

Joint Briefing for the House of Lords
Immigration Bill 2015/2016: overseas domestic workers

Amendment 60 addressing Overseas Domestic Workers provides a crucial opportunity to protect this vulnerable group from trafficking and slavery.ⁱ The amendment, proposed by Lord Hylton, implements the key recommendations of a Government commissioned report which found that the right to change employer and to extend leave for 2.5 years are the minimum provisions needed to protect Overseas Domestic Workers from trafficking.ⁱⁱ It is strongly supported by Anti Trafficking Monitoring Group, Anti Trafficking and Labour Exploitation Unit, Anti Slavery International, Justice 4 Domestic Workers, Kalayaan, Liberty, Walk Free and Immigration Law Practitioners Association.

Amendment 60 in brief

- Right to change employer (must notify Home Office) - Leave to remain of up to 2.5 years
- Information sessions to be provided to Overseas Domestic Workers

Why an amendment on Overseas Domestic Workers?

Parliamentary debates during the passage of the Modern Slavery Act 2015 highlighted that changes to the Overseas Domestic Worker visa system made in 2012 had increased workers' vulnerability of to trafficking and slavery by removing the right to change employer and extending periods of leave. These concerns prompted the Government to commission an independent review of the Overseas Domestic Worker regime. The review was undertaken and published by James Ewins QC ("the Ewins Report"). Karen Bradley (then Minister for Modern Slavery and Organised Crime) stated in Parliament that the intention was that the recommendations of the report should be implemented by a future government.ⁱⁱⁱ

The Government's approach

Rather than implement the Ewins' Report recommendations, Government set out its own method for protecting Overseas Domestic Workers.^{iv} In the view of our organisations the Government's regime does not achieve the stated aim of providing an escape route from abuse because:

- it wrongly assumes that granting information to overseas domestic workers will in itself empower workers to escape, no matter how complex or conditional the rights;
- it leaves domestic workers effectively tied to their employers: they can only work beyond their initial visa term where they enter the Government's "National Referral Mechanism" for identifying victims of trafficking, and then for an unknown period that could be as little as 5 days. Obtaining employment in these circumstances will be virtually impossible;
- in order to access a further defined period of leave (of up to 2 years) enabling them to work again, workers must be identified under the National Referral Mechanism as a victim of trafficking. The National Referral Mechanism is slow and complex with many documented barriers to entry, and results in poor decisions with no formal mechanism for challenge.

In our view workers will only be empowered to escape abusive situations if informed of clear and concrete rights. Many Overseas Domestic Workers informed of the complex and conditional rights under the Government's regime will be deterred from escaping even the most abusive situations. The government's regime does not therefore safeguard against trafficking. Such safeguard is provided by Amendment 60.

Impossibility of getting job with only 6 month visa

The Government's regime purports to "untie" the overseas domestic worker from her employer for the initial 6 months of her visa. However, in our opinion it will not do so in practice because workers will not be able to obtain work with what remains of their initial 6 months visa (see Case Study). Workers take time to gather sufficient courage (or despair) to escape. After escaping, under the Government's regime they will have little or no time left on their visas and will be unable to procure employment in these circumstances. Although their visa may be extended if they enter the National Referral Mechanism, they will not be able to tell employers about a defined period of leave: if a negative "Reasonable Grounds" decision is made their additional period of leave could last as little as 5 days.

Case study

Client A suffered severe exploitation in UK from summer 2015 until January 2016. She had worked for many years without holiday or time off. In the UK she worked at least 16 hours a day, with no rest breaks even for meals, and no days off; she was regularly subjected to verbal abuse by members of the family and physical abuse by the children; she was responsible for caring for a baby as well as the other children, and she was required to share a bed with the baby who woke regularly. She understood that she could not leave until the end of a 2 year fixed term contract. Her wage had enabled her family in their country of origin to cover their immediate costs but did not produce a surplus: her priority was therefore was to maintain a continuity of remittances.

Client A only left when, through severe sleep deprivation, she feared she would die and this would leave her children without a source of support. Only then did the dangers of staying seem greater than the risks of leaving. By the time she left she only had a matter of weeks left to run on her visa. Under the Government's regime, since her right to work would be exhausted imminently she would be very unlikely to obtain employment. Few if any employers will agree to employ her on the basis that she can lawfully work for as long as her case is being considered under the National Referral Mechanism: this could be as little as 5 days if she receives a timely negative reasonable grounds decision.

Problems with the National Referral Mechanism

- The National Referral Mechanism is a bureaucratic process with many documented barriers to entry: e.g. lack of access to legal advice before entry meaning that many are afraid to enter;
- National Referral Mechanism decisions are frequently of poor quality^v and carry no mechanism for challenge;
- National Referral Mechanism decisions are slow: conclusive decisions can take over a year to be made. In the meantime workers' families are left without remittances as the Overseas Domestic Worker cannot work. This can cause unbearable strain for the Overseas Domestic Worker and will put many Overseas Domestic Workers off entering.

Information without underlying rights is merely window dressing

Information can only help Overseas Domestic Workers if it informs them of clear and concrete rights which they can exercise. Informing Overseas Domestic Workers that their ability to work is conditional upon an unknown (and complex) decision being made by the government is more likely to have the effect of deterring escape.^{vi} The characteristics of Overseas Domestic Workers are key here: Overseas Domestic Workers are often women with limited formal education, often suffering from mental illness resulting from past traumas, and having learned (or been conditioned) to distrust authorities. Many workers will have no understanding of the concepts nor trust in the mechanisms that the government's scheme depends on, including the very concept of being a "victim of trafficking".

Case Study

In the case of Client A (above), information given earlier in her employment would have encouraged Client A to leave only if it conveyed some certainty that she would be able to replace her lost income and continue to support her children in her country of origin for a sustained period. The risk of any substantial disruption to remittances would likely have prohibited her escape.

Conditional rights may undermine workers' prospects of getting redress

The Government regime may have the perverse effect of undermining prospects of pursuing criminal traffickers and exploiters or getting redress in the form of compensation in the civil courts: tying the grant of a visa (and thus permission to work) to positive identification within the National Referral Mechanism, could lead traffickers to claim, and some judges or juries to believe, that Overseas Domestic Workers have an immigration motivation for bringing their complaint. Under Overseas Domestic Worker Amendment 60, Overseas Domestic Workers will be able to report trafficking and exploitation without their evidence being undermined in this way.

Addressing concerns about the Overseas Domestic Worker amendment

In his statement of 1 April 2016 the Independent Anti-Slavery Commissioner raises concerns that granting longer visas and rights that are not conditional on recognition through the National Referral Mechanism may have perverse effects. In the extensive and combined experience of all the organisations supporting this briefing, and in the opinion of the workers themselves as expressed through Justice 4 Domestic Workers, these concerns are misguided, as follows:^{vii}

If visas can be extended more employers can exploit Overseas Domestic Workers for longer periods

This concern depends on the idea that traffickers are worried about whether their illegal treatment of Overseas Domestic Workers breaches immigration rules. In our experience, this is very often not the case, as exemplified by the Case Study below. In fact, in our experience:

- trafficking of Overseas Domestic Workers from within the UK does not become more likely where a visa can be extended and the right to extend a visa does not increase the likely period a worker is exposed to re-trafficking;

- on the contrary, where a victim is present illegally criminal traffickers have far greater power over their victims and can therefore exploit them more easily for longer, with less risk to themselves;
- where workers do not understand that they have clear and concrete rights they are unlikely to seek help.

Case study

In a case brought by ATLEU (EK Tanzania)^{viii} the client, EK, was trafficked to the UK. Once in the UK she was transferred to family members of her original trafficker and maintained in domestic servitude well beyond the term of her initial visa. No effort was made to extend her leave. When she was unwell she was told she could not seek medical help. After “escaping”, a third employer kept her in domestic servitude for more than 2 ½ years regularly using her illegal status as a reason for EK not to seek medical help or to leave. By the time she sought emergency medical help irreparable harm had been done to her lungs by tuberculosis.

In our view, the risk identified by the Commissioner is most effectively mitigated by the combined measures of giving domestic workers clear, concrete and understandable rights, and ensuring access to clear information on these rights as proposed by Amendment 60.

If workers are able to extend visas without reporting abuse, this will lead to fewer reports to the police, meaning in turn a “constant supply” of domestic workers and reducing prosecutions

James Ewins QC has specifically addressed concerns that an ability to extend a visa would interfere with reporting and the prosecution of offenders, stressing:

“abused workers overwhelmingly want their abusers to be brought to account, and are prepared to assist in that happening. The barrier to engaging their assistance is not one of unwillingness. The key, therefore, is to understand how to empower overseas domestic workers...to get out of their abusive situations such that their willingness to report their abuse and assist with prosecutions or civil actions is acted upon.... The evidence received by this review strongly indicates that those victims who choose to make criminal and civil complaints against former abusive employers are those who are in safe and secure alternative live-in employment.”^{ix}

We agree with James Ewins’ conclusions:

- In our view, workers would be far more likely to obtain legal redress under Amendment 60 than under the Government’s regime since traffickers would be unable to use the issue of ‘immigration advantage’ to undermine domestic worker testimony;
- the issue of traffickers bringing further “supplies” of domestic workers is best addressed by investigating cases where the worker has notified a change of employer, as proposed by Amendment 60. Under the government’s regime far fewer reports will be made because so few workers will be able to get a job within their limited six month visa. Where reports depend on decisions under the National Referral Mechanism delays will mean that reports cannot effectively be used to prevent trafficking of further workers (see Case Study below).

Case Study

In a case brought by ATLEU, Ms Reyes and Ms Suryadi v Al Malkis^x, Ms Reyes was replaced by Ms Suryadi within two months of Ms Reyes escaping, reporting her complaints to the police and being recognised as a victim of trafficking at the “reasonable grounds” stage under the National Referral Mechanism.

Workers will “simply” look for another job if they can extend their leave without reporting abuses. Their needs may therefore not be met

In our opinion, this concern considerably misunderstands the “needs” of many overseas domestic workers, whose vulnerabilities are closely connected to their ability to get another job: very often they have been driven to suffer severe abuses and privations because of their desperation to send remittances to their families. Whilst the abuses and privations themselves may cause mental illness and entrench pre-existing vulnerabilities, for many workers these cannot be effectively treated, and recovery is not possible, unless and until the original imperative – to work so as to send remittances to family in their country of origin – is addressed. Getting another (non-exploitative) job is therefore very often an essential part of a domestic worker’s recovery. It will be virtually impossible for individuals to obtain a change of work when the maximum length of possible stay in the UK is six months.

Conclusion

Our organisations consider that allowing migrant domestic workers to change employer and renew their domestic worker visa for up to 2 ½ years months will considerably improve protections for this group of workers who are particularly vulnerable to abuse.

Sadly, the government’s proposals do not sufficiently recognize or respond to the particular vulnerabilities of overseas domestic workers and will, accordingly, be ineffective in providing the protection they intend to provide. We hope very much that you might consider speaking in support of the proposed amendment and to vote accordingly.

ⁱ See Appendix for the full text of Amendment 60

ⁱⁱ <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review>. The finding of the Ewins Report support others' views that the 2012 visa changes: have 'unintentionally strengthened the hand of the slave master against the victim of slavery' (Joint Committee on the Draft Modern Slavery Bill); are "...a backward step in the protection of migrant domestic workers, particularly as the pre-2012 regime had been cited internationally as good practice..." (Joint Committee on Human Rights which recommends that the pre-2012 protections be reinstated); "undermined the British government's obligations...to protect migrant domestic workers from employer abuse and provide them with ways to access justice" (Human Rights Watch, Hidden Away: Abuses against Migrant Domestic Workers in the UK); correlate with increased reports of physical abuse and restriction of movement (Kalayaan, Still Enslaved: The migrant domestic workers who are trapped by the immigration rules)

ⁱⁱⁱ Karen Bradley, 17 March 2015, Column 650: "We have asked for this review to take place and we look forward to the recommendations. I cannot commit a future Government, but the intention is that whoever is in government—I very much hope it will be the Conservatives—will implement the review's recommendations."

^{iv} These were described in the Rt Hon James Brokenshire MP's Written Statement^{iv} of 7 March 2016 and have been partially implemented by recent changes to the Immigration Rules. See <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2016-03-07/HLWS568/>

^v Anti Trafficking Monitoring Group, 2013, 'Hidden in plain sight'

^{vi} If the information sessions are to be complete and accurate in relation to workers' immigration rights it will be necessary for them to inform workers about: what it is to be a victim of trafficking; the process of being recognised as such; the identity of the decision maker (being an agency within the Home Office); the risks of such process (including removal from the UK by the Home Office); the means of challenging negative decisions (by bringing a claim in the High Court); the amount of time that identification as a victim, and any challenges to negative identification decisions, can take; a person's inability to access public funds in the meantime; the limited availability to potential victims of trafficking of support and accommodation including the location (outside London) of that support and accommodation and the fact that it is only available for 45 days; the fact that it is only after these decisions have been made that workers will be able to work.

^{vii} We recognise the experience of the Independent Anti Slavery Commissioner in dealing with victims of trafficking as a police officer. However, his experience of working with overseas domestic workers has necessarily been affected by the low rates of police reports made by Overseas Domestic Workers. The combined experience of the organisations supporting this briefing has been built up over many years (in the case of Kalayaan, decades) of working with scores (in the case of Kalayaan, hundreds) of domestic workers annually. See Appendix 2 for more details.

^{viii} available at <https://tribunalsdecisions.service.gov.uk/utiac/2013-ukut-313>)

^{ix} Ewins, J., 'Independent Review of the Overseas Domestic Workers Visa', 16 December 2015, p. 24.

^x <https://www.judiciary.gov.uk/wp-content/uploads/2015/02/reyes-v-al-malki-judgment.pdf>, Neutral Citation Number: [2015] EWCA Civ 32