



**United Nations High Commissioner for Refugees**  
**BORDERS, CITIZENSHIP AND IMMIGRATION BILL**

Parliamentary Briefing  
House of Lords Second Reading

**I. Introduction**

1. The UN Refugee Agency (UNHCR) has been charged by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate and for seeking permanent solutions to the problem of refugees by assisting governments and private organisations.<sup>1</sup> Article 35 of the 1951 Convention Relating to the Status of Refugees<sup>2</sup> ('1951 Refugee Convention') requires that States co-operate with the UNHCR in the exercise of its supervisory function.
2. In view of the Office's supervisory role, UNHCR's interpretation of the provisions of the 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees<sup>3</sup> ('1967 Protocol') are generally considered an authoritative view which should be taken into account by States when deciding on questions of refugee law.
3. UNHCR has previously commented on aspects of the Draft (Partial) Immigration and Citizenship Bill to the Home Affairs Select Committee<sup>4</sup> and Joint Committee on Human Rights.<sup>5</sup> UNHCR would like to take the opportunity of the second reading of the Border, Citizenship and Immigration Bill ('the Bill') to comment on specific aspects of the provisions therein. UNHCR has particular concerns in respect of the provisions of the Bill relating to 'acquisition of British citizenship by naturalisation' (Part 2, Clauses 37-39), which substitutes various provisions of the British Nationality Act 1981 ('BNA 1981').
4. UNHCR has previously observed that securing legal residence is of the utmost importance to the successful integration of refugees and other persons with international protection needs.<sup>6</sup> In this regard, UNHCR has noted that consideration should be given

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<sup>1</sup> Statute of the Office of the United Nations High Commissioner for Refugees, Annex to GA Res 428(V) (1950) (UN Doc. A/1775) paras [1] & [6]

<sup>2</sup> UN General Assembly, Convention Relating to the Status of Refugees (28 July 1951) 189 UNTS 137

<sup>3</sup> UN General Assembly, Protocol Relating to the Status of Refugees (30 January 1967) 606 UNTS 267

<sup>4</sup> UNHCR, 'Draft (Partial) Immigration and Citizenship Bill: Submissions to the Home Affairs Select Committee in response to the Call for Written Evidence of 22 July 2008' (Oct, 2008) ('UNHCR Submissions to the HASC')

<sup>5</sup> UNHCR, 'Draft (Partial) Immigration and Citizenship Bill: Submission to the Joint Committee on Human Rights' (Nov, 2008) ('UNHCR Submissions to the JCHR')

<sup>6</sup> UNHCR Submissions to the HASC, *supra* n 4, para [20], UNHCR Submissions to the JCHR, *ibid*, para [12]

to facilitating the naturalisation of refugees and those with humanitarian protection.<sup>7</sup> UNHCR observes that Article 34 of the 1951 Refugee Convention requires that States ‘expedite naturalization proceedings’ and ‘reduce as far as possible the costs and charges of such proceedings’.

5. UNHCR is concerned that the acquisition of British citizenship proposed by Clauses 37-39 complicates the naturalisation process; in particular, that the naturalisation requirements, as presently outlined in the Bill, may prove too difficult for refugees or those with humanitarian protection to meet and may in fact impair integration and access to a durable solution.

## **II. The required qualifying immigration period and the ‘community activity’ requirement**

6. UNHCR considers that as a matter of best practice, the required period of residence in order to be eligible for naturalisation should not exceed five years in the case of refugees, including those resettled under the Gateway Protection Programme, and those with humanitarian protection. This is in order to restore an effective nationality to refugees and those with humanitarian protection and to promote their full integration into society. Further, UNHCR believes that a cumulative period of the initial five years should, where relevant, include periods spent in the country whilst asylum applications are under consideration.

7. UNHCR wishes to draw attention to the case of those refugees who are resettled to the United Kingdom under the Gateway Protection Programme, the majority of whom have been recognised as refugees by UNHCR for at least five years. They have often spent decades residing in refugee camps and have been identified for resettlement because they are unable to integrate in their country of asylum, or return to their country of origin. Accordingly, the objective of resettlement is to provide these refugees with a durable and permanent solution.

8. UNHCR is therefore concerned with the new required qualifying immigration periods and related conditions of residence to be met by refugees and those with humanitarian protection status in order to achieve naturalisation. The provisions of the Bill would require all refugees, including those resettled under the Gateway Programme, and those with humanitarian protection to pass a qualifying period of five years and an additional ‘probationary citizenship’ period prior to qualification for naturalisation. Applicants could apply for naturalisation after three years of probationary citizenship, or after one year if they are able to demonstrate ‘community involvement’.<sup>8</sup>

9. UNHCR remains of the view that it would be inappropriate to require refugees, including those resettled under the Gateway Programme, and those with humanitarian protection status to spend more than five years before being able to apply for naturalisation. The introduction of a probationary citizenship period would increase the

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<sup>7</sup> *Ibid*

<sup>8</sup> BNA 1981, Sch 1, Para 4B(3)(a)&(4)(a) respectively [as inserted by Clause 39(1) of the Bill]

total period of time before refugees become eligible for citizenship to six or eight years respectively depending on whether the ‘community activity’ requirement is met. UNHCR is particularly concerned for refugees or those with humanitarian protection status who may be unable to participate in ‘community activities’ due to having faced specific forms of persecution or ill-treatment in the past.

10. UNHCR would recommend that the ‘community activity’ requirement include a specific exception recognising that there may be refugees or others who are unable to participate, or are limited in the manner in which they are able to participate, in any required community activity for the reasons set out above.

### **III. The language requirement**

11. UNHCR agrees that language is fundamental to integration and cohesion for communities. In UNHCR’s view, refugees, their family members and those with humanitarian protection should be given the opportunity to learn English following their arrival in the UK. However, UNHCR has previously expressed concern with respect to language requirements imposed on refugees, their families and those with humanitarian protection as a prerequisite to the acquisition of citizenship.<sup>9</sup> Unlike other migrants, refugees and those with humanitarian protection status and their families have not freely chosen to leave their country of origin and are therefore particularly disadvantaged. Prior to their arrival in the UK, many refugees and those with humanitarian protection status will have fled from communities that have been torn apart by conflict, spent years in makeshift refugee camps, or lived in remote areas of the world where education facilities are minimal and access to English language training and the internet is limited.

12. UNHCR observes that the Bill includes a waiver in relation to certain requirements for naturalisation to be met by those that have a family connection. In this respect, those seeking naturalisation on the basis of a family connection may be exempt from demonstrating ‘sufficient knowledge of the English, Welsh or Scottish Gaelic Language’;<sup>10</sup> and ‘knowledge about life in the UK’<sup>11</sup> if,

*‘the Secretary of State considers that because of A’s age or physical or mental condition it would be unreasonable to expect A to fulfil that requirement or those requirements’.*<sup>12</sup>

13. Given the above precedent, UNHCR recommends the inclusion of a similar waiver for refugees, their family members and those with humanitarian protection in circumstances where it would be unreasonable to expect the language requirements to be fulfilled.

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<sup>9</sup> UNHCR Submissions to the HASC, *supra* n 4, para [24], UNHCR Submissions to the JCHR, *supra* n 5, para [15]

<sup>10</sup> BNA 1981, Sch 1, para 3(1)(d) [as substituted by Clause 38(3)]

<sup>11</sup> BNA 1981, Sch 1, para 3(1)(e) [as substituted by Clause 38(3)]

<sup>12</sup> BNA 1981, Sch 1, para 4(f) [as substituted by Clause 38(4) of the Bill]

#### IV. Qualifying immigration status and penalisation for illegal entry

14. UNHCR has repeatedly expressed the view that asylum seekers should not be penalised for illegal entry.<sup>13</sup> UNHCR observes that Article 31 of the 1951 Refugee Convention prohibits States from imposing penalties on refugees ‘on account of their illegal entry or presence’. In this respect, the criminalisation of asylum seekers by the UK authorities for illegal entry has been the subject of UNHCR comments on a number of occasions in the recent past.<sup>14</sup>

15. In relation to acquisition of British citizenship, UNHCR is concerned that penalisation for illegal entry may operate to prolong the period in which refugees or those with humanitarian protection will be able to apply for naturalisation. As part of the requirements the Bill would require applicants to demonstrate that they ‘were not at any time in the qualifying period in the UK in breach of the immigration rules’.<sup>15</sup>

16. UNHCR would urge that the Bill be amended to ensure that penalisation for illegal entry does not operate to affect the ‘qualifying immigration status’ period.

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For further information please contact:

Laura Padoan, External Affairs, UNHCR London, at [padoan@unhcr.org](mailto:padoan@unhcr.org); 020 7759 8092

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<sup>13</sup> UNHCR, ‘Comments on Home Office Asylum Policy Instruction (API) on Section 31 of the Asylum and Immigration Act 1999 and Article 31 of the 1951 Convention Relating to the Status of Refugees and UNHCR third party intervention in the case of *R v Asfaw* [2008] UKHL 31 [2008] 2 WLR 1178’, available at: <http://www.unhcr.org/refworld/docid/483d1222.html>

<sup>14</sup> See, UNHCR, ‘Asylum and Immigration (Treatment of Claimants, etc.) Bill, Lords 2nd Reading: UNHCR Briefing’ (Dec, 2003), and UNHCR, ‘Comments on the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Clause 2 Draft Guidance of June 2004’ (July, 2004), available at: <http://www.unhcr.org.uk/legal/position.html>

<sup>15</sup> BNA 1981, Sch 1, Para 1(2)(f) [as substituted by Clause 37(2) of the Bill].