



Briefing on Borders, Citizenship and Immigration Bill 2009

For second reading in House of Lords

Protecting migrant children from poverty

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Contents

Introduction	3
The structure of the bill and implications for access to services and benefits	4
Impact Assessment conflicts with the Government's child poverty objective	4
Comments on specific clauses	5
Clause 39 Qualifying period for qualifying as a British citizen/settled status	5
Clause 37 application requirements: general	5
Clause 38 application requirements: family members etc	6
Differential capacity to satisfy the active citizenship test	7
Part 4 Clause 51 Duty regarding the welfare of children	8
About CPAG	8

Introduction

The Child Poverty Action Group (CPAG) campaigns for the eradication of child poverty in the UK. Poverty can damage children and it is important that those who will or may remain in the UK benefit fully from the financial support and services available to British children. The Public Service Agreement underpinning the child poverty target makes no mention of nationality, birthplace, or immigration status – the target is to eradicate child poverty for all children in the UK. The briefing is intended to help poverty proof the draft legislation.

CPAG does not take issue with the need to manage immigration, nor with rules protecting against payment to visitors and holiday makers. However our view is that control of immigration status should be separate from provision for need. Generally immigrants, even those likely to remain here, are unable to access benefits (including tax credits) unless they have settled status although there are some exceptions to this principle. This places these families at a considerable material disadvantage. Benefits and tax credits are paid to supplement low pay, provide for children, meet special costs such as disability and rent, provide an income for those unable to work either temporarily or longer term. Exclusion from part or all of this material support for those in need must have serious consequences for child poverty and family welfare.

CPAG's briefing thus relates to Part 2 of the Bill which includes the new proposals on citizenship and the new duty regarding the welfare of children.

Part 2 of the bill outlines the conditions to be satisfied to obtain citizenship and refers to the qualifying period prior to obtaining settled status. Two major changes are:

- an increase in the length of time before a person can obtain settled status and;
- the introduction of a probationary citizenship period and an active citizenship test

In general terms the bill increases the period of time for which a family is excluded from full rights from two to at least five years (family members) or eight years (migrant workers and others). CPAG is concerned that this longer qualifying period before the person acquires citizenship or settled status will therefore create more hardship and poverty for immigrant families.

The structure of the bill and implications for access to services and benefits

As it stands the bill is not only skeletal, it is incomplete. The bill is silent on the financial implications for immigrants although an impact assessment of the Earned Citizenship proposals has identified one of three key benefits of the changes as 'delayed migrant access to welfare benefits'. It is unfortunate that the question of access to services (including benefits) is to be dealt with in a separate piece of legislation later this year. CPAG believes this is not helpful to informed debate on the bill or to enable proper scrutiny of new legislation. CPAG believes that at the very least detailed information should be provided to parliament about when migrants will have access to services and benefits within the new structure of the path to citizenship.

Impact assessment conflicts with the Government's child poverty objective

Describing the delayed access to welfare benefits as a gain is completely at odds with the government's objective of halving child poverty by 2010 and abolishing child poverty by 2020. It stands in stark contrast with its decision to introduce a bill during this parliamentary session to enshrine in law the abolition of child poverty. The impact assessment by the Child Poverty Unit on this proposed legislation states that 'children who grow up in poverty can lack opportunities and suffer hardship, deprivation and exclusion...these ...can lead to worse outcomes particularly [in] health and educational attainment...'ⁱ

Child poverty in the UK

Child poverty in the UK: based on the official 2006/7 statistics there are 2.9 million children living in relative poverty; 3.9 million after housing costs (CPAG's preferred indicator).ⁱⁱ Child poverty rates vary enormously by area and according to certain circumstances which place certain children at greater risk of poverty. The highest child poverty rates occur in Inner London and in the North East of England (31% and 48% respectively). Those groups of children at greatest risk of poverty include children with a disabled person in the household, (see below comments on clause 38) and children living in a family headed by someone from a minority ethnic group – more than half of the children are of Pakistani/Bangladeshi origin.

The failure to grant families without settled status or British citizenship access to benefits is a further reason why children in immigrant families may be at greater risk of poverty. This is a risk recognised by the Government in its impact statement when assessing the risk to those coming to the UK via the family route. In reality the responsibility for the spouse and children is privatised, the settled spouse or British citizen must provide for and maintain and accommodate the family that joins him/her regardless of their capacity to do so. This is an approach which places a restrictive immigration policy above family welfare. The government however do not believe there is a significant risk for those who come as well qualified economic migrants to work here.ⁱⁱⁱ We comment on these issues in more detail in relation to the specific clauses of the bill.

Comments on specific clauses

Clauses 37 – 39 deal with the journey to citizenship. The right to obtain permanent residence will presumably be covered by changes to the immigration rules as the right to seek indefinite leave to stay is not currently spelt out in primary legislation. Immigrants will be expected to undergo a period of temporary residence, followed by probationary citizenship and once certain conditions are satisfied can then apply for citizenship or permanent residence status.

Clause 39 Qualifying period for qualifying as a British citizen/settled status

This clause deals with the qualifying period for citizenship and varies according to the grounds of entry.

Where immigrants apply for British citizenship/settled status under clause 37 (economic migrants – immigrants allowed to work here, bring families with them and settle) the default period for qualifying is 8 years.

Where immigrants apply under clause 38 (the family route – they are joining a person already settled or with British citizenship) the default period for qualifying is 5 years.

The above periods can be reduced to 6 and 3 years respectively if the person meets the new condition of active citizenship.

The active citizenship test will not act to exclude a person from obtaining full citizenship but may delay their access to full citizenship or permanent residence. It is a measure for speeding up or slowing down applications and CPAG is concerned that there will be some migrants who may find it more difficult to satisfy this test and will therefore be penalised financially.

Clause 39(3) allows for regulations to be made under s.41 of the BNA 81 to deal with criteria for deciding whether the active citizenship test is satisfied or treated as satisfied. These regulations should be made available in advance of committee stage to enable a meaningful debate.

Clause 37 application requirements: general

This applies to those entering the UK having been given leave to enter for the purposes of taking employment. They are required to have been in continuous employment since the start of that leave, and not to have been absent for more than 90 days in total since the grant of that initial leave. The right to apply for British citizenship applies only once the person has acquired probationary citizenship and has satisfied the active citizenship test or already has permanent residence. The existing provisions that a person must be of good character, have sufficient knowledge of English and of life in the UK continue to apply. The Secretary of State has some discretion to waive these requirements in certain circumstances but we understand that to date there has been some reluctance to exercise this discretion.

The clause defines the types of status that count as a qualifying immigration status.

Families in this category are likely to have difficulties progressing their application if the person admitted for the purpose of employment suffers a serious accident or assault, illness, industrial accident or disease. In such circumstances where the adult is unable to work either indefinitely or for some considerable time the family would have no access to financial assistance if savings are exhausted. The immigration rules exclude such a person from having recourse to public funds (all

forms of support except contribution-based benefits) and similarly with the same exception there will be no entitlement under social security and tax credit law.

CPAG is seeking an assurance that the government will in certain circumstances allow a family to stay without being in breach of the rules and allow access to certain benefits and tax credits in particular for the children and help with housing costs.

Clause 38 application requirements: family members etc.

This sets out the conditions to be satisfied by a person applying for citizenship who is the spouse or civil partner of a person who has settled status or British citizenship. The clause has extended the provision to include 'a person with a relevant family association' – a phrase to be defined in regulations. Draft regulations explaining this term should be made available in advance of the committee stage to enable effective scrutiny.

The conditions to be satisfied before being granted citizenship are the same as for those entering via the employment route.

Where children enter the UK with the foreign spouse/ partner, they have the same status as the foreign spouse. This leaves disabled children in a disadvantaged position. The parents, as long as one has settled status or is British, can claim child tax credit (CTC), but the disability element of CTC is only payable if the child receives disability living allowance. In addition, the settled or British parent can claim child benefit for the child. However unlike child benefit, disability living allowance, a benefit paid to help with the additional costs of disability, cannot be paid for a child who does not have settled status (who is here subject to immigration control for the purposes of benefit).^{iv} This therefore means that under these rules the child tax credit will be paid at the basic rate and without the additional disability element.

At current rates (2008/9 rates) this means the family lose the equivalent of between £66.47 to £115.72 per week for as long as the children do not have settled status. Yet research shows that it costs on average an additional £99.15 a week depending on the degree of disability^v. This lower rate of support will continue for approximately three to five years. How quickly the family can claim the disability allowance depends on the capacity of the foreign spouse to satisfy the active citizenship test.

CPAG is looking for the following assurances:

- that a foreign spouse with caring responsibilities for a disabled child should not be required to satisfy the 'active citizenship test'.
- that disabled children should receive disability living allowance and thus the disability element of child tax credit despite their status. This could be achieved by treating children as having settled status if one parent is British or settled, or by changing the conditions of entitlement to disability living allowance so that it is payable purely on grounds of health rather than subject to an immigration status test. There is a residence test which would mean visitors and others in the UK short term would not qualify.

CPAG welcomes the fact that there is to be discretion where there is relationship breakdown to treat the person as though the relationship subsists and is therefore potentially eligible for citizenship. However the criteria for the exercise of discretion should be available in advance of the committee stage.

If no discretion is exercised in favour of the new lone 'foreign' parent, that parent would have no access to any welfare benefit support or tax credits; she and her child would be destitute. Where there has been abuse or the migrant spouse is the victim of domestic violence there may also be children from the family who *do* have settled status but who could only safely live with the foreign spouse. They would however also be denied any support because it is the parent who must actually claim social security and tax credits. In these circumstances we would welcome a clear statement from government that the children would be allowed to stay in the care of the foreign spouse and that she would be given leave to stay outside the immigration rules so that she could have access to services and benefits for the family.

If a foreign spouse remained in the UK without discretion being exercised in her favour she would be in breach of the immigration rules.

Differential capacity to satisfy the active citizenship test

CPAG is concerned that this may happen where:

- foreign spouses come from relatively deprived communities;
- language is a barrier to participation in some voluntary activities;
- lack of familiarity with the concept and tradition of voluntary activity
- cultural traditions may inhibit participation in some types of activity – in particular that this may disadvantage some women from more traditional communities.

For example a foreign spouse from Canada is more likely to be able to satisfy the active citizenship test than a woman from a rural village in Bangladesh whose command of English (even after tests), possible lack of self confidence and inhibited by conservative traditions may find voluntary activity intimidating.

Moreover the necessary controls around volunteering – for example criminal records checking – will not exist in countries where there are limited records thus discriminating against those who cannot prove their suitability.

CPAG believes that citizenship tests should be applied only *after* settled status or an interim status has been granted and which would give the family access to both services and benefits. The active citizenship test should not be used as a mechanism to speed up or slow down an application for citizenship or settled status and thus with it the access to services and benefits. This places certain groups at a disadvantage.

Part 4 Clause 51 Duty regarding the welfare of children

CPAG welcomes the fact that the Secretary of State must ensure that in carrying out the immigration and nationality functions of the Department there is a duty to ensure that those arrangements take account of the welfare of children. However we believe that this clause contrasts with the desire to make financial savings at the expense of immigrant families and children before they gain permanent status or citizenship by denying access to welfare benefits and some tax credits.

The duty to act to ensure the welfare of children would be even better enforced if the new bill were to incorporate key sections of the UN Convention on the Rights of the Child. All children deserve adequate care and financial support including those whose parents have both yet to acquire settled status or citizenship.

About CPAG

CPAG promotes action for the prevention and relief of poverty among children and families with children. To achieve this, CPAG aims to raise awareness of the causes, extent, nature and impact of poverty, and strategies for its eradication and prevention; bring about positive policy changes for families with children in poverty; and enable those eligible for income maintenance to have access to their full entitlement. If you are not already supporting us, please consider making a donation, or ask for details of our membership schemes, training courses and publications.

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ⁱ Impact Assessment for Ending Child Poverty : Making it Happen 21/01/09

ⁱⁱ Child Poverty: the statistics. Analysis of the latest poverty statistics. CPAG policy briefing October 2008

ⁱⁱⁱ Impact Assessment of Earned Citizenship Proposals Borders, Citizenship and Immigration Bill. See paras 41 and 42

^{iv} Reg 2(1) (a) (ib) Social Security (Disability Living Allowance) Regs and CDLA /708/2007. The Commissioner's decision meant that children of British citizens were now excluded from entitlement and could not qualify under par 1 of Part II to the Schedule to Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000

^v G Preston (ed), *At Greatest Risk* 2005 p83