Modern Slavery Bill
Ping Pong – House of Lords

25 March 2015

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COMMONS AMENDMENTS 72A, 72C AND 72C AND LORD HYLTON'S PROPOSED AMENDMENTS 72D, 72E and 72F TO AMENDMENT 72A

Purpose of Commons Amendments

Commons Amendment 72A

Removes from the Bill Lords Amendment 72, which would have restored to overseas domestic workers the right to change employer, and given them time to find a new employer. Instead it provides for the immigration rules to make provision for leave to remain in the UK to be granted to an overseas domestic worker who has been determined to be a victim of slavery or trafficking and meets other requirements of the immigration rules. These are not specified but it was stated that they might include not already having had leave under the National Referral Mechanism. Such persons will be allowed to work only as domestic workers. They will have no resource to public funds. They will be allowed to stay for six months minimum but a maximum time limit can be imposed on their stay. They will be able to change employer. The Secretary of State must issue guidance to immigration officials which, inter alia, must provide for a period (unspecified during which no enforcement action may be taken against a domestic worker who has overstayed or bvreahe3d a condition of his/her leave relating to employment because of matters "relied on" as slavery or human trafficking. No enforcement action can be taken while they are in the National Referral Mechanism.

Commons Amendments 72B and 72C

Ensure that amendment 72A applies throughout the UK, not just to England and Wales.

Purpose of Lord Hylton's amendments 72D, 72E and 72F to Commons Amendment 72A

Lord Hylton's amendments represent a compromise between Lords Amendment 72 and the Commons amendment in lieu.

Amendment 72D replaces the provision in the Commons' amendment 72A for at least six months' leave to be granted as described above, with provision for a domestic worker to change employer provided that the notify the Secretary of State of this; renew their visa for 12 months at a time and, where there is evidence that they have been victims of slavery, to have a temporary visa permitting them to remain in the UK to seek alternative employment

Amendment 72E provides that the temporary visa for a person to seek alternative employment as a domestic worker shall be granted for a maximum of six months.

Amendment 72F is a consequential amendment, removing the definition of a "determination" that a person is a victim of trafficking or slavery because such a determination will no longer be required for a domestic worker to be free to change employer. Provision for guidance, set out in subsection 5 of the Commons' amendment, is unaffected.

BRIEFING

Suggestions that to refuse to accept the Commons' amendments in lieu will result in the Bill being lost are part of a game of brinkmanship. In the House of Commons the Minister protested too much along these lines. The points read as a substitute for real argument.

The Commons amendments in lieu will protect overseas domestic workers. FALSE

The table compares the position under the government amendments with the current positon for a person in the National Referral Mechanism (which is intended to be adapted to cover enslaved persons as well as trafficked persons after the Bill becomes law).

Current	**Commons amendments in lieu**
No removal while within National Referral Mechanism	No removal while within National Referral Mechanism
One years' discretionary leave following positive "conclusive grounds" decision, founded in obligations under EU Trafficking Directive	Minimum six months leave following positive "conclusive grounds" decision ["provided there are no public policy grounds for refusing leave and subject to any safeguards needed specifically to avoid victims falling into another abusive employment relationship"]
Recourse to public funds	No resource to public funds
Entitled to work in any job (including but not limited to as an overseas domestic worker)	Only entitled to work as an overseas domestic worker

Why would an overseas domestic worker opt for the new leave rather than the existing discretionary leave which the Government indicates in its letter to peers would be used in any event for those needing to stay more than six months?

Moreover, in a confused passage, the Minister, Karen Bradley MP, appeared to suggest that workers could be forced to choose between the existing and the new leave:

> *We would not expect those who have already benefited from a period of discretionary leave following a conclusive grounds decision that they are a victim of modern slavery to be able to claim that in addition to the time already spent in the UK.*[1]

[1] HC Report, 17 March 2015, col 656.

Why would an overseas domestic worker who is not persuaded to leave his/her employer by the existing protection on offer be persuaded to do so by what is offered through the Commons amendment?

The Government said in its letter to peers about the amendments in lieu

> *"This will mean that victims can come forward to the authorities secure in the knowledge that they will be supported and without fear of being removed or deported"*

But the existing leave for trafficked persons does not always have that effect now, so why should the lesser, shorter, leave?

What are the chances of getting work if you can only stay in the UK for a maximum of six months? And without work, how will you live without falling back into exploitation and abuse, when you have no recourse to public funds?

The objection to Lords Amendment 72 and how Lord Hylton's amendments meet it

The Minister, Karen Bradley MP, said in the Commons "I understand and share the sentiment behind Lords amendment 72."[2]

The Minister's arguments against Lords Amendment 72 in the House of Commons were a fugue on one single objection. [3] This echoed the notes from police officers to its letter to peers, one from Chief Constable Shaun Sawyer, National Policing Lead for Modern Slavery and one from Ian Cruxton, Director of the National Crime Command at the National Crime Agency. The objection was, in the words of Mr Cruxton:

> *If victims of abuse from their employer can simply change employers without reporting to the appropriate authorities then the abuse may not be identified*

With the result, said Mr Sawyer, that "perpetrators will remain free to recycle their abuse."

Lord Hylton's first amendment addresses this because it requires an overseas domestic worker changing employer to notify the Secretary of State that s/e has done so. This fulfils Mr Cruxton's requirement of reporting to the appropriate authorities who are then free to make follow up enquiries of the workers and/or employer and make the appropriate referrals, whether to the police or to the National Referral Mechanism.

Thus the sole objection to Lords' amendment 72 has been met.

We can persuade workers in the current system or what is proposed in the Commons' amendments to come forward to seek help. FALSE

Perpetrators are free to perpetuate abuse now, because workers do not come forward, and they will not come forward with the offer only of six months limited protection. Only when they feel safe are workers likely to have the confidence to explain what they have suffered.

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[2] HC Report 17 March 2015, col 646.
[3] See HC Report 17 March 2015, col 647, 651, 653, 654m 667.

Kalayaan gave evidence to the Public Bill Committee that fewer overseas domestic workers on the tied visa are seeking it out than did under the old visa. It said

> ***Driven Underground: Reports of abuse have increased yet fewer victims are coming forward for help***
> *1. The numbers of workers on the tied visa coming to us for support and advice have dropped in comparison with those on the original visa in spite of the numbers of visas being issued remaining consistent (there was a slight increase in 2013). However, of the workers on the tied visa who registered at Kalayaan in the year since the tied visa was introduced, the reports of control and deprivation of autonomy or freedom have increased. It appears clear that the reason fewer domestic workers are coming to Kalayaan is either because they are physically prevented from leaving, or they are too scared to leave as they have no money, documents and have been told by their employers that they are prohibited by the immigration rules from leaving them. Otherwise they have escaped and are too scared to approach Kalayaan for advice or have been told that the help we can give them in practise under the new rules is now extremely limited and of little practical use to them.* [4]

Michael Connarty MP explained the positon at Commons' Consideration

> *In the past, … a large number of people reported being abused because they knew that they could leave a bad employer. The Minister boasts that the figure has gone down to 60, but that has happened because people are now trapped with the same employer and can do only one of two things: they can go home, or they can run away. They are not protected under the present visa system, and that is why the number has fallen.*[5]

Fiona Mactaggart MP secured the Minister's agreement to this analysis:

> ***Fiona Mactaggart:*** *… Kalayaan would say the reason for the reduction in the number of people who sought its help was that the remedies available to them have gone away. …*
> ***Karen Bradley:*** *On the numbers, I accept and do not dispute what Kalayaan is saying.* [6]

The major disincentive to coming forward may be the prospect of having to leave the UK. An analogy can be drawn with domestic violence. The rules provide a route to settlement for survivors of domestic violence on a spouse visa,[7] in the hope that this will be an incentive to leave the abusive relationship, not to stay in it because of fears about immigration status.

It places heavy demands upon a person in a situation of exploitation, enslavement and extreme poverty to reach any help, let alone where they do not speak English and are isolated and alone; let alone when they are undocumented, fear removal and are reluctant to jeopardise such income as they do receive and such status as they have. Cuts to legal aid affect cases before the employment tribunals; having to remain with the employer a person wishes to sue affects the case even more. The barriers are so high that any suggestion that these courses of help are available in practice must be viewed with scepticism.

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[4] See MS 18 9 September 12014 http://www.publications.parliament.uk/pa/cm201415/cmpublic/modernslavery/memo/ms18.htm . Alison Harvey, ILPA's legal director, is a trustee of Kalayaan.
[5] 17 March 2015, col 649.
[6] 17 March 2015, col 650.
[7] HC 395, paragraphs 289A to 289C, see (accessed 20 February 2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370924/20141106_immigration_rules_part_8_final.pdf

And if workers do come forward, what help do they get? Under the Commons amendments in lieu, six months leave, no recourse to public funds, scant opportunities to find a job for such a short time and thus the prospect of being driven from the UK by their destitution.

The way to protect people against exploitation is to give them more choices, not fewer. The UK response to the exploitation of migrant domestic workers should take account of global realities and contribute to ensuring that exploitation and slavery is not the least bad alternative for these workers worldwide.

Changes in Statement of Changes in immigration rules HC 1025 and procedural changes will protect domestic workers FALSE

> *The noble Lord also wrote about the new visa-linked contract and the cards to be given to both employer and worker. These may help slightly, perhaps most of all with the majority of decent employers. However, the caseworkers at the point of departure overseas have to be satisfied that the national minimum wage will be paid. How, in practice, can they do that when the employer is bound to say yes to their questions*? Lord Hylton[8]

On 26 February 205 Statement of Changes in Immigration Rules HC 1025 was published. It contains amendments in respect of overseas domestic workers which were prayed in aid by the Government. The changes are:

- To make it a requirement of the rules that the caseworker granting a visa be satisfied that the worker will be paid the National Minimum Wage
- To add a requirement to prevent employers using an exemption in the National Minimum Wage Regulations designed for au pairs that allowed employers to decline to pay the Minimum Wage to those living as part of the family.
- To provide a more detailed template contract [this has not yet been published] and to use it for overseas domestic workers in private households and in diplomatic households.

The Minister, Karen Bradley MP, described these and the associated process changes

> *There will be a new standard contract, along with changes to the immigration rules to strengthen the guarantees that overseas domestic workers will be paid at least the national minimum wage, pilot programmes of interviews for applicants overseas and the provision of information cards at the border.Baroness Garden of Frognal heralded these changes at Committee stage in the Lords.*[9]

The Minister in the House of Lords, Baroness Garden of Frognal, had already acknowledged the weakness of these arguments

> *…. of course, I hear from around the Committee the concerns that these documents will not be adequately and legally kept to…*[10]
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> *I agree that it is possible that they* [forms handed out at port] *are snatched away by the employers and put in a passport...*I[11]

[8] HL Report, 25 February 2015, col 1689.
[9] HC Report. 17 March 2015, col 648.
[10] HL Report 10 December 2014 col1866.
[11] *Ibid*. Col 1869.

> *… The power of the employer and the fact that people support family links back home make it extraordinarily difficult for people to complain about their employment….*[12]
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> *"**Lord Alton of Liverpool**. …the figures that she has just given to the Committee are very dubious? …By definition, many of these will be people who are frightened out of their minds about going to any of the authorities. … Is this not just the tip of an iceberg? By ignoring it we are not going to help the situation at all…."*
> ***Baroness Garden of Frognal** I entirely accept what the noble Lord says; it may well be the tip of an iceberg…."I entirely accept the difficulty of identifying the people who are abused,…*[13]

In any event, the protections are not new. The Home Office Entry Clearance Guidance and Instructions already makes provision for interviews:

> ***WRK2.1.8 Interviews** Where an interview is appropriate, applicants should be interviewed on their own, at least on their first application, to establish that they understand the terms and conditions of the employment and are willing to go to the UK.*[14]

The guidance also makes provision about the minimum wage

> ***WRK2.1.9 The National Minimum Wage** Domestic workers must be paid at least the NMW unless they are subject to an exemption.*[15]

Signed statements, albeit in a different format, are already required:

> ***WRK2.1.7 Statement of terms and conditions of employment** The employer must provide a signed statement including:*
> - *Maintenance and accommodation*
> - *Confirmation that the domestic worker can maintain and accommodate themselves adequately without recourse to public funds.*
> - *Confirmation that the domestic worker will have their own separate bedroom if living in the employer's house. This is a requirement and must be provided.*
> - *Specific terms and condition of employment*
>
> *Employers should complete the 'statement of terms and conditions of employment' found at appendix 7 of the Immigration Rules and the O[*verseas*] D[*omestic*] W[*orkers*] should sign it to confirm acceptance of the conditions.*

It is too easy for an employer to present a contract of employment that promises the earth for the purposes of immigration control, then pay the domestic work nothing, force him or her to sleep on the floor and work long hours and subject him/her to beatings. Evidential requirements do not remove the risks of exploitation. It is possible to produce evidence that money has been paid to a domestic worker but demand that money back with menaces. The specialist charity Kalayaan, whose figures Ministers accept,[16] reports that 65% of the 120 domestic workers on

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[12] *Ibid.*
[13] *Ibid.*
[14] https://www.gov.uk/government/publications/overseas-domestic-workers-in-private-households-wrk21/overseas-domestic-workers-in-private-households-wrk21--2#wrk218-interviews
[15] *Ibid.*
[16] See HC Report 4 Nov 2014 : Column 764.

the new visa that they saw between 6 April 2012 and 6 April 2014 did not have their own rooms but shared children's rooms or slept on the floor of communal areas, while 53% worked more than 16 hours a day. Sixty per cent were paid less than £50 a week.[17]

Those who attended the meeting convened by Baroness Cox in parliament at Lords' Committee stage, at which ILPA was represented, heard overseas domestic workers describe how they did not get documents supposed to tell them their rights or how, when they did and told the employer that the employer had promised to pay them or to give them a day off, they were laughed at by employers who pointed out that there was nothing the worker could do about it. Many had no phone. Those accounts reflect the experiences recounted to ILPA members working with those trying to escape domestic servitude.

Templates and guarantees as to salary do not work. [18] Either the requirement of the rules that the caseworker be satisfied that the worker will be paid in accordance with the National Minimum Wage Regulations is going to result in wholesale refusal of overseas domestic worker visas or it is going to provide no protection additional to that currently in place. The removal of the exemption in the second amendment may assist some workers, those working for law abiding, employers, as highlighted by the Lord Hylton, but the rest of the rules changes repeat existing so-called safeguards and place on record good intentions but do not change the reality for overseas domestic workers.

The evidence exists, it is unnecessary to wait for an enquiry to take action.

There is evidence enough. Numerous reports have made the case against the current laws[19]. In the words of the Joint Committee on the Draft Modern Slavery Bill:

> *In the case of the domestic worker's visa, policy changes have unintentionally strengthened the hand of the slave master against the victim of slavery. The moral case for revisiting this issue is urgent and overwhelming. Protecting these victims does not require primary legislation and we call on the Government to take immediate action*' [20]

Making a change now in no way prevents the Government from coming up with a better solution as a result of its enquiry and implementing that in future. But it does provide domestic workers with protection against slavery and servitude in the meantime. We echo Sir John Randall MP's response to the announcement of an enquiry, that he had

> *"…met too many victims to be able to say that it is a matter for another day".*

[17] *Ibid.*
[18] HL Report, 10 December 2014, col 1861.
[19] *Report of the Joint Committee on the Draft Modern Slavery Bill*, Session 2013-2014,HL Paper 166, HC 1019; Joint Committee on Human Rights, *Legislative Scrutiny: (1) Modern Slavery Bill…*, Third Report of Session 2014-15, HL Paper 62, HC 779; Kalayaan *Still Enslaved: The Migrant Domestic Workers who are Trapped by the Immigration Rule*; Centre for Social Justice, *It Happens Here*; Andrew Boff, Conservative leader of the GLA, *Shadow City*. See also Home Affairs Select Committee, *The Trade in Human Beings: Human Trafficking in the UK*, Sixth Report of Session 2008-2009, HC 23.
[20] Paragraph 5, Introduction, *Report of the Joint Committee on the Draft Modern Slavery Bill*, *op.cit.*