

**BORDERS, CITIZENSHIP AND IMMIGRATION BILL – HL BILL 15
HOUSE OF LORDS COMMITTEE****Clause 37****New paragraph 1(2)(e), Schedule 1 to the British Nationality Act 1981
(Continuous employment)**

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

Amendment 51 Page 27, leave out lines 15 to 19**Amendment 52** Page 27, line 17, leave out "been in continuous employment" and insert "not been in breach of conditions of that leave"**Purpose:**

These two amendments are alternatives. They will allow peers to probe what is meant by 'continuous' employment and why this condition is thought necessary.

The first would delete altogether the requirement that a person who has entered the probationary citizenship stage as a worker must remain in employment throughout this stage. It would require consequential amendments, but is sufficient to raise the matter in debate.

The second would replace the requirement with a requirement to abide by the terms and conditions of the person's probationary citizenship leave, and will allow peers to compare the current conditions relating to remaining in work with whatever may be said to be the meaning of 'continuous'.

Briefing:

Clause 37 would require a person to be in continuous employment through their probationary citizenship¹. The term 'continuous employment' is not defined. It is anticipated that the Government intends to provide further explanation of the term by way of guidance. However, this leaves open the prospect of the Executive introducing requirements that have not been sanctioned by Parliament, and which may change over time.

In any case, no reason has been given for justifying the continuous employment requirement; and the other aspects of the current and proposed path to citizenship reveal that the requirement is not needed.

Clause 37 also requires a person not to be "*in breach of the immigration laws*" throughout the qualifying period, including the period of probationary citizenship².

Someone who is granted temporary leave will have conditions attached to that leave. For example where through no fault of the worker, the sponsor of a skilled worker under Tier 2 of the Points-Based System loses their sponsor licence, the worker will have their leave curtailed if they are out of employment for more than 60 days

¹ New paragraph 1(2)(e), Schedule 1 to the British Nationality Act 1981

² New paragraph 1(2)(f), Schedule 1 to the British Nationality Act 1981

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following their sponsor losing their licence, unless they have less than six months left to run. There are strict rules for changing job. The 60 days is time in which they can find another job, and satisfy requirements with the UK Border Agency so as to be allowed to change jobs³.

By contrast, a European Economic Area (EEA) national of one of the A8 or A2 countries (Access States to the EEA in 2004 and 2007 respectively), to whom particular regulations have been applied, is only considered to be in continuous employment if he or she is in employment with breaks of no more than 30 days. However, they are free to change jobs without any restrictions. For example, continuous employment in respect of the latter (Bulgarians and Romanians) is explained as⁴:

“Employment is to be considered to be continuous if the applicant was legally working at the beginning and end of that period and any intervening period in which the applicant was not legally working did not exceed 30 days.”

Introducing a continuous employment requirement, therefore, would introduce confusion. It is not clear what it means, or even if it would have the same meaning for all migrants; or whether its meaning would accord with how the presence of other migrant workers is generally regulated. Given that migrant workers' presence is regulated as described here, there is no reason to introduce some new requirement. The requirement that a migrant continues to be lawfully present (i.e. continues to have temporary leave and to abide by the conditions of that leave) is sufficient. The first amendment would achieve this because continued lawful presence is provided for in clause 37⁵.

Problems that could arise for migrants by the introduction of a new continuous employment requirement are highlighted the case study appended hereto.

Additionally, a continuous employment requirement may introduce particular problems for domestic workers. In contrast to others, domestic workers' ability to change jobs is specifically restricted to finding another domestic worker position. As explained on the UK Border Agency website⁶:

“You will be allowed to change employers while you are in the United Kingdom, however, you must still be employed as a domestic worker.”

The problems faced by the skilled worker, who needs time to make arrangements to find and confirm with the UK Border Agency any new job, would be compounded for the domestic worker who is tied to the specific type of employment.

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³ UK Border Agency Sponsor Guidance paragraphs 442/443

⁴ European Casework Instructions, Chapter 7, Section 2, paragraph 4.3 (p33)

⁵ New paragraph 1(2)(f) *op cit*

⁶ <http://www.ukba.homeoffice.gov.uk/workingintheuk/othercategories/domesticworkers/>

Case Study A

After 4 years and 11 months in employment, A was told that she would be made redundant by her employer just before she had obtained ILR. She was 3 months pregnant at the time of redundancy. Her husband was her dependant and held only a Palestinian travel document and as such found it very difficult to travel. She was extremely worried that the redundancy would affect her ability to remain in the UK. However, as she had a 3-month notice period, her employer was able to write in support of her Indefinite Leave to Remain (ILR) application and confirm her continuing employment for the duration of this notice period. She also had substantial savings in the UK. She was granted ILR.

The family were under tremendous stress and so were hugely relieved to learn that her redundancy would not adversely affect their ability to stay in the UK, their progress to British citizenship and also that the baby would be born British. Under the new scheme, she would be required to have remain in employment to qualify for citizenship (the 'continuous employment' requirement). As her dependant, would her husband also have lost his status as soon as his wife lost her job? It is to be assumed that this is what is intended by the legislation, although rules would be needed to make this clear. Her child was born British because the parents were settled at the time of the child's birth. Under the proposed new regime, the child would not have been born British because his parents would not have been settled at the time of the child's birth.

Moreover, what would have been A's position under the proposed continuous employment requirement had her employment been broken by her taking maternity leave rather than redundancy? If she did not return to work immediately after her maternity leave, would the period of unemployment break the continuity of her employment for the purpose of her progress to citizenship?