



UK Mission
Geneva

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Note Verbale No. 205

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit the response to communication AL GBR 6/2021, further to the letter dated 27 May 2021 from the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on trafficking in persons, especially women and children.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 28 July 2021

Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights

**RESPONSE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND TO SPECIAL PROCEDURES COMMUNICATION AL GBR 6/2021**

ANNEX

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned observations.

The UK Government is committed to tackling the heinous crime of modern slavery; ensuring that victims are provided with the support they need to begin rebuilding their lives and that those responsible are prosecuted.

The purpose of the overseas domestic work visa is to provide the admission of a domestic worker where the worker forms part of the employers' private household overseas and where the worker is accompanying their employer to the UK. The Immigration Rules require an overseas domestic worker to travel in the company of their employer, that employer's spouse or child. The requirements are intended to establish that the worker is an existing employee of the visiting employer and that they are coming to the UK for no other purpose than to continue their employment.

The UK Government has recognised that domestic workers are, as a group, potentially vulnerable to exploitation and abuse. The route has been under frequent review since the passage of the Modern Slavery Act 2015 and the Government has taken numerous measures, over many years, to safeguard these workers.

In March 2015, the UK Government commissioned James Ewins QC to conduct a review of the overseas domestic worker visa to assess how far existing arrangements are effective in protecting workers from abuse and exploitation and what more can be done to make sure that abuse can be identified; support provided to victims; and perpetrators dealt with.

In response to the Review the Government has included a number of protections in the Immigration Rules governing domestic workers, including:

- Workers are able to switch to a different employer within the 6-month validity of their visa without needing to seek permission or report their change of circumstances. This provision extends to domestic workers employed in diplomatic households.
- A dedicated process exists for victims of modern slavery who entered the UK as a domestic worker. This process offers those who have fallen into this vulnerable position, permission to stay in the UK for up to two additional years. This is in addition to the support provided by the Single Competent Authority through the National Referral Mechanism.
- Visa applicants must submit a copy of their written terms and conditions of employment in the UK, including provision for payment in accordance with National Minimum Wage Act, hours of work, and accommodation arrangements.

- When applying for a visa, applicants are given a letter setting out employment protections available within the UK and possible sources of help – e.g. Kalayaan, a charity specialising in supporting domestic workers, and the Pay and Work Rights Helpline.

The UK also has the National Referral Mechanism (NRM) in place, which identifies and supports victims of trafficking. The UK Government has seen no evidence that links the introduction of the ‘tied visa’ in 2012 to an increase in reports of abuse. We are working to improve our understanding of the nature of exploitation, and officials in the Home Office are in the process of developing proposals to reform the route from next year

2. Please provide detailed information on how the current legislative framework applying to migrant domestic workers complies with your Excellency’s Government obligations under the international legal framework of human rights laws relating to the protection of human rights of migrants (regardless of their immigration status), the protection from slavery and other relevant norms and standards.

The UK Government remains fully committed to supporting human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights and relevant international human rights treaties. The UK Human Rights Act (1998) incorporates those rights set out in the European Convention on Human Rights (ECHR) into domestic UK law, including Article 4 on prohibition of slavery and forced labour. The UK Government is also committed to our international obligations under the Council of Europe Convention against Trafficking in Human Beings. Suspected victims of modern slavery, including those working as overseas domestic workers, are treated in accordance with our legal obligations.

We are also committed to considering the impact of our policies on vulnerable people. All decisions made by the Home Office are taken with due consideration for the impact on people with protected characteristics, including nationality. This includes fulfilling our public sector equality duties under s149 of the Equality Act 2010. As such, a full assessment is made of changes to policy or process to identify both direct and indirect discrimination and any conduct prohibited by the Equality Act, advance equality of opportunity and foster good relations in relation to protected characteristics. This ensures that we keep at the forefront of our minds the potential consequences of our policies on those who may be susceptible to exploitation.

3. Kindly indicate if your Excellency’s Government intends to amend the current Immigration Rules, for example by granting the right to work to migrants who are potential victims of slavery or of trafficking and who have been included in the NRM.

The Immigration Rules governing overseas domestic workers were redrafted in May 2021. This provided an opportunity to communicate visa requirements and conditions of stay much more clearly. The new, simplified, rules set out what we expect of employers and offer guidance to those unfamiliar with the UK’s employment regulations. There is also a dedicated process for victims of modern slavery who entered the UK as an overseas domestic worker.

An individual's modern slavery victim status, however, does not confer a right to work, rather a right to work is dependent on immigration status. Migrant domestic workers who enter the NRM with a valid visa may be given continuing permission to work as a domestic worker while their conclusive grounds decision is being considered.

Following a positive conclusive grounds decision, victims without immigration status can apply for a grant of discretionary leave to remain if they are supporting the police, are seeking compensation through a civil claim against their abuser, or due to their personal circumstances. Victims who are foreign nationals are automatically considered for discretionary leave to remain.

In order to reduce the risks of future exploitation, adults identified in the NRM can, where assessed to be necessary to assist them in their physical, psychological and social recovery, receive accommodation, financial support, assistance in accessing mental and physical health care including counselling, and access to legal support.

A small number of migrant domestic workers claim asylum in the UK, usually timed alongside or following the receipt of their NRM referral. The Home Office is undertaking a review into its policy in respect of asylum seekers' right to work. This was commissioned by the former Home Secretary specifically in response to the recommendations made by the Lift the Ban coalition's report on this issue, published in October 2018. This review is ongoing and will be published in due course. We await the findings from the aforementioned review before considering whether to bring forward any specific arrangements for victims of modern slavery.

4. Please indicate how your Excellency's Government monitors the labour conditions of domestic workers and what measures are taken against employers who engage in exploitation and/or abuse of these workers, including by confiscating their passport. Please also indicate if any employers have been investigated and sanctioned/prosecuted in this regard. Please elaborate on your Excellency's Government efforts to enhance the capacity of the labour inspectorate to monitor working conditions in private households.

Those who employ overseas domestic workers are subject to the same laws and scrutiny as UK based employers employing settled workers. Anyone found guilty of modern slavery offences may face a ban from re-entering the UK. This could be via a deportation order or because their presence in the UK is not conducive to the wider public good.

Modern slavery is a complex and multi-faceted crime and some modern slavery offenders may be prosecuted or convicted for offences that are not specifically modern slavery offences. The Crown Prosecution Service (CPS) is unable to confirm how many employers have been investigated and sanctioned or prosecuted as a result of engaging in exploitation and / or abuse of these workers, including by confiscating their passport. The investigation into such allegations is a matter for the police; only when a case is referred by the police to the CPS and reviewed in accordance with the Code for Crown Prosecutors, can the decision to prosecute be made. The CPS records data on the number of offences charged and defendants

who have been prosecuted for an offence under the Modern Slavery Act 2015, however, without a manual review of all Modern Slavery Act cases, we are unable to disaggregate cases of domestic servitude from that data

The UK Government spends £33 million a year on state enforcement of employment rights. This covers national minimum wage, employment agencies gangmasters licensing and modern slavery related to worker exploitation.

The UK Government is committed to improving the enforcement of employment rights across the board and has now committed to establish a single enforcement body for employment rights to better protect vulnerable workers and create a level playing-field for the majority of employers complying with the law. The Single Enforcement Body will provide a clearer route for workers to raise a complaint and get support, whilst also enabling the use of pooled intelligence to better target more coordinated and proactive enforcement action on labour exploitation, including modern slavery.

5. Please provide information on the measures applied to prevent the exploitation of domestic workers in diplomatic households.

In relation to private staff employed in diplomatic households the UK has long-standing and well established obligations with regard to diplomatic immunity and inviolability of employing diplomats. The international law regime which governs the activities and conduct of diplomats accredited or appointed to a receiving State is the Vienna Convention on Diplomatic Relations (VCDR) 1961.

Diplomats also have obligations to the receiving State, in particular the duty to “respect the laws and regulations of the receiving State” (VCDR Article 41(1)) which includes, for example, the UK’s anti-trafficking laws and the National Minimum Wage Act 1998 and associated regulations. In addition the Home Office (UK Visas and Immigration) requires diplomats to agree terms and conditions of employment for their private staff, before the prospective employee applies for a visa to come to the UK.

The UK does not tolerate diplomats breaking the law. The Foreign, Commonwealth and Development Office (FCDO) takes a firm line with diplomatic missions whose staff commit offences, including allegations – drawn to the attention of the police - of mistreatment of staff employed in diplomatic households. For the most serious alleged offences committed by diplomats, FCDO demands the immediate withdrawal of the individual from the UK unless their diplomatic immunity is waived to allow them to cooperate with independent law enforcement investigations.

6. Please indicate what measures your Excellency’s Government has adopted or intends to adopt to guarantee the effective access to justice and redress for migrant domestic workers, regardless of their immigration status, including their access to legal assistance and information. Please provide details on the protection measures available for migrant domestic workers during the process of accessing justice, and how these measures ensure causing their further victimisation and exploitation.

Prior to referral, First Responders provide potential victims with information on their rights, entitlements and what they should expect as part of the NRM process. This includes what support they may be eligible to receive through the Modern Slavery Victim Care Contract (MSVCC). Potential victims will be sign-posted to legal advice, including to qualified immigration advisers, for advice where required from this stage. This would include any overseas domestic workers who are referred to the NRM.

Upon entering MSVCC support, support workers ensure that potential victims and victims of modern slavery are provided with information on the rights and services available to them, including access to legal aid, legal representatives and legal advice. Where needed, the support worker will facilitate access to these services. [The Modern Slavery: Statutory Guidance for England and Wales \(under s49 of the modern Slavery Act 2015\) and non-statutory guidance for Scotland and Northern Ireland](#), also referenced under item 70, provides further information regarding the different areas where legal aid may be available. Support providers should also make victims aware that where they have suffered an injury as a result of a crime of violence, and meet the criteria, they may be eligible for compensation through the Criminal Injuries Compensation Scheme. Support workers will provide assistance to progress victim compensation claims.

All victims of modern slavery with a positive Reasonable Grounds decision can apply for legal aid.

7. Please indicate for which reasons your Excellency's Government has abandoned plans for holding information meetings for newly arrived migrant workers in the UK, after a commitment had been made in 2016 to offer such sessions to migrants about their rights and duties.

We remain committed to safeguarding overseas domestic workers who enter the UK.

Following extensive market engagement, a full tender exercise was conducted, which attracted two bids to provide the information and advice sessions for overseas domestic workers. Neither bid was successful.

All domestic workers are provided with an information leaflet explaining their rights and how to access help should they need it. Further help and information is also available online at: <http://www.gov.uk/domestic-workers-in-a-private-household-visa/your-employment-rights>

8. Please indicate if there are any other measures to enable the monitoring and compliance with terms and conditions of employment contracts for migrants domestic workers and on protection of migrants domestic workers in diplomatic households.

Domestic workers in diplomatic households or households of employees of international organisations must be sponsored by a Home Office licensed sponsor. When a sponsor is granted such a licence, significant trust is placed in them. With this

trust comes a direct responsibility to act in accordance with the UK's immigration laws, all parts of the sponsor guidance, and with wider UK law.

The Home Office has a duty to ensure all sponsors discharge these responsibilities, and will take compliance action when it is considered that a sponsor has failed to do so. It will consider information about abuse of the sponsorship arrangements, investigate it and, if appropriate, tell the relevant authorities, which in turn may lead to prosecution. It will also take action against the sponsor. This could include downgrading the licence, suspending the licence, or revoking it, each of which affect the ability of the sponsor to sponsor any more workers.

Sponsors must give the Home Office, when asked, any documents relating to sponsored workers that it considers relevant to assessing compliance with their duties as a sponsor. This includes copies of employment contracts and payslips. Failure to provide the documents when asked or within the timeframe specified will result in action being taken against the sponsor.

An application for a sponsor licence from a diplomatic mission or international organisation is deemed to include an acknowledgement that the Home Office may seek, from the head of mission or head of organisation, a limited waiver of inviolability and of immunity to enter any residence or premises to undertake compliance activity relating to the sponsor licence application or after the licence has been granted.

9. Please indicate and elaborate on any further efforts to facilitate access to long term social protection for survivors of trafficking, other forms of contemporary slavery or labour exploitation that is afforded unconditionally, regardless of the victims' participation in the criminal proceedings.

In England and Wales, adult victim support is provided through the new five-year Modern Slavery Victim Care Contract (MSVCC), which went live on 4 January 2021. The new contract builds on the wide-ranging support provided through the previous Victim Care Contract, to deliver a service that is needs-based and better aligned to the requirements of individual victims. MSVCC support is offered to any individual in the UK suspected to be a victim, regardless of nationality, immigration status, or whether they should choose to participate in criminal proceedings against their exploiter/s.

As was previously the case, under the new contract those in receipt of a positive Reasonable Grounds decision are eligible to receive MSVCC support in the form of accommodation, financial support, translation and interpretation services, transport, signposting to legal assistance, and access to a support worker for a minimum of 45 days, where they are assessed to be necessary to assist them in their physical, psychological and social recovery and they are not provided to them by other sources. Since September 2019, individuals in receipt of a positive Conclusive Grounds decision who remain in MSVCC support are exited from support only when appropriate to do so. A Recovery Needs Assessment is undertaken during a confirmed victim's 45-day guaranteed 'move-on' period, which identifies any ongoing recovery needs for support the individual has and puts in place a needs-based plan to support transition out of MSVCC support and into the community.

The new contract adds greater prescription to existing services to better meet the needs of each victim, including those with specialist or complex needs, and also introduced a number of new services. Journey Plans, which are personalised plans tailored to an individual's needs and circumstances, were introduced to keep track of the potential victim or victim's recovery progress and detail how they will be supported to move towards independence outside of the MSVCC. Once a confirmed victim exits the main service, they are also able to access assistance through the new Reach-in service, a post-NRM service that offers transitional support with the aim of supporting a smooth and sustainable transition after exit.

10. Please elaborate on measures taken to ensure the application on the non-punishment principle for victims of trafficking in persons for any unlawful activity carried out by a trafficked person as a direct consequence of their trafficking situation.

The non-punishment principle is an integral part of the UK Government's response to safeguard victims of modern slavery and provide further encouragement to victims of slavery to come forward and give evidence without fear of being convicted for offences connected to their slavery or trafficking situation. The statutory defence under section 45 of the Modern Slavery Act 2015 provides the legislative vehicle to protect victims in England and Wales who have been compelled to commit a crime, in the case of an adult and committing the crime as a direct result of being a victim, in the case of a child.

In the case of adults the compulsion must be attributable to slavery or to relevant exploitation; and that a reasonable person in the same situation and having the accused person's characteristics would have no realistic alternative to committing the criminal act. In the case of children, it needs to be established that their action was a direct consequence of their exploitation and that a reasonable person in the same circumstances and with the same characteristics (including their age) would have committed the criminal offence. There is no requirement for compulsion to be demonstrated in the case of children. The lack of the test of compulsion and the lower threshold for meeting the reasonable person test is in recognition of the unique vulnerabilities of children.

The statutory defence was designed to apply to the types of crime that victims were notably being forced to commit, such as cannabis cultivation and drug supply. The defence does not apply to the most serious crime, such as sexual offences or offences involving serious violence. A more comprehensive list of crimes which are exempt from the S45 defence can be found under Schedule 4 of MSA here: [Modern Slavery Act 2015](#). This is to avoid a legal loophole allowing serious criminals to escape justice.

Whilst the statutory defence does not apply to all crimes, the Crown Prosecution Service having regard to its relevant guidance is still able to decide not to prosecute taking the following considerations into account:

- there is clear evidence of a common law defence of duress;
- where there is no clear evidence of duress and no clear evidence of a s.45 defence or where s.45 does not apply (because the offence is so

serious) prosecutors should apply prosecutorial discretion and consider whether it is in the public interest to prosecute.

Following the findings from the Independent Review of the Modern Slavery Act, published in July 2019, the Government committed to keep the use of the defence under review and as part of this, the Home Office is working closely with the police, the Crown Prosecution Service and Single Competent Authority to consider how the defence is being used at all the stages of the criminal justice process. In addition, improved advice and support has been provided to police forces and investigators in respect of specific cases and a training course has been developed by the National Crime Agency and the National County Lines Co-ordination Centre in collaboration with the Modern Slavery and Organised Immigration Crime Programme.

11. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by human rights bodies, referred to above.

In 2015, the UK Government introduced the landmark Modern Slavery Act, giving law enforcement agencies the tools to tackle modern slavery, including maximum life sentences for perpetrators and enhanced protection for victims.

The UK gives careful considerations to all recommendations by human rights bodies. The Government is determined to ensure that visa arrangements are as robust and effective as possible, and that the legislative and administrative framework protecting overseas domestic workers from trafficking is practical and effective.

Successive Governments have acknowledged the unique vulnerability of overseas domestic workers and numerous measures have been taken, over many years, to safeguard these workers. We are working to improve our understanding of the nature of extent of exploitation, and officials in the Home Office are in the process of developing proposals to reform the route from next year.

28 July 2021