

BORDERS, CITIZENSHIP AND IMMIGRATION BILL – HL BILL 15**HOUSE OF LORDS COMMITTEE****AMENDMENT 45****Before Clause 37**

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

Insert the following new Clause—

"Probationary citizenship leave

- (1) A person with probationary citizenship leave 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;
 - (b) the Education (Fees and Awards) Act 1983;
 - (c) the Education and Libraries (Northern Ireland) Order 1986;
 - (d) the National Health Services (Charges to Overseas Visitors), Regulation 1989;
 - (e) the Teaching and Higher Education Act 1998;
 - (f) the Education (Student Support) Regulations (Northern Ireland) 1998;
 - (g) the Learning Skills Act 2000;
 - (h) the Higher Education Act 2004; and
 - (i) the Higher Education (Northern Ireland) Order 2005;
- (2) In section 115 of the Immigration and Asylum Act 1999 (c. 33) (exclusion from benefits), in subsection (9) after "EEA state" insert "or a person with probationary citizenship leave".

Purpose:

To ensure that if there is to be 'probationary citizenship leave' (a measure ILPA opposes as introducing unnecessary complications – see separate briefing on amendments to clause 37), 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.

Briefing:

Appended to this briefing is a short analysis of the education, health and welfare services and benefits to which migrants may be excluded, highlighting each of the provisions to which the new clause refers.

The future position regarding healthcare is uncertain. In 2004, the Government published a consultation on proposals to exclude overseas visitors from access to primary healthcare. However, no Government response to the consultation was published and the Government's intentions for future access to healthcare for migrants remains uncertain.

Under existing welfare and services provisions, a person required by the new probationary citizenship to spend a greater period on temporary leave would be likely to be denied access to education at home student rates and access to welfare benefits for the duration of that probationary citizenship. This time would be over and above the period someone would currently be excluded from these benefits under the current path to citizenship.

In his letter of 19 February 2009 to peers who spoke at Second Reading, Lord West makes clear that those granted refugee status, humanitarian protection or discretionary leave will, as now, have full access to benefits from the moment their status is granted. As regards others on the route to citizenship, he states:

"...it has been a long-standing policy that those entering the United Kingdom on the 'work' or 'family' routes should be expected to support themselves without access to social security benefits or local authority housing. This supports the clear public view that migrants should be making an economic contribution and should not be a burden on the state. We believe that this policy should be strengthened and clarified so that everyone is clear about which benefits can be accessed by migrants at each stage of the process."

Peers may question how introducing a new and unfamiliar stage (probationary citizenship) will provide clarity rather than confusion – see further ILPA briefing on clause 37.

Lord West's letter continues by listing benefits from which a person granted limited leave to enter or remain is currently excluded¹. He states that:

"Under the new system this will continue. The Borders, Citizenship and Immigration Bill makes no changes to the underlying legislation on access to benefits for migrants. Migrants in the Temporary Residence category have limited leave to enter/remain. Therefore they will be subject to the benefit restrictions. Migrants in the Probationary Citizenship category will also have limited leave to enter/remain; therefore they will be subject to the same restrictions."

The statement that there is no change is, however, incorrect. In the current route to citizenship, migrants move from the stage of limited leave to indefinite leave (referred to as temporary residence and permanent residence in the proposed regime – see clause 45). The Government's proposal is that migrants should move from the stage of limited leave to a stage of more limited leave (called probationary citizenship).

The introduction of this new stage will, therefore, extend the period during which migrants will be excluded from benefits. Moreover, as provided by clause 39, the overall qualifying period is to become of variable length. The period during which

¹ The letter lists income-based jobseeker's allowance, income-related allowance under Part 1 of the Welfare Reform Act 2007, attendance allowance, state pension credit, severe disability allowance, disability living allowance, carer's allowance, income support, tax credits, a social fund payment, child benefit, housing benefit, council tax benefit, social housing or homelessness allowance

migrants will be excluded from benefits may, therefore, be extended by an extra one or three years for those who can and wish to become British citizens.

For those who cannot or do not wish to become British citizens, this period of exclusion may be extended by an extra period of between three and five years. In its response to the consultation on the *Path to Citizenship* Green Paper², the Government stated:

“...we are proposing that those who wish to become permanent residents must reside as a probationary citizen for a longer period than those progressing towards citizenship.”

The length of this extra period is set out in the table at page 14 of the response. The explanation provided by the Government for having a longer period on probationary citizenship before permanent residence may be obtained is said to be to encourage individual's to choose British citizenship. However, for those with nationalities that preclude dual nationality, there is no choice.

Contrary to Lord West's letter, therefore, the position for migrants on the route to citizenship is not unchanged. Rather, migrants may spend anything from an extra one to five years excluded from benefits as explained in the following table.

Type of route to citizenship	Current length of time during which benefits are excluded	Length of time during which benefits would be excluded under this Bill
Family	Two years on limited leave	Two years on limited leave; <u>plus</u> one to three years on probationary citizenship (or three to five years if unwilling or unable to take British citizenship)
Work	Five years on limited leave	Five years on limited leave; <u>plus</u> one to three years on probationary citizenship (or three to five years if unwilling or unable to take British citizenship)

As can be seen the extra period is substantial.

The situation of migrants on the route to citizenship would, however, be made even more precarious because, under the Government's proposals, they would also face a substantial increase in fees before they could access benefits. This is because there would be an extra fee to pay before access would be granted. The following table explains this.

[Note: *The table uses the fees as published for 2009/10³ for single adults who apply by post. For those applying in person the fees are higher. For those applying with dependents there is an additional £50 for each dependent. As there is currently no probationary citizenship stage, there is no published fee. Peers will be able to probe the Government as to the intended fee. For the purpose of the calculations in the*

² The Green Paper, analysis of responses and Government response are available at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/pathtocitizenship/>

³ *Hansard*, HL 12 Feb 2009 : Column WS110-116

table, the fee for probationary citizenship is assumed to be at the same rate as for indefinite leave – i.e. the fee that is currently charged to move from the first stage to the second stage in the path to citizenship.]

	Current route	Proposed route
Fees to pay (before benefits may be accessed)	Application for indefinite leave to remain - £820	Application for probationary citizenship - £820 Application for British citizenship OR permanent residence - £640
Number of fees	One	Two
Total sum of fees	£820	£1,460

By increasing the fees in this way, the Government would create a regime where some migrants may never move beyond probationary citizenship, or may delay the time at which they do, because they cannot afford the fees. Thus, the periods during which some migrants may remain without access to benefits may be even longer than the periods highlighted by the preceding table.

The executive summary to the Green Paper stated at paragraph 5:

“We want to encourage people with the right qualifications and commitment to take up citizenship so that they can become fully integrated into our society.”

At Second Reading, Lord West stated:

“We want to integrate migrant workers into the country in a way that benefits both the migrants and the communities they join.”

However, the Government’s proposals risk doing the very opposite. The most vulnerable face the risk of being pushed further to the margins of society by the double penalty of additional fees and extended exclusion from services and benefits.

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APPENDIX

This provides a short analysis of the services and benefits to which a person may be excluded under the Government’s proposed probationary citizenship, highlighting the relevance of the particular provisions listed in the new clause.

Education:

Immigration status generally affects access to higher education – in particular the right to pay at home student rates. Those excluded from home student rates may have to defer going to university until they can qualify as home students.

The following provisions relate to access to education at home student rates:

- **Health Services and Public Health Act 1968**
- **Education (Fees and Awards) Act 1983**
- **Education and Libraries (Northern Ireland) Order 1986**
- **Teaching and Higher Education Act 1998**
- **Education (Student Support) Regulations (Northern Ireland) 1998**
- **Learning Skills Act 2000**
- **Higher Education Act 2004**
- **Higher Education (Northern Ireland) Order 2005**

Health:

National Health Services (Charges to Overseas Visitors) Regulations

1989: These regulations (as amended) impose an obligation upon hospitals to charge people, whatever their nationality, for health services if they are not 'ordinarily resident' in the UK or they do not otherwise fall within a category under the regulations qualifying for free healthcare.

Free primary healthcare is generally available to anyone living lawfully in the UK on a settled basis. In addition, emergency treatment at a GP surgery, at an Accident & Emergency department (though not in another hospital department) or at a walk-in centre is free to all. Treatment for certain communicable diseases is also free to all (as regards HIV/AIDS, only first diagnosis and connected counselling sessions are free).

Migrants on the path to citizenship may generally be entitled to free healthcare. They will usually be ordinarily resident in the UK.

Welfare:

Section 115, Immigration and Asylum Act 1999: This excludes 'a person subject to immigration control' from listed welfare benefits, unless he or she falls within a category exempted by regulations from this exclusion. The section also defines a person subject to immigration control. Essentially, this covers those who are not European Economic Area (EEA) nationals and either do not have leave to enter or remain (unless they do not need this – e.g. those with the right of abode) or do have leave to enter or remain but it is subject to a condition prohibiting recourse to public funds. Under the Immigration Rules, temporary (or limited) leave to enter or remain is in most cases granted with a condition prohibiting recourse to public funds. Thus, migrants on the path to citizenship currently are generally excluded from benefits by section 115 for the duration of their temporary leave. After their period of temporary leave, this exclusion is removed as the migrant moves to the second stage of indefinite leave which is not subject to any conditions.