



information sheet

Path to Citizenship 2

23rd April 2009

This information sheet updates information given in the December 2008 “Borders, Immigration and Citizenship Bill” and March 2008 “Path to Citizenship” information sheets.

Despite the Government announcement that it would introduce a Borders, Immigration and Citizenship Bill, when introduced to Parliament the Bill was called the Borders, Citizenship and Immigration Bill – see the January 2009 “Borders, Citizenship and Immigration Bill”. A significant part of this Bill concerns whether and how migrants will in future be able to become British citizens (naturalise) or obtain permanent residence (similar to what is now called indefinite leave to remain). This is what this information sheet is about.

Borders, Citizenship and Immigration Bill

On 22 April, the Bill completed its passage through the House of Lords. It will now be passed to the House of Commons to be considered by MPs. A more general update on the Bill is provided in the “Borders, Citizenship and Immigration Bill 2” information sheet.

The Bill’s provisions on naturalisation

Naturalisation is how a migrant in the UK may become a British citizen. Not all migrants are permitted to naturalise. Currently, a migrant will be able to naturalise if the Immigration Rules allow, or the Home Office exercises its discretion to grant, him or her to obtain indefinite leave to remain (ILR). Some key changes that the Bill would introduce are as follows.

The qualifying period (i.e. the length of time it takes to become a British citizen) would change for some, but not for all. The period would also become variable. For example, someone who does not do specified voluntary work may be delayed by up to an additional 2 years. (Details of this scheme, including what work will count are still to be worked out.) The minimum qualifying period (i.e. where the required voluntary work has been done) will be 3 years for certain family migrants (e.g. those with permission to be in the UK to be with their spouses or civil partners) and 6 years for others. These minimum periods are the same as the current qualifying periods, but currently only spouses and partners can benefit from the family route.

The new qualifying period to obtain permanent residence will be 2 years longer than the period for becoming British.

Throughout the qualifying period, someone will need to have a qualifying immigration status. This means that a migrant in the UK who has an immigration status that is not a qualifying status will not be able to become British. If his or her circumstances change, moving from a non-qualifying status to a qualifying status, he or she will have to begin the qualifying period from the point at which he or she acquires the qualifying status. If he or she moves from a qualifying status to a non-qualifying status and back to a qualifying status, the first period on a qualifying status will not count towards the qualifying period. It will not matter how long the migrant has been in the UK in total, whether lawfully or unlawfully. Not all lawful residence in the UK will constitute a qualifying immigration status.

Any absence of more than 90 days during any 12 months period during the qualifying period will mean the person needs to start the qualifying period all over again. Absences can currently be averaged out over the relevant qualifying period, so a long absence in one year can be made up by no absences in the next. This will not be allowed under the Bill’s provisions. Someone who has

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to leave the UK to attend to a sick or dying relative for more than 90 days may, if these provisions are introduced, have to start their qualifying period all over again – even if he or she had almost reached the point of making an application for citizenship.

Throughout the qualifying period, those who have permission to be here to work, must be in continuous employment. What this will mean in practice is unclear. Currently, someone who is permitted to come to the UK in order to work, is allowed a period of time (e.g. 60 days under tier 2 of the points-based scheme) to find new employment if he or she loses his or her job. Domestic workers in the UK may be particularly disadvantaged in that currently they are permitted to change jobs, but only to take another domestic job. A domestic worker who loses or is forced to leave his or her job may be unable to satisfy the continuous employment requirement.

Discretion to waive requirements

Currently, the Home Office has discretion to waive some of the requirements for naturalisation. The Bill proposes that there will continue to be discretion to waive requirements. However, it is not clear how that discretion may be exercised. Of concern is the statement by the Minister, during the passage of the Bill, that:

“...we will not examine the requirement too closely where the absences take place in the early part of the qualifying period – that is, in the entry into the probationary citizenship stage, which has already been examined. We are not concerned about absences from the UK before the start of the qualifying period.” (Hansard, HL Committee 2 Mar 2009 : Column 513)

This gives some indication of when the discretion to waive the requirement about absences may be exercised. However, the answer is unclear. The qualifying period will usually start several years before the ‘probationary citizenship’ stage (which is nothing more than a second period of limited (temporary) leave), so the point of entry to this stage is not early in the period. However, the indication is that the requirement may be strictly applied in respect of absences later in the period. Starting the qualifying period all over again is much more problematic for someone who is already several years into that period than for someone who has just begun.

Transitional arrangements

Transitional arrangements can provide protection for people who are already in a process, which is changed before they have completed it.

During the passage of the Bill, the Government has indicated that when the naturalisation provisions are commenced (implemented) there will be some transitional arrangements. This may mean that some migrants, already in the UK on a route to ILR and/or citizenship, may be permitted to continue that route under the current provisions – escaping the changes introduced by the Bill. However, it is not at all clear for whom the Government is willing to make transitional arrangements; and how much protection will be given.

The House of Lords has introduced an amendment to the Bill. This seeks to protect those who will have reached any of the following stages by the time the new provisions are commenced:

- having ILR
- making an application for ILR
- being within 12 months of being able to make an application for ILR

The Government resisted this amendment. It is understood that the Government will seek to remove this amendment during the Bill’s passage through the House of Commons.