

**Modern Slavery Bill: House of Lords' Committee Stage: briefing for amendment 94 in the names of Baroness Cox, Lord Alton of Liverpool, Baroness Royall of Blaisdon and Lord Hylton: Protection from slavery for overseas domestic workers**

**Amendment 94**

Insert the following new Clause—

“Protection from slavery for overseas domestic workers

All overseas domestic workers in the United Kingdom, including those working for staff of diplomatic missions, shall be entitled to—

- (a) change their employer (but not work sector) while in the United Kingdom;
- (b) renew their domestic worker or diplomatic domestic worker visa, each such renewal being for a period not exceeding twelve months, as long as they remain in employment and are able to support themselves without recourse to public funds;
- (c) a three month temporary visa permitting them to live in the United Kingdom for the purposes of seeking alternative employment as an overseas domestic worker where there is evidence that the worker has been a victim of modern slavery.”

**Purpose**

Amendment 94 reintroduces some but not all of the protections against exploitation for migrant domestic workers that were removed on 6 April 2012 for those applying on or after that date<sup>1</sup>. It provides for domestic workers to change employer and extend their leave. Where they have left a situation of slavery they are given a three-month breathing space in which to find a new position, a provision that resembles the breathing space given to international students to find a new course when they are the unwitting victims of the closure of educational institution.

**For further information please get in touch with Shauna Gillan, Legal Officer, [Shauna.Gillan@ilpa.org.uk](mailto:Shauna.Gillan@ilpa.org.uk) or Alison Harvey Legal Director, [alison.harvey@ilpa.org.uk](mailto:alison.harvey@ilpa.org.uk), 0207 251 8383.**

**Domestic worker visas**

Before and after the 2012 changes, to be granted permission to come to the UK as an overseas domestic worker in a private household, a person must be over 18 and under 65. He or she must have worked as a domestic worker in the home of the person who will be the employer in the UK for at least 12 month, must intend to travel to the UK with that same employer (or the employer's spouse, civil partner or child), intend to work full-time for the employer in that employer's household, and have no intention of working for anyone or anywhere else. He or she must be able to maintain and accommodate her/himself without recourse to public funds.

What changed in 2012 for those applying on or after that date was the domestic worker must now intend to leave the UK at the same time as the employer or after six months, whichever is the shorter period. The domestic worker is tied, bonded, to the employer. S/he is not permitted to bring dependants to the UK. There must be a written contract of employment between employer and domestic worker, providing that the domestic worker will be paid in

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<sup>1</sup> Protections for domestic workers initially operated as concessions outside the immigration rules and were incorporated into the rules by Statement of Changes in Immigration Rules Cm 5597 of 22 August 2002. As of 5 April 2012 the rules on overseas domestic workers in private households were contained in paragraphs 159 to 159G of Statement of Changes in Immigration Rules HC 395.

accordance with the national minimum wage in the UK. Domestic workers entering after 6 April 2012 workers are not permitted to stay in the UK for any longer than six months.

### **Statistics**

Prior to 6 April 2012, the vast majority of domestic workers came in temporarily, with employers who had entered as visitors, and left with their employers. Those coming or returning to the UK with an employer who was coming to the UK for settlement, or for long-term work or business activities, were given visas for a year at a time. The ratio of the two types of visa granted was around 10:1; in 2009, for example, 13,175 domestic worker visas were granted for six months, and 1600 for 12 months. Few domestic workers remained long enough to qualify to settle. In 2010 15,350 visas as domestic workers were issued and 1060 domestic workers were granted settlement.<sup>2</sup> Three hundred and ninety six domestic workers were granted settlement in 2006, 434 in 2007, 784 in 2008 and 845 in 2009, rising to 1060 in 2010.<sup>3</sup> The increase is in line with general spikes in applications for settlement and citizenship at the time, associated with anticipation of the coming into force of the “earned citizenship” provisions of the Borders, Citizenship and Immigration Act 2009.

Most domestic workers did not apply to extend their leave in the UK: 5275 extension applications were granted in 2006, 6425 in 2007, 5845 in 2008 and 6425 in 2009. The UK Border Agency *Control of immigration: statistics 2010*, table 1.1<sup>4</sup> stated that the number of entry clearances granted to dependants of domestic workers in private households was 150 in 2007, 75 in 2008, 245 in 2009 and 335 in 2010; only 805 dependants over the course of four years. Statistics are not held separately for the very small number of dependants of domestic workers for diplomats. Thus, the cohort of cases that stands to be protected by Amendment 94 is thus small and tightly circumscribed. We wish it were much larger.

### **Recommendation of the Joint Committee on the Draft Modern Slavery Bill**

The Committee called for change as a matter of urgency:

*In the case of the domestic worker's visa, policy changes have unintentionally strengthened the hand of the slave master against the victim of slavery. The moral case for revisiting this issue is urgent and overwhelming. Protecting these victims does not require primary legislation and we call on the Government to take immediate action' [18] .*

*Tying migrant domestic workers to their employer institutionalises their abuse; it is slavery and is therefore incongruous with our aim to act decisively to protect the victims of modern slavery.<sup>5</sup>*

See also the Joint Committee on Human Rights' report on the Modern Slavery Bill:

*'the removal of the right of an Overseas Domestic Worker to change employer... a backward step in the protection of migrant domestic workers...and recommends that the Bill be amended*

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<sup>2</sup> *Employment-related settlement, Tier 5 and overseas domestic workers*, Home Office June 2010 paragraphs 7.3 and 7.13, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/269012/employment-related-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269012/employment-related-consultation.pdf) and *Control of immigration: Quarterly statistical summary, UK Quarter 4 2010*, see <https://www.gov.uk/government/statistics/control-of-immigration-quarterly-statistical-summary-fourth-quarter-2010>

<sup>3</sup> *Control of Immigration*, *op cit*, paragraph 7.13.

<sup>4</sup> *Control of Immigration*, *op.cit*.

<sup>5</sup> Paragraph 5, Introduction, *Report of the Joint Committee on the Draft Modern Slavery Bill*, Session 2013-2014,HL Paper 166, HC 1019.

to reverse the relevant changes to the Immigration rules and to reinstate the pre 2012 protections in the Bill<sup>6</sup>.

Despite these recommendations in the strongest terms, the Modern Slavery Bill leaves overseas domestic workers to their fate.

### **Migrant domestic workers in this bill**

An amendment, similar to amendment 94, moved by David Hanson MP was defeated in Commons Committee by the Chair's casting vote.<sup>7</sup> There was a vote on a version of the amendment at the report which garnered support from around the House<sup>8</sup> although ultimately it did not succeed.

### **Briefing**

It is easy to feel uncomfortable that people should be allowed to bring domestic workers with them to the UK and to reach for a paternalistic response, given the documented cases of abuse and exploitation. But such a response does little or nothing to change the dependency of migrant domestic workers and the imbalance of power which their exploitation can take place, both of which are likely to follow them around the world. Overseas domestic workers are vulnerable to exploitation because they are responding to a multiplicity of imperatives. Their own poverty and the need to provide for children and elderly and sick relatives, whether or not combined with fear of a powerful and abusive employer, may lead them to regard their situation of exploitation and slavery as the least bad alternative.<sup>9</sup> Even when they decide that it is the least bad alternative, some do not have the money to leave the UK as a means of leaving their situation, including if part of the abuse involves underpayment or the withholding of wages and they may not have control of their passports.

The way to protect people against exploitation is to give them more choices, not fewer. The UK response to the exploitation of migrant domestic workers should take account of global realities and contribute to ensuring that exploitation and slavery is not the least bad alternative for these workers worldwide.

The UK response should also take account of parochial realities. It is too easy for an employer to present a contract of employment that promises the earth for the purposes of immigration control, then pay the domestic worker nothing, force him or her to sleep on the floor and work long hours and subject him/her to beatings. Evidential requirements do not remove the risks of exploitation. It is possible to produce evidence that money has been paid to a domestic worker but demand that money back with menaces. The specialist charity Kalayaan, whose figures the Minister accepts,<sup>10</sup> reports that 65% of the 120 domestic workers on the new visa that they saw between 6 April 2012 and 6 April 2014 did not have their own rooms but shared children's rooms or slept on the floor of communal areas, while 53% worked more than 16 hours a day.

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<sup>6</sup> Joint Committee on Human Rights, *Legislative Scrutiny: (1) Modern Slavery Bill and (2) Social Action, Responsibility and Heroism Bill*, Third Report of Session 2014-15, HL Paper 62, HC 779, paragraph 1.95. See also the Home Affairs Select Committee, *The Trade in Human Beings: Human Trafficking in the UK*, Sixth Report of Session 2008-2009, HC 23 Volume 1, 6 May 2009, p26.

<sup>7</sup> Public Bill Committee Debates 14 October 2014 c503.

<sup>8</sup> HC Debates 4 Nov 2014 : Column 776, defeated by 292 votes to 234.

<sup>9</sup> See *Still enslaved: The migrant domestic workers who are trapped by the immigration rules* Kalayaan, (April 2014) <http://www.kalayaan.org.uk/documents/tied%20visa%202014.pdf> See also Kalayaan's Response to Draft Modern Slavery Bill, December 2013 available at <http://www.kalayaan.org.uk/documents/Draft%20Modern%20Slavery%20Bill%20Response.pdf>

<sup>10</sup> See HC Report 4 Nov 2014 : Column 764.

Sixty per cent were paid less than £50 a week.<sup>11</sup> In the face of that evidence, the Minister's statement at Commons report "The House will be pleased to know that a pilot is now under way to hand out very simple and easy-to-understand information cards on arrival to the UK, in addition to the information already provided with the visa," demonstrated naivety.<sup>12</sup> Similarly her comment "Home Office ... information suggests that between May 2009 and July 2014, there were 213 confirmed cases of trafficking for domestic servitude involving non-EU nationals. Of these, only 41, or less than 20%, were linked to the overseas domestic worker visa—an average of eight per year," which ignores that these cases are more likely to remain hidden.

As legal representatives we want to treat migrant domestic workers as persons with choices and to contribute to alleviating their powerlessness. But now they have few options. Moreover, our chances of being able to assist them are reduced by the loss of legal aid from the overwhelming majority of immigration cases under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Many migrant domestic workers are not well-paid and are not in a position to pay for legal advice and representation. Many are isolated with little knowledge of their rights and entitlements. Given the prohibition on giving immigration advice unless the person giving the advice is a solicitor, barrister, member of the Institute of Legal Executives or regulated by the Office of the Immigration Services Commissioner, set out in the Immigration and Asylum Act 1999, they will not get this advice from general sources of help.

A trafficked person may claim asylum if they fear persecution or a violation of their human rights on return to their country but not all domestic workers will have such fears and in any event many will want advice and/or representation in the matter of changing employer, or applying for settlement. Legal aid may be available for this once the competent authority has made a decision that there are reasonable grounds to believe that the migrant domestic worker has been trafficked, but the migrant domestic worker is unlikely to present to the competent authority without reassurance about his/her immigration status. This is addressed by amendments 102B and 102C in the name of Baroness Cox, which deal with legal aid.

The government does not deny that overseas domestic workers need protection. But it suggests that this can come from the police, ACAS, the pay and work rights helpline and employment tribunals. It places heavy demands upon a person in a situation of exploitation, enslavement and extreme poverty to reach any of these sources of help, let alone where they do not speak English and are isolated and alone; let alone when they are undocumented, fear removal and are reluctant to jeopardise such income as they do receive such status as they have. Cuts to legal aid affect cases before the employment tribunals; having to remain with the employer a person wishes to sue affects the case even more. The barriers are so high that any suggestion that these courses of help are available in practice must be viewed with scepticism.

The Minister said "We need to look at the underlying problem and tackle it" but did not go on and set out any proposals for tackling poverty, or the imbalances of power between master and servant. We echo the words of Sir John Randall MP, voting for the amendment at Commons Report:

"I have met too many victims to be able to say that it is a matter for another day,<sup>13</sup>

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<sup>11</sup> *Ibid.*

<sup>12</sup> Karen Bradley MP, HC Deb, 4 Nov 2014 : Column 775

<sup>13</sup> HC Deb 4 Nov 2014 : Column 767.