

The Voice of Domestic Workers



Kanlungan
Empowering Filipino, East
and Southeast Asian Migrants in the UK

1 March 2022

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

Kalayaan produced a [briefing](#) for Committee stage in the House of Lords which set out the policy and legislative developments over the past ten years in respect of migrant domestic workers. This briefing is designed to complement the briefing produced for Committee stage. It addresses developments at Committee and recommendations for a further amendment at Report stage.

'Working conditions should not have to deteriorate to the point of slavery before workers can access redress and justice... this is a very modest amendment, merely restoring a model that worked well in the past'

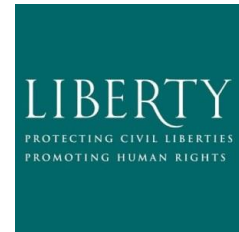
Baroness Hamwee, Liberal Democrat Peer, HL Deb 10 February 2022, vol 818, col 1912

Amendment 70A, if passed at Report stage, would serve to right a historic wrong. Since April 2012, migrant domestic workers have been left with no options to challenge their treatment at the hands of abusive employers. This amendment would finally change that.

Peers at Committee stage explained how the 2016 changes to the visa and legislative framework have made no difference to the abuse experienced by migrant domestic workers.¹ These changes included reinstating the right for workers to change employer, but not to stay longer than six months or extend their visa.² The government does not require workers to notify the Home Office when changing employer. The other change was in

¹ HL Deb 10 February 2022, vol 818, cols 1911 and 1915.

² The change of employers is not contained in the Immigration Rules, but is detailed on the government's website 'Overseas Domestic Worker visa' <<https://www.gov.uk/overseas-domestic-worker-visa>> accessed 1 March 2022; UK Visas and Immigration, 'Leaflet for persons coming to the UK as an overseas domestic worker (accessible version)' (Updated 6 May 2021) <<https://www.gov.uk/government/publications/overseas-domestic-workers-supporting-documents/leaflet-for-persons-coming-to-the-uk-as-an-overseas-domestic-worker>> accessed 1 March 2022.



**The Voice of
Domestic Workers**



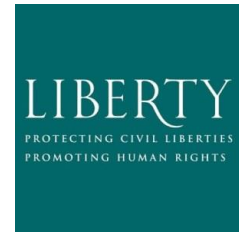
Kanlungan
Empowering Filipino, East
and Southeast Asian Migrants in the UK

respect of workers who had been conclusively recognised by the UK as a victim of trafficking or slavery. This particular group of workers are able to apply for a domestic worker visa for two years, up from six months when this provision was first introduced with section 53 of the Modern Slavery Act 2015. In 2016, the government also committed to implementing information sessions for newly arrived migrant domestic workers in the UK, but this safeguard has since been [abandoned](#).

The 2016 changes have made no impact on the levels of abuse reported to Kalayaan, the only organisation in the UK to be recording the experiences of migrant domestic workers and their working conditions in the UK. Workers do not know what limited rights they have in the UK, not having been informed prior to or after their arrival in the UK. Many flee abusive employers without possession of their passport. They often do not know details of their visa, including when it expires. Without possession of their passport, they cannot evidence that they have a valid visa (if indeed it is still valid at the point they flee) and permission to work in the UK, so automatically fail right to work checks. For those workers who are in possession of their passport and a valid visa, they will have months, often weeks remaining on their visa making them highly undesirable to prospective employers. The right to change employer without the linked right to renew the visa has been proven to be a meaningless concession and has not provided the immediate escape route from abuse as claimed.

In response to concerns about the visa regime, the government has repeatedly said that workers trapped in abusive employment can be referred to the National Referral Mechanism (NRM) to access protection and support.³ This is not true for those workers who experience daily infringements of their labour law rights but whose treatment does not amount to trafficking or slavery. For these workers, the NRM is not suitable, so they are left destitute and at further risk of abuse. Even in cases where Kalayaan has assessed a case as suitable and referred the worker to the NRM, Kalayaan has seen numerous negative

³ For example, recently in response to the Petitions UK Parliament and Government, 'Reinstate the pre-2012 Overseas Domestic Worker visa with a route to settlement' (closed 27 February 2021) <<https://petition.parliament.uk/petitions/326765>> accessed 1 March 2022.



The Voice of Domestic Workers



Kanlungan
Empowering Filipino, East
and Southeast Asian Migrants in the UK

trafficking decisions which state that conditions may have breached employment terms but do not constitute trafficking or slavery.

The government's approach has left a clear gap in protection for migrant domestic workers for the past decade. It is also at odds with the government's strategy on preventing modern slavery and tackling gendered forms of violence.

'Rather than listening to overseas domestic workers and reinstating the original ODW visa, the 2016 changes ignore the need for workers to be able to exercise their rights before exploitation escalates. Support organisations such as Kalayaan and Voice of Domestic Workers report the bind in which the current situation leaves many such workers. Do they risk leaving before abuse escalates? If this abuse does not equate to trafficking, they could be left destitute, without a reasonable prospect of finding work and without access to public funds or legal aid to challenge mistreatment'

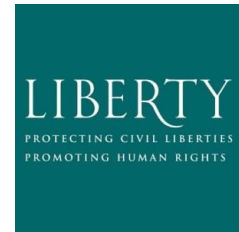
Baroness Lister of Burtersett, Labour Peer, HL Deb 10 February 2022, vol 818, col 1915

The government's response at Committee stage

Baroness Williams of Trafford, Minister of State, gave five broad reasons for the government opposing the amendment to restore the terms of the original Overseas Domestic Worker visa.⁴

The first reason provided was that the government did not want to impose any extra conditions on workers when they are seeking to leave abusive employment by requiring them to register any change of employment with the Home Office. This is inconsistent with the government's previous stance in debates during the Modern Slavery Act 2015 and

⁴ HL Deb 10 February 2022, vol 818, cols 1922-1924.



**The Voice of
Domestic Workers**



Kanlungan
Empowering Filipino, East
and Southeast Asian Migrants in the UK

Immigration Act 2016 when they refused calls to allow workers to renew their visa, as they argued to do so may make workers less likely to report abusive employers.⁵ Ultimately, the government should be encouraging individuals to report abuse so perpetrators are made accountable. In the case of migrant domestic workers, they will report abusive employers if they have the security and stability of alternative employment. The Minister's response is also at odds with the requirement of workers who entered the UK on the original Overseas Domestic Worker visa and who are already required to notify the Home Office of a change of employment.

The Minister's second point about workers being able to apply for a domestic worker visa for two years only applies to those workers who are able to enter the National Referral Mechanism and are conclusively accepted to be a victim of trafficking or slavery.

In response to the point made by peers that not all abuse equates to trafficking or slavery, the Minister said the Immigration Rules are '**deliberately designed to prevent the importation of exploitative practices – for example, they set out that they should be paid the national minimum wage.**'⁶ However, as Baroness Lister confirmed during the debate, the Immigration Rules are **simply not working**.

The Minister confirmed she would '**perhaps explore further**'⁷ the point made by peers regarding workers falling through the cracks in cases where treatment does not amount to trafficking or slavery. However, this exploration has not been conducted in advance of Report stage, and thus this amendment has been tabled once more.

The Minister's fourth point argued that the UK must be mindful of allowing workers to stay which could '**inadvertently create a fresh cohort of recruits for traffickers**'⁸ but as Baroness Hamwee explained, '**that is exactly what the danger is now**'.⁹

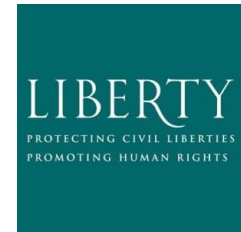
⁵ For example, Ministerial Statement, 7 March 2016 <<https://questions-statements.parliament.uk/written-statements/detail/2016-03-07/hcws583>> accessed 1 March 2022.

⁶ *ibid*, col 1922.

⁷ *ibid*.

⁸ *ibid*, col 1923.

⁹ *ibid*, col 1925.



**The Voice of
Domestic Workers**



Kanlungan
Empowering Filipino, East
and Southeast Asian Migrants in the UK

Lastly, the Minister said the 2015 independent report by James Ewins QC did not establish a direct link between the length of stay and the likelihood of exploitation. The government-commissioned report did in fact confirm that restrictions on the visa had only served to ***'increase the risk of abuse and therefore increases actual abuse and there is no evidence that it [the visa tie to a single employer] is neutral in its effect or that it reduces abuse'***.¹⁰

A decade after migrant domestic workers were stripped of their fundamental rights, the UK is still failing in its obligations to protect this workforce from abuse. The UK government must not miss yet another opportunity to reinstate rights and restore the terms of the original Overseas Domestic Worker visa, recognised internationally as good practice.¹¹

Support for this amendment

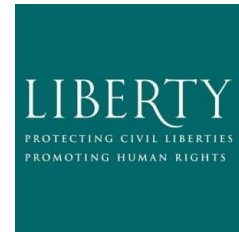
Calls for the changes introduced with this amendment are backed by the UK's [anti-trafficking sector](#), trade unions, as well as the general public (a [parliamentary petition](#) which closed in 2021 attracted over 12,700 signatures). It is also supported by [three United Nations Special Rapporteurs](#) (on contemporary forms of slavery, on the human rights of migrants, and on trafficking in persons, especially women and children) who found that granting rights such as the right to change employer and visa renewals would contribute ***'directly and significantly to the prevention and protection from exploitation and abuse of migrant workers.'***¹²

¹⁰ James Ewins, *Independent Review of the Overseas Domestic Worker Visa* (16 December 2015), page 24 [76] <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf> accessed 1 March 2022.

¹¹ ILO's Multilateral Framework on Labour Migration, 2006 <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_146243.pdf> accessed 1 March 2022;
Report of the Special Rapporteur on the human rights of migrants, 2010 <<https://www.refworld.org/docid/4c0623e92.html>> accessed 1 March 2022;

Joint Committee on Human Rights, 2014 <<https://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/62/6203.htm#a22>> accessed 1 March 2022

¹² Mandates of 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, AL GBR 6/2021, (27 May 2021) page 5



**The Voice of
Domestic Workers**



Kanlungan
Empowering Filipino, East
and Southeast Asian Migrants in the UK

There are numerous other benefits in restoring rights to this workforce including keeping workers visible and able to access reporting mechanisms such as taking claims before the Employment Tribunal and reporting to the police. This would send a clear message that the UK does not tolerate abuse.

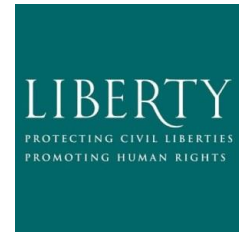
'...there is another financial imperative for the Treasury, because I have long thought that we force people into the black economy because they simply cannot find a legal way to stay here.

I suggest to the Minister that this amendment would at least help a lot of people to come out into the open and pay taxes. If they could extend legal visas, those people would not go into the black economy and extend that uncontrolled area of work.'

Lord Berkeley of Knighton, Crossbench Peer, HL Deb 10 February 2022, vol 818, col 1919

The 2016 changes to the policy and legislative framework for migrant domestic workers have made no tangible difference to levels of reported abuse. It also remains the case that there is no real immediate escape route for those fleeing abusive employers. **In all cases, workers must wait for their treatment to deteriorate to conditions amounting to trafficking and or slavery before they are able to access protection** and even then, there are no guarantees that their claims will be believed.

The government must finally seize the opportunity to do the right thing by this workforce and take the path informed by clear and robust evidence. It is abundantly clear that when workers had rights under the original ODW visa, this resulted in lower rates of reported abuse. The time to correct this historic wrong is now.



The amendment

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.”

If you require further information, please contact Avril Sharp, Policy Officer:
avril@kalayaan.org.uk.