



KALAYAAN

justice for migrant domestic workers

Kalayaan briefing on the Government response to the independent review of the overseas domestic worker (ODW) visa

08/03/2016

The Government has now set out its response to the key recommendations of the independent review of the overseas domestic worker (ODW) visa. The review, promised during the debate of the Modern Slavery Bill and carried out by James Ewins QC, made a range of recommendations, the including the right to of domestic workers to change employer and renew their visas annually for a period of 2½ years.

During the debate the Government stated its intention to implement the review's recommendations Minister Karen Bradley stated that

'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'.¹

It is therefore disappointing that although the Government has committed itself to implement a number of the review's recommendations, it will not fully implemented the review's recommendations including main key recommendation on the visa tie.

The review 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'.²* It also found that extensions up to a maximum of 2½ years was is *'the minimum required to give effective protection to those overseas domestic workers who are being abused while in the UK'³*

The Government has opted to permit domestic workers to change employers in the first six months in the UK but not to permit renewal of the ODW visa beyond this point on the basis that if domestic workers were permitted to *'significantly prolong their stay...they may be less likely to report abuse'*. It went on to state that *'This may perpetuate a revolving door of abuse in which perpetrators remain unidentified and free to bring other domestic workers to the United Kingdom with impunity'.⁴* The review noted that this concern previously raised during the debate on the Modern Slavery Bill

¹ Karen Bradley MP 17 March 2015 Modern Slavery Bill Debate

² James Ewins, Independent Review of the Overseas Domestic Worker visa (Independent Review), 16 Dec 2015, paragraph 10

³ Independent Review, Paragraph 11

⁴ Overseas Domestic Workers Written statement – HCWS583

could be met by requiring any change of employer to be registered with the Home Office.⁵ This would provide the Home Office with sufficient information to pass on to the police to consider investigating further. The review noted that 'little resistance' was received to this and the Government acknowledged that the requirement for domestic workers to register their change of employer '*could help mitigate the possibility that they move into another abusive relationship*'⁶

In the almost four years during which migrant domestic workers have been tied to their employers, fewer workers known to Kalayaan have gone to the authorities, as they are too afraid given their uncertain immigration status. In contrast, prior to April 2012 Kalayaan regularly supported workers to go to the police, usually to report the theft of workers' passports by an employer, a clear indicator of trafficking. In the period April 2011 – December 2011, 36 domestic workers who came to Kalayaan without their identity documents were assisted by Kalayaan to report this to the police. In many cases they reported other incidents of mistreatment and crime at the same time.

There remains no upheld conviction for trafficking an adult to the UK for domestic servitude. We do not believe that a right to change employer in the first six months in the UK will lead to domestic workers having greater confidence to report abuse to the police and others. Only when they feel safe are workers likely to have the confidence to approach the authorities. Domestic workers will only feel sufficiently secure only when they know their situation in the UK is guaranteed at least in the medium term.

Moreover, the proposal to permit domestic workers to change employers in the first six months without a right to renew their ODW will be largely meaningless for domestic workers. Recruitment agencies that place domestic workers in private households have noted in the context of Section 53 of the Modern Slavery Act, that it would be almost impossible to place domestic workers for periods of six months or less. Without work and with no recourse to public funds, it is likely that some of these workers will fall victim to further exploitation and abuse.

This very limited right is unlikely to prevent trafficking and other forms of modern slavery as exploitative employers be aware that while domestic workers may have the right to change employer they will be unlikely to do so given the difficulties of finding work for a very short period.

It is therefore unlikely that this measure will provide the 'immediate escape route from abuse' that the Government hope.

Other government proposals

Extend stay for domestic workers granted a positive conclusive grounds decision

As part of 'the two pronged approach' set out in its statement, the Government proposes to extend the period which domestic workers who have been referred to the NRM and received a positive conclusive grounds decision. Section 53 of the Modern Slavery Act provided that migrant domestic workers who entered the UK on the ODW visas and who have been trafficked or subjected to other forms of modern slavery may apply for a visa for a maximum of six months permitting them to work as a domestic worker in a private household. However, the number of domestic workers who will actually benefit from this measure is small. In 2015, 353 domestic workers were referred to the

⁵ Independent Review Paragraph 83

⁶ Independent Review Paragraph 83

National Referral Mechanism,⁷ and there are no figures for those who received a positive conclusive grounds decision.

More than half of the domestic workers internally identified as trafficked chose not to be referred to the NRM. The NRM identifies persons who have been trafficked and provides for their short term support needs such as accommodation but offers little to workers without those needs.

The risk also remains that unless all domestic worker are permitted to renew their visa, prosecutions will be more difficult to achieve as domestic workers could be seen as having a motive to allege abuse in order to remain in the UK.

Tighten the obligations of employers of ODWs

The government intends to tighten the obligation of employers and ensure that they are rigorously enforced. These obligations include requiring employers to comply with employment law and any workplace-based compliance checks. The employers of domestic workers are already obliged to comply with UK employment law including the National Minimum Wage. In the three years following the 2012 visa changes, Kalayaan registered 184 workers who entered on the tied visa, however 31% of these were not paid at all during their time in the UK. Employers are required to provide a contract of employment which complies with Appendix 7 of the Immigration Rules. However many domestic workers report to us that their actual terms and conditions of employment differ from those in their contract. Employers legal obligations including under employment law must be properly enforced, which has not happened to date.

Kalayaan has found that since the introduction of the tied visa in April 2012 few domestic workers arriving under the tied visa are able to seek redress for their exploitation and abuse. The independent review of the ODW visa states:

*'First, the overseas domestic worker needs to be enabled to access real, practical ways to escape from an abusive relationship, and take steps to seek redress.'*⁸

It is difficult to see how being denied the right to renew the visa enables a domestic worker who has been badly exploited but not trafficked or otherwise a victim of modern slavery to seek redress. They would have no right to remain in the UK for more than 6 months and seeking compensation by way of an employment tribunal or otherwise would therefore prove impossible given the likely duration of such proceedings. Permitting them to renew their visa as recommended by the Ewins review would facilitate domestic workers to see redress. As the review has pointed out successful redress *'also send powerful messages of deterrence to would-be abusive employers.'*⁹

Information and advice meetings for ODWs

The Government accepts the Ewins review recommendation regarding the provision of information advice and support meetings for domestic workers. It has confirmed that these meetings will be provided by an agency independent of the Home Office. This is a welcome development but it is essential that the information provided is easily understood and domestic workers leave these meetings clear about their rights and how to avail of them.

⁷ National Crime Agency, National Referral Mechanism End of Year Summary 2015, p4.

⁸ Independent Review, Paragraph 173

⁹ Independent Review, Paragraph 135

It is unclear what assistance if any would be provided to domestic workers who disclose abuse and exploitation at this meeting, given that it may be the first occasion they have to leave their employer's home. What support if any would be provided in such cases where a domestic worker disclosed abuse amounting to trafficking or other forms of modern slavery chose to stay in abusive situation as they know they will not get work if they leave the employer and referral to the NRM and the possibility of being able to remain in the UK for two years following a positive Conclusive Grounds decision is too remote and uncertain.

The Government is also committed to providing information to employers on their obligations. As the review recommends:

*'... an employer needs to be given due warning as to the consequences of abusing his employee in the UK'*¹⁰

The consequences the Government propose for failing to comply with their obligations – possible loss of right to sponsor the entry of other domestic workers in the future – is not sufficiently robust to ensure compliance. Such employers should also lose their own right to remain in the UK or similar punishment.

The independent review of the overseas domestic worker visa sought to *'to identify the minimum steps necessary to redress the power balance such that the overseas domestic worker is given proper protection of her fundamental rights while in the UK'*¹¹. It is disappointing that the Government has failed to implement these minimum steps.

However the opportunity to ensure that the review's main recommendations are fully implemented has not yet been lost. Lord Hylton's amendment to the Immigration Bill 2015 supported by Lord Rosser is an opportunity to give effect to the main recommendations of the Ewins report and ensure that the minimum steps necessary for the protection of the fundamental rights of domestic workers are taken.

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¹⁰ Independent Review, Paragraph 173

¹¹ Independent Review, Paragraph 173