citizenship. If the former, the Amendment should be agreed because the new requirement in the Bill is unnecessary. If the latter, the Government must explain why it is necessary – particular in the current economic climate, where people’s employment is likely to be less secure – to introduce a significantly harsher approach to any, even very short, break in employment.

Tom Brake
Paul Rowen

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Clause 40, page 29, line 27, after ‘period’, insert ‘, save that periods during which A was in the United Kingdom with leave other than that conferring qualifying immigration status shall be disregarded for the purpose of considering whether A had qualifying immigration status for the whole period’.

Presumed Purpose

This Amendment seeks to mitigate one of the harshest aspects of the proposed new regime – that any break not merely in being lawfully present in the UK, but in having a particular type of lawful presence (a qualifying immigration status) will require someone to begin the qualifying period all over again. The Amendment would disregard periods of lawful presence in the UK on a non-qualifying immigration status.

Briefing Note

The Amendment seeks to address one of the ‘snakes and ladders’ situations under this Bill (see *Hansard*, HL Second Reading 11 Feb 2009 : Column 1135 *per* the Baroness Hanham). Thus, without the Amendment, a person here under Tier 2 of the points-based system (a skilled worker), who interrupts his or her work in order to undertake an MBA and hence switches to Tier 4 of the points-based system (student), will when returning to Tier 2 find him or herself back at square one so far as the route to citizenship is concerned. No reason has been advanced by the Government as to why a person in this situation should be penalised in this way. So far as the terms in which the Government has advanced its citizenship agenda, the current provisions appear to be a wholly unnecessary restriction on reasonable and legitimate choices that do nothing to undermine a person’s commitment and integration to the UK and which may (as in the example given) strengthen the person’s value to the UK.

Tom Brake
Paul Rowen

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Clause 40, page 29, line 31, at end insert ‘or refugee status or humanitarian protection’.

Presumed Purpose

The Amendment would remove the probationary citizenship stage from the route to citizenship for refugees and those granted humanitarian protection. The Amendment will allow Members to probe the Government as to its intentions as regards fees that refugees and those granted humanitarian protection may face in order to progress on the route to citizenship. It should be read with Amendment No. 51 (below).

Briefing Note

Whether or not it is intended that refugees and those granted humanitarian protection will be required to pay a fee to apply for probationary citizenship, the Government proposals will seriously prejudice this group. Currently, refugees and those granted humanitarian protection are not required to pay a fee to apply for indefinite leave to remain (ILR) after 5 years refugee leave (or humanitarian protection). This means that they may reach settlement without the imposition of what is a substantial fee (the current fee for an ILR application is between £820 and £1,020; and citizenship applications cost over £700). Under the new path to citizenship, it will be citizenship that offers the earliest opportunity for a refugee to apply for a settled status – and, unless the Government is to change its current policy, refugees will need to be able to pay the fee in order to do so.

Mr Damian Green
Mr Crispin Blunt

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★ Clause 42, page 34, line 42, at end insert—

‘(c) has participated in activities of benefit to the individual applicant, the host organisation and the wider community.’.

Mr Damian Green
Mr Crispin Blunt

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★ Clause 42, page 34, line 42, at end insert—

‘(6) The activity condition can be completed at any point during an applicant’s arrival in this country or the subsequent probationary citizenship stage.’.

Presumed Purpose

These Amendments will allow Members to probe the Government as to its intentions for the activity condition. Amendment 45 would mean that migrants would not be restricted to the particular activities that may be prescribed by Government, as to which we are largely in the dark. Amendment 46 would make express that a migrant could rely upon activities undertaken at any time he or she was in the UK rather than merely the period of probationary citizenship.

Briefing Note

ILPA is opposed to the imposition of what is a form of compulsory service (the activity condition). As explained in our May 2009 Briefing for Second Reading on the Naturalisation provisions (see www.ilpa.org.uk - Briefings section), the pressures and risks that migrants would face if having to further extend their period on probationary citizenship mean that the activity condition would be compelled. Moreover, risks of exploitation, discrimination and bureaucracy were highlighted by Members from all sides of the House at Second Reading (see *Hansard*, HC 2 Jun 2008 : Columns 183, 187-188, 197, 220, 222 and 232 *per* Chris Grayling MP, Neil Gerrard MP, Tom Brake MP, Chris Huhne MP, Alasdair McDonnell MP, Charles Walker MP and Damian Green MP).

Mr Damian Green
Mr Crispin Blunt

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★ Clause 42, page 35, line 36, after ‘Parliament’, insert ‘This resolution shall be under the affirmative procedure’.

Presumed Purpose

The Amendment will allow Members to probe the Government in relation to the pig in a poke nature of what is being put before Parliament.

Briefing Note

ILPA would highlight, in particular, the extraordinary power to be provided to the Secretary of State by the insertion of new subsection (bc) in section 41 of the British Nationality Act 1981. This would allow the Secretary of State, by regulations, to amend the length of the qualifying periods for citizenship. Members will recall the controversy over the Secretary of State’s variation through the Immigration Rules of the length of the route to settlement for those on the HSMP (see also Amendments Nos. 43 and 44 above). There would be no limit on the additional years that could be added by regulation under new subsection (bc).

Tom Brake

Clause 42, page 34, line 42, at end insert—

- ‘(6) In the case of an applicant with refugee status or humanitarian protection—
- (a) the number of years in the period is 5; and
 - (b) the activity condition is waived.’

Presumed Purpose

This Amendment would remove the activity condition from the route to citizenship for refugees and those granted humanitarian protection. It would also set the qualifying period for citizenship at 5 years for this group.

Briefing Note

Currently, refugee leave and humanitarian protection is granted for 5 years. These groups would then be able to apply for citizenship. Given the removal of the indefinite leave to remain stage, this would be particularly appropriate (see Amendment No. 50, above). It would not, however, address the problem of the introduction of a substantial fee before this group could in future reach a settled status. It would, nonetheless, mitigate somewhat the Government’s continued refusal to agree to allow refugees and those granted humanitarian protection to count their time in the UK pending determination of their asylum claims towards the qualifying period.

Tom Brake
Paul Rowen

Clause 40, page 29, line 23, after first ‘the’, insert ‘average’.

Tom Brake
Paul Rowen

Clause 41, page 31, line 36, after first ‘the’, insert ‘average’.

Presumed Purpose

These Amendments seek to mitigate one of the harshest aspects of the proposed new regime – that any absence from the UK in excess of 90 days or accumulation of 90 days of absence in a single year will require someone to begin the qualifying period all over again. The Amendments seek nothing more than to preserve the current option of averaging out absences.

Briefing Note

The Amendments seek to address one of the 'snakes and ladders' situations under this Bill (see *Hansard*, HL Second Reading 11 Feb 2009 : Column 1135 *per* the Baroness Hanham). Further information is provided in our May 2009 Briefing for Second Reading on the Naturalisation provisions (see www.ilpa.org.uk - Briefings section). By allowing absences to be averaged out, this both mitigates the impact upon those who may be required to be absent from the UK – e.g. to attend to sick or dying relatives; or posted overseas by employers – and removes the 'snakes and ladders' effect.

Tom Brake
Paul Rowen

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Clause 42, page 34, line 42, at end insert—

'(c) is 16 years or under.'

Presumed Purpose

This Amendment would remove the activity condition in respect of those who are aged 16 years or younger at the time of applying for citizenship. It will allow Members to probe the Government as to requirements for the activity condition in respect of children.

Briefing Note

Members should, however, take note that the effect of the Amendment would not be sufficient to remove the effect of the activity condition upon children. Someone may begin his or her journey to citizenship as a child, but by the time he or she is permitted to apply for citizenship he or she may be over 16 years or even over 18 years old. This would not alter the possibility that for the majority of the qualifying period he or she was a child. It would be unreasonable, for instance, if a child were to be granted refugee status (aged 12) or start the route to citizenship as a dependent of a worker (aged 12) but find his or her progress towards citizenship delayed further in order that he or she spend time undertaking community work in order to meet the activity condition for no better reason than by the time he or she was eligible to apply for citizenship he or she had reached an age where the condition was applied.

Tom Brake
Paul Rowen

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Clause 48, page 39, leave out lines 6 to 11.

Presumed Purpose

To remove the requirement of a good character test for those eligible to register as British citizens as Hong Kong war wives and widows.

ILPA supports this amendment.

The Ilois: citizenship

Tom Brake
Paul Rowen

NC1

To move the following Clause:—

‘In section 6 of the British Overseas Territories Act 2002 (c. 8) (The Ilois: citizenship) omit subsection (2).’.

Presumed Purpose

To amend the British Overseas Territories Act 2002 so that Chagossians from the Chagos Islands and Diego Garcia who benefit from its provisions are British citizens *simpliciter* rather than British citizens by descent. A British citizen by descent cannot pass on his/her citizenship to his/her children born outside the UK or a qualifying territory. That the children of Chagossians are born outside the UK or a qualifying territory is no fault of their own but the result of their enforced exile.

ILPA supports this Amendment.

Stateless children of British nationals

Tom Brake
Paul Rowen

NC6

To move the following Clause:—

Schedule 2 to the British Nationality Act 1981
(1) (c. 61) (amendments to Immigration Act 1971)
is amended as follows.

(2) In paragraph 4, omit sub-paragraph (1)(c).

In paragraph 4, for sub-paragraphs (2)(a) and
(3) (2)(b) substitute “shall be registered under it as
a—

(a) British citizen, or

in the case of a child whose mother or father is, or would have been but for their death, a British overseas territories citizen, as a British overseas territories citizen.”.

(4) In sub-paragraph (4) of paragraph 4, for “sub-paragraphs (1) to (3)” substitute “sub-paragraph (1)”.

(5) In sub-paragraph (4) of paragraph 4, after “British Overseas Citizen”, insert “British National Overseas”.’.

Purpose

To ensure that the stateless children born after 1 January 1983 to British nationals (British citizens, British overseas territories citizens, British Overseas citizens, and British subjects) wherever in the world, are entitled to be registered as British Citizens, and that the children of British overseas territories citizens can be registered as both British citizens and British overseas territories citizens.

ILPA supports this Amendment.

Legitimacy

Tom Brake
Paul Rowen

NC7

To move the following Clause:—

- (1) The British Nationality Act 1981 (c. 61) is amended as follows.
- (2) After section 4C insert—

**“4D Acquisition by registration:
legitimacy**

- (1) A person is entitled to be registered as a British citizen if—
 - (a) he applies for registration under this section; and
 - (b) he satisfies each of the

following conditions.

(2) The first condition is that the person was born before 1 July 2006.

(3) The second condition is that the person is not already a British citizen.

(4) The third condition is that the father of the child satisfies any requirements as to proof of paternity prescribed under section 50(9B) of this Act.

(5) The fourth condition is that the person would have been a British citizen had his father been married to his mother at the time of his birth.”.

Purpose

To make provision for those born before 1 July 2006 to British fathers not married to their mothers to register by entitlement as British Citizens.

ILPA supports this Amendment.

Probationary citizenship leave: homelessness assistance

Tom Brake
Paul Rowen

NC8

To move the following Clause:—

‘(1) The Immigration and Asylum Act 1999 (c. 33) is amended as follows.

(2) After subsection (6) of section 118 (housing authority accommodation) insert—

“(6A) For the purposes of this section a person subject to immigration control does not include a person who has probationary citizenship leave.”.

- After subsection (4) of section 119
(3) (homelessness: Scotland and Northern Ireland) insert—

For the purposes of this section a person subject to immigration control does not include a person who has probationary citizenship leave.”.

Presumed Purpose

The Amendment will allow Members to probe the Government as to access to local authority’s support for those who may become homeless during their probationary citizenship.

Qualifying period to provide education and health protection

Tom Brake
Paul Rowen

To move the following Clause:—

- ‘(1) A person under the qualifying period shall be treated as a person settled in the United Kingdom for the purposes of all regulations made under—
- (a) the Health Services and Public Health Act 1968 (c. 46);
 - (b) the Education (Fees and Awards) Act 1983 (c. 40);
 - (c) the Education and Libraries (Northern Ireland) Order 1986 (S.I., 1986/594 (N.I. 3));
 - (d) the National Health Service (Charges to Overseas Visitors) Regulations 1989 (S.I., 1989/306);
 - (e) the Teaching and Higher Education Act 1998 (c. 30);
 - (f) the Education (Student Support) Regulations (Northern Ireland) 1998;
 - (g) the Learning and Skills Act 2000 (c. 21);

(h) the Higher Education Act 2004 (c. 8); and

(i) the Higher Education (Northern Ireland) Order 2005 (S.I., 2005/1116(N.I. 5)).

In section 115 of the Immigration and Asylum Act 1999 (c. 33)

(2) (exclusion from benefits), in subsection (9) after “EEA state”, insert “or a person with probationary citizenship leave”.

Presumed Purpose

This is a version of an Amendment tabled in the Lords that aimed to ensure that if there is to be ‘probationary citizenship leave’ (a measure ILPA opposes as introducing unnecessary complications), those on this leave are treated as citizens on probation and have the rights and entitlements of citizens to education at home student rates, healthcare as for a settled person and to benefits. This Amendment relates to the whole of the qualifying period.

Briefing Note

The effect of introducing a probationary citizenship stage, coupled with the new requirements that may require people to commence the qualifying period all over again (referred to above as the ‘snakes and ladders’ effect), means that the removal of indefinite leave to remain – when most migrants in the current regime gain full access to services and benefits – has very serious potential consequences. Further information is provided in our May 2009 Briefing for Second Reading on the Naturalisation provisions (see www.ilpa.org.uk - Briefings section).

For further information please get in touch with:

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