Integration Requirements: A New Model in Migration Law

Bernard Ryan

Introduction

The years since 2002 have seen a series of integration requirements introduced into British migration law. The process began in the law on naturalisation, with the strengthening of the requirement of knowledge of an official language and the introduction of a requirement of knowledge of life in the United Kingdom. Subsequently, these two knowledge requirements were extended to indefinite leave applications, and English language requirements have been introduced or proposed for limited leave categories. A further planned step is the inclusion of a concept of ‘active citizenship’ in the rules on naturalisation and long-term residence.

The article provides a critique of this recent wave of integration requirements. It begins with a summary of the integration-oriented changes that have been introduced or proposed to date. It then argues that these recent developments mark a shift away from a liberal approach to migrant integration, towards a model of ‘community cohesion’. That shift is seen both in the official justifications for the new integration requirements, and in the very fact of reliance upon migration law to advance an integration agenda. The article goes on to show, based on the available published data, that the impact of the ‘knowledge of life’ tests is highly differentiated by nationality, and is probably differentiated by immigration category. The argument of the article is that this new model in immigration law is an unwelcome development: the policy as a whole is paradoxical in denying immigration status in the name of integration; it is highly prescriptive in places; and, it is at odds with the growing diversity of the migrant population of the United Kingdom.

1. Integration requirements in migration law

In approaching the category of ‘integration requirements’ in migration law, an initial difficulty is that the category is not an objective one. Firstly, migrant integration can be conceptualised in a number of ways – for example, as referring to interactions with other residents, or shared activities, or shared outlooks, etc. Secondly, however conceptualised, integration is likely to be evidenced by the core of the claim to the given immigration status – a job offer, skills, family relationships, a period of residence, etc. The category of interest to us is those additional attributes or experiences which are treated by policy-makers as markers of present or future integration.

Taking that starting-point, this section will look in turn at new requirements for naturalisation, indefinite leave and limited leave, and then at the emergent concept of ‘active citizenship’.  

1 Reader in Law, University of Kent. I am grateful for the comments of an anonymous referee. I am also grateful to participants at the June 2008 Migration and Law Network conference on Integration and Immigration: What Role for the Law? when a version of this paper was presented.

2 The term ‘migration law’ is used here to refer to the legal framework relating to immigration and naturalisation.

Naturalisation

Recent developments in British migration law related to integration began with two reforms of naturalisation law announced in the 2002 White Paper Secure Borders, Safe Haven. The first of these concerned knowledge of an official language. Knowledge of English has been a formal requirement in the law on naturalisation since the British Nationality and Status of Aliens Act 1914 made it a condition for the acquisition of British subject status by aliens other than wives. Commonwealth and Irish nationals first became subject to a language requirement under the Immigration Act 1971, which required them to have knowledge of English or Welsh if they sought to register as citizens of the United Kingdom and Colonies on the basis of residence or Crown employment. The British Nationality Act 1981 then required all applicants for naturalisation as British citizens, other than spouses, to have knowledge of English, Scots Gaelic or Welsh. The 2002 White Paper announced that the language requirement would be taken more seriously: where previously an individual’s language ability had simply been assumed, specific evidence would now be required in all cases. It also announced that the language requirements would be extended to spouses. These two changes came into effect on 28 July 2004.

The second reform set out in the 2002 White Paper was a new requirement that an individual have ‘sufficient knowledge about life in the United Kingdom’. That requirement came into effect on 1 November 2005. Since that time, the requirements as to knowledge of language and of life in the United Kingdom have ordinarily been met together. One means of compliance is to take and pass a course for English for Speakers of Other Languages (ESOL) which includes a component based upon the official handbook, Life in the United Kingdom: A Journey to Citizenship. Alternatively, the knowledge requirements may be satisfied through passing a computerised test based on chapters of the official handbook which give factual accounts of everyday life and of the system of public administration. There is discretion to waive either or both of the knowledge requirements where an ‘applicant’s age or physical or mental condition’ means that it would be ‘unreasonable’ to expect compliance, and the discretion is exercised to the benefit (among others) of persons over 65 or nearing that age. Special provision is made for applicants outside the United Kingdom who are Crown servants, and their spouses/civil partners: in these cases, a designated official may certify that the two knowledge requirements are met.

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4 Home Office, Secure Borders, Safe Haven: Integration with Diversity in Modern Britain (Cm 5387, 2002), Chapter 2. Note that, in addition to the two reforms discussed in the text, the 2002 White Paper also proposed citizenship ceremonies for adults wishing to register or naturalise as British citizens. Because of their procedural character, ceremonies are not discussed here.
6 British Nationality Act 1948, s 5A, inserted by Immigration Act 1971, Sch 1.
8 Secure Borders, Safe Haven, para 2.13.
9 British Nationality Act 1981, Sch 1, para 3, as amended by Nationality, Immigration and Asylum Act 2002. The test has applied to civil partners since 5 December 2005.
10 British Nationality (General) Regulations 2003 (SI 2003/548), reg 5A, as substituted by the British Nationality (General) (Amendment) Regulation 2005 (SI 2005/2785).
12 British Nationality Act 1981, Sch 1, para 2(e) and para 4; UK Border Agency, Nationality Instructions, Chapter 18, Annex E, para 1.4.4 (as of 1 September 2008).
13 British Nationality (General) Regulations 2003, reg 5A, as substituted by SI 2005/2785. These are the only categories of applicant for naturalisation not required to be present in the United Kingdom on the date of an application.
An individual who meets the two knowledge requirements at the indefinite leave stage (discussed below) can rely upon that as part of a subsequent naturalisation application. The requirements are not redundant at the naturalisation stage, however. They will be encountered at that stage by persons in the few categories which are exempt from the tests at the indefinite leave stage (again, see below). The requirements are also relevant to EEA and Swiss nationals, and their qualifying family members, who acquire the EU law status of permanent residence through five years’ residence in the United Kingdom. Such persons are ordinarily eligible for naturalisation after a further year’s residence without first obtaining indefinite leave. Persons who acquired indefinite leave before April 2007 are a further group who may encounter the requirements only when a naturalisation application is contemplated.

The particular position of refugees may also be highlighted. Those who enter as refugees are covered by these knowledge requirements if they seek to naturalise, except for those resettled under the Gateway Protection Programme, who are to be subject to the language requirement alone. We will see in section 3 (below) that there is evidence that refugees on average find it harder to pass the test of knowledge of life in the United Kingdom. It may therefore be wondered whether the application of the knowledge requirements to refugees is compatible with art 34 of the Geneva Convention, which provides that:

‘Contracting States shall as far as possible facilitate the … naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings …’

The knowledge requirements may not be contrary to the letter of art 34, which is usually taken to require only that states do not to exclude refugees from the standard rules applicable to naturalisation. Nevertheless, the current policy is at odds with the underlying principle of art 34, which is that refugees should have an easy path to naturalisation, in order that they may acquire an effective nationality and/or integrate more readily in the state of asylum.

Indefinite leave

Even before the reform of the law on naturalisation had come fully into effect, the Government announced in its February 2005 ‘five year strategy’ for immigration that the two knowledge requirements would be extended to those applying for indefinite leave. This reform did not require primary legislation, and was instead achieved through an amendment of the relevant parts of the Immigration Rules, with effect from 2 April 2007. The two knowledge requirements are again demonstrated together, by taking and passing an ESOL-with-citizenship course, or by passing the “knowledge of life” test. One difference from the law on naturalisation is that the Immigration Rules refer to knowledge of English alone, and do not expressly allow competence in Scots Gaelic or Welsh to be sufficient.

14 UK Border Agency, Nationality Instructions, Ch 18 Annex E, para 1.1.3 (as of 1 September 2008).
15 Schedule 2, para 2 of the Immigration (European Economic Area) Regulations, SI 2006 No 1003, provides that, for the purpose of the British Nationality Act 1981, a person who holds permanent resident status ‘shall be regarded as a person who is in the United Kingdom without being subject under the immigration laws to any restriction on the period for which he may remain’. The absence of immigration restrictions is a precondition to eligibility for naturalisation under the 1981 Act.
16 The Path to Citizenship: Government Response to Consultation (July 2008), p 12. As this programme commenced in 2004, eligibility for naturalisation will begin to arise in 2009.
18 Controlling our Borders: Making Migration Work for Britain, Cm 6472, para 39.
19 Immigration Rules, para 33B.
A number of special provisions may be highlighted. The requirements are stated to apply only to applicants for indefinite leave who are aged between 18 and 65. There is discretion to waive the requirements in the case of persons whose physical or mental condition makes it unreasonable for them to comply. The following categories are exempt under the Immigration Rules: former armed forces members and their family members; bereaved partners (ie spouses, civil partners or unmarried partners with two years’ cohabitation) of settled persons; ex-partners of settled persons who are the victims of domestic violence; and, certain adult relatives – who may be under 65 – of settled persons. Persons admitted for resettlement under the Gateway Protection Programme are granted indefinite leave without meeting the requirements. In addition, provision is made for a designated person to certify compliance by the partners of these British officials abroad: permanent diplomats, British Council staff and Department for International Development staff.

A category which is not catered for is the partners of British citizens who have been outside the United Kingdom with them for four or more years. Even though these persons are entitled to indefinite leave to enter the United Kingdom, there is no mechanism by which they may meet the two knowledge requirements before arrival. One option for them is to first come to the United Kingdom as visitors in order to take the test, before returning to their place of residence in order to apply for indefinite leave. The alternative is that they enter with limited leave as partners, and then apply for indefinite leave after passing the ‘life in the United Kingdom’ test.

The arrangements in this area are to change with the implementation of the reform of long-term residence set out in The Path to Citizenship in February 2008. Indefinite leave will disappear under these proposals, to be replaced by a time-limited category called ‘probationary citizenship’ and a subsequent category of ‘permanent residence’. The two knowledge requirements are to apply at the earlier probationary citizenship stage. Special provision is again to be made for former armed forces members, bereaved partners and ex-partners after domestic violence: persons in these three categories will proceed directly to permanent residence if they meet the knowledge requirements, but will otherwise be eligible only for probationary citizenship. Gateway refugees are a further special case: they are to be eligible for permanent residence upon arrival in the United Kingdom, without meeting the requirements.

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21 Immigration Rules, paras 276F, 276I, 276L, 276O, 276R, 276U, 276X, 276AA.
22 Immigration Rules, para 287(b).
23 Immigration Rules, para 289A.
26 Immigration Rules, para 33B.
27 Paragraphs 287(a) and 295G of the Immigration Rules require two years in the United Kingdom as a partner before an individual is entitled to indefinite leave to remain. The completion of this probationary period is not insisted upon where a person would have been entitled to indefinite leave to enter, but for the failure to meet the knowledge requirements: letter from UK Border Agency to Camden Law Centre, 11 August 2008 (on file with ILPA, mailing of August 2008).
28 The Path to Citizenship: Next Steps in Reforming the Immigration System (February 2008). The main points of these proposals were confirmed in July 2008 in The Path to Citizenship: Government Response.
29 See paras 127 and 142 of The Path to Citizenship. It is unclear whether dependent relatives under 65 will benefit from this special provision.
30 The Path to Citizenship: Government Response, p 12.
Limited leave

A separate strand of recent integration policy in migration law has been the development of language requirements for persons seeking admission to the United Kingdom in limited leave categories which lead to settlement. Ministers of religion were the first group to whom an English language requirement was applied. From 23 August 2004, applicants in that category had to demonstrate spoken English to International English Language Test System (IELTS) level 4. The standard was then raised to IELTS level 6, for both written and spoken English, with effect from 19 April 2007. During 2005, the Home Office also consulted on a possible test of ‘civic knowledge’, which would have applied to ministers of religion when they applied for an extension of stay, but that proposal was dropped after the decision to introduce the general ‘knowledge of life’ requirement for indefinite leave.

The second step was the introduction of an English language requirement as part of a reform of the highly skilled migrant programme (HSMP) in November 2006. That language requirement was retained when the HSMP was incorporated into the highly skilled Tier 1 of the points based system (PBS) for economic migration, with effect from 30 June 2008. Under the new Tier 1, the language requirement has also been extended to the business migration and innovator categories. The English language requirement may now be satisfied either by passing an approved language test to at least CEFR level C1 (the lower standard for what are termed ‘proficient’ users), or by having a qualification equivalent to a UK degree which was taught or researched in English. Applicants for two schemes for graduates of UK educational establishments – the International Graduates Scheme and the Fresh Talent: Working in Scotland Scheme – are exempt from the language requirement, as their qualifying course of study was necessarily taught in English. There is also an exemption for investors: in their case, a minimum investment of £750,000 within 3 months of arrival appears to speak for itself. A further exemption covers the nationals of 16 majority English-speaking states outside the EU.

The next step is the extension of an English language requirement to skilled workers, as part of the new Tier 2 of the points based system, which is scheduled to come into force in November 2008. The required standard is to be the ability to speak to CEFR level A1 (the lower of two ‘basic user’ levels). As under Tier 1, possession of a degree taught in English will be sufficient, and there is to be an exemption for nationals of 16 majority English-speaking states. Ministers of religion are to be an exceptional case under Tier 2: in order to preserve the previous standard, they will have to meet CEFR level B2, which is the higher of two levels for ‘independent’ users. Intra-company transferees are to be exempt from the English requirement when they first obtain admission to the United Kingdom, but will have to meet it after three years’ residence.

A further limited leave category to which an English language requirement may be applied is those applying for admission to the United Kingdom as the spouses, civil partners or unmarried partners of settled persons. Having initially been announced in a March 2007
document on immigration control, this proposal was elaborated in a consultation document in December 2007, before being modified in *Marriage Visas: The Way Forward*, published in July 2008. Because of gaps in the provision of English language courses, a formal requirement for partners is currently only a medium-term goal. Instead, as part of the entry clearance process, partners are to be required either to prove their English language ability – provisionally in the same way as skilled workers – or to enter an agreement that they will learn English. Individuals in the latter group will have to convince entry clearance officers of the genuineness of their intention to learn English, and, after arrival, will have to prove to the UK Border Agency that they are actually doing so. Special provision is anticipated for partners with a physical or mental impairment.

‘Active citizenship’

A final development as regards integration requirements in migration law is the proposal, set out in *The Path to Citizenship* in February 2008, to make ‘active citizenship’ relevant to naturalisation and to the new status of permanent residence. The plan is that the standard qualifying periods for progression from probationary citizenship to British citizenship (one year) or permanent residence (three years) should apply only to those who meet this test. Those who do not satisfy the test will require an extra two years’ residence in order to progress to either citizenship or permanent residence. In *The Path to Citizenship*, the Government had gone so far as to speculate that ‘active citizenship’ might become a requirement for permanent residence or British citizenship, but that was dropped after the opposition of a majority of respondents to the consultation.

A significant practical challenge with the ‘active citizenship’ concept is to define the activities which qualify. The list given in *The Path to Citizenship* emphasised voluntary work with charities and children. That approach was criticised by consultation respondents, with some suggesting the addition of environmental and community activities, while others feared a negative impact upon voluntary organisations. Faced with these criticisms, the Government announced in July 2008 that a ‘design group’ would be established to make proposals *inter alia* as to the range of activities which would qualify. The draft Immigration and Citizenship Bill, also published in July 2008, suggests that in any event payment will be inconsistent with active citizenship, at least for naturalisation purposes.

The novel concept of ‘active citizenship’ is a particularly significant step within the recent wave of integration requirements. While language and societal knowledge are themselves problematic as legal requirements – for reasons discussed below – they at least concern capacities, which a person may choose what to do with. By contrast, a concept of ‘active citizenship’ implies the official designation of certain social participation as particularly acceptable. Even if the list produced is a broad one, it will mark a new, more prescriptive, departure within migration law.

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40 *Marriage Visas: The Way Forward* (July 2008), Ch 2. Among other things, this document clarified that the proposals would apply to civil partners and unmarried partners (para 2.26).
41 *The Path to Citizenship*, paras 167–181 and *The Path to Citizenship: Government Response*, pp 17–18. The proposed changes to the law on naturalisation were reflected in amendments to Schedule 1 of the British Nationality Act set out in clauses 32 to 34 of the *Draft (Partial) Immigration and Citizenship Bill* (July 2008).
44 Proposed amendment to para 4A of Sch 1 of the British Nationality Act 1981, cl 34 of the *Draft (Partial) Immigration and Citizenship Bill*. 
2. Towards community cohesion?

It is not in itself inappropriate for a government to favour the acquisition of basic linguistic and societal knowledge by migrants. Familiarity with the common language(s) of a society, and with a society’s basic organisation, tends to facilitate social interaction, economic activity, voluntary activity and participation in political life. Everything depends however on the integration policy which is actually pursued, both in its objectives, and in the means chosen to give it effect.

Since the late 1960s, the dominant public policy approach to the integration of migrants and minorities has been a liberal one. In a celebrated speech delivered in 1966, the then Home Secretary Roy Jenkins set out the core of that approach:

‘I do not think we need in this country a ‘melting pot’, which will turn everyone out in a common mould, as one of a series of carbon copies of someone’s misplaced vision of the stereotyped Englishman ... I define integration ... not as a flattening process of uniformity, but cultural diversity, coupled with equality of opportunity, in an atmosphere of mutual tolerance.’

Within the liberal approach, in the public sphere – including employment – the general aim has been that migrants and minorities should benefit from equality of opportunity. At the same time, there has been a presumption of tolerance of cultural differences, particularly in the private sphere.

The main alternative to the equal opportunity approach has often been thought to be a policy of assimilation. To quote from the Parekh Report on *The Future of Multi-Ethnic Britain* in 2000, the core assumption of such an approach is that

‘the state has a duty to ensure that everyone assimilates into the prevailing natural culture. Those who do not or cannot assimilate ... cannot complain if they are treated like second-class citizens.’

In other words, the assumption has been that the policy choice is between promoting a single national culture and recognising diverse ones.

In recent years, however, ‘community cohesion’, rather than assimilation, has emerged as the main alternative to the liberal approach. The objective of ‘community cohesion’ focuses upon the promotion of shared and common experiences. That focus can be seen for example in *Our Shared Future*, the final report of the Government’s Commission on Integration and Cohesion, published in June 2007. Its definition of an ‘integrated and cohesive community’ included ‘a clearly defined and widely shared sense of the contribution of different individuals and different communities to a future vision for a neighbourhood, city, region or country’ and ‘strong and positive relationships between people from different backgrounds in the workplace, in schools and other institutions within neighbourhoods.’ What is novel here is the assumption that there ought to be significant shared aspects to British life, including ‘future visions’ and relationships within common institutions. This focus on cohesion implies a move

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46 Speech to the National Committee for Commonwealth Immigrants, 23 May 1966, quoted in Favell, p 104.

47 Runnymede Trust, p 43. This approach is termed ‘nationalist’ there.

48 Commission on Integration and Cohesion, *Our Shared Future* (June 2007), para 3.15.
away from ‘cultural diversity … in an atmosphere of mutual tolerance’, but without going so far as to require assimilation to a sole ‘national’ way of life.

**Government policy: equality or cohesion?**

In its statements concerning integration requirements, the Government has often sought to justify itself by reference to equal opportunity for migrants, rather than the promotion of cohesion. For example, the Secure Borders, Safe Haven White Paper stated that ‘It is a fundamental objective of the Government that those living permanently in the UK should be able, through adequate command of the language and an appreciation of our democratic processes, to take their place fully in society.’\(^49\) The 2005 ‘five year strategy’ defended the extension of the knowledge requirements to indefinite leave applications on the basis that these were ‘related to the factors that are most closely linked to migrants succeeding in the UK and becoming economically active, and are intended to encourage greater social integration.’\(^50\) The December 2007 consultation on a language requirement for spouses suggested that it would ‘help spouses integrate more quickly into the community [and] boost confidence in participating in employment’.\(^51\) The government has also presented the new language requirement for Tier 2 skilled workers as desirable for social participation (only): ‘it helps to ensure migrants play a full part in British life outside the workforce.’\(^52\)

In other places, however, the government has been clear that its integration agenda in migration law reflects a new policy of promotion of ‘community cohesion’. This new model was initially seen in the reform of the law on naturalisation, the background to which was the inter-community violence which occurred in the summer of 2001 in a number of cities and towns in Northern England. The Government’s response to those disturbances, set out in the Denham Report of December 2001, included the reform of the law relating to nationality among its proposals for ‘community cohesion’, with the aim of ensuring ‘recognition of and adherence to fundamental rights and duties, and to English as our shared language’.\(^53\) The details were then elaborated – as we have seen – in Secure Borders, Safe Haven several months later.

More recently, the promotion of cohesion has been central to the proposals concerning active citizenship. That idea was first publicised in a speech on ‘Britishness’ given by Gordon Brown when still Chancellor, in February 2007.\(^54\) In it, he set out the view that ‘A strong sense of being British helps unite and unify us; it builds stronger social cohesion among communities …’ He went on to argue that ‘British citizenship is about more than a test, more than a ceremony’, and that:

‘in any national debate on the future of citizenship, it is right to consider asking men and women seeking citizenship to undertake some community work in our country or something akin to that that introduces them to a wider range of institutions and people in our country prior to enjoying the benefits of citizenship’.

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\(^49\) Secure Borders, Safe Haven, para 2.13.
\(^50\) Controlling our Borders, para 39.
\(^51\) Marriage Visas: Pre-Entry English Requirement for Spouses, para 1.2.
\(^52\) Skilled Workers under the Points Based System (May 2008), para 45. The silence in relation to economic participation was presumably because Tier 2 workers are linked to a specific employer.
That speech was followed by a June 2007 Fabian pamphlet on the question of citizenship, jointly authored by then Communities Secretary Ruth Kelly and then Immigration Minister Liam Byrne. The pamphlet argued that, in today’s complex society, it was necessary to:

‘develop a meaningful sense of what we all – whatever faith, ethnicity and wherever in Britain we are from – hold in common. We need a stronger sense of why we live in a common place and have a shared future.’

The pamphlet’s proposals included the proposition that citizenship should be ‘earned’, and in particular that ‘undertaking civic and voluntary work that enriches communities and helps vulnerable groups’ would confer an advantage as regards eligibility for naturalisation.

The Path to Citizenship Green Paper of February 2008 then elaborated on the proposal for ‘earned citizenship’, and gave community cohesion as its main justification:

‘The key feature of the proposed system is that it aims to increase community cohesion by ensuring all migrants ‘earn’ the right to citizenship and asks migrants to demonstrate their commitment to the UK by playing an active part in the community.’

Within the 2008 Green Paper, “values” formed the link between ‘cohesion’ on the one hand and the ‘earning’ of citizenship on the other. The Government’s aim was to ‘put[] British values at the heart of the immigration system’, and for ‘the immigration system to do more to encourage newcomers with the right values and commitments to integrate with British life.”

Migration law as an instrument

In addition to being made explicit in government policy statements, the new objective of community cohesion has been reflected in the choice of migration law as an instrument to advance integration. That strategy means denying improved immigration status to those who fail to meet certain requirements notwithstanding the negative consequences of so doing. In particular:

– Those who fail the requirements at the naturalisation stage, while retaining immigration rights, forego other benefits of British citizenship, such as in freedom of travel and residence within the European Union.
– For those who fail the requirements at the indefinite leave stage, a continued right of residence remains dependent upon their original claim to status, such as their economic or family position. Economic and family migrants lose access to social benefits, while economic migrants may also lose the free choice of employment and self-employment.
– Those who fail the English language tests for economic migrants are denied admission altogether.
– If English language requirements are introduced for spouses, those who fail are likely to be granted only temporary leave for the purpose of learning English.

55 Ruth Kelly and Liam Byrne, A Common Place (Fabian Society, 2007).
56 Ibid, p 34.
57 The Path to Citizenship, para 45.
58 Ibid, para 83. Similar statements can be found at paras 1, 4, 19, 32, 59, 98 and 139.
59 Ibid, para 134. A similar statement can be found at para 122.
60 Marriage Visas: Pre-Entry English Requirement for Spouses, para 2.7.
As we have seen, a failure to meet the test of ‘active citizenship’ is to lead to a two-year delay in the acquisition of British citizenship or permanent residence, with the loss of the benefits associated with those statuses.

The paradox of this strategy is that, in the name of integration, migrants are left either with an inferior legal status, or are simply excluded from the United Kingdom altogether. The focus of integration policy is no longer on the equalisation of opportunity, but rather on the discouragement and penalisation of migrants who do not possess certain attributes.

The alternative to an integration strategy which relies upon migration law is to pursue an educational approach. This was recognised – ironically – by the 2003 report of the ‘Life in the United Kingdom group’, even though the group’s purpose was to advise on the two knowledge requirements for naturalisation. The report emphasised that:

‘the object is educative and integrative: language, understanding of our society and enhancement of life-skills and employment skills. The object is not to diminish … numbers of people already settled and employed.’

Accordingly, it proposed that the planned handbook on life in the United Kingdom should be distributed free to all those with a route to settlement – and not only to those applying for naturalisation – and that it should be available in bilingual versions. English language tuition should be available free to all those with a route to settlement. The report also proposed that formal requirements should be met in all cases through a form of education: short courses or supervised self-study for those with sufficient English, and progress in language-with-citizenship classes for others. Citizenship tests meanwhile were to be used to demonstrate that the individual had attained the requisite level through education.

Policy on migrant integration has developed in a quite different direction to that proposed by the ‘Life in the United Kingdom group’. The official handbook is not free and is not available in languages other than English. Entitlement to full fee remission for English language tuition was narrowed in 2007 for adults not on benefits. Meanwhile, the availability of citizenship courses is limited. The result is that, for most migrants seeking to settle or naturalise, the tests are de facto the core of the system, without any educational component. This failure to develop a coherent educational approach to integration again suggests that the priority is no longer to equalise opportunity.

61 Bernard Crick, the group’s chair, and the author of the report, had previously been involved in the introduction of citizenship education in the school curriculum: see the report of the Advisory Group on Citizenship, Education for Citizenship and the Teaching of Democracy in Schools (Qualifications and Curriculum Authority, 1998).


63 Ibid, paras 4.2 and 4.5.

64 Ibid, para 5.11.

65 Ibid, para 5.9.

66 For criticism of current ESOL policy, see House of Commons Communities and Local Government Committee, Community Cohesion and Migration, 2007–08 House of Commons Papers 369, paras 91–97.

67 The Advisory Board for Naturalisation and Integration has highlighted the under-supply of ESOL places, a tendency for some with low language ability to take the tests prematurely, and the unsuitability of the tests as a means of citizenship education for those with high levels of English: see its Second Annual Report April 2006–October 2007, p 15.
3. Test outcomes

As integration requirements have expanded since 2002, little attempt appears to have been made to wait for an evaluation of the effects of any given reform before proceeding to the next one. Nor does any research appear to have been commissioned into the quantitative impact of integration requirements upon actual and potential applicants. Without such research, it is difficult to assess the dissuasive effects of the new integration requirements.

The one published source of data concerning the effects of integration requirements is the second annual report of the Advisory Board on Naturalisation and Immigration (ABNI), which gave data on pass rates for the ‘life in the United Kingdom’ tests. It showed that, in the last full year for which figures are given (August 2006–July 2007), a total of 88,313 tests were failed, which was slightly more than one-third of the number of grants of naturalisation or settlement in 2007 (243,055). The implication is that a significant proportion of potential applicants for those statuses are being held back by actual test failures. There will in addition be an unknown number of potential applicants who do not even take the tests in the first place.

Between the start of the tests in October 2005 and July 2007, a total of 367,712 tests were taken, with a pass rate of 68.7% (252,495 passes and 115,219 fails). The ABNI report also included a highly revealing breakdown of this pass rates by nationality, for October 2005–June 2007.

In Table 1, the ABNI information has been re-arranged, to give a rank order for all nationalities for which more than 1000 tests were taken in that period.

An examination of Table 1 suggests a number of provisional conclusions. The first is that high success rates in the knowledge of life tests are positively associated with English as a majority language (New Zealand, USA, Australia, Canada) and with higher levels of development and/or education among the probable applicant group (e.g., Russia, Bulgaria, Ukraine, Mauritius, India, Philippines). There is also a relatively high degree of success among African states which were once British colonies (in particular, South Africa, Zimbabwe, Kenya, Ghana, Nigeria, and Uganda). Meanwhile, the bottom of the list is dominated by nationalities which have recently been the source of large numbers of refugees (including the Democratic Republic of the Congo, Eritrea, Iraq, Kosovo, Angola, Sri Lanka, and Afghanistan) and nationalities whose migration to Britain includes significant shares of migrants in family categories (e.g., Bangladesh and Turkey).

These provisional conclusions lead to the further suggestion that pass rates are likely to vary significantly with the initial basis for admission to the United Kingdom. In the absence of information on that point for the United Kingdom, it is instructive to consider outcomes in Australia, as it is another English-speaking country, with a broadly similar immigration policy orientation, and introduced citizenship tests on 1 October 2007. Table 2 gives information on the first nine months of the Australian citizenship tests, by broad immigration category.

69 A direct comparison with the figures on naturalisation and settlement is impossible, as the requirements at the settlement stage came into effect only in April 2007.
70 The data is set out in Appendix 2 of the ABNI’s Second Annual Report. Note that the figures given for each of China, the Democratic Republic of the Congo, Iran, Kosovo, Russia, Tanzania and Yugoslavia are made up of two entries in the ABNI data. The entry here for Serbia leaves out a separate figure for Serbia and Montenegro (385 tests, 255 passes).
71 Table 2 is based upon information published in Department of Immigration and Citizenship, Australian Citizenship Test: Snapshot Report: July 2008. Some reworking has been necessary, to bring together information on the number of tests taken by broad category (p 8) and on the number of passes by broad category (p 9).
### TABLE 1: Pass rates for nationalities with 1000+ tests

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TABLE 2: Pass rate by broad category, Australia, October 2007–June 2008

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</table>

It can be seen that in Australia, the overall pass rate (78.6%) is some 10% higher than in the UK. Despite that, the pass rate for those starting from its humanitarian programme is less than half (46.4%). When this pattern is put together with the low test pass rates for refugee-producing nationalities in the United Kingdom, it is reasonable to conclude that the rate for those who start out in international protection categories is likely to be less than 50% in the United Kingdom as well.

A second significant question which is not addressed in the United Kingdom data is the likelihood of individuals ever passing the test – ie, including cases where they pass at second or subsequent attempts. The equivalent Australian data shows that the cumulative pass rate by individual was 95.5% in the first nine months. This again conceals large differences: 98.9% of those starting from the skilled stream succeeded in that time, as did 92.3% of those from the family stream, but only 81.5% of those starting from the humanitarian programme. Here too, it is reasonable to expect a similar relative pattern in the United Kingdom, albeit at a lower level, because of the lower test pass rate.

From the information which is available, it can therefore be assumed that the negative effects of the ‘life in the United Kingdom’ are highly differentiated. We know that some nationalities fare significantly worse than others, and we can safely assume that family migrants and persons benefiting from international protection fare worse than economic migrants. A fuller picture will require information on success rates by immigration category, as well as differences by gender and level of education. Indeed, the many questions raised by the limited data which has been published highlight the need for independent quantitative research into the effects of all integration requirements.

Conclusion: integration requirements in a diverse society

This article has offered an evaluation of developments to date with respect to recent integration requirements in British migration law. It has argued that the expansion of integration requirements since 2002 marks a shift from a liberal philosophy, including equality of opportunity, to one which is increasingly concerned with community cohesion. The effects of integration requirements are potentially significant in scale, and differentiated in their effects by nationality and (probably) by immigration category.

These attempts to promote community cohesion through migration law are problematic at different levels. Viewed in the abstract, some aspects of the cohesion agenda – such as shared experiences or social interactions across communities – may be defensible as broad aspirations. It is quite another matter to make those aspirations the basis for legal requirements, with

72 These figures have again been calculated from the information in pp 8 and 9 of the Snapshot Report.
consequences for the status of individuals. To do so is to override the legitimate claims of potential applicants, and of those with whom they have family, economic and social relationships. It leads to the paradox that migrants risk being marginalised or excluded in the name of their own integration.

The turn to cohesion within migration law is also at odds with the empirical reality that migration to Britain has become more extensive and varied. Steven Vertovec has recently characterised the current immigration context as one of ‘super-diversity’:

‘Over the past ten to fifteen years, immigration, and consequently the nature of diversity, in the UK has changed dramatically. Since the early 1990s there has been a marked rise in net immigration and a diversification of countries of origin … Throughout this time there has been a proliferation of migration channels and immigrant legal statuses.’

‘Super-diversity’ implies that it is difficult even to have a coherent objective of community cohesion. It also means that the negative effects of integration requirements are likely to be widely felt. The lack of fit between a cohesion policy pursued through migration law and the social reality of migration is a contradiction which will have to be resolved in the period to come.

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University of Kent
