

BORDERS, CITIZENSHIP AND IMMIGRATION BILL – HL BILL 15**HOUSE OF LORDS COMMITTEE****Clause 37****(Probationary citizenship)**

LORD AVEBURY

LORD WALLACE OF SALTAIRE

Amendment 48 Page 27, line 11, leave out lines 11 to 14**Amendment 49** Page 27, line 11, leave out "probationary citizenship leave" and insert "limited leave to enter or remain"**Purpose:**

These amendments are alternatives. The first would omit the requirement that an applicant for naturalisation have a particular kind of leave at the time of making that application. The second would provide that rather than have 'probationary citizenship leave' at the time of making that application, the person simply had limited leave to enter or remain. The amendments allow peers to probe what 'probationary citizenship leave' adds to the path to citizenship. Whereas consequential amendments would be needed to remove the concept, these are sufficient to raise the matter in debate.

Briefing:

In winding up at Second Reading, Lord West stated:

"I will clarify the position on probationary citizenship. It is a further period of temporary leave..." (Hansard, HL 11 Feb 2009 : Column 1210)

Whereas the Minister is accurate, he has not provided any clarity. What is the purpose in naming two identical statuses by different names? How can that contribute to any clarity for migrants or the wider public? Surely an ordinary onlooker would be likely to think that differently named statuses were different.

In its response to the *Path to Citizenship* Green Paper, February 2008¹, the Government set out several concerns identified by those who have responded to the consultation. An extract from the response is appended to this briefing. The extract reveals that, far from bringing clarity, the probationary citizenship proposal has brought confusion – not only to those who responded to the consultation, but seemingly to those who drafted the Government's response.

Nothing in the response indicates how changing the name of temporary leave midway through the path to citizenship contributes anything towards integration,

¹ The Green Paper, analysis of responses and Government response are available at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/pathtocitizenship/>

contributing to British society or clarity – which are said to be the aims. Moreover, changing the name does none of the things that are said to be of value – requiring migrants learn English, ensuring an understanding of British society, speeding up the process for those who contribute to British society or slowing the process for those who do not obey the law. None of these things require a change in the name of temporary leave midway through the path to citizenship.

However, if the Government believes that the mere name ‘probationary citizen’ sends out a valuable message, there are two alternatives to avoid the confusion of two identical statuses on the path to citizenship going by different names:

- all migrants who come to the UK on a path to citizenship could be granted probationary citizenship immediately; or
- all migrants who have reached the probationary citizenship stage could be granted full access to services and benefits.

ILPA does not support the introduction of probationary citizenship. The term is itself apt to bring confusion. Some of the reasons for this are highlighted in the extract from the Government’s response to the consultation, which is appended to this briefing. People think it means to be a second-class citizen, or that someone has been put on probation because of crime or other bad behaviour. Another reason is that, for some, probationary citizenship may not lead to, and have no connection with, citizenship – e.g. those whose nationality forbids dual citizenship and who become permanent residents.

The Government has indicated that it is prepared to reconsider whether ‘probationary citizenship’ is a title that can be improved – see the appended extract from its response to the consultation. Whether or not it is persuaded to adopt a different title, having two different names for temporary leave only makes sense if there is some difference of substance between the two.

If all migrants who come to the UK on a path to citizenship were given probationary citizenship immediately, this would indicate that these migrants were in a different position to others – i.e. they are on the path to citizenship. Similarly, if a person who switches, from a form of temporary leave which does not provide a path to citizenship to a form which does (e.g. a student who becomes a skilled worker or commences a family relationship), is immediately given probationary citizenship. Any period of temporary leave, which provided a path to citizenship, would be probationary citizenship.

If, however, migrants must commence their path to citizenship on a form of temporary leave which is not probationary citizenship, this status must distinguish itself in some other way. Probationary citizenship would be made different from temporary leave, and closer to citizenship, by granting access to services and benefits during this stage. Peers will note that the period of time by which a migrant could then access services and benefits under this alternative is no quicker than the period of time that exists now.

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APPENDIX

Extract from Government response to the consultation on the *Path to Citizenship* Green Paper (p9)

http://www.ind.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/close_dconsultations/pathtocitizenship/

“The proposal to create a probationary citizenship stage prompted a number of comments.

“Some respondents supported the creation of this new stage, agreeing that it was a good way to ensure integration and contribution to the UK:

“This seems fair to me. I believe that anyone who wishes to become a UK citizen should demonstrate themselves as having integrated into and contributed to British society. It should be mandatory for all those who wish to become citizens to demonstrate an acceptable level of English and an understanding of British society.” (Individual)

“Others raised some concerns. Some felt the stage was unnecessary as the temporary residence stage is already probationary in nature. Others indicated that probationary citizenship could lead to more confusion by creating an extra stage for migrants to pass through.

“I am concerned that in creating a category of ‘temporary citizenship’, Britain risks repeating the mistakes of the past, namely creating multiple categories of citizenship, each with different rights. I am concerned ‘probationary’ citizenship would create confusion, and could potentially lead to the creation of stateless persons.” (Individual)

“Others were worried that the new stage might discourage rather than encourage integration particularly as the name ‘probation’ is associated with the criminal justice system. Some felt that probationary citizenship may create a ‘second class’ citizen status. Some respondents were concerned about the introduction of probationary citizenship leading to the lengthening of the timescale to achieve a permanent status in the country and did not feel that there was a need for this.

*“We continue to believe that this second stage in the journey has a vital role to play in creating a system that is clearer and easier to understand. **We still believe that an explicit stage which recognises that migrants are on a journey and need to continue earning the right to become British citizens is the right way to proceed.***

“In addition – and as will be clear from the following chapter on progression – the probationary citizen stage enables us to introduce a system that has a better match between rights and responsibilities, speeding up progress for those who contribute and make an effort to integrate and slowing down progress for those who do not obey the law. We recognise there are concerns about the language. At this stage we think ‘probationary citizenship’ conveys the appropriate message for what is a stepping stone between temporary residence and British citizenship. But we will continue to consider alternatives as this is debated in Parliament.”