



KALAYAAN

justice for migrant domestic workers

25 January 2022

Why the UK must reinstate the original Overseas Domestic Worker visa Briefing for Committee Stage of the Nationality and Borders Bill in the House of Lords

Baroness Hamwee and The Lord Bishop of Bristol have tabled an important amendment to the Nationality and Borders Bill which, if passed, would restore the rights of migrant domestic workers in the UK almost ten years after they were stripped of them. These rights include the right to change employer and the linked right to renew their visa. Such rights would ensure the safety and dignity of this workforce and serve to close a protection gap that has existed in the government's response over the past decade. The amendment reads:

Insert the following new Clause—

“Migrant domestic workers

- (1) The Secretary of State must amend the Immigration Rules to make provision for the matters the subject of subsection (2).
- (2) All holders of domestic worker or diplomatic domestic worker visas, including those working for staff of diplomatic missions, must be entitled—
 - (a) to change their employer (but not work sector) without restriction, but must register such change with the Home Office;
 - (b) to renew their domestic worker or diplomatic domestic worker visa for a period of not less than 12 months, provided they are in employment at the date of application and able to support themselves without recourse to public funds, and to make successive applications;
 - (c) to apply for leave to enter and remain for their spouse or partner and any child under the age of 18 for a period equivalent to the unexpired period of their visa and of any subsequent visa;
 - (d) to be granted indefinite leave to remain after five continuous years of residence in the United Kingdom if at the date of application their employer proposes to continue their employment.”

Ten years in review

April 2012: The government introduced the tied visa, capped at six months and not renewable. Workers were prohibited from leaving their employer, even when experiencing abuse. Reported abuse increased exponentially.

- April 2014: Joint Committee on Draft Modern Slavery Bill found the tied visa 'unintentionally strengthened the hand of the slave master over the victim'
- Nov 2014: Joint Committee on Human Rights found 'removal of right to change employer a backward step in the protection of Overseas Domestic Workers, particularly as the pre 2012 visa regime had been cited internationally as good practice'
- March 2015: Amendments to the Modern Slavery Bill defeated by the government who commission an independent review into the terms of the visa and whether it facilitates abuse
- Dec 2015: Independent review [published](#). The review was evidenced based and looked at the full spectrum of abuse including treatment amounting to trafficking and slavery. The two key recommendations were considered the minimum required to give effective protection to all workers being abused in the UK.
- 1) Workers to have the right to change employer and apply for extensions totalling 2.5 years in the UK to give them a real and practical route out of exploitation without jeopardising their immigration status and livelihood
 - 2) Introduction of mandatory information meetings so workers can be empowered and enabled to exercise these rights and not have to rely on chance encounters with good samaritans. Meetings to be funded by increasing the visa fee.
- Jan 2016: Amendments to the Immigration Bill giving effect to recommendations of the independent review [withdrawn](#) on basis Ministers would meet with the inaugural Independent Anti-Slavery Commissioner and author of the independent review
- March 2016: The Government [responded](#) to the review's recommendations
- 1) **Accepted** that workers need an escape route from abuse so right to change employer reinstated
 - 2) **Not accepted** that workers should have the right to renew their visa. The Government claimed workers would be less likely to report abuse if allowed to renew their visa meaning perpetrators go undetected. No evidence was provided to back such a claim and is at odds with Kalayaan's experience and the finding in the review that when workers have the right to change employers and find safety and security in alternative employment, they will make complaints and pursue their claims
 - 3) **Accepted** that more should be done to ensure workers are provided with information on their rights and have access to a neutral space in which they can be given advice and an opportunity to alert someone if they need to

- April 2016: Right to change employer reinstated. The government also introduced other measures but these were restricted to those workers whose treatment amounts to trafficking or slavery and who enter the National Referral Mechanism (NRM). Changes include granting extension of leave and permission to work in the UK pending claims being decided (applicable only in cases where a worker has a valid visa) and upon being recognised as a survivor, having the right to apply for a domestic worker visa for two years, up from six months
- June 2018: The government launched a procurement exercise to find a provider to run the information meetings. Kalayaan voiced a number of [concerns](#) with the requirements, chiefly that they would not be compulsory and no checks would be made on a worker invited but who failed to attend. We also raised concern the requirements were weighted heavily in favour of organisations with larger infrastructures, rather than demonstrable experience in supporting and advising vulnerable individuals.
- April 2021: The government [confirmed](#) the two bids received to run the information meetings did not meet requirements although it remains unclear *why* they did not

Workers still have no escape route

Many of the concerns raised by Peers during scrutiny of the Immigration Bill have been realised. The changes introduced in 2016 are ineffective in practice and leave workers without any options. The right to change employer is limited to the time remaining on a worker's visa, which remains capped at six months. In practice this means that workers have only weeks or months remaining to find new employment. The vast majority of workers seeking assistance from Kalayaan do not know they have this right, having not been informed prior to or after their arrival in the UK. By the time they do learn of it, it is often too late. Many workers do not have possession of their passports when they escape which stands as another barrier to finding employment – those without possession cannot demonstrate they have valid leave in the UK and permission to work so automatically fail right to work checks. Without possession of their passport, references and the inability to renew their visa, migrant domestic workers are highly undesirable to new employers who look for longevity and a worker to join their household. The result is that workers end up being further abused and exploited by unscrupulous employers as means to survive and this is then exacerbated by the hostile environment.

Government plans to review the visa route again

In response to concerns, the government continues to signpost workers who have suffered abuse to the National Referral Mechanism (NRM), the UK's framework for identifying and supporting trafficking and slavery survivors. This response is problematic because not all abuse experienced by migrant domestic workers fits within the legal framework meaning they cannot pursue a NRM referral (and those that do, will ultimately be issued with negative decisions). This results in a protection gap for those workers who have experienced

exploitation but not trafficking, and leaves this cohort at risk of further harm. This response also does nothing to prevent abuse from escalating and requires work conditions to amount to trafficking or slavery before workers are able to access protections afforded by the NRM.

In February 2021, a [parliamentary petition](#) attracted over 12,700 signatures and called for the government to reinstate the terms of the original Overseas Domestic Worker visa, in place from 1998 - 2012. Three United Nations experts also wrote a detailed [communication](#) to the government echoing the petition's call in May 2021 and highlighted concerns raised by various international monitoring bodies. In their communication the UN experts said they firmly believe that migrant workers should be granted the right to change their employer at any point in time and for any reason while being able to apply for an extension of their visa/residency status. This would, in their view, contribute directly and significantly to the prevention and protection from exploitation and abuse of migrant workers.

Disappointingly, the government maintained their decision not to reinstate these vital protections to workers. Their latest response to Kalayaan can be found [here](#). Many of the points raised in response are legally and technically incorrect so we have [responded](#) to clarify these.

The government also [responded](#) to the communication sent by the United Nations experts in July 2021. At the end, the government confirm they are looking to 'understand the nature of exploitation and officials in the Home Office are in the process of developing proposals to reform the route from next year'. This is concerning, not least because a government-commissioned independent review of the visa was completed in 2015 but the recommendations were not fully implemented. This includes the now abandoned recommendation to introduce information meetings for newly arrived workers.

We need to restore rights, not review again

There is copious evidence that demonstrates that reported abuse is lower when migrant domestic workers have rights that enable them to challenge abuse. It is unclear why the government intends to proceed with reforms when it will not consider reinstating the terms of the original ODW visa which is proven effective at preventing abuse. Such an approach is also at odds with the government's stated commitment to preventing trafficking and ending violence against women.

The tabled amendment serves to right a wrong. The right to change employer is a fundamental safeguard but can only be effective for workers when accompanied by the linked right to renew their visa. At the same time, this amendment closes the protection gap which fails to safeguard workers who have suffered abuse but do not meet the definition of being trafficked or enslaved. Importantly, it serves to demonstrate that working conditions for this group of workers should not have to deteriorate to the point of slavery before a worker can access redress and justice.

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