

Kalayaan response to consultation – questions on MDWs 5 August 2011

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26. Should the route for domestic workers in private households be closed?

No

In order to prevent an increase in human trafficking and domestic slavery a legal route that recognises domestic workers accompanying their employers to the UK as workers must be maintained.

The closure of the route for domestic workers in private households will increase the exploitation and abuse of migrant domestic workers by:

- Removing a system that works well to protect domestic workers ([section 26.1](#))
- Removing a system that has been hailed as best practice in preventing trafficking ([section 26.2](#))
- Increasing trafficking and preventing migrant domestic workers enforcing their rights ([section 26.3](#))

The closure of the route for domestic workers in private households will be damaging for the UK because it will:

- Frustrate Government efforts to prevent trafficking for domestic servitude ([section 26.4](#))
 - Because proposals are based on an erroneous assumption that our borders are impermeable ([section 26.5](#))
- Increase costs to the Government ([section 26.6](#))
- Prevent wealthy individuals from coming to the UK ([section 26.7](#))

Nor will closing the route significantly reduce net migration or create jobs for UK and EU nationals ([section 26.8](#))

26.1 The current visa system works well to protect domestic workers

Migrant domestic workers, the vast majority of whom are women, have been widely recognised as a vulnerable group of workers¹ due to the isolated nature of their work, often invisible to regulatory bodies, and their dependency on their employers for their income, accommodation and immigration status.

The current overseas domestic worker visa was introduced in 1998 in recognition of the particular vulnerability of migrant domestic workers. A comparison of statistical data on abuse and exploitation reports collected by Kalayaan in 1996 and again in 2010 shows that the visa works to prevent abuse and exploitation, including, but not limited to, trafficking for forced labour.² The Home Office acknowledged that the situation of migrant domestic workers has improved with the rights given in 1998.³

The system works as intended with only a small proportion of migrant domestic workers who enter the UK availing themselves of the possibility to change their employer. At least 40% of those who change employer do so because they have experienced abuse or exploitation.⁴

26.2 The current visa system is recognized as best practice at preventing trafficking

Granting an independent visa status, including the right to change employer, for migrant domestic workers has been hailed as good practice by the International Labour Organization⁵, the US Government in their 2010 Trafficking in persons report⁶ and the United Nations Special Rapporteur on the Human Rights of Migrants⁷.

The Committee on the Elimination of Discrimination Against Women recommends that States give independent residency rather than tying workers to any employer:

“When residency permits of women migrant workers are premised on the sponsorship of an employer or spouse, States parties should enact provisions relating to independent residency

¹ See Anderson 2010, Pollert and Charlwood 2009, Trades Union Congress: Commission on Vulnerable Employment, ‘Hard Work, Hidden Lives’ Report, Department of Trade and Industry, 2007, International Labour Organisation. Report IV(1). Decent work for domestic workers.
http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf

² Lalani, M. Ending the abuse: Policies that work to protect migrant domestic workers. Kalayaan. May 2011.
<http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

³ Note of Immigration Law Practitioners’ Association (ILPA) meeting with James Quinault (Director, Managed Migration Strategy) re: Managed Migration Points Based System. 28 November 2008

⁴ UKBA statistics in Lalani, M. Ending the abuse: Policies that work to protect migrant domestic workers. Kalayaan. May 2011.
<http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

⁵ Draft ILO Multilateral Framework on Labour Migration Non binding principles and guidelines for a rights- based approach to labour migration, Geneva, 31 Oct- 2 Nov 2005. Annex II ‘Examples of best practise, VI Prevention of and protection against abusive migration practises’, pt 82

⁶ 2010 Trafficking in Persons Report, US Department of State, June 2010, p 24 <http://www.state.gov/g/tip/rls/tiprpt/2010/>

⁷ Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante: Mission to the United Kingdom of Great Britain and Northern Ireland. United Nations, Human Rights Council. 16 March 2010.
<http://www.unhcr.org/refworld/docid/4c0623e92.html>

status. Regulations should be made to allow for the legal stay of a woman who flees her abusive employer or spouse or is fired for complaining about abuse (article 2 (f))”⁸

The Parliamentary Assembly of the Council of Europe has passed a resolution urging member states to:

“Develop independent visa schemes for migrant domestic workers and care workers which would allow legal entry, provide a standardized working contract, allow for a change of employer[...] and ensure that visas are not tied to particular employers...”⁹

26.3 The proposals will increase trafficking and prevent domestic workers enforcing their rights

Abolishing the domestic worker visa would be unlikely to deter traffickers from bringing domestic workers to the UK. On the contrary, it is well evidenced that traffickers use illegality and the threat of deportation to coerce and control their victims.¹⁰ Indeed the UK Human Trafficking Centre list the threat of being handed over to the authorities as an indicator of trafficking on their National Referral Mechanism referral form¹¹ and in the UK Guidance to Competent Authorities (the UK Border Agency staff responsible for identifying trafficking) states that traffickers often instill fear in domestic workers by threatening them with deportation and by withholding their passport¹².

“Access to justice is a crucial right since the enforcement of all other fundamental rights hinges upon it in the event of a breach”¹³. In addition to increasing the problem of trafficking and illegal working, closing the domestic worker route would mean that when workers escape their employers, they will be undocumented, and have no access to legal remedies through the employment tribunal. They are very unlikely to approach the police as they will fear detention and removal.

26.4 Removing the visa would frustrate Government efforts to prevent trafficking

In the UK the current visa system for migrant domestic workers has been acknowledged to prevent trafficking. The Home Affairs Select Committee enquiry on trafficking stated that:

⁸Recommendation 26 (f). General recommendation No. 26 on women migrant workers CEDAW/C/2009/WP.1/R http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf

⁹ Protecting migrant women in the labour market. Report of the Committee on Migration, Refugees and Population. Ms Pernille Frahm. Parliamentary Assembly of the Council of Europe <http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12549.pdf>

¹⁰ Skrivankova, K. Trafficking for Forced Labour: UK Country Report. Anti-Slavery International. P17 http://www.antislavery.org/includes/documents/cm_docs/2009/t/trafficking_for_forced_labour_uk_country_report.pdf

¹¹ <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/nrm-referral-forms>

¹² Guidance to the Competent Authorities. Parliament website. <http://www.parliament.uk/deposits/depositedpapers/2011/DEP2011-0980.pdf>

¹³ Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States. FRA European Union Agency For Fundamental Rights. 2011. p9 http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_domestic_workers_en.htm

“to retain the Migrant domestic worker visa and the protection it offers to workers” is the single most important issue in preventing the forced labour and trafficking of such workers”¹⁴

The Office for the Special Representative on Trafficking in Persons at the OSCE¹⁵ and the United Nations Special Rapporteur on contemporary forms of slavery¹⁶ both criticise restrictive visa regimes as being a cause of vulnerability to trafficking for forced labour.

The Office of the United Nations High Commissioner for Human Rights, Regional Office for Europe states that the risks of human rights abuses are particularly high for migrant domestic workers with irregular or undocumented migration status.¹⁷

26.5 The proposals are based on the assumption that our border is impermeable

Employers who currently bring MDWs to the UK are often extremely wealthy and very powerful. Closing the visa route for domestic workers in private households will have no effect if these employers do not respect UK immigration rules. Even under current arrangements, some employers actively choose to evade UK immigration controls. Kalayaan has documented cases where migrant domestic workers have been brought by employers on visit visas, on false passports arranged by the employer and as family members. In some cases the migrant domestic worker has not even cleared immigration control as they came in from Europe by car or on an employer’s private jet¹⁸.

If some wealthy employers are prepared to use any means available to ensure that their own domestic staff accompany them to the UK and are willing to break the rules even when a legal channel for such migration exists, the removal of the ODW visa will result in an increase in the number of undocumented workers who are brought into the UK by their employers to work illegally. Most domestic workers have no control over their passports and it is the employer who applies for their visa. Most are not shown their visa and if they are they are unlikely to understand that a visit visa doesn’t allow them to work. Even if a domestic worker were to see her passport and understand that a visit visa is not an appropriate working visa for the UK, they would be powerless to refuse to come to the UK if they are working overseas in their employer’s country rather than their own.

¹⁴ House of Commons Home Affairs Committee, *The Trade in Human Beings: Human Trafficking in the UK*, Home Affairs Committee, Sixth Report of Session 2008–9, Volume 1, House of Commons, London, *The Stationery Office*, 14 May 2009, p. 26.

¹⁵ Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude’. OSCE. 2011
<http://www.osce.org/cthb/75804>

¹⁶ Report of the Special Rapporteur UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, 18 June 2010, A/HRC/15/20
http://www2.ohchr.org/english/issues/slavery/rapporteur/docs/A.HRC.15.20_EN.pdf

¹⁷ Rights of Migrant Domestic Workers in Europe. United Nations Office of the High Commissioner for Human Rights, Europe Regional Office. 2011.
http://www.europe.ohchr.org/Documents/Publications/Study_Domestic_Migrant_webversion.pdf

¹⁸ Lalani, M. Ending the abuse: Policies that work to protect migrant domestic workers. Kalayaan. May 2011. p 23
<http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>.

It should be borne in mind that closing the route for domestic workers in private households is only likely to deter good employers from bringing their domestic staff. Traffickers are unlikely to be concerned by what route they traffic someone to the UK. Closing the route means that instead of providing an escape route for the domestic worker the power of the trafficker will be increased.

The argument that bringing someone unlawfully to the UK to work would be a criminal offence and would be prosecuted in the criminal courts holds no water since the record for prosecuting trafficking for domestic servitude is woefully inadequate in the UK. Indeed there have been no successful criminal prosecutions. In any case, opening a criminal prosecution does nothing for the victim, most prosecutions fail, the victims is then likely to be removed after the case is closed and will then be outside the UK with no protection from the trafficker whom she has denounced.

26.6 The proposals would increase costs

When domestic workers flee abusive employers, those who fit the definition of trafficked person will need to be protected in line with the Council of Europe Convention¹⁹ and the EU directive²⁰. This will increase costs. In the 25 months that Operation tolerance and the NRM had been running (to Dec 2010), **£850,000** in Government money was saved because of the domestic worker visa. Rather than accepting state accommodation and support the majority of trafficked domestic workers chose to move on, work and support themselves and their families, remain visible in the UK and contribute through visa fees and taxes.

Kalayaan identified 157 domestic workers as trafficked under Operation tolerance (May-Sept 2008) and under the NRM (April 2009 - Dec 2010), 102 of these individuals choose not to be referred to the NRM. 68 of those individuals did not need accommodation and support as they found new work. An additional 10 domestic workers who were referred into the NRM chose not to take up accommodation and support as they wanted to work. Therefore without the domestic worker visa an additional 78 would have needed housing. £850,000 is based on 78 individuals multiplied by £11,340; the average cost of housing a domestic worker based on the length of stay and the cost of a bed in the Poppy Project.

26.7 Prevent wealthy individuals from coming to the UK

The Conservative peer Lord Reay, said of the Conservative policy to allow employers to bring their domestic staff to the UK in 1990 that:

¹⁹ Council of Europe Convention on Action Against Trafficking in Human Beings. Warsaw 16.V.2005.
<http://conventions.coe.int/treaty/en/treaties/html/197.htm>

²⁰ DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Brussels 9 March 2011.
http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/DIRECTIVE_OF_THE_EUROPEAN_PARLIAMENT_AND_OF_THE_COUNCIL.pdf

“The Government thought it would be unreasonable for a domestic worker for an employer [...] abroad to be prevented from coming to the UK if the employer came here. This is both humanitarian and pragmatic. [...] Looking at our national interest, if wealthy investors, skilled workers and others with the potential to benefit our economy were unable to be accompanied by their domestic staff they might not come here at all but take their money and skills to other countries only too keen to welcome them”

Hundreds of extremely wealthy families come to the UK to second homes and rented apartments each year, they often bring domestic workers to the UK. An article in the Daily Mail in August 2010 stated that in the summer there are more than 100 billionaire Saudi families in Knightsbridge alone. They quote Hussam Baramo, the Syria-born features editor at Al Quds newspaper, a daily paper widely-read by Middle Eastern people in London saying “the mega-wealthy billionaire families of the Gulf states over here this summer will tell you that they come to London because, unlike in the U.S. or France, they are made to feel welcome,”²¹

26.8 The proposals, if implemented, will not significantly reduce net migration and the jobs will not be filled by UK or EU nationals

Closing the route for overseas domestic workers will not have any significant effect on net migration. UK Border Agency (UKBA) figures show that 94% of the domestic workers coming to the UK return home again with their employer within a short period of time and do not stay on and renew their visa.²² The ability to change employer applies to all domestic workers in a private household but it is only used by very few of them – approximately 1000 each year²³ – and nearly half of these individuals reported to the UKBA that abuse or exploitation was the reason for the change²⁴. It is likely that more experienced abuse or exploitation but felt unable to report this to the UK Border Agency.

Figures explained

We are concerned that the UKBA are using misleading figures. For instance, it has been stated that: “The majority of ODWs do leave the UK at the end of a finite period but considerable numbers seek to remain longer – in 2009 10,000 ODWs came here to work in private households and in the same year 6,000 extended their stay and 790 settled.”²⁵

Domestic workers have to renew their visa every year until they either leave the UK or they apply for settlement after five years. This means that the 6,000 the UKBA use refer to domestic workers who would have entered any year between 2005-2009. The figure of 6,000 needs to be divided across the five years of domestic workers renewing their visa; the contribution made to net migration by the overseas domestic worker visa is therefore approximately 1,200 each year. We are unsure where the figure of 6,000 came from.

²¹ <http://www.dailymail.co.uk/news/article-1301419/Invasion-Bling-ionaires.html>

²² Calculation based on UKBA management information figures for visa renewals in 2009

²³ UKBA management information figures

²⁴ Lalani, M. Ending the abuse: Policies that work to protect migrant domestic workers. Kalayaan. May 2011. <http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

²⁵

The UKBA previously gave Kalayaan figures stating figures for renewals in 2009 as 5,050 in a private household or 5,285 if you include domestic workers with diplomats therefore the net migration figure for 2009 was closer to 1000.

The Recruitment and Employment Confederation states in its briefing on the domestic worker visa: “Unlike other professions, it is increasingly difficult to find UK residents who are willing to work as live-in domestic workers. This is also true of EU nationals and companies providing these services have had to turn to non EU countries to meet demand- the Philippines being a prominent example of this. This trend is explained by the reluctance of UK or EU nationals to enter into positions that require them to live with their employers for the duration of that employment. The REC believes that any moves to restrict applications for Domestic workers Visas would compromise the supply of such professionals in the UK Economy”.²⁶

The European Union Agency for Fundamental Rights insists that member states should be aware of the gap between labour market needs and the available workforce in the domestic work sector. A number of EU countries have found that they cannot fill live-in domestic work jobs with their own country nationals or individuals from within the EU.

In Italy for example there is a quota that allows people within Italy to recruit domestic workers from outside of the EU in order to fill the labour shortage. This was 15,000 persons (19% of the total migrant workers quota) in 2005, 45,000 (27% of quota) in 2006 and more than 100,000 (70% or total) in 2008.²⁷

The Belgium immigration authorities responded to a survey initiated by the UK saying they deliver authorisation for work permits for domestic workers after having verified whether the vacancy can be filled by EU job seekers. They state that “It is considered very difficult to find a domestic worker who is willing to live in with the employers”²⁸ Under the Belgium system, these migrant domestic workers can change their employer.

The migrant domestic worker visa system operated by the UK is far more restrictive than the Belgium or Italian case as it does not allow for people based in the UK to recruit migrant workers from overseas. The UK system allows only for migrant domestic workers to be brought by their employers if the employer is coming to the UK, and only on proving a twelve month pre-existing employment relationship.

²⁶ Lobbying brief: The Domestic Workers Visa: The REC response to potential changes in the Domestic Worker Visa. Also stated by Anne Fairweather, the REC’s Head of Public Policy in response to previous Government proposals on the domestic worker visa <http://www.rec.uk.com/press/news/261>

²⁷ *ibid.* p17

²⁸ European Migration Network, Ad Hoc Query on overseas domestic workers, requested by the UK on 2 November 2009. http://www.emn.fi/files/186/Compilation_of_UK_ad_hoc_query_on_overseas_domestic_workers_open.pdf

In Italy and Spain in addition to setting quotas for migrant domestic workers they approach the problem of needing domestic workers by undertaking large scale amnesties. “Though in Italy immigration policies in general have been restrictive, they have, through large immigration quotas and amnesties, mostly supported the entry of domestic workers and care assistants[...] The exceptional position of domestic workers and care assistants in Italian immigration policies can be explained primarily by the important role these migrants play in the Italian family care system.²⁹ Some 500,000 irregular third-country nationals employed in domestic work have been regularized since 2002 in Italy and Spain. Another 250,000 persons are pending regularization in Italy.³⁰

In comparison to the Italian system the UK route offers legal certainty, rather than tacitly allowing undocumented working and dealing with the issue by periodically regularizing domestic workers.

27. If we were to continue to allow domestic workers in private households to enter the UK, should their leave be capped (at a maximum of 6 months, or 12 months if accompanying a skilled worker)

No

This question does not admit of a yes or no answer. It is unclear whether the question is asking if the leave should be capped or whether it asks that, having decided it should be capped, the timeframe should be six months or twelve.

The answer to the former question is No. The second question is no longer relevant.

Capping the visa would be impractical, costly and would put domestic workers at risk:

- The existing visa cannot be renewed unless domestic workers are in work. There is a demand for their live-in labour that will not be filled by UK or EU nationals ([section 27.1](#))
- The proposal to allow workers to be brought to the UK as visitors will deny them fundamental working rights and leave them completely unprotected ([section 27.2](#))
- A visa cap would prevent workers enforcing their rights through the employment tribunal ([section 27.3](#))
- A visa cap would play into the hands of unscrupulous employers who would encourage workers to overstay with the associated vulnerabilities of undocumented working ([section 27.4](#))

²⁹ When Families Need Immigrants: The Exceptional Position of Migrant Domestic Workers and Care Assistants in Italian Immigration Policy, Bulletin of Italian Politics Vol. 2, No.2, 2010, 21-38, Franca van Hooren. University of Bremen http://gla.ac.uk/media/media_194307_en.pdf

³⁰ Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States. FRA European Union Agency For Fundamental Rights. 2011. p19 http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_domestic-workers_en.htm

- A visa cap would mean that domestic workers pursuing criminal cases would be reliant on Government support for the duration of proceedings ([section 27.5](#))
- A visa cap would be impractical for employers and domestic workers alike ([section 27.6](#))

27.1 A cap is unnecessary, domestic workers can only renew their visas if in full time work in a private house

Migrant domestic workers cannot renew their visa if they are not in work. There has been a noticeable increase in the demand for live-in elder care in private households, for reasons that relate to, amongst others, the privatisation of care and the ageing population.³¹ As discussed above other EU countries have recognised the need for migrant domestic workers labour. A cap on the length of the visa is unnecessary.

27.2 The proposal to allow workers to be brought to the UK as visitors will deny them fundamental working rights and leave them completely unprotected

The consultation document states that the Government wish to “consider restricting leave to a 6 month period as a visitor only” (p12) and under question 27 describe a “short term visitor-only” provision. Allowing domestic workers to be brought as a visitor to the UK means the UKBA will be knowingly putting domestic workers in breach of their immigration conditions by allowing them to enter on a visit visa to work. The fact that visit visas are issued to those declaring they are coming to work sends out the confusing and incorrect message that it is permitted to work on a visit, or tourist visa.

There has been no consideration of how domestic workers will be protected from abuse and exploitation. If they enter the UK on a visit visa they will not be classified as worker under UK law, will have an unlawful contract in the eyes of the employment tribunal and will have no way of enforcing any of the fundamental rights common to workers in the UK.

The Parliamentary Under-Secretary of State for Business, Innovations and Skills, Mr. Edward Davey MP stated in a debate in the House of Commons on 29 June 2011 that “Domestic workers have the same access as other worker to mechanisms for enforcing their rights. The national minimum wage and statutory sick pay, for example, are enforced by Her Majesty’s Revenu and Customs, and those and other rights can also be enforced by individual workers, if necessary by taking a case to an employment tribunal.”³² This would not be the case under these proposals.

It is simply unacceptable to operate a system where migrants have fewer rights than nationals doing the same work. The lack of employment rights for migrant domestic workers under these proposals mean

³¹ Gordon and Lalani, ‘Care and Immigration: Migrant care workers in private households’. Kalayaan. 2009. <http://www.kalayaan.org.uk/documents/Kalayaan%20Care%20and%20Immigration%20Report%20280909%20e-version.pdf>

³² Convention on Domestic Workers, Westminster Hall, 29 June 2011. <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110629/halltext/110629h0001.htm>

they would be left completely unprotected as there are no employment rules that employers would have to comply with.

27.3 A visa cap will prevent domestic workers enforcing their rights in employment tribunal

Even if the Government were to create a six month working visa where a migrant domestic worker was recognised as a worker with the associated rights under labour legislation, a cap on the visa, combined with the prohibition from changing employer, would prevent them enforcing these rights, making them ineffective as protection against abuse or exploitation.

A domestic worker cannot enforce her employment rights whilst living and working in the household of her employer as she would lose her job and accommodation. If a worker finds an opportunity to flee or leaves to pursue her rights she will, under these proposals to cap the visa (and the proposal to remove the right to change employer), become undocumented, homeless and destitute.

A cap on the visa would therefore effectively prevent the worker from seeking justice through the employment tribunal system; they would have no right to stay in the UK for the tribunal case and would be unable to work to support themselves or their families whilst they wait for the case to come to tribunal.

The Committee on Economic, Social and Cultural Rights (CESCR) warned in relation to Denmark that “a strong link between the labour contract and the length of a residence permit may hinder the enjoyment by migrant domestic workers and their families of the human rights protected by the Covenant”.³³

The Parliamentary Under-Secretary of State for Business has also stated that the key question with regard to protecting domestic workers is enforcement and referred to Andrew Selous MP who had previously said in the same debate that we need to help domestic workers ‘find every opportunity to help them realise what rights they already have’. Clearly removing the right to change employer and to renew the visa has the exact opposite effect and makes enforcement impossible.

27.4 A cap would increase the power of unscrupulous employers to control workers

Unscrupulous employers will misinform domestic workers about the nature of their visa, withhold the workers passport and encourage them to overstay. They will then use the workers illegality as a tool to coerce and control them. This much is stated in the Guidance to Competent Authorities (those making the decisions for the UK Border Agency on trafficking).³⁴

³³ Rights of Migrant Domestic Workers in Europe. United Nations Office of the High Commissioner for Human Rights, Europe Regional Office. 2011. p12

http://www.europe.ohchr.org/Documents/Publications/Study_Domestic_Migrant_webversion.pdf

³⁴Guidance to the Competent Authorities. Parliament website.

<http://www.parliament.uk/deposits/depositedpapers/2011/DEP2011-0980.pdf>

It is vital that migrant domestic workers have the right to change employer, without it unscrupulous employers can use the UK immigration authorities as a threat to coerce and control a worker. Even if a change of employer was allowed (which under these proposals it will not be), a capped visa essentially prevents a change of employer as an employer would be unlikely employ someone in care work within their home who could not stay for the longer term.

27.5 In criminal cases domestic workers will be reliant on Government support

If a domestic worker escapes a situation and wishes to take a criminal case against the employer, she will not be able to work to support herself for the duration of proceedings. Instead the domestic worker will be reliant on costly Government funded accommodation and support. Giving a residence permit under trafficking legislation in these cases allows domestic workers full access to public funds, whereas allowing a domestic worker to find new work and renew her domestic worker visa (which prohibits recourse to public funds) costs the Government nothing.

27.6 A cap is impractical

Capping the visa at six or twelve months will be impractical for employers who bring their domestic staff as they will not wish to find a new nanny or carer after 12 months because of the attachments formed between worker and the child or elderly person. For the worker the proposal is impractical as they have often paid high fees to migrate from their own country to a third country and may have been working there for many years before their employer's move to the UK. They will effectively be giving up their livelihood by agreeing to come to the UK as they will not be able to return to their employer's country for other work.

28. Given the existence of the National Referral Mechanism for identifying victims of trafficking, should the unrestricted right of overseas domestic workers in private households to change employer be removed?

No

No, we do not consider that the restricted right of overseas domestic workers in private households to change employer should be removed. We do not consider that this right is unrestricted; it is restricted to the right to work for a different employer as a domestic worker in a private household. The question obscures this. A person answering this question may agree that a domestic worker should not have an unrestricted right to change to any kind of employment but this is not how the current system operates and as such answers should be treated with caution if not explained.

Our view that the right to change employer should not be removed is not conditional upon the existence of the National Referral Mechanism. We do not consider that the National Referral mechanism provides

protection for domestic workers in private households. It in no way provides protection comparable to that offered by the right to change employer.

The right to change employer should not be removed because:

- The right to change employer protects all domestic workers who have been mistreated regardless of whether their experience fits the narrow trafficking definition ([section 28.1](#))
- The right to change employer helps to prevent abuse and exploitation by giving some limited bargaining power to a worker. It has been hailed as good practice. ([section 28.2](#))
- Removing the right to change employer would force hundreds of women into illegality each year simply because they refused to continue suffering abuse ([section 28.3](#))
- Restrictive immigration regimes give extra power to traffickers who have been evidenced to use this power as a way of coercing and controlling their victims ([section 28.4](#))
- The National referral mechanism (NRM) is ineffective, has been widely criticised by NGOs and does not meet victims' needs ([section 28.5](#))
- The police fail to identify migrant domestic workers as victims of trafficking and domestic workers will fear approaching authorities; they will not be referred into the NRM ([section 28.6](#))
- Attempting to support workers through the NRM rather than by simply allowing them to move on and find new work will be costly to the taxpayer ([section 28.7](#))

28.1 The right to change employer protects all domestic workers who have been mistreated regardless of whether their experience fits the narrow trafficking definition

Trafficking legislation cannot replace basic workers rights. It will only assist the migrant domestic workers who have been trafficked, and not those exploited in other ways. Anti-trafficking legislation will give no support to exploited and abused workers who do not meet the trafficking criteria. This will create a hierarchy of vulnerabilities and will result in a situation where a certain level of exploitation will be tolerated.

The Government has recognised that trafficking does not cover all of the manifestations of modern day slavery, including forced labour. As such they introduced a criminal offence for subjecting an individual to forced labour or domestic servitude which was brought in under Section 71 of the Coroners and Justice Act 2009³⁵, carrying the same sentence as that of trafficking.

The NRM would do nothing to protect MDWs who are subject to forced labour or for instance sexual harassment but do not fit the definition of trafficked person.

28.2 The right to change employer helps to prevent abuse, exploitation and trafficking

³⁵ Slavery, servitude and forced or compulsory labour: Implementation of Section 71 of the Coroners and Justice Act 2009. Circular 2010/07. Ministry of Justice. <http://www.justice.gov.uk/publications/docs/circular-07-2010-coroners-justice-act-section-71.pdf>

The National Referral Mechanism for identifying victims of trafficking does nothing to replace the protections provided by permitting migrant domestic workers to change employer. The ability to withdraw their labour is the only bargaining power migrant domestic workers have in relation to their employers and as such is an important protection against abuse and exploitation. This includes, but is not limited to, trafficking. The right to change employer also contributes to preventing trafficking by ensuring that there is some deterrent to employers mistreating domestic workers. If employers know that domestic workers will become 'illegal' if they flee, they will know there is very little chance of any sanctions against them.

The effect of an inability to withdraw ones labour on vulnerability to trafficking can be seen in the comparison between the relative numbers of domestic workers trafficked by diplomats to those trafficked by private households. Figures from Kalayaan's database show that a third (17 out of 55 referrals) of the trafficking cases that were referred to the NRM had come to work with a diplomat whereas the ratio of diplomatic domestic workers entering the UK in comparison to private households is one fiftieth. When comparing referrals to the NRM in this period with the numbers of visas issued in 2007 and 2008 (the last time that diplomatic domestic worker visas are identifiable in the figures), the rate of trafficking on the diplomatic route is 3.8% in comparison to a rate of trafficking on the private household route of 0.2%³⁶. Actually this masks the fact that the referrals not related to diplomats include some women trafficked on visit visas, false passports and as family members so the rate of trafficking on the private household route may be overstated here.

Please also see above question 26 regarding the right to change employer being hailed as best practice by international and UK experts and that restrictive visa regimes are responsible for increasing vulnerability to trafficking.

28.3 Removing the right to change employer would force hundreds of women into illegality

Before the introduction of the overseas domestic worker visa in 1998, migrant domestic worker were brought to the UK by their employers with no independent immigration status of their own. If they left their employer they became undocumented. There were approximately 4,000 undocumented domestic workers³⁷ registered with the organization Waling Waling who had been forced into an irregular situation when they fled an abusive or exploitative employer. It is vital that the lessons of the past are learned and the Government does not created this kind of criminalized underclass of people in an irregular situation who are vulnerable to further abuse and exploitation.

³⁶ Lalani, M. Ending the abuse: Policies that work to protect migrant domestic workers. Kalayaan. May 2011.

<http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

³⁷ The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies Regularisation programmes in the United Kingdom, Amanda Levinson Centre on Migration, Policy and Society, University of Oxford 2005

http://www.compas.ox.ac.uk/fileadmin/files/pdfs/Non_WP_pdfs/Reports_and_Other_Publications/Country%20Case%20UK.pdf

28.4 Restrictive immigration regimes give extra power to traffickers who use this to coerce and control their victims

Please see, as examples of just a few of the sources of evidence for this, the following documents which are listed above in answer to question 26: UK Guidance to the Competent Authorities identifying victims of trafficking; the UK Human Trafficking Centre's National Referral Mechanism referral form; Reports by Anti-Slavery International, the OSCE, the UN Special Rapporteur on Human Rights of Migrants, the UN Special Rapporteur on contemporary forms of slavery; the 2010 USA Trafficking in Persons report and the Parliamentary Assembly of the Council of Europe Resolution on Protecting migrant women in the labour market.

28.5 The National Referral Mechanism is ineffective and has been widely criticised by NGOs

The National Referral Mechanism is still relatively young and to date has been subject to many concerns expressed by NGOs who work with victims (see Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons. Anti-Trafficking Monitoring Group, June 2010). On the 19 July 2011 the Government published a new 'Anti Trafficking Strategy' of which leading NGOs have already been critical citing concerns that the strategy places too much emphasis on border control and not enough on victim protection.³⁸

We have concerns about decision making by the competent authority which does not comply with Convention definitions. The Anti-Trafficking Monitoring Group report gives examples where conclusive negative decisions have, despite acknowledging an individual had been trafficked, stated that they had not been identified as a victim of trafficking 'for the purposes of the Convention'.³⁹

Nor has the NRM been shown to provide for victims needs, particularly those with vulnerable immigration status, as would be the case for all migrant domestic workers under the proposed changes. At most recognition as a victim provides a 45 days reflection period (stay on removal), with the possibility of the police applying for a residence permit in order to prosecute a criminal case. The residence permit is not available for a victim to pursue compensation, even though many have not been paid for years. Returning to their country further indebted than when they left makes both victims and their families vulnerable to re-trafficking.

28.6 The police fail to identify domestic workers as victims of trafficking and domestic workers will fear approaching authorities; they will not be referred into the NRM

Problems with the NRM have been discussed above but even putting these aside, there are ongoing problems with ensuring that victims of trafficking are identified. If migrant domestic workers are not

³⁸ Focus of government's new trafficking strategy will not help victims, say charities
http://www.antislavery.org/english/press_and_news/news_and_press_releases_2009/190711_response_to_new_trafficking_strategy.aspx. Accessed 29.7.11

³⁹ Lalani, M. Ending the abuse: Policies that work to protect migrant domestic workers. Kalayaan. May 2011.
<http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

identified and referred into the NRM in the first place then they cannot benefit even from the very limited protections available.

There have been well documented problems with the identification of domestic workers as victims of trafficking by police. Where Kalayaan has supported potential victims to report trafficking crimes to the police we have been unsuccessful in more than 50% of cases. This figure is likely to be far higher in cases where a trafficked individual attempts to report trafficking directly to the authorities without the assistance of an advocate.

In a number of cases police forces have been and are being sued for returning domestic workers to situations of servitude. Even where investigations and prosecutions have taken place, there has never been a successful prosecution for trafficking an adult into domestic servitude.

Kalayaan has found that in any case many migrant domestic workers do not want to enter the NRM as they do not understand the concept of trafficking nor do they see themselves as victims. Even once this is explained they do not see how such identification is in their interests and they have been led to fear the authorities by their traffickers. If the proposals were passed and all trafficked domestic workers were undocumented their willingness to enter the NRM would decrease still further. A referral would mean identifying themselves to the authorities who would remove them from the UK without the chance to access compensation, to their homes where they are heavily indebted to agencies or community members and have no protection from the trafficker.

28.7 Attempting to support workers through the National Referral Mechanism rather than by simply allowing them to move on and find new work will be costly to the taxpayer

There are significant costs implications to protecting trafficked migrant domestic workers through the National Referral Mechanism. Recognition as a victim through the NRM entitles an individual to support including accommodation. This entails a significant cost in comparison with the current visa system, which allows the possibility of changing employer, finding a new job, without recourse to public funds.

In the 25 months that Operation tolerance and the NRM had been running (to Dec 2010), **£850,000** in Government money was saved because of the domestic worker visa. Trafficked domestic workers chose to move on, work and support themselves and their families, remain visible in the UK and contributing through visa fees and taxes. Please see above section 26.7 for details on how these costs have been calculated.

29. Should leave for private servants in diplomatic households be capped at 12 months?

No

We are extremely concerned that no consideration has been given in these proposals to increasing the protections for domestic workers in the employ of diplomats.

29.1 Domestic workers in diplomatic households need increased protections

The UK is out of step with the rest of Europe and the world in not having recognised that trafficking and exploitation of domestic workers by diplomats is a problem. Across Europe and in the USA Ministries of Foreign Affairs are finding ways of increasing oversight of the relationship between diplomat and domestic worker and improving protections for victims, whilst trying to find ways of ensuring sanctions for diplomats who abuse and exploit.⁴⁰

“The US State department has expressed concern about the abuse of domestic staff working in foreign embassies in London, saying repeated allegations of mistreatment have not been addressed by the Government”⁴¹ The UK still speaks of a ‘light touch approach’ to regulating this area.

Kalayaan’s figures show that domestic workers in diplomatic households experience abuse and exploitation. These workers have no escape route and are prevented from enforcing their rights because they become undocumented on leaving an employer and because of their employers immunity to prosecution, either criminal and private.

Abuse and exploitation reported by domestic workers in diplomatic households⁴²

Type of abuse/exploitation	% of domestic workers n diplomatic households reporting this to Kalayaan in 2010 (n19 except where specified)
Not allowed out (unaccompanied	63
Passport withheld	58
Psychological abuse	47
Physical abuse	11
Sexual abuse	6 (n18)
Denied regular food	32
No private space (no bedroom)	37
No day off during the week	63
Working 16 hours of more hours a day	53 (n17)
On call 24 hours a day	41 (n17)
Salary of £50 or below per week	50 (n18)

⁴⁰ Domestic Workers in Diplomats’ Households: Rights Violations and Access to Justice in the Context of Diplomatic Immunity. Kartusch A. German Institute for Human Rights. 2011. http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/domestic_workers_in_diplomats_households_01.pdf and; USA Diplomatic Note on Domestic worker visa eligibility requirements. 16 September 2009.

⁴¹ <http://www.guardian.co.uk/law/2011/jun/27/us-state-department-embassy-staff> Report on the release of the 2011 USA Trafficking in Persons report <http://www.state.gov/g/tip/>

⁴² Lalani, M. Ending the abuse: Policies that work to protect migrant domestic workers. Kalayaan. May 2011. <http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf> p33

In fact, the rate of trafficking is far higher in diplomatic households. Figures from Kalayaan's database show that a third (17 out of 55 referrals) of the trafficking cases that were referred to the NRM had come to work with a diplomat whereas the ratio of diplomatic domestic workers entering the UK in comparison to private households is one fiftieth. When comparing referrals to the NRM in this period with the numbers of visas issued in 2007 and 2008 (the last time that diplomatic domestic worker visas are identifiable in the figures), the rate of trafficking on the diplomatic route is 3.8% in comparison to a rate of trafficking on the private household route of 0.2%⁴³.

29.2 The right to change employer must be granted and current protections be retained

The comparison of trafficking rates on the diplomatic and private household routes for domestic workers makes it very clear that without the right to change employer, migrant domestic workers are far more vulnerable to trafficking.

Below are listed a number of ways in which the UK Government can improve the protections for migrant domestic workers in a diplomatic household. However all of these provisions would be undermined if a domestic worker is not granted the right to change employer. The diplomat will know that he can abuse and exploit with impunity if a domestic worker becomes 'illegal' as soon as she flees.

If the UK is serious about tackling the problem of diplomats exploiting and abusing domestic workers, then they must grant workers the right to change employer. Without it migrant domestic workers will not feel secure enough to come forward as they will, rightly, fear detention and removal. The UK will therefore never understand the true extent of this problem

The right to change employer must be granted. Many other countries grant this right including the Netherlands, Switzerland, Austria, Belgium and France. These countries allow switching within the diplomatic community. Since the UK has an effective system of domestic worker visas in the private house, the right to change employer should not be restricted to the diplomatic community.

Diplomatic domestic workers should retain their existing right to renew their visa and to apply for settlement after five years. These are both important parts of the protections needed. Please see points below in answers to questions 29.3 and 30.

29.3 Oversight of the relationship between diplomats and migrant domestic workers should be increased

Oversight of the route by Government should be increased by introducing pre-entry requirements such as a contract of employment, including an undertaking to pay the national minimum wage (this is the case in a number of European countries).

⁴³ Lalani, M. Ending the abuse: Policies that work to protect migrant domestic workers. Kalayaan. May 2011. <http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

In the USA only diplomats of the rank of Minister or above are presumed able to pay the salary of a domestic worker and will be issued visas for this purpose. Lower level diplomats can apply to bring domestic workers but they must provide evidence that they have adequate income in order to pay the minimum wage to the domestic worker.⁴⁴

The Government should consider implementing a requirement for a pre-existing employment relationship between the diplomat and the worker before a visa is issued. This is the case on the private household domestic worker visa.

All diplomatic domestic workers should be interviewed alone to ensure that they are aware of their rights before they enter the UK and to ensure that they are given information about where they can go to for help.

Once the domestic worker has entered the UK, the Austrian example should be followed. The UK Government should ensure diplomats make salary payments to domestic workers transparent. The Austrian Government demands the diplomat shows payments going in to the Austrian account of the domestic worker in order to secure a renewal of the visa.⁴⁵

As in Austria, the domestic worker should be interviewed independently of the employer before granting a visa renewal.

29.4 Migrant domestic workers in the employ of diplomats should have improved access to justice

Domestic workers should, in line with Mr Davey's comments quoted above (section 27.2), have the same rights as anyone else to enforce their rights through the employment tribunal or criminal courts. The UK currently does not provide residence permits for victims of trafficking who wish to attempt to secure redress through our employment tribunal system. Not only does this prevent migrant domestic workers enforcing their rights, it also means the behaviour of diplomats will never be challenged and the limits of immunity cannot be properly explored through the courts. The USA offers permits in this kind of situation. The right to change employer would to a great extent remove the need for these permits as domestic workers could continue to work for a different employer whilst pursuing justice against a diplomat.

The UK does technically have a scheme for granting residence permits to domestic workers taking cases through the criminal courts. In practice however these permits can only be applied for by the police on the basis that they need someone to be in the UK for a prosecution. Since diplomats are immune to criminal prosecution these will never be granted to a domestic worker with a diplomat. This means if a

⁴⁴ USA Diplomatic Note on Domestic worker visa eligibility requirements. 16 September 2009.

⁴⁵ Domestic Workers in Diplomats' Households: Rights Violations and Access to Justice in the Context of Diplomatic Immunity. Kartusch A. German Institute for Human Rights. 2011. http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/domestic_workers_in_diplomats_households_01.pdf

domestic worker does go to the police she does so on the basis that she will eventually be returned to her country, to her village from where she was recruited by an agent of the diplomat, with no protection from the diplomat whom she has alleged to have trafficked or abused her. Unsurprisingly a number of domestic workers have dropped out of the process of pursuing justice.

The Government should consider implementing a similar scheme to that in Belgium whereby if a prosecutor agrees that there would be enough evidence to take a trafficking case against the diplomat and it is only immunity that is blocking the prosecution then the domestic worker should be granted a residence permit. In this way domestic workers will at least be encouraged to enforce their rights to the extent that is possible under international law. Hopefully this would end in a diplomat being declared *persona non grata* if immunity was not waived and would therefore increase the deterrent for diplomats. Again, the right to change employer would render this kind of permit largely unnecessary.

In Germany and Austria, the Ministry of Foreign Affairs facilitates out of court settlements between domestic workers and diplomats where rights violations are alleged. In Switzerland there is a non-governmental organisation funded by the Government for this specific purpose. The UK cannot continue to ignore the complaints of domestic workers. They must allow domestic workers to proceed through the courts if they wish but must also recognise that so that immunity does not hinder the very essence of the right to justice they should assist domestic workers in at least beginning the process of out of court negotiations.

29.5 Sanctions for diplomats who abuse and exploit must be introduced

Assisting domestic workers to secure justice, whether through the criminal courts, employment tribunal system or out of court, is in itself a form of sanction on the diplomats behaviour.

In addition to this the UK Government should ensure that there is proper communication between all Government departments in order to properly monitor and if necessary sanction diplomat behaviour. For instance, when the Government makes a positive reasonable grounds decision that someone has been a victim of trafficking by a diplomat, this information should, with the permission of the domestic worker, be forwarded to the Foreign and Commonwealth Office to be reviewed and placed on file. Where the Government have decided there are conclusive grounds to believe someone is a victim of trafficking by a diplomat, sanctions on that diplomat and embassy should be implemented.

These sanctions might include diplomats being declared *persona non grata* and the sponsorship licence for bringing domestic workers being removed from the embassy. These must not simply be empty threats. The Government must show the political will to stand up to the more powerful embassies. There have been a number of reports, including police complaints, about certain embassies that the UK Government has for a long time ignored as was highlighted in the recent United States Trafficking in Persons Report.⁴⁶

⁴⁶ 2011 USA Trafficking in Persons report <http://www.state.gov/g/tip/>

It should however be borne in mind that without adequate protection for the victims (i.e the right to change employer and residence permits for seeking justice) domestic workers will not come forward to report these rights violations to the Government. It should also be understood that the definition of trafficking does not cover all the manifestations of modern day slavery as was recognised by the Government when they criminalised forced labour. The Government must consider how they will affect sanctions for other serious violations of the rights of domestic workers that do not amount to trafficking.

29.6 Capping leave is impractical and will put workers at risk

Capping leave at 12 months for the domestic workers of diplomats is impractical and will put domestic workers at risk. It is very likely that recruitment agencies overseas, who charge very high fees, will not inform migrant domestic workers of the fact that they are only able to work in the UK for one year. It is likely that a year-long post will not even give the domestic worker the ability to recoup the fees paid to the agency.

Most diplomats are stationed for four years at a time. Migrant domestic workers will be encouraged to overstay their visas by diplomats, who will not want to lose their domestic staff part-way through their own posting. These women will then become yet more vulnerable to abuse and exploitation. Given the already high rates of trafficking for domestic servitude by diplomats, it is unacceptable to further curtail migrant domestic workers rights and put them at greater risk.

30. Should an avenue to settlement be removed from overseas domestic workers (private servants in diplomatic households and domestic workers in private households)?

No

Achieving settlement finally rids domestic workers of dependence on their employers. It means they are able to take control of their own lives and assists with integration.

Migrant domestic workers have separated from their own families to devote themselves to support families in the UK. It is only right that after a period this sacrifice should be recognised by right to be joined and to settlement.

Settlement is not an unrestricted right. Migrant domestic workers must meet the criteria laid down by the Government including that they are in full time work as a domestic worker, that they have not used public funds, and that they are of 'good character'.

Since there are very few domestic workers who go on to settle, the right to settlement for migrant domestic workers does not have a significant effect on net migration (they made up 0.5% of all settlements in 2009) but is a very important protection for those who do go on to settle.

The UK Border Agency states that grants of settlement to migrant domestic workers went up by 34% between 2009 and 2010⁴⁷ but this masks not only the real numbers settling - only 795 individuals in 2009 – but also the effect on net migration; in 2009 migrant domestic workers accounted for only 0.5% of the total grants of settlement.⁴⁸ It is also possible that settlement figures increased in 2010 because of uncertainty around whether the possibility to apply for settlement and citizenship would be removed.

31. Should the right for overseas domestic workers (private servants in diplomatic households and domestic workers in private households) to bring their dependants (spouses and children) be removed?

No

Migrant domestic workers have separated from their own families to devote themselves to support families in the UK. It is only right that after a period this sacrifice should be recognised by the right to be joined and to settlement.

The Parliamentary Assembly of the Council of Europe recommends to the Committee of Ministers that a charter for domestic workers be established including amongst other things, the right to family life, including health, education and social rights for the children of domestic workers.⁴⁹

32. If we were to continue to allow overseas domestic workers to bring their dependants, should those dependants' right to work be removed?

No

It is impractical and waste of human resources to deny people who are in the UK the chance to work and contribute to the economy.

⁴⁷ Employment Related Settlement, Tier 5 and Overseas Domestic Workers: A Consultation. UKBA. June 2011. P31 <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/employment-related-settlement/>

⁴⁸ Lalani, M. Ending the abuse; Policies that work to protect migrant domestic workers. Kalayaan. May 2011. P22.

⁴⁹ Domestic slavery: servitude, au pairs and mail-order brides. Committee on Equal Opportunities for Women and Men, Rapporteur: Mr Giuseppe Gaburro, Italy, Group of the European People's Party. 19 April 2004. <http://assembly.coe.int/Documents/WorkingDocs/doc04/EDOC10144.htm>