

ICAR Briefing

Citizenship for Refugees in the UK Key Issues and Research

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Introduction

Becoming a citizen of the host country has traditionally been seen as the last stop on the refugee's journey, a definitive moment in reaching sanctuary. But since 2005 refugee status by itself has no longer meant permanent right to residence in the United Kingdom - the gateway to citizenship. Likewise citizenship legislation has been driven in recent years by the concept of 'earned citizenship', and refugees have not been immune to this trend. At the same time, the protection traditionally offered by citizenship has itself been brought into question¹.

This briefing highlights how refugees have historically been at the centre of policy, debate and social mobilisation around citizenship. It also examines specific paths and barriers to citizenship for refugees and the substantive meaning of citizenship in the light of contemporary UK and European Union policy. It highlights some of the key debates around these issues and relevant research, and signposts the reader to further resources.

Defining Citizenship

Legally, citizenship means membership of an individual political unit, such as the nation state, hence the modern day equivalence with nationality. It is covered by nationality law rather than immigration law. In Britain, people who are not British citizens at birth apply through a process of naturalisation or registration, the latter being reserved mainly for minors.

Substantively, it often refers to the rights and duties which this 'membership' entails. Immigration and asylum scholars have challenged this association of citizenship with membership or inclusion, to look at how it also functions as a form of exclusion and discrimination.

Law and Policy

The history of citizenship policy in Britain is bound up with the history of refugees. The timeline below sketches how refugees, in the last two hundred years especially, have both influenced citizenship policy and been affected by it².

Origins

The origins of citizenship lie in the loyalty of serfs to lords, who in turn pledged allegiance to the crown. Hence the enduring use of the term subject rather than citizen, despite the development of the latter concept in parallel with the rise of republicanism elsewhere in the world.

18th-19th Century

Prior to 1844 acquiring UK nationality had required a private Act of Parliament. This was a costly and lengthy process but was applied to whole groups, such as Huguenot refugees. The 19th century saw the enactment of the first legislation allowing foreigners to be granted nationality, with layers of 'earned citizenship' style requirements being progressively added.

1793 Regulations of Aliens Act: a response to the arrival of refugees following the 1789 French Revolution and subsequent war with Britain, this was the first law seeking to control the arrival of migrants. New arrivals wishing to leave London had to obtain passports and an Aliens Office was set up to investigate those seeking naturalisation, among other duties. Initially a temporary measure, it was reinforced by subsequent Acts.

1844 Naturalisation Act: The first law allowing foreigners to acquire British nationality. Further Acts in 1847, 1870 and 1873 introduced a growing list of requirements such as five year residency (1870) and proving 'respectability'. These Acts were applied to refugees from the 1848 revolutions in Europe.

Early 20th century

In the late 19th and early 20th century issues of asylum, security, race and immigration overlapped and affected refugees' and migrants' citizenship rights in a way reminiscent of today, in the wake of forced migration from Eastern Europe and the fear of political radicalism. In the interwar years the right to citizenship via naturalisation became a political battleground in which these refugees were prominent actors. The major issues were financial and language tests and access to benefits, at a time when the first welfare measures were being enacted, thus introducing social rights as an aspect of citizenship.

1905 Aliens Act: often described as the first immigration control, because this was the first law giving power to refuse entry. Enacted following agitation against the large scale arrival of Eastern European refugees, many of them Jewish. Provision was made for refugee status, but it was rarely given.

1908 Old Age Pension Act and 1911 National Insurance Act: these and other early welfare state measures raised the issue of the 'social' component of citizenship by tying entitlement to citizenship. This and the difficulty of acquiring citizenship became the subject of political debate and refugee-led mobilisation in the inter-war years.

1914 British Nationality and Status of Aliens Act: the first 'comprehensive statute' in nationality law, basing nationality – citizenship on the feudal common law of

ius soli (birth right). It also allowed limited rights to citizenship by descent and by grant.

1919 Aliens Restriction Act: made it a criminal and ultimately deportable offence for an alien to 'promote industrial unrest' or cause 'sedition or disaffection', thus putting a political block on the route to citizenship. The Act also added new restrictions to the civil and employment rights of aliens already resident in Britain.

1920s and 1930s: progressive restrictions on acquiring nationality.

The post-war period

For much of the post-war period citizenship policy was shaped by the changing relationship between Britain and its colonies, as the latter gained independence and its inhabitants also became a source of labour supply. The 1981 legislation was the culmination of steps towards a new post-Empire brand of citizenship, by which Commonwealth citizens no longer were British citizens, and remaining ones lost the automatic right to enter and reside in the UK. As legislation largely applied to non-white Commonwealth citizens, as opposed to white European nationals, citizenship acquired a racial dimension³.

1948 British Nationality Act: this Act created two categories of British subject or citizen: citizens of the UK and existing colonies; and Commonwealth citizens from independent ex-colonies. Both categories had the right to settle in the UK. The 1914

prohibition on dual nationality was overturned.

1951 United Nations Refugee Convention: encouraged giving citizenship to refugees as soon as practically possible.

1962: Commonwealth Immigrants Act. For the first time the right of any UK/Commonwealth citizen to enter and reside in the UK was restricted, a change that culminated in the 1971 Immigration Act. The right of citizenship was separated from the right of abode and made dependent on the level of 'connection' with the UK.

1974: arrival of Ugandan Asian refugees. They exercised their right to settle as a group of Commonwealth residents that had retained British citizenship, and were not given refugee status. Their arrival was met with anti-immigrant agitation and then attempts at further restrictions.

1981: British Nationality Act: Citizenship formally created in law with three main types of status: British citizenship, British Dependent Territories citizenship (BDTC); and British Overseas citizenship.

With the 1981 Act citizenship could no longer be automatically acquired by birthright – it now depended on parents (ius sanguinis) and their status or 'connection' to the country. Citizenship by grant or naturalisation could be granted after five years of residence to foreign nationals including asylum seekers and Commonwealth citizens alike, subject to meeting various conditions. This continued

to include asylum seekers given temporary leave to remain but not refugee status⁴.

The contemporary period

2002 Nationality Immigration and Asylum Act: Introduction of language and 'life in the UK' tests along with citizenship ceremonies to mark becoming a British citizen. Based on the 2002 Secure Borders, Safe Haven: Integration with Diversity White Paper⁵.

2008: Lord Goldsmith QC Citizenship Review (Goldsmith 2008). Followed the 2006 Commission for Integration and Cohesion in arguing for a formal model of citizenship based on rights and responsibilities.

2008: Green Paper: The Path to Citizenship: next steps in reforming the immigration system⁶. The paper launched the concept of earned citizenship while reiterating a specific commitment to refugees.

2009: Borders, Citizenship and Immigration Act (see below). Followed by consultation The Path to Citizenship: next steps in reforming the immigration system⁷.

July 2011: New citizenship requirements of 2008 Act due to come into effect.

The 2009 Borders, Citizenship and Immigration Act

The 2009 Act marks the biggest overhaul of citizenship in recent decades. It considers refugees along with other migrants within the framework of two major policy goals: managed migration, or the

need to "manage the number allowed to settle permanently in the UK"⁸; and integration, often linked to social cohesion. For refugees it means a longer period of temporary leave before attaining permanent residence.

In essence, the Act constitutes a new naturalisation process for foreign citizens based on the notion of 'earned citizenship', whereby migrants seeking to settle would need to "demonstrate a more visible and a more substantial contribution to Britain."⁹ Instead of applying directly for full citizenship after five years would-be citizens will have an additional period of 'probationary citizenship' "which can be accelerated through a demonstration of active citizenship, but can be slowed down or halted altogether by criminality,"¹⁰ gaining or losing points counting towards full citizenship in the process. Active citizenship (the 'activity condition') is envisaged as meaning civic or voluntary activities.¹¹

The Act brings refugees within the existing points-based approach already governing the route of migrant workers to citizenship. The subsequent consultation paper seeks to define how the points based system would work in practice; and how to 'integrate' would-be citizens. It also seeks to explore separate provision for 'circular migration' back to the developing world.

To some extent earned citizenship reflects the extension to all migrants of policies aimed originally at refugee communities, notably through the Refugee Integration Strategy, which applied rights and responsibilities as a policy to refugees¹²

before it was worked into the current legislation via the 2008 Lord Goldsmith Review.

Earned citizenship for refugees?

Refugee and migrant advocates have raised various objections to earned citizenship being applied to refugees, on the grounds that the safety represented by citizenship should be a right rather than something that needs to be 'earned'. A refugee, it is argued, already faces enough difficulties obtaining safety *before* their asylum claim is accepted. Once their claim is accepted they need a sense of security to rebuild their lives and overcome trauma¹³.

Thus the 2009 Act conflicts with the 1951 Refugee Convention's requirement to make naturalisation as easy a process as possible for refugees. The government missed an opportunity by not taking up the 2008 Goldsmith Review's recommendation to reverse the 2005 decision to replace permanent leave to remain for refugees with a 5 year residency (Refugee Council 2009). Furthermore conditions governing application for citizenship were already stringent enough (Webber 2009).

Objections are also raised specifically in regard to:

Citizenship tests: research shows nationals from refugee producing countries perform far worse and so any additional testing would further violate both the Refugee Convention and, particularly with regard to

extra costs, Article 34 of the 1954 Convention Relating to the Status of Refugees (JCWI 2009).

Discrimination against non-citizens: refugees who do not want to take up citizenship, perhaps in order to access certain benefits available to refugees but not citizens, are penalised by having to wait two years more to apply for Permanent Residence (Refugee Council 2009).

The activity condition: volunteering should not be a compulsory requirement of 'active citizenship' – this contradicts the nature of volunteering and potentially discriminates against those unable to volunteer due to childcare or other commitments. There is already a high level of volunteering among refugees (ibid).

The refugee path to citizenship

Amending the 1981 Act, the 2009 Act creates a **qualifying period** of 8 years for applicants for full citizenship (naturalisation), or six years if the activity condition is met.

According to current proposals, the refugee path to citizenship comprises three basic stages:

Temporary Residence: 5 years

5 year refugee status or humanitarian protection as result of asylum application. Previously a refugee could apply for permanent residence and with that, naturalisation (citizenship) at the end of this period.

Probationary Citizenship: 1-3 years

After 5 years a refugee can apply for probationary citizenship under the following conditions: they pass an Active Review of their eligibility: meaning they will be considered to have enough points

- if they have a *continued need for protection* or *ongoing family relationship* in the case of dependents and partners.
- and they pass the Life in the UK test or equivalent
- and have no criminal record

Previously persons with refugee status or other leave to remain as a result of an asylum application could apply for naturalisation at this stage subject to passing the Life in the UK test or equivalent, and other conditions.

Citizenship or permanent residence

- After 1 year on probationary citizenship they can then apply for full citizenship *if* they meet the activity condition; if not they must wait 3 years.
- Dependents must continue to be supported and partners continue in relationship.
- If the refugee doesn't want to become a citizen, then they can apply for Permanent Residence after 3 years of probationary citizenship¹⁴.

Transitional arrangements mean that until July 2011 those with Indefinite Leave to Remain (now Permanent Residence), or who have applied for it, will have two years to apply for citizenship under the old system¹⁵

The criminal record clause¹⁶

It is envisaged that the level of crime will determine eligibility for citizenship:

Serious crimes: these will as before lead to automatic deportation

Lesser crimes – custodial sentence: will not be able to apply for probationary citizenship, full citizenship or permanent residence.

Lesser crimes – no custodial sentence: cannot apply until conviction spent.

In the case of refugees it should be noted that the Convention allows for refoulement where the refugee is considered a 'danger to the community or the security of the host country' (Farbey and Dubinsky 2009). But where deportation is not possible, for reasons based on the 1951 Convention or the European Convention on Human Rights, the 2009 Act states that a form of leave other than citizenship will be given.

Criminal record condition: the use of false documentation is considered a criminal offence and could thus disqualify someone for citizenship. Thus the 2009 Act clashes with Article 31 of the Refugee Convention¹⁷, which states that refugees should not be punished for using false documentation in the process of seeking asylum (ibid).

Political activity: the deduction of points for an unspecific range of activities strongly implies that political activity during probationary citizenship could harm the chances of becoming a citizen, a fear reinforced by the Minister for Immigration's comments when the consultation paper was launched¹⁸.

Statistics

In 2008 156,085 applications for citizenship were received, and in the same year 129,375 people were granted citizenship, although this figure does not correspond directly to the number of applications as an application may be made one year and granted the next¹⁹.

The annual British Citizenship statistics give the country of origin of new citizens. There are no figures currently available for how many of these had previously applied for or were given asylum. However a number of the main countries of origin of asylum seekers do feature in the top ten each year. For example in 2008 all but the Philippines and South Africa out of the top ten countries of origin of new citizens could be described as such.

The table below shows the top 10 previous nationalities for those receiving British citizenship in 2008.

Previous Nationality	Number	%
India	11825	9%
Pakistan	9440	7%
Iraq	8985	7%
Somalia	7165	6%
Zimbabwe	5710	4%
Afghanistan	5540	4%
Philippines	5380	4%
South Africa	5265	4%
Turkey	4640	4%
Nigeria	4530	4%

Source: Home Office 2009

Policy and Research issues

There is a wide body of literature on refugees' and migrants' experiences in relation to the different citizenship 'markers' such as integration. This briefing will restrict itself to some examples of work that deals explicitly with issues raised by recent citizenship legislation, as well as some broader studies on the contemporary relationship between asylum and citizenship.

Meaning of citizenship

According to New Labour's communitarian understanding of citizenship, it is based on 'responsibility or membership', and cohesion and integration can be achieved by

reinforcing 'shared values' which in turn give a greater sense of common national identity (Morrell 2008)²⁰. Government thinking behind recent legislation has suggested that citizenship has so far involved receiving rights, but not taking on responsibilities. It is the purpose of probationary citizenship to show that prospective citizens have taken on the responsibilities and thus shown themselves to be fully integrated.

Beyond official policy, what does citizenship mean to refugees themselves? In a study of migrants who had become citizens or were eligible to do so, Levesley (2008) found that refugees more than any other migrant subgroup were far more concerned with acquiring safety and stability than citizenship.

Morrell (2009) looked at how refugees themselves understand responsibilities, on the basis that perhaps their perspectives differ from those of both other migrants and the indigenous British population; and that these responsibilities are of a transnational nature.

His research found that;

- Rights and responsibilities are complex and varied, in terms of type (political, economic etc) and also whereabouts (UK, home country etc)

- Responsibilities are prioritised, often starting with the family and then moving through other stages such as own community and UK society
- There are diverse attitudes towards British citizenship, classified as three 'types' of refugee-citizen: indifferent, pragmatic and contented.
- Refugees accepted some aspects of the earned citizenship agenda, but would still need adequate support to fulfil them.

The research concluded that although there was general acceptance of the concept of 'putting something back,' active citizenship requirements may overload refugees' existing responsibilities in a manner detrimental to integration, especially in view of limitations in terms of individuals' time and money.

The research highlights the issue of transnational citizenship, in that migrants may have political and economic rights and responsibilities beyond Britain's borders.

Transnational citizenship among refugees is also explored in Erel (2009)'s study of Turkish women in the United Kingdom and Germany, and a number of studies look at diasporic political activity among largely refugee communities as an expression of

transnational citizenship (e.g. Pero 2008; Guarnizo 2007; Pieke and Van Hear 2004).

Experiences of earned citizenship

As noted earlier, one of the main policy aims of new citizenship requirements is to foster 'shared values' and in doing so achieve greater social cohesion and integration.²¹ In an early attempt to gauge this, Macgregor et al (2009) studied the experiences of the first immigrants to have to take the citizenship test and ceremony, introduced in 2004-5. Their Leicester-based sample included a significant number with refugee backgrounds.

They found that the new process had led to a "degree of basic integration" but had not succeeded in creating the 'shared values' deemed vital to social cohesion, and in fact both the process and thinking behind it reinforced "exclusionary discourse and policies", to the detriment of social cohesion (ibid p.1).

Their research observes that cohesion policy, where expressed through the citizenship process, is only aimed at changing migrants' beliefs or behaviour and not that of the host population. The notion of separate communities which underpins integration and cohesion policy has also been questioned in research into the social composition of refugee and migrant rights campaigns (Squire 2009b).

Integration versus exclusion

As well as a means of integration and inclusion, citizenship has also been examined as a mode of exclusion vis-à-vis the foreigner. For Squire (2009a), the 1990s was a time when asylum came to play a key role in defining citizenship in Britain, as the arrival of asylum seekers challenged the 'territorial norms' of the sovereign state. It is these norms which the renewed emphasis on citizenship has sought to reinforce.

For Squire the asylum issue has played a dual role in redefining citizenship: one the one hand, the right to asylum defines the values of liberal citizenship, yet at the same time asylum is treated as a security issue, thus undermining those very values through increased controls. In practice this means the moral belief in the right to asylum is upheld, whilst increased controls make it ever more difficult to actually exercise that right. Bosworth and Guild (2008) further explore this paradox in terms of current citizenship discourse and the exclusion and ultimately criminalisation of asylum seekers and other migrants.

Wolton (2008) and Morris (2009) also look at the role of asylum in redefining citizenship. For Wolton, increased powers of detention of asylum seekers, and welfare restrictions leading to destitution are part of a wider policy trend indicating that, paradoxically, a section of Britain's elites have moved away from the notion of citizenship as embodying the 'rights and freedoms'

contained in the new citizenship pledge. Furthermore, such measures applied to asylum seekers can later be applied to citizens more generally, thus redefining the terms of citizenship. For her part, Morris draws on successful legal challenges to the withdrawal of welfare support to asylum seekers to look at how they may lay the basis for a broader, 'cosmopolitan' definition of citizenship.

In a study centred on the London borough of Newham, Bloch (2000) draws out the importance of social citizenship to migrants/refugees in laying the basis for social and economic stability. However social citizenship rights are utterly dependent on status, thus citizenship is a form of both inclusion and exclusion from social and economic livelihood. The study finds that policies which undermine social and economic stability make it harder for refugees to integrate. Elsewhere, young separated asylum seekers' lack of access to otherwise universal social provision has been put forward as evidence that immigration policy clashes with the concept of social citizenship, which on a policy level claims to embrace all minors (Sinha and Upal 2009)²².

Citizenship policy understood as integration leading to 'social cohesion' has also dovetailed the national security and anti-terrorist agenda. Thus for example, the role of the Task Force to tackle Violent Extremism is couched in

terms of citizenship (MacGregor et al 2009).

At the same time definitions of extremism and terrorism have become increasingly elastic, potentially restricting both access to asylum and continued protection, including that provided by citizenship itself (Mulvey 2009).

Earned citizenship and amnesties

The 'architecture' of earned citizenship has also become a central component of proposals for a limited 'amnesty' for undocumented migrants – including significant numbers of refused asylum seekers - as advocated principally by the Strangers into Citizens campaign²³. Other campaigners have criticized this for being exclusionary in its own right, and for being premised on tighter controls and thereby greater exclusion in the future (No one is Illegal 2007). For its part the government and others have rejected any such proposals as a form of rewarding illegality, although the legacy programme has seen some asylum seekers being given residence and possibly then citizenship (BBC News 2009).

European Citizenship

The 1992 Maastricht Treaty formally created the status of a new [European citizenship](#), the subsequent development of which has matched the supranational legal and political

integration taking place, including moves towards the harmonisation of asylum and immigration policy as envisaged by the 1999 Treaty of Amsterdam.

Existing joint EU asylum policy, such as unified border controls and offshore processing, appears to make the route to citizenship via asylum much harder.

And in many areas it does not exist: instead, national citizenship policies remain very much intact. As European citizenship remains predicated on attaining national citizenship first, this results ultimately in unequal access to

European citizenship, as shown by the examples in the table below.

citizenship in the sense of naturalisation across 33 European countries, on the premise that much more comprehensive information is required in order to make valid comparisons.

Citizenship models and asylum policy

Sicakkan (2008) uses comparative statistical analysis to argue that these differing historical citizenship models and naturalisation laws make for different refugee and asylum policy in different European countries, especially in terms of access to asylum, to the point that different citizenship models and asylum procedures both produce varying asylum recognition rates. He concludes that asylum needs to be separated from citizenship.

Access to Citizenship (source: Sinnakan 2008)			
<i>Country</i>	<i>Length of residency required</i>	<i>Other criteria</i>	<i>Rules favourable to refugees</i>
Denmark	9 years	no criminal record; 'citizenship test'	Yes – shorter residency period
Spain	5 years (permanent residence); 2 years for those from Spanish or Portuguese speaking countries	None	Yes – shorter residency requirement
United Kingdom	5 years with award of permanent residence at end (6-8 years from July 2011)	no criminal record; 'citizenship test'	None at present

In 2009 the [European Union Democracy Observatory on Citizenship](#) was created in order to document and analyse

Would a unified asylum procedure equalise recognition rates? UNHCR have suggested that harmonisation in this area could lead to lower rates of

recognition (ibid). At the same time others have noted a tendency for EU countries to harmonise on a selective basis, thus allowing national citizenship models, as well as more short term policy, to still be reflected in the procedures.

Guild (2006) raises the issue of citizenship as integration or inclusion in the European context, and argues that whereas integration once meant the bridge between being an immigrant and being a citizen, increased offshore suitability tests mean it is now more a bridge between potential and actual immigration. Immigrants therefore need the same rights within Europe as European citizens, and EU anti-discrimination directives need to reflect this.

For Kofman (2005), increasing restrictions on the refugee route to citizenship – from border controls to earned citizenship proposals – are Europe-wide phenomena which can be explained by ‘managerialism’ - the greater priority given to economic factors in determining policy. On a similar note Schierup et al (2006) see a contradiction between EU anti-discrimination policies and an overarching tendency, symbolised by the Lisbon Treaty, to steer away from a social citizenship model and to make labour market flexibility the key determinant of immigration policy.

The [Charter of Fundamental Rights of the European Union](#) brings together into a single text all the personal, civic,

political, economic and social rights enjoyed by the citizens and residents of the European Union.

However refugees are often among those third country nationals, who whilst being long term residents of EU countries, are nevertheless excluded from benefits of European citizenship afforded to citizens of said countries. This is especially true with regard to freedom of movement within the Union - one of the central tents of European citizenship and one based on the principle of non-discrimination (European Network Against Racism 2001).

It has therefore been argued that EU policies aimed at integrating refugees and third country nationals generally should promote easier routes to citizenship. However research indicates that harmonisation in this area has been lacking, and that which has taken place more informally presents a mixed picture in terms of trends towards easier access to citizenship (Eurasylum 2009).

¹ This area unfortunately falls outside the scope of this briefing.

² For a complete list of legislation on naturalisation see the National Archives’ [Moving Image](#) project. Other sources used for this timeline include Morrell (2008), Cohen (2000), Hayter (2000), Squire (2009) and Spencer (1994) for the interwar period; and Ministry of Justice (2008) for the post-war period.

³ It has been argued that this racialized citizenship in a way that continued with

subsequent asylum and immigration policy (Squire 2009(1): 46-7).

⁴ See JCWI (2006:1454)

⁵ Home Office (2001)

⁶ Home Office (2008)

⁷ Home Office UK Border Agency (2009)

⁸ *ibid*

⁹ Border and Immigration Agency Communications Directorate 2008. *op.cit.* p.6.

¹⁰ *ibid*

¹¹ Refugee Council (2009)

¹² See Home Office (2005)

¹³ Furthermore, a refugee applying for citizenship cannot include the time spent awaiting a decision to count towards the qualifying time for citizenship except in 'exceptional circumstances', thus extending even further the period of temporary leave (Refugee Council 2009)

¹⁴ Permanent Residence replaces Indefinite Leave to Remain (ILR)

¹⁵ See Home Office UK Border Agency (2009b) press release

¹⁶ At Clause 39(2)(f)

¹⁷ At Clause 39(2)(f)

¹⁸

<http://www.guardian.co.uk/uk/2009/aug/03/immigrations-citizenship-points-phil-woolas>

¹⁹ Home Office Statistical Bulletin (2009)

²⁰ Communitarianism: a school of 19th century bourgeois thought, critical of the philosophical basis of classical liberalism (libertarianism). See Morrell (2008) for a discussion of the communitarian underpinnings of citizenship policy under New Labour and Mulvey (2009) for a

treatment of the same subject from a refugee advocacy perspective.

²¹ In the case of refugees it is not clear whether citizenship is now a means to integration or the culmination of a process of integration (Morrell 2008)

²² The United Kingdom's refusal to sign the United Nations Convention on the Rights of the Child means there is no obligation to give citizenship rights to under 18s

²³ See www.strangersintocitizens.org.uk The campaign has been endorsed by the Mayor of London and a number of local authorities and business associations. See GLA (2009) for supporting research.

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