



RUNNYMEDE TRUST¹ WRITTEN CONSULTATION RESPONSE TO

The Path to Citizenship: the next steps in reforming the immigration system (Home Office/BIA)

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INTRODUCTION

The Runnymede Trust welcomes this opportunity to respond *The Path to Citizenship* Green Paper consultation process.

Runnymede is an independent action research and social policy charity focused on equality and justice offering timely, practical and strategic thinking on realizing the full potential of cultural diversity in Britain. Runnymede's core mandate since inception has been to challenge racial discrimination, to influence anti-racist legislation and to promote the inclusion of Black and minority ethnic people and communities in all areas of life in Britain and the rest of Europe. We fulfil our mandate by providing information, research and advice to promote the value of diversity in all of our communities and to encourage the development of a successful multi-ethnic society -- "a society where citizens and communities feel valued, enjoy equal opportunities to develop their talents, lead fulfilling lives and accept collective responsibility, all in the spirit of civic friendship, shared identity and a common sense of belonging" (from the Runnymede report on *The Future of Multi-Ethnic Britain*).

We welcome the laudable aim of making the immigration system clearer, more streamlined and easier to understand. We agree, in particular, with the objective of giving both immigration applicants and the wider public clarity about the different stages of the newcomer's journey to citizenship.

These proposals are reasonably clear but **we do not believe that they are at all the right way for the UK to go**. We are deeply concerned about the substantive content of the proposals, the conceptual and

¹ The Runnymede Trust also consulted members of its Academic Forum, several of whom have also asked to be signatory to this consultation response. They are: **Dr. Suki Ali**, Lecturer, Department of Sociology, London School of Economics; **Professor Becky Francis**, Professor of Education, School of Education, Roehampton University; **Professor Ralph Grillo**, Emeritus Professor of Social Anthropology, School of Social Sciences and Cultural Studies, University of Sussex; **Professor Itesh Sachdev**, Professor of Language and Communication, Director of SOAS-UCL Centre of Excellence for Languages of the Wider World and Head of SOAS School of Languages, School of Oriental & African Studies; and, **Professor John Solomos**, Head of Department, Department of Sociology, City University.

ideological framework in which they are situated, and the extremely poor quality of evidence as to the need for the sorts of measures outlined. We believe, based on our 40 years of expertise as an organisation working on issues to do with racial discrimination, immigration and human rights, that **if these proposals were enacted and implemented, they would result in unfair discrimination on a wide range of grounds – race (including ethnicity and nationality), religion or belief, gender, transgender, age, sexual orientation, disability, as well as by class, income and region – and they would violate fundamental human rights.**

Before we move on to answer all of the specific questions in the proforma, we feel it is necessary to raise a number of points regarding: (1) the overall impact of the proposals and the place of the UK in the European Union as regards integration policy; (2) the overarching concept of 'earned citizenship'; and, (3) the way in which the views of the public were sought and used in justifying the proposals in chapter 2 of the Green Paper.

(1) The overall impact of the proposals

The Green Paper provides a number of examples of practices of other countries that suggests that the proposals presented in *The Path to Citizenship* are in line with the current law and practice in many other member states of the European Union. However, an analysis of the proposals using the *Migrant Integration Policy Index* (MIPEX)² does not concur:

By way of background, the MIPEX Index uses 140 indicators to compare the legal provisions in place across Europe to promote the integration of non-EU migrants. The index is based on normative framework derived from the highest European standards expressed in human rights, anti-discrimination, and social, economic and civic inclusion laws and practices — laws which the UK played active and leading roles in creating and to which we are signatory (with some notable derogations). Though benchmarking is commonly used in the private sector and attracting growing interest in the field of justice, security and freedom, the exercise remains a relatively new phenomenon for immigrant integration. Whilst there are a number of initiatives around where indicators are just starting to develop, the second edition of MIPEX, published September 2007, has established it as a constant and reliable biannual stocktaking with the ability to track policy advances and reversals.

The results of the MIPEX analysis enable the identification of national areas of strength and weakness for promoting integration of migrants and the nexus between Community and national law. When applied to these proposals, the following results were found:

"The UK's score on access to nationality would drop as much as 15 points, falling from its position as the 5th most favourable for promoting integration to 10th, just around the EU average. This drop comes from a slight change in the waiting periods for naturalisation and a dramatic one in the conditions.

The UK's score on eligibility would lose its tie for 5th place with IE, since the probationary period would make naturalisation longer for most first-generation migrants.

In March 2007 the UK imposed conditions for naturalisation that were no better or worse than those in most European countries. Given the proposals on economic resources, integration, good character, and active citizenship, the conditions for naturalisation in the UK could go from this "middle of the road" (score 57) to becoming some of them most onerous in Europe, on par with Austria and Denmark (a score of 26)."

² Migration Policy Group (2007) *Migrant Integration Policy Index*. Brussels: Migration Policy Group and British Council.

The type of rules a country will adopt to regulate entry and citizenship will depend to a considerable degree on the country's experience and expectations but also on its vision for the society it is seeking to build. While identifying integration as a goal, many of the ways in which this is meant to be achieved may, in our view, be counter productive. The range of additional burdens and restricted rights to be extended over an increased number of years is more likely to alienate rather than to integrate people who choose to come to the UK to work or to join their families.

(2) The overarching concept of 'earned citizenship'

The overarching concept of 'earned citizenship' is introduced in the Green Paper where it is stated several times and in different ways that this piece of the immigration reforming process is about "...putting British values at the heart of the system." (p.9) and designed to "...contribute to the government's wider agenda of reinforcing shared values..." (p.11)

This new concept is set in a context of diversity – by which seems mainly to mean racial and ethnic diversity more than anything else – and of promoting shared bonds for the purpose of building community cohesion and ensuring that some communities don't isolate themselves or be mainly inward looking. The Green Paper states that "The key feature of the proposed system is that it aims to increase community cohesion by ensuring all migrants can 'earn' the right to citizenship and asks migrants to demonstrate their commitment to the UK by playing an active part in the community." (p.12)

We are deeply concerned with the way in which this idea is presented. Throughout the Green Paper there is a negative and accusatory tone that is both unfair and unwarranted. This alone is likely to engender resentment and therefore create tension and *reduce* cohesion in our view. Indeed, the rhetoric of 'earning rights' or as it was put in a public letter from the BIA on 20 February 2008, 'matching the benefits and entitlements of migrants with the contribution they make to the UK', implies that immigrants are undeserving and suspect by default.

The Green Paper makes much about the net positive contribution of migrants to the UK economy, but then goes on to argue that there is a 'transitional' negative impact on 'our communities and public services' and argues for additional fees to be placed on migrants as part of the application process. It refers to obeying the law in such a way as to imply a propensity on the part of migrants toward criminal behaviour, evidence for which there is simply none. And it implies that migrants don't want to integrate, particularly to learn English, which, as we evidence in this response, is not the case. The tone which accompanies the concept of earned citizenship in this Green Paper is, in our reading, both unwelcoming and offensive to migrants – aspirant citizens – and completely unnecessary.

What the Green Paper fails to adequately acknowledge is that successful and positive integration of migrants rests on the concept of equal opportunities – in social and in civic terms – not on extending periods of insecure immigration statuses and increasing the number of hurdles to be overcome – hurdles for which evidence of their effectiveness as a contributor to integration and cohesion is at best patchy and inconclusive.

(3) The views of the public and a poor evidence base

In chapter 2, it is suggested that the proposals are a response to the views of the British public, gleaned from a series of nine public meetings ('listening sessions') at which the public expressed its views on "successful integration; how potential citizens should demonstrate their commitment to Britain; and celebrating citizenship". In our reading of the Green Paper, we felt strongly that there was a 'this is what

the British public wants' rhetoric running throughout and which seemed to provide the whole rationale for the proposals. We are skeptical about the reliability of the evidence, for a number of reasons.

First, we are surprised at the claim that a series of nine meetings should in some way be seen as representative of the views of all Britons. This is contrary to the very basic principles of sociological inquiry. The Green Paper does not explain why this method was chosen, nor how the Border and Immigration Agency justifies the quantum leap it makes in presenting methodologically dubious data as representative of the nation as a whole.

Second, the methodology and analysis suffer from a basic lack of transparency. How people were picked to participate in these nine meetings is not explained, nor whether the groups were representative in terms of ethnicity, nationality, religion or belief, gender, transgender, age, sexual orientation, disability or social status. And from what we can glean from colleagues in the sector across the country is that it appears that community groups and service providers that work with migrants on the ground were not invited to participate or contribute to this series of public meetings. Indeed, the Green Paper gives no consideration to the views expressed by expert bodies working intensively with migrant communities, and which consistently report a strong commitment to learning and improving English standards, and integrating into all aspects of the labour market.³ Nor is the actual content of the meetings explained; rather, the reader is given sound bites from members of the public without a clear sense of collective sentiment. Indeed, many of the quoted statements directly contradict the proposals, suggesting the views of 'the British public' are far more nuanced and complex than the Green Paper implies.

Third, we question the impartiality of the organisation and analysis of the meetings, which were arranged by the Central Office for Information (COI), on behalf of the Border and Immigration Agency.

Fourth, the wealth of reliable evidence that actually *does* exist is ignored or cherry-picked. We will refer to the profusion of counter-evidence throughout our response, which further highlights the selective nature of the evidence produced in the Green Paper.

In spite of these methodological inconsistencies and deficiencies, the Green Paper deduces from these meetings that 'the public' declared their concerns relating to migration to be about:

- the ability of migrants to speak English (to assist with the integration process);
- ensuring migrants 'pay their way' by working and paying tax and not being able to rely on benefits; and
- making sure migrants were law abiding and, if not, there were serious 'consequences'

In addition, the Green Paper states that 'the public' broadly offered its support for:

- the idea of 'provisional citizenship'; and
- a system requiring migrants to show the commitment to the local community before they can become citizens, above and beyond what can be expected of British citizens

It is our view that the proposals contained in the Green Paper have been introduced on the back of highly questionable evidence.

³ For a review of the viewpoints of civil society organisations on these issues, see the evidence submitted to the House of Lords Inquiry on the Economic Impact of Immigration at <http://www.publications.parliament.uk/pa/ld/ldeconaf.htm#evid>

CHAPTER 3: THE ARCHITECTURE OF THE SYSTEM - WHO CAN QUALIFY FOR CITIZENSHIP AND THE STAGES IN THE JOURNEY

3.1. Are all parts of the system set out here (i.e. the three routes to citizenship and the three stages in the journey) clear and easy to understand?

As noted in our introduction, we welcome the laudable aim of making the immigration system clearer, more streamlined and easier to understand. We agree, in particular, with the objective of giving both immigration applicants and the wider public clarity about the different stages of the newcomer's journey to citizenship.

These proposals are reasonably clear but we do not believe that they are at all the right way for the UK to go. We are deeply concerned about the substantive content of the proposals, the conceptual and ideological framework in which they are situated, and the extremely poor quality of evidence as to the need for the sorts of measures outlined. We believe, based on our 40 years of expertise as an organisation working on issues to do with racial discrimination, immigration and human rights, that if these proposals were enacted and implemented, they would result in unfair discrimination on a wide range of grounds – race (including ethnicity and nationality), religion or belief, gender, transgender, age, sexual orientation, disability, as well as by class, income and region – and they would violate fundamental human rights.

3.2. Do you think the concept of 'probationary citizenship' is a good idea?

No. We would argue that the concept itself, and the terminology, are both deeply flawed. Firstly, 'probationary citizenship' is a contradiction in terms. As well as certain duties, citizenship in liberal democracies bestows certain rights, most prominently the right to full and equal participation in the political process. Should this be lacking, it is no longer appropriate to speak of citizenship. Although the right to full political participation is not mentioned in the Green Paper, paragraph 122 states that only when full citizenship is obtained will a migrant enjoy equal rights, including full voting rights, suggesting that a 'probationary citizen' would not enjoy equal rights in the political process. We therefore suggest that 'probationary citizenship' would amount to second-class citizenship, which is generally regarded as a violation of human rights.

A concept of something akin to temporary residence, with a period of 4-5 years (less for family class migrants) before qualification for access to citizenship, is the norm in most western democracies. This period is usually itself seen as the period during which migrants come to learn about and understand the society in which they are living and make decisions about whether or not they will stay for the long-term, and the form which their commitment to their new society will take, i.e. permanent resident or citizen.

The Green Paper proposal for longer periods for being a 'temporary resident' (5 years for economic migrants and refugees, 2 years for family-class immigrants), and the possibility of being held up for up to a further 5 years (3 for family-class immigrants) as a 'probationary citizen' means that applicants could spend up to 10 years on this 'path to citizenship,' making it one of the longest and most onerous systems of access to citizenship in the European Union, as we pointed out in our introduction.

The Green Paper states that the purpose of the extended period of time to progress to citizenship and the introduction of the distinct stages of temporary residence and probationary citizenship are to (1) make the process clear to all, and (2) to encourage newcomers with the right values to become British citizens rather than permanent residents, so they can become fully integrated into our society' (para 98

(2) and (3)). Introducing a system that will lengthen the time it takes an individual to qualify is surely counter-productive to these stated goals.

Indeed, the Green Paper states that the “key feature of the proposed system is that it aims to increase community cohesion by ensuring all migrants ‘earn’ the right to citizenship” (paragraph 45). If community cohesion is the goal, ‘probationary citizenship’ – with its rhetoric of ‘earning’ rights – will be counter-productive. The term – especially its connotations with criminal justice policies – implies that immigrants are undeserving and suspect by default. We have already commented on the general tone of the document, which we find negative and accusatory to an extent that is both unfair and unwarranted. This is likely to engender resentment and therefore create tension and *reduce* cohesion in our view.

What the Green Paper fails to adequately acknowledge is that successful and positive integration of migrants rests on the concept of equal opportunities – in social and in civic terms – not on extending periods of insecure immigration statuses and increasing the number of hurdles to be overcome – hurdles for which evidence of their effectiveness as a contributor to integration and cohesion is at best patchy and inconclusive. For example, one of the clearest findings in Runnymede’s Community Studies programme⁴ has been that economic migrants generally have strong instrumental reasons for wanting to integrate to British society. Integration enhances prospects on the labour market, which is a primary reason for economic migration.

But it is not only that this potentially represents a long and onerous process, but also that, given the levels of restriction to public benefits beyond those based on National Insurance contributions proposed and the proposed requirement for individuals’ to demonstrate continuous, sustained levels of self-support, income and tax/NI payments, etc., the extended period of time it may take migrants to complete the ‘path to citizenship’ puts all applicants at risk of greater failure. Quite simply, people’s lives and circumstances change, things happen, there are few of us who could go for 10 full years without there having been some form of personal, family or financial/job related crisis, and this system will not be sympathetic to this reality of life at all. Further, disadvantaged groups would also be a greater risk of failure than others, and this is likely to include Black and minority ethnic groups disproportionately – resulting in indirect discrimination.

3.3. Migrants of certain nationalities may choose not to become British citizens because of restrictions on holding more than one nationality in the law of their country of origin. Do you think that a permanent residence category should be provided for persons in this situation?

Yes, a permanent residence category must be provided for persons who face such restrictions. Indeed, there should also be a category of permanent residence for those who choose not to take up citizenship for any other reason, personal choice included – being a permanent resident is still a major commitment to a polity and a society and the possibility, as implied by this question, that third country nationals will no longer have an option to choose citizenship or permanent residency is alarming.

Beyond the implied loss of personal choice (personal freedom), there also remain an important set of issues regarding individuals’ relationships to other states beyond rights to dual citizenship. There are a range of policy areas whereby an individual who becomes a citizen here may lose out on in his/her entitlements in his/her country of origin or other countries where they may have worked and are entitled to, for example, state pensions, personal pensions set up and invested in there, or other

⁴ Runnymede’s series of Community Studies aims at understanding the changing nature of diversity in Britain by focusing on communities; their demography, links to civil society, and key political and social issues. To date, we have conducted studies on Bolivians, Vietnamese, Francophone Cameroonians, Romanians, Thais, Nepalese and South Africans. See <http://www.runnymedetrust.org/projects/communityStudies.html>

benefits/entitlements that may be negated by taking up citizenship here. The government has not demonstrated that it has considered all these possible scenarios and the impact this would have on applicants overall, or on certain groups of applicants where the impact may be greater, those from Black and minority ethnic groups, for example.

Again, the point of this part of the Green Paper proposals is said to be to encourage greater integration. No evidence is offered to verify that there is a causal link between formal citizenship status and integration. Nor is there evidence to suggest that those who take up citizenship, as opposed to permanent residence, contribute more to a society, feel more bound to a society and are better 'denizens'.

3.4. Do you think the 'UK ancestry' route should be abolished?

Yes. As the Discrimination Law Association have aptly pointed out in their response to this consultation, this rule was introduced to regulate entry under the Commonwealth Immigrants Act 1968 and its obvious intentional indirect racial discrimination – allowing entry for British citizens in the Old Commonwealth (mainly white) but excluding those residing in the New Commonwealth (mainly Black and Asian) – has been a cause of shame for the UK. We would welcome its abolition.

Indeed, again as the Discrimination Law Association have pointed out, in the case of Secretary of State for Defence –v- Mrs. Diana Elias [2006] EWCA Civ 1293, an identical rule that was used to determine who, as UK citizens imprisoned by the Japanese during WW II should be entitled to compensation was held to be indirectly discriminatory on racial grounds. The High Court also found that by introducing such a rule when it was aware of its race equality duty the Ministry of Defence was in breach of its statutory duty under the Race Relations Act to eliminate racial discrimination and to promote racial equality.

3.5. Do you think the 'retired persons of independent means' route should be abolished?

Unsure. The abolition of the 'retired persons of independent means' route may result in a scheme regulating immigration that is age discriminatory, excluding older non-EEA nationals, few of whom are likely to enter under the Points Based System, from rights to reside in the UK. The lack of a full and proper Equality Impact Assessment to accompany the Green Paper makes it difficult to assess this. Clearly this is an issue that government must investigate further as part of the required EqlA, which we strongly urge should be conducted before any of the proposals in this Green Paper are considered further.

CHAPTER 4: EARNING THE RIGHT TO STAY - WHAT WE REQUIRE OF MIGRANTS TO PROGRESS THROUGH THE SYSTEM

4.1. Are the proposed minimum time periods for a migrant to complete the journey to British citizenship suitable?

- a. 6 years for economic migrants (under Tiers 1 and 2 of the PBS) and their dependants**
- b. 3 years for family members of British citizens/permanent residents**
- c. 6 years for migrants given protection (those granted refugee status and humanitarian protection) and their dependants**

No: the time period should be decreased for (a), (b) and (c). Progress towards a secure immigration or citizenship status should be reasonably rapid, and certainly drawn out no longer than the current two years for family class applicants and five years for migrant workers. As we have argued in question 3.2 above, the distinct stages of temporary and probationary citizenship are conceptually flawed and

unnecessary, and the potential lengthening of the time it takes to acquire citizenship is unjustified. In our view a stronger case exists for a reduction in these time scales rather than an extension, with migrants being brought more rapidly to the point when they can plan their future lives in Britain with more confidence and in more security. Again, successful and positive integration of migrants rests on the concept of equal opportunities – in social and in civic terms – not on extending periods of insecure immigration statuses and increasing the number of hurdles to be overcome – hurdles for which evidence of their effectiveness as a contributor to integration and cohesion is at best patchy and inconclusive.

Equally important to recognize is the reality that the proposed system will mean that many, perhaps even the majority, of migrants will not be able to meet the requirements to pass through the system within the minimum time periods proposed, and the extra years are far too long and will themselves put people at greater risk of failure and render them more vulnerable to exploitation. There are a range of concerns that we have in relation to this.

First, a longer period of up to 10 years to demonstrate financial stability and tax/NI contributions puts people at greater risk of failing to make it through this process generally as a simple fact of life, as we argued in more detail in our response to question 3.2.

Second, as the Migrant Rights Network aptly points out in their briefing on the Green Paper⁵, there is a known association with higher risks to the individual migrants and conditional immigration residence statuses (statuses which can be revoked by the authorities at any point). In this regard, family dependents living with domestic violence, most often women and children, would be affected by this – feeling powerless to protest against abuse because of fear of loss of residence rights for example. This raises human rights issues connected with the ‘positive obligations’ public authorities have to protect people from abuse, including under the prohibition of inhuman and degrading treatment (Article 3 of the European Convention on Human Rights), the right to respect for private and family life (Article 8), and, in extreme cases, the right to life (Article 2). The protracted time period from the date of entry to granting of citizenship of up to seven years (for those joining British spouses) is likely to prolong the stress suffered by partners in violent relationships, since the proposals seem to expect the continuation of family life with a partner to be tested up to the point of filing (and processing) an application for citizenship or permanent residence. Further it would be a serious wrong and breach of the UN Convention on the Rights of the Child to adopt a procedure that is likely to expose children to abusive and violent behaviour within their family.

Migrant workers would also be at greater risk of exploitation by employers and in work situations – where unscrupulous employers operate we can be sure that economic migrants will be at greater risk of threat of loss of job if they object to working conditions or pay for example. According to the Joseph Rowntree Foundation, many migrant workers are subjected to such levels of exploitation that “they meet the international legal definition of ‘forced labour’”.⁶ Indeed, 5,500 Filipino agency nurses came to Britain under false pretences in 2003, and were required to work 60 hour weeks to pay off extortionate contract fees.⁷ The majority of employers are, of course, not unscrupulous. But the desire for business to increase profit or at least reduce costs is often passed on to the employee. Economic migrants, many who work in industries that are known to have poor working conditions and low pay (though perhaps within the law), will be effectively put into a position whereby they are willing to accept lower pay and/or poorer working conditions over the risk of a period of ‘unemployment’ appearing on their ‘record’ and leading to a longer period of ‘probationary citizenship’ or worse, revocation of permission to remain, particularly within the first 5 years. For example, the TUC reports a “range of ways in which employers

⁵ Migrant Rights Network (March 2008) *The Path to Citizenship: Comments on the Home Office Green Paper*. London: MRN.

⁶ Gary Craig et al. (2007) *Contemporary Slavery in the UK: Overview and Key Issues*. York: JRF.

⁷ Ibid.

are currently able to use their real or perceived power within the current work permit system to exploit migrant workers” and quote an employment rights officer: “in some instances they would be made illegal by the employer who refuses or fails to renew the permit and basically then they are not paid and the conditions are worsening because of the threat of deportation”.⁸

In addition to being vulnerable to exploitation is the risk of discrimination – both for individual migrants and for British citizens who may be perceived by employers as ‘foreign’ based on racial stereotyping practices that are still common today. With new, far more onerous requirements for employers to check the immigration status and right to work of their employees and regularly re-check documents for those who have conditional rights, it is likely that employers will regard migrant workers, who will be expected to spend many years without permanent right to remain in the UK, as less than their first choice employees. If a migrant worker loses his or her job, their ability to find other work will be hampered by employer concerns about status. This may lead these migrants to accept lower pay, poorer conditions and render them vulnerable to the exploitation noted above. They may come in as a health care professional, but they may well end up as a night cleaner due to discrimination.⁹

British citizens, in particular Black and minority ethnic citizens (and permanent residents), may also be affected in a similar way. Although we would all like to believe that employment practices have improved, that stereotyping is a thing of the past and that direct discrimination does not take place, the reality is different.¹⁰ It is reasonable to assume that employers will also scrutinize British citizens who they perceive to be possibly ‘foreign’ and also discriminate against these citizens as they might against migrant workers.

The Home Office has not asked for responses to issues relating to the use of **English language tests** and the **‘Life in the United Kingdom’ test**, but there are important points, and there is evidence from our recent community studies series that we wish to point out.

Our reading of the Green Paper is that those not able to pass the language test and the ‘Life in the UK’ test within the five years of the proposed ‘temporary resident’ period will be required to leave the UK. If the categories exempted from the tests at this point do not pass at the stage of probationary to full citizenship or permanent residence, they will also be required to leave.

We are in favour of assisting migrants to learn English, and the development of services which do so. However, making knowledge of English a requirement for citizenship is laden with dangers, and we are concerned about a number of factors in the proposals which will invite human rights violations.

In this instance, we would like to draw the government’s attention to the group of migrants at greatest risk of human rights violations, namely the partners of British citizens or people with permanent residence. Under the current system, they are tested after two years residence in the country for the ESOL entry 3 level to progress to a settled status (‘Indefinite Leave to Remain’). Failing this test, a migrant is permitted to remain on an extended temporary basis and given the opportunity to take the test again. The Green Paper proposals suggest that this will not be the case in the future, and that those failing tests at the stage of probationary citizenship *will be required to leave*.

⁸ TUC Commission on Vulnerable Employment (2008) *Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment*. London: TUC.

⁹ Jessica Mai Sims (2008) *Empowering Individuals and Creating Community – Thai Perspectives on Life in Britain*. London: Runnymede Trust.

¹⁰ Sandra Sanglin-Grant (2005) *The Space Between: From rhetoric to reality on race equality in the workplace*. London: Runnymede Trust.

The Green Paper does not seem to take into account that many of these relationships will, in the course of two years, produce children who will be British citizens by birth. The proposals will seriously threaten these families, raising issues under Article 8 of the European Convention on Human Rights. The principle of a requirement of adequate English language will impact on the quality of life of many families; the stress and anxiety associated with the threat of failure will hang like a shadow not only over the migrants themselves, but their spouses and children as well.

Finally, we find it contradictory that the government proposes to introduce language as a requirement for citizenship at the same time as it cuts funding for ESOL provision. Again, spouses are particularly hard hit. In our recent Community Study focusing on the Thai community,¹¹ some women involved in the sample said that the cost of classes meant they had to take up employment and found balancing employment, child care and course commitments extremely difficult.

4.2. Are the proposed minimum time periods for a migrant to complete the journey to permanent residence suitable?

- a. 8 years for economic migrants (under Tiers 1 and 2 of the PBS) and their dependants**
- b. 5 years for family members of British citizens/permanent residents**
- c. 8 years for migrants given protection (those granted refugee status and humanitarian protection) and their dependants**

No: the time period should be decreased for (a), (b) and (c). For those who choose not to become British citizens because of restrictions on holding more than one nationality in the law of their country of origin, this represents an unfair and unjustified penalty. For these groups of migrants, there is a high probability of real discriminatory impact on racial and nationality grounds, possibly religion or belief as well, in the way in which this would affect certain groups over others.

For those who might choose to be a permanent resident rather than a citizen, there also appears to be no real justification for the increased time periods. The only justification the Green Paper offers is that the government *believes* that this will aid integration and by extension cohesion. There is simply no evidence to support this claim of a causal link between formal citizenship status and integration. Nor is there evidence to suggest that those who take up citizenship, as opposed to permanent residence, contribute more to a society, feel more bound to a society and are better 'denizens'. We draw attention to our previous statement that the successful and positive integration of migrants rests on the concept of equal opportunities – in social and in civic terms – not on extending periods of insecure immigration statuses and increasing the number of hurdles to be overcome – hurdles for which evidence of their effectiveness as a contributor to integration and cohesion is at best patchy and inconclusive.

4.3. Should partners of British citizens or permanent residents be required to demonstrate that they are in an ongoing relationship with the citizen/permanent resident before progressing:

- a. from the probationary citizenship stage to British citizenship?**
- b. from the probationary citizenship stage to permanent residence?**

No for (a) and (b). As we pointed out in our response to question 4.1, there is a known association with higher risks to the individual migrant and conditional immigration residence statuses (statuses which can be revoked by the authorities at any point). In this regard, family dependents living with domestic violence, most often women and children, would be affected by this – feeling This raises human rights issues connected with the 'positive obligations' public authorities have to protect people from abuse, including under the prohibition of inhuman and degrading treatment (Article 3 of the European Convention on Human Rights), the right to respect for private and family life (Article 8), and, in extreme

¹¹ *ibid.*

cases, the right to life (Article 2). to protest against abuse because of fear of loss of residence rights for example. The protracted time period from the date of entry to granting of citizenship of up to seven years (for those joining British spouses) is likely to prolong the stress suffered by partners in violent relationships, since the proposals seem to expect, as this questions implies, the continuation of family life with a partner to be tested up to the point of an application for citizenship or permanent residence. Individuals who have joined British partners in good faith, built lives for themselves here, have children and other relations here, but then find themselves in a violent situation should not be penalized in this way. Further it would be a serious wrong and breach of the UN Convention on the Rights of the Child to adopt a procedure that is likely to expose children to abusive and violent behaviour within their family.

Likewise, those who do not find themselves in violent domestic situations but suffer a failed relationship should not be penalized in this way. The chances of a marriage breaking down before this proposed, potentially 7 year long 'path to citizenship' can be completed are good. There is no justification or evidence provided in the Green Paper for the need such a measure.

4.4. Should Gateway Refugees continue to be granted permanent residence on arrival in the UK?

Yes, of course, it is our international commitment. And yes, as stated in the Green Paper (para 125), they should move directly to a status of permanent residence.

4.5. Active Citizenship

- a. Should 'active citizenship' be a means by which probationary citizens can speed up their journey British citizenship or permanent residence?**
- b. Should 'active citizenship' be a mandatory requirement for all probationary citizens to qualify for British citizenship or permanent residence?**

No for (a) and (b). The Green Paper states that the purpose of requiring evidence of 'active citizenship' is to promote integration, "including bringing probationary citizens in greater contact with the wider community, showing current British citizens that those seeking to join them as British citizens are earning citizenship by being active rather than passive participants in UK life, and seeking to encourage those who become British citizens to carry on contributing to UK society in a positive way by opening them up to new experiences, which could become life long roles." (para 167)

There is, however, no evidence presented in the Green Paper to verify the claim that engaging in formal volunteering (which is what the Green Paper actually describes active citizenship to be) promotes greater integration, or indeed cohesion, as suggested elsewhere in the proposals (paras 40 and 181). The initial assessment of impact of these active citizen proposals in Annex C is completely inadequate and conjectural – who is to say that this proposal wouldn't result in the opposite effect whereby the already considerable amount of volunteering activity which migrants engage in could come to be viewed by critical parts of local communities as motivated by self-interest rather than genuine concern for the quality of communal life?

Indeed, to take this point on how to promote cohesion further, the evidence coming from government, not least from the report of the CLG Commission on Integration and Cohesion, indicates that the best approach to promoting cohesion is at the local level, with a programme of actions, policy interventions and public engagement strategies that are locally designed to meet the specific challenges of the community. A blanket approach to compulsory (even minimum levels of) volunteering for aspirant citizens is directly contrary to this.

The Green Paper then goes on to say, again without evidence or justification, that “people who have demonstrated their commitment to the UK by playing an active part in the community should be allowed to complete their journey to citizenship more quickly than others who have chosen not to do so.” This presupposes that ‘choice’ operates equally for all, a proven serious shortcoming in a range of current government policy focused on a ‘choice agenda’, as we have shown in our 2007 report on parental choice in schooling for their children.¹²

Indeed, this assumption that individual migrants have equal choice in ‘choosing’ whether or not to become ‘active citizens’ in the way described will lead to discriminatory impacts on many grounds – race (including ethnicity and nationality), religion or belief, gender, transgender, age, sexual orientation, disability, as well as by class, income and region. For example:

- Certain racial and ethnic groups are more likely to face discrimination in attempting to find voluntary placements, similar to the sort of discrimination found in employment – a recent JRF report¹³ has shown that BME women reported experiencing gender, race and/or faith discrimination; and that lack of confidence, not lack of skill or desire, was a major barrier for BME women in voluntary governance positions like school governors, local health agencies.
- Individuals living with poor health or disabilities might also feel impeded from volunteering – indeed, it has been shown that people with a LLI were more likely to cite illness or disability, and/or being too old as a reason for not volunteering.¹⁴
- The same research bulletin noted above also shows that those from BME backgrounds are more likely to cite worries about a threat to safety as a reason for not volunteering – hardly a benefit to community cohesion.
- None-the-less, these groups are involved in volunteering and are more likely to cite religious belief and to address a need in the community as motivations.
- Less well off groups, or those who work unsociable shift patterns or long hours, such as nurses or doctors, or those who have responsibilities to young children or the care of elderly family members, whose free time for active citizenship is likely to be limited will obviously be penalized by this proposal too.

Disturbingly, and as noted earlier in our response, there seems to be an assumption here that immigrants care less and give less to the communities in which they live and that immigrants don’t feel integrated because they don’t mix with British people. Indeed, the Citizenship Survey tells a rather different story¹⁵:

- The rates of volunteering of groups at risk of social exclusion compared to all adults are lower, but not really that far off – 41% compared to 48%.
- BME groups overall have similar rates of volunteering to the White population – higher than the White population for Black groups, but lower for Asian groups, particularly those who are more likely to be poor and socially excluded, demonstrating diversity between minority ethnic groups and therefore suggesting that a blanket (single) approach to ‘active citizenship’ is not effective or the right way forward.

¹² Debbie Weekes-Bernard (2007) *School Choice and Ethnic Segregation – Educational Decision-making among Black and Minority Ethnic Parents*. London: Runnymede Trust.

¹³ Sontosh Rai (March 2008) *Routes and barriers to citizen governance*. York: Joseph Rowntree Foundation.

¹⁴ Institute of Volunteering Research (2008) *Research Bulletin—volunteering among groups deemed at risk of social exclusion*. London: Institute of Volunteering Research..

¹⁵ DCLG (January 2008) *Citizenship Survey April-September 2007, England and Wales*. Available online on the DCLG website. Though the data in the survey does not identify British born and non-British born, the BME categories can validly be used as an indicative proxy for immigrant groups.

- All Black and minority ethnic groups felt more able to influence decisions affecting the local area and Great Britain than the White population, surely a sign of civic integration.
- 82% of people from White groups and 82% of people from Black and minority ethnic groups agree that their local area is a place where people from different backgrounds get on well together.
- The same is true for perceptions of cohesion in their local area.
- Indian, Bangladeshi and Pakistani respondents were all more likely to feel like they belonged to Britain than other minority ethnic groups and than White groups – a possible proxy for social integration, and yet these are the same groups that have lower levels of volunteering, suggesting that the causal link between ‘active citizenship’ and integration that the Green Paper purports does not exist.
- And when it comes to values, there is also a great deal of similarity across all ethnic groups, where the vast majority cite respect for the law in the top five. There are, of course, meaningful differences, but the implied level of difference in values between immigrant groups and the White British groups is at the very least inaccurate, if not misleading.
- Finally, it is also worth pointing out that the Citizenship Survey continues to find that Black and minority ethnic people believe they suffer from racial discrimination in employment – in applying for jobs and in promotions – and that, indeed, the White population also feels that there is more racial prejudice now than there was five years ago.

There are also serious questions to be raised about the feasibility of this proposal. First, Annex C of the Green Paper suggests that this proposal for active citizenship will increase the economic value of formal volunteering in the UK. However, there is evidence that the voluntary sector doesn’t need or want more volunteers.¹⁶ Indeed, Mike Locke, assistant director of Volunteering England told *Third Sector* magazine that “many organisations already had as many volunteers as they could cope with, so government and charities should focus on the quality of volunteering opportunities, rather than on the number of volunteers. ... ‘There is a general policy from government to increase the number of volunteers...But the report shows that we should be cautious about assuming groups can just go on taking more.’”¹⁷

Second, the Green Paper says little about how it would administer such a policy other than to suggest that it would be a ‘light touch’. These are proposals that will affect the prospects and life chances real living people, that will involve thousands of volunteer employers and managers, and that, as the Green Paper states, will increase the economic value of the (already) £40 billion volunteering market place. Indications that government is thinking about a light touch are not acceptable in our view.

Finally, these proposals for ‘active citizenship’ impose on migrants conditions of belonging from which the rest of society is exempt. This is hardly exemplary of the British values of justice and fair play.

4.6. Should the following activities be viewed as demonstrations of ‘active citizenship’?

- a. Volunteering with a recognised organisation or charity**
- b. Employer supported volunteering**
- c. Volunteering with a recognised organization to support the UK’s international development objectives, including short periods of time overseas**
- d. Running or helping to run a playgroup which encourages the different communities to interact**
- e. Fund-raising activities for charities or schools**
- f. Serving on community bodies, for example as a school governor**
- g. Running or helping run a local sporting team**

¹⁶ Institute of Volunteering Research (April 2008). *Management Matter*. London: IVR.

¹⁷ Third Sector, 23 April 2008, p.4

We strongly oppose this proposal of 'active citizenship' and will not therefore comment on the above list, except to say that the list does not adequately represent volunteering as it is truly experienced and undertaken by people in Britain today, including migrants; it negates altogether, and hence all the positive benefits, of informal volunteering; and it reduces the concept of 'active citizenship' to volunteering ignoring the many other forms of engagement and participation that make up real and meaningful active citizenship.

4.7. Do you think that committing a crime which attracts a custodial sentence should slow down or stop a migrant's progression to permanent residence?

No, not stop or slow down. The Green Paper stipulates a custodial sentence of 30 months or more but this is still not appropriate. The measure that should be used should be focused on serious crime only, not custodial sentences. The criteria taken into account in imposing a custodial sentence vary greatly – some may relate to the seriousness of the offence, indeed to serious crime itself, others may not. Therefore, committing an offence which attracts a custodial sentence should not automatically in every case slow down or stop progression to permanent residence or UK citizenship. The full circumstances of the offence should be considered as well as the rehabilitative effect of imprisonment and all relevant evidence regarding the risk of re-offending. A person who, on the balance of probabilities, poses no further threat of serious criminal conduct should not have their progression towards UK citizenship delayed or stopped; the latter implying that the person would be required to leave the UK.

Furthermore, there are clear and serious race equality considerations. Minority ethnic groups are severely over-represented in the criminal justice system, a state of affairs which became the focus of intense debate following the Stephen Lawrence Inquiry. And, as the Discrimination Law Association argue in their response, the annual statistics on Race and the Criminal Justice System – published under s.95 Criminal Justice Act 1991¹⁸ – provide further evidence of unequal treatment in the criminal justice system. These consistently report disproportionality based on ethnicity across most parts of the criminal justice system. Nationality is not recorded in relation to arrest and prosecution, but at least some parallels relevant to the treatment of migrants, persons joining families settled in the UK and refugees can be drawn between the treatment and experiences of Black, Asian and Other groups compared to the White group. Taken as a whole these suggest that non-White suspects or offenders are more likely to be arrested, prosecuted (as opposed to cautioned) and given custodial sentences. For young offenders, offences committed by Black young people were more likely to attract a custodial sentence. At 30 June 2006, 26% of male prisoners and 28% of female prisoners were from BME groups (of which 40% are foreign nationals). As nationality is recorded for prisoners, it is known that at 30 June 2006, 15% of all male prisoners and 23% of all female prisoners were foreign nationals; these figures suggest that convicted foreign nationals are significantly more likely than UK nationals to receive a custodial sentence for comparable offences. The Discrimination Law Association submits, and Runnymede supports their view, that these data must raise strong doubts as to the fairness of using convictions and/or sentences of imprisonment as decisive factors that could deny rights to remain in the UK or to seek UK citizenship or permanent residence.

4.8. Do you think that committing an offence which does not attract a custodial sentence should slow down or stop a migrant's progression to permanent residence?

No, not stop or slow down. In cases of less serious offences we think any decision affecting permission to remain in the UK and progression towards permanent residence or UK citizenship must

¹⁸ Statistics on Race and the Criminal Justice System - 2006, Ministry of Justice, October 2007

take into consideration the gravity and full circumstances of the offence, subsequent changes in conduct and all relevant evidence regarding the risk of re-offending.

All offences carrying a sentence of less than 30 months imprisonment may eventually be 'spent' under the Rehabilitation of Offenders Act 1974. In our view it is wrong to effectively disentitle migrants, family members and refugees from their rights under this Act by imposing what could be a permanent punishment – i.e. they are required to leave the UK – for an offence that could otherwise be 'spent'.

Furthermore, a survey conducted by Professor Susanne Karstedt and Dr Stephen Farrall of people in England and Wales revealed that 61% of their sample (N=1,807) admitted to an offence against business, government or employers. To subject migrants to standards we do not adhere to ourselves would be hypocritical. Indeed, the Green Paper even cites members of the public attending the 'listening sessions' as raising concern about asking immigrants to do things or behave in ways that British citizens don't or don't have to (para 82).

4.9. Do you think progression should be stopped or delayed for those whose children commit criminal offences?

No, not stop or delay. It is not customary in the UK to punish parents for their children's actions. This proposal equates to sending parents to prison for offences committed by their children, which is clearly absurd. The issue of different responsibilities as noted in paragraph 82 of the Green Paper and described in our response to question 4.8 is of obvious relevance to this question too.

More directly on this point, there are already mechanisms to improve the way parents supervise children who have come to the attention of the youth justice system. Parenting orders, with prosecution as an ultimate sanction, may be imposed by a court on parents of a young person who has committed an offence. Prevention programmes involving parents are intended to prevent youth offending. We assume that parents' nationality is irrelevant for these purposes.

As regards race equality in particular, there are issues relating to the fact that stop and search by the police frequently involves young people. The continuing disproportionality in stop and search influences to some extent the number of young BME and non-EEA nationals that come to the attention of the police. That there are disparities in the arrest and conviction rates of young offenders is not surprising. Of the young people convicted of offences in 2006, 13.7% identified themselves as from BME groups, and Black young offenders were more likely to receive custodial sentences.¹⁹ If factors related to ethnic or national origin make it more likely that children of non-EEA nationals will be arrested, prosecuted and convicted, as appears to be the case, then we are particularly concerned if criminal convictions of their children could be used to stop a non-EEA national's progression to UK citizenship or permanent residence.

To sum up our position on questions 4.7-4.9: as far as we are aware, the Home Office has not adopted the proposal to deport naturalised citizens if they or their children commit criminal offences, as suggested by a focus group participant quoted on page 16 of the Green Paper. We strongly urge the government to retain this position so that a distinct second class citizenship is not established. Importantly, naturalised citizens may be deprived of their citizenship only "if the Secretary of State is satisfied that deprivation is conducive to the public good".²⁰

¹⁹ Statistics on Race and the Criminal Justice System – 2006, Ministry of Justice, October 2007

²⁰ S.56 Immigration, Asylum and Nationality Act 2006

CHAPTER 5: THE IMPACT OF MIGRATION AND ACCESS TO BENEFITS AND SERVICES

5.1. Should probationary citizens who have entered the UK through the economic or family routes have access to benefits in addition to those based on National Insurance contributions?

Yes. Again, as we have argued in several other places in our response, the extended period of time it may take migrants to complete the 'path to citizenship' puts all applicants at risk of greater failure – and without recourse to public funds, at risk of destitution, including homelessness. Quite simply, people's lives and circumstances change, things happen, there are few of us who could go for 10 full years without there having been some form of personal, family or financial/job related crisis, and this system will not be sympathetic to this reality of life at all. Further, disadvantaged groups would also be a greater risk of failure than others, and this is likely to include Black and minority ethnic groups disproportionately. Without access over what is quite possibly a 10 year process to public benefits, aspirant migrants who have in good faith committed themselves to the 'path to citizenship' – committed themselves to our society – will be left to fail and eventually expelled for experiencing a rather ordinary life event. This is unjust.

5.2. Further and Higher Education

- a) At which stage in the journey to citizenship do you think further education for the same fees as British nationals (rather than at the higher 'overseas rate') should be available?**
- b) At which stage in the journey to citizenship do you think higher education for the same fees as British nationals (rather than at the higher 'overseas rate') should be available?**

Temporary residence for (a) and probationary citizenship for (b).

5.3. Should non-EEA migrants entering through the economic and family routes pay an additional charge on top of existing application fees in order to create a fund to manage the transitional impact of migration which would be used to alleviate short-term pressures on local public services caused by migration?

No. There is no evidence for the need for such a fund. Indeed, as the Migrant Rights Network pointed out in their briefing paper, the Green Paper itself (chapter 1) reiterates what is known about the positive contribution which migrants make to British society, including that migrants:

- make a greater contribution to the provision of public services than the average non-migrant, already paying 10% more in tax than they receive back in services;
- work in public sector jobs in the NHS and other essential services, and create new businesses and jobs;
- provide labour market flexibility, increasing productivity, and making the British population more prosperous as a consequence;
- contribute to around 15-20% trend growth to the British economy, and add around £6 billion to output;
- increase the diversity of British society and add to the range of cuisine and cultural experiences available to all.

What the proposals really imply is a form of tax based on nationality and immigration status. This cannot be justified. The whole rational of the Points Based System is that it should attract economic migrants in well-paid employment or well remunerated self-employment. These would contribute, like everyone

else, through National Insurance and income tax. We are aware that some public authorities have complained about short-term pressures due to migration. This, we suggest, cannot be solved by taxing migrants. The problem is that central government has failed to devise a mechanism for redistributing revenues gathered nationally to local regions in particular need of expenditure and investment. This issue should be addressed by improving, making more flexible and more sensitive arrangements for funding regional and local services before policies aimed at either restricting access to services or raising additional revenue from migrant specific taxes or charges are advanced.

It also appears to us that the requirement of an increased fee for family reunification may operate as a major deterrent. If this is the object then that should be candid. Otherwise, it is wrong to penalise or to force a delay (while efforts are made to accumulate the additional funds) on highly desirable family reunification. Furthermore, there are serious race equality considerations. It could logically be presumed that a majority of people now with UK citizenship or permanent residence wanting to bring in their partner and/or dependants will be people working in low or semi-skilled occupations on low incomes and a majority from poorer parts of the world. The proposed charge would therefore have a disproportionate impact on particular racial groups. As dependants are likely either to be children or older relatives, deterring or delaying their reunification with their family in this way would discriminate indirectly on grounds of age.

CHAPTER 7: SIMPLIFYING THE SYSTEM AND REFORMING THE LAW

- 7.1. a. Overall, are the simplification proposals set out in chapter 7 of the Green Paper in keeping with the simplification principles outlined in paragraph 220? (para 223?)**
b. Are there any simplification proposals that you feel are not in keeping with the simplification principles in paragraph 220? (para 223?)

7.2. Do you have any further thoughts or comments on the simplification proposals set out?

Runnymede does not have the technical expertise to comment on immigration law, but are able to state that we agree in principle with the aims of simplification of immigration law set out in paragraph 223. Because we are unable to provide our own technical assessment of the proposals in chapter 7, the following comments were kindly shared by the Discrimination Law Association, which we wholly support.

It is suggested that the new legislation and rules would allow far less discretion to officials of the new Borders Agency. Generally, we welcome this, having regard to the evidence in successive reports of the Independent Race Monitor of case-hardening and reliance on inappropriate stereotypes by immigration officers and asylum caseworkers. However, this makes the specific provisions in new primary and secondary legislation even more significant. As in respect of the other proposals within this Green Paper, a preliminary stage, regretfully not yet carried out, should be a comprehensive equality impact assessment, to have a clear understanding of how any of the provisions might adversely affect individuals and/or groups on any of the grounds protected under the equality enactments.

We would be concerned if the “simplification” process were to bring with it procedures that involve less favourable treatment on any of the grounds protected under the equality enactments, or greater interference with the privacy and right to family life of persons with permission to be in the UK or to reduce rights of access to justice of asylum seekers and immigrants or to increase powers of entry search and seizure and detention without strong supporting evidence.

We note that it is in relation to protections offered under the Human Rights Act 1998 that asylum and immigration control matters are most frequently before the courts, and in a number of instances

resulting in Home Office decisions being overturned. We would therefore strongly urge that before any changes in legislation or immigration rules governing the relationship of the Home Office and/or the Borders Agency and asylum seekers, immigrants, visitors and other persons in the UK with permission, in addition to an equality impact assessment, a thorough human rights impact assessment should be carried out, and any procedures likely to be incompatible with the European Convention on Human Rights or UN human rights instruments should not be included.

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14 May 2008

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