



# KALAYAAN

justice for migrant domestic workers

## Briefing for Report Stage of the Immigration Bill in the House of Lords February 2016

The Immigration Bill will enter Report Stage in the House of Lords on the 9<sup>th</sup> March 2016. Kalayaan urges Peers to vote for the proposed new clause after clause 36, Overseas Domestic Workers, tabled by Lord Hylton and supported by Lord Rosser. This amendment seeks to enact the recommendations contained within the Independent Review of the Overseas Domestic Worker visa by James Ewins QC. This review was commissioned by the Government in the context of the Modern Slavery Bill with the intention, stated by the Minister, Karen Bradley, that the recommendations of the review would be implemented;

*'We have asked for this review to take place and we look forward to the recommendations. I cannot commit a future Government, but the intention is that whoever is in government.... implement the review's recommendations'.<sup>1</sup>*

The amendment is as follows;

### **PROPOSED NEW CLAUSE AFTER CLAUSE 36 Overseas Domestic Workers**

Insert the following new Clause

#### **Overseas domestic workers**

(1) For section 53 of the Modern Slavery Act 2015 substitute the following:

#### **53 Overseas domestic workers**

- (1) Immigration rules must make provision for leave to remain in the United Kingdom to be granted to an overseas domestic worker
- (2) Immigration rules must make provision as to the conditions on which such leave is to be granted, and must in particular provide—
- (3)
  - (a) that the leave is to be for the purpose of working as a domestic worker in a private household;
  - (b) for a person who has such leave to be able to change employer, registering such change of leave with the Home Office.
- (3) Immigration rules may specify a maximum period for which a person may have leave to remain in the United Kingdom by virtue of subsection (1). If they do so, the specified maximum period must not be less than 2 ½ years.
- (4) Immigration rules must provide for a period during which no enforcement action should be taken against such an overseas domestic worker in respect of his or her—
  - (a) remaining in the United Kingdom beyond the time limited by his or her leave to enter or remain, or
  - (b) breaching a condition of that leave relating to his or her employment

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<sup>1</sup> Karen Bradley MP 17 March 2015 Modern Slavery Bill Debate

- (5) The Secretary of State must issue guidance to persons having functions under the Immigration Acts about the exercise of those functions in relation to an overseas domestic worker who may be a victim of slavery or human trafficking.
- (6) The guidance must provide for
  - (a) An overseas domestic worker remaining in the UK for more than 42 days to be required to attend a group information group information session as defined in those rules within that period;
- (7) In this section—
  - “enforcement action” has the meaning given by section 24A of the Immigration Act 1971;
  - “immigration rules” has the same meaning as in that Act;
  - “overseas domestic worker” means a person who, under the immigration rules, has (or last had) leave to enter or remain in the United Kingdom as—
    - (a) a domestic worker in a private household, or
    - (b) a private servant in a diplomatic household.

If passed this amendment would dramatically improve the situation of migrant domestic workers in the UK including those employed by diplomats. It would provide protection against abuse by allowing migrant domestic workers to change employer, giving them some bargaining power to challenge mistreatment by employers and so prevent abuse, and to escape if necessary, without breaking the law. It would allow these same workers to find alternative work as a domestic worker in a private household and so begin to rebuild their lives and provide for their families. This would make the right to change employer a viable option for individuals so often made vulnerable to trafficking by poverty and debt. If in full time employment it would allow for workers to apply to renew their visa. This would serve to keep workers visible to the Home Office and allow officials to challenge any conditions of employment about which they have concerns. Workers who assist in investigations against their former employers are far less likely to have their credibility undermined with the defence claim that they are ‘making it up’ in order to have a basis on which to apply to remain in the UK.

### **Why the immigration rules for migrant domestic workers who enter on the Overseas Domestic Worker visa need to change**

Since April 2012 migrant domestic workers have entered the UK on a six month long, non renewable visa, which prohibits them from leaving the employer with whom they enter. The employer’s name is usually written on their visa. This leaves them little opportunity to challenge any aspect of their treatment or employment. Domestic workers’ pre-existing vulnerability to abuse which is usually caused by poverty and other push factors such as family illness or debt is compounded by the unregulated and hidden employment context of a private household and the created vulnerabilities such as isolation and dependency caused by exploitative employers.<sup>2</sup> Migrant domestic workers usually depend on their employer for accommodation, employment and most information about their situation in the UK.

The two parliamentary committees for the Modern Slavery Act and Frank Field MP’s evidence review which preceded the Act found that the current tied visa regime in place for migrant domestic workers dramatically increases their vulnerability to abuse and exploitation.

The Joint Committee on the Draft Modern Slavery Bill published in April 2014 found that *‘In the case of the domestic worker’s visa, policy changes have unintentionally strengthened the hand of the slave*

<sup>2</sup> See UNODC Guidance Note on ‘abuse of a position of vulnerability’ as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime [https://www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Guidance\\_Note\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability\\_E.pdf](https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Guidance_Note_-_Abuse_of_a_Position_of_Vulnerability_E.pdf) paragraph 2.3

*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’.*

The Joint Committee on Human Rights in its legislative scrutiny of the Bill in November 2014 reported that *‘We regard the removal of the right of an overseas domestic worker to change employer as a backward step in the protection of migrant domestic workers, particularly as the pre-2012 regime had been cited internationally as good practice. We recommend that the bill be amended to reverse the relevant changes to the immigration rules and to reinstate the pre-2012 protections in the bill’.*

In her written evidence to the Public Bill Committee, submitted in October 2014, Dr Virginia Mantouvalou, Co-Director of the Institute for Human Rights and Reader in Human Rights and Labour Law, University College London (UCL), Faculty of Laws highlighted similar visa regimes which have been subject to legal challenges and raised concerns that the ODW visa regime could be subject to the same. She mentions the *Rantsev* case involving human trafficking in breach of Article 4 of the European Convention on Human Rights (prohibition of slavery, servitude, forced and compulsory labour), in which the European Court of Human Rights ruled that a very restrictive visa regime – the artiste visa regime in Cyprus – led to a violation of the Convention and suggests that the same principles can be extended to cover the ODW visa.

The Centre for Social Justice in their 2013 report ‘It happens here’, the Human Rights Watch Report ‘Hidden Away’ (2014) and Shadow City, a report into trafficking by Andrew Boff, Conservative leader of the GLA (2013), all condemned the tying of migrant domestic workers to their employers.

Most recently the Independent Review of the Overseas Domestic Worker visa, by James Ewins QC, commissioned by Government in March 2015 and published in December 2015 found that;

*the existence of a tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa **are incompatible with the reasonable protection** of overseas domestic workers while in the UK.<sup>3</sup>*

This right to change employers is a fundamental protection and the recommendations are an important first step in the protection of migrant domestic workers in the UK. Kalayaan is pleased that the review recommends that the permission to change employer also apply to those migrant domestic workers whose employers are diplomats and that all overseas domestic workers who are to work in diplomatic households are to be employed by the mission rather than individual diplomats.

The review also calls for **mandatory group information** meetings for all overseas domestic workers who remain in the UK for more than 42 days. Kalayaan welcomes any increase in opportunities for migrant domestic workers to receive information about their rights. We believe that if these meetings are delivered appropriately, in an environment where workers feel safe and genuinely able to disclose abuse, and are given meaningful options, such as changing employer, they can be an important tool in preventing and ending abuse.

The Government has not fully responded to the review, which it received in November 2015, stating only that it is *‘carefully considering the report’s recommendations and will announce its response in due course’.*<sup>4</sup>

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<sup>3</sup> Independent Review of the Overseas Domestic Worker visa. James Ewins, December 2015. Paragraph 10 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486532/ODWV\\_Review\\_-\\_Final\\_Report\\_6\\_11\\_15\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf)

<sup>4</sup> <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review>

Kalayaan is dismayed by the continued delays to rid the UK of the shameful tied visa which has now been in place for almost 4 years. In 2009 the Home Affairs Select Committee's Inquiry into Trafficking found that retaining the protections provided by the pre-2012 ODW visa was *"the single most important issue in preventing the forced labour and trafficking of such workers."*<sup>5</sup> As detailed above, repeated reports and parliamentary committees have condemned the tying in no uncertain terms. Reports of abuse reported by migrant domestic workers to Kalayaan have made clear that already high levels of serious abuse of domestic workers by employers increased with the 2012 tie to the employer.<sup>6</sup> Now the Independent review has confirmed these grave concerns it is time for Government to respond with urgency as every day delayed allows for more workers to enter the UK on a visa found to be incompatible with their reasonable protection. This undermines the Modern Slavery Act passed only last year.

Section 53 of the Modern Slavery Act was the Commons' only concession to those on the tied visa. It provides too little to these workers and too late; it leaves in place the tie doing nothing to prevent exploitation and what it provides for those who have been trafficked in of little practical assistance. Section 53 was implemented in changes to the immigration rules laid before parliament on the 17th September 2015. The changes provided that migrant domestic workers who have been found to have been trafficked by the UK authorities and have received a positive Conclusive Grounds decision through the National Referral Mechanism can apply for up to a six month visa to work as a migrant domestic worker in a private household with no recourse to public funds. It is unclear how in practise this provision benefits trafficked workers and it would be interesting to know how many individuals on the ODW visa have applied for leave under S53. Julia Harris, Managing Director of the Housekeeper Company has been clear that sadly, she would find it extremely hard to place anyone in this position in a job. She has explained that employers who go to agencies would not consider someone who would be unable to stay beyond six months and who would, inevitably, have no references (as they have been trafficked). Mrs Harris fears that as recruitment agencies will be unable to place workers who are in this situation, it will make them extremely vulnerable to being targeted by unscrupulous employers, as they will be desperate and have limited options.

Kalayaan shares these concerns. Section 53 of the Modern Slavery Act in fact offers far less to an individual granted a positive Conclusive Grounds decision as trafficked than a residence permit on the basis of personal circumstances would. The period of leave is less and there is no recourse to public funds. Work is limited to domestic work in a private household. It gives no guarantee of protections prior to entering the NRM to workers who are fearful of escaping abuse. It offers nothing to those workers who are seriously abused but whose treatment stops short of trafficking or modern slavery.

### **Other promised 'protections' which are not effective in practise**

- Appendix 7 of the immigration rules was introduced in 2015 and is in effect a contract covering key terms of employment as well as issues such as retention of passports which must be used when applying for entry clearance as an ODW. Kalayaan frequently encounters cases where the domestic workers terms and conditions of employment including salary are not in accordance with those stated in their contract.<sup>7</sup> To be effective, contracts of employment must be easily

<sup>5</sup> <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/23/23i.pdf>

<sup>6</sup> See for example Still enslaved: The migrant domestic workers who are trapped by the immigration rules, Kalayaan. April 2014 <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/tied-visa-2014.pdf>

<sup>7</sup> This is evidenced in detail in 'Turning a Blind Eye. The British state and migrant domestic workers' employment rights', by Nick Clark and Leena Kumarappan

enforceable in the UK. The tied visa combined with the recent cuts to legal aid serve to deny domestic workers the opportunity in practice to enforce employment rights through an Employment Tribunal.

- A requirement that a caseworker examining an ODW visa application be satisfied that the National Minimum Wage (NMW) will genuinely be paid. A far more effective strategy for ensuring that the NMW is paid in the UK would surely be to remove barriers to domestic workers from enforcing this right in the UK as well as scrutinising bank accounts and payslips with visa renewals.
- A commitment to work with the Foreign and Commonwealth Office to consider the way domestic workers in diplomatic households are protected. Diplomatic immunity means that domestic workers employed by diplomats find it particularly hard to access justice. In February 2015 the Court of Appeal found that diplomatic immunity trumped trafficking when it refused the claim of two domestic workers found by the UK's National Referral Mechanism to have been conclusively trafficked by their diplomatic employers (*Reyes and Suryadi vs Al- Malki*). If we are interested in protecting these workers we must allow them to leave their diplomatic employers. If we want to go further, a landmark Court of Appeal Case, heard also in February; *Benkharbouche & Janah vs Sudan & Libya* where these workers were employed directly by the embassy issued a declaration of incompatibility under the Human Rights Act 1998 in order that the workers could take a claim. Ensuring workers are employed by the embassy rather than individual diplomat could do much to facilitate their access to justice.
- Referral into the National Referral Mechanism as a victim of trafficking. This does not protect against nor prevent trafficking. It identifies someone as having been trafficked. Less than half of the domestic workers whom Kalayaan staff have identified as trafficked consent to be referred into to NRM. In 2014, Kalayaan staff considered that 54 domestic workers who registered in that year were victims of trafficking. However, only 25 consented to referrals into the NRM in the same year. For those without immediate short term support needs such as accommodation, the NRM offers little protection to domestic workers.
- Support to return to their country of origin. For many domestic workers Kalayaan encounters returning to their country of origin is not an option in the short to medium term. Some domestic workers have described being in situations of debt bondage as they have no choice but to borrow money in order to cover agency fees and flights and subsequently discover that their salary was too small to make realistic repayments. Some domestic workers have borrowed to pay the costs of hospital care and medicine for an ill relative and become indebted for considerable periods as they try to make repayments from small salary. Many domestic workers have indicated to us that they would seek work abroad again if they had to return home for any reason as they have no other way of supporting their families. There is a real risk that they would be re-trafficked

Migrant domestic workers in the UK remain tied to their employers in a visa system of which we should be ashamed. The Modern Slavery Act provided an excellent opportunity to address this by reinstating the original overseas domestic worker visa which allowed domestic workers to change employers, escape abuse and access justice. Instead this has been missed. We are left with a provision which to

date hasn't taken account of the promised review and which offers so little leave it is worthless in practise. Worse there is a likelihood that these workers, still not fully recovered from the effects of the trafficking, left with no evidence of their right to work, destitute and with the same pressures to support their families which led them to migrate in place, may be pushed into exploitative employment or even re trafficking. The opportunity to address this is now. The Ewins Independent Review of the Overseas Domestic Worker visa has made sensible suggestions and this amendment will ensure they are implemented.

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