

## Liberty's briefing on the Immigration Bill: overseas domestic workers

During Report Stage consideration of the Immigration Bill on 9<sup>th</sup> March, the issue of the tied visa for overseas domestic workers (ODWs) was debated. Crossbench Peer, Lord Hylton, tabled an amendment which would allow domestic workers to change employer within their work sector, escaping situations of abuse and exploitation. It was passed by a margin of 226:198. **Clause 40** of the Immigration Bill now reads as follows:

### **"40. Overseas domestic workers**

(1) For section 53 of the Modern Slavery Act 2015 (overseas domestic workers) substitute—

#### **"53 Overseas domestic workers**

(1) Immigration rules must make provision for leave to remain in the United Kingdom to be granted to an overseas domestic worker.

(2) Immigration rules must make provision as to the conditions on which such leave is to be granted, and must in particular provide—

(a) that the leave is to be for the purpose of working as a domestic worker in a private household;

(b) for a person who has such leave to be able to change employer, registering such change of leave with the Home Office.

(3) Immigration rules may specify a maximum period for which a person may have leave to remain in the United Kingdom by virtue of subsection (1), and if they do so, the specified maximum period must not be less than 2½ years.

(4) Immigration rules must provide for a period during which no enforcement action should be taken against such an overseas domestic worker in respect of his or her—

(a) remaining in the United Kingdom beyond the time limited by his or her leave to enter or remain, or

(b) breaching a condition of that leave relating to his or her employment if he or she wishes to change it.

(5) The Secretary of State must issue guidance to persons having functions under the Immigration Acts about the exercise of those functions in relation to an overseas domestic worker who may be a victim of slavery or human trafficking.

(6) The guidance must provide for an overseas domestic worker remaining in the UK for more than 42 days to be required to attend a group information session as defined in that guidance, within that period.””

The new clause provides for changes to the Immigration Rules to allow a domestic worker to change her employer, but not work sector, and for annual visa extensions. In accordance with the amendment, the Government could place a cap of 2½ years on the total period of time the ODW may work in the UK. The amendment would further require a domestic worker to notify the Home Office of a change of employment. The amendment would require guidance to be provided to those performing functions under the Immigration Acts when they come into contact with domestic workers who may have been victims of slavery or trafficking. This guidance must include provision requiring overseas domestic workers who remain in the UK for more than 42 days to attend a group information session.

### *Background*

Liberty was deeply critical of changes to the Domestic Overseas Workers Visa, introduced in April 2012, which provided for domestic workers to be tied to their employers. We warned that it would institutionalise abuse and force already vulnerable workers into a position of exploitation or destitution. The tied visa overturned rules in place for over 14 years which allowed domestic workers to switch employer – but not work sector – once they were in the UK. It has had no effect on the number of people arriving each year on domestic worker visas, a tiny fraction of the overall migration figure.

Following an intense Parliamentary battle during the passage of the Modern Slavery Act 2015, Peers voted through an amendment that would ensure that these vulnerable individuals are able to change their employer, renewing their visa at annual intervals whilst they remain in employment. This progress was undone in the Commons. The only change to the system offered by Government in the Modern Slavery Act was provision set out at section 53 and implemented through changes to the Immigration Rules. These changes provide for a domestic worker to apply to change employer within her work sector, but visas are limited to six months and only apply where a Conclusive Grounds decision has been

reached through the National Referral Mechanism. Sadly this move was of no real practical benefit to workers, as the 6 month cap renders finding alternative employment exceptionally unlikely. In relying on a positive Conclusive Grounds decision, this system further places all the risk and burden of establishing abuse onto the vulnerable employee.

The experience of 4 years of the new tied visa shows that exploitation of domestic workers has increased. Kalayaan – the leading organisation providing assistance to migrant domestic workers in the UK – registered 188 domestic workers between 1<sup>st</sup> April 2014 and 31<sup>st</sup> March 2015. Kalayaan found that:

Of those 188 workers, reports of abuse made by 64 tied workers are proportionately consistently higher than the (also unacceptably high) levels reported by the 124 other workers.<sup>1</sup>

Specifically 28% of those on the tied visa reported abuse, compared to 11% of those who weren't tied. 68% of tied workers reported being prohibited from leaving the house freely, compared to 38% from the untied group. 70% of tied workers had no time off, compared to 49% of the other domestic workers. These statistics show that the eradication of a tied visa is an absolutely essential first step in the battle against the abuse and exploitation of ODWs.<sup>2</sup>

### *The Ewins Review*

In response to the level of opposition to the tied visa system demonstrated inside and outside of Parliament, the Government commissioned an expert, James Ewins QC, to conduct an independent review in March 2015. He was asked to assess how far existing arrangements for the admission of overseas domestic workers are effective in protecting workers from abuse and exploitation, and to make recommendations. The Ewins Report, published by Government on 17<sup>th</sup> December after a protracted period of Home Office delay, stated in no uncertain terms:

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<sup>1</sup> Kalayaan, 'Britain's forgotten slaves; Migrant domestic workers in the UK three years after the introduction of the tied Overseas Domestic Worker visa', May 2015, available here: <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-3-year-briefing.pdf>, p. 1.

<sup>2</sup> Kalayaan, 'Britain's forgotten slaves; Migrant domestic workers in the UK three years after the introduction of the tied Overseas Domestic Worker visa', pp. 1-2.

the existence of a tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK.<sup>3</sup>

The Report recommends that ODWs be entitled to change employer and apply for annual extensions of their visa up to a total period of 2 ½ years. James Ewins made clear that:

...for those who are abused in any way at all, the universal right will give them a real and practical way out of that abuse without the current possibility of a subsequent precarious immigration status and threat to livelihood.<sup>4</sup>

#### *Inadequate Government response to the Ewins recommendations*

In response to a robust Committee stage debate and following the publication of the Ewins Report, the Government has made further changes to the Immigration Rules which create two categories of visa provision for domestic workers. Under the changes ODWs can access a 6 month visa to undertake domestic work with another employer.<sup>5</sup> This approach fails to acknowledge the difficulties - explored in the Ewins report - likely to be faced by workers who have six months or less on an ODW visa. The Ewins Report notes that:

...the commercial reality of an employer paying an agency fee for securing the services of [an overseas domestic worker] requires, in the evidence of some agencies, that a longer period of prospective employment is offered. It has been emphasised that this is particularly the case in circumstances where the employer is necessarily taking a risk by employing an overseas domestic worker who has escaped from a previously abusive employer and therefore comes without any references. Placing such employees is not as easy as placing others, it is said, and placing them for short periods is impossible.<sup>6</sup>

James Ewins goes on to recommend that:

...in order to provide overseas domestic workers with a meaningful alternative employment to which removal of the tie will provide access, there needs to be the

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<sup>3</sup> Ewins, J., 'Independent Review of the Overseas Domestic Workers Visa', 16 December 2015, available here: <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review>, p. 5.

<sup>4</sup> Ewins, p. 6.

<sup>5</sup> Immigration Rules, 159B, as amended.

<sup>6</sup> Ewins, p. 31.

potential for an overseas domestic worker to stay in the UK for up to 2 years beyond the initial 6 month term.<sup>7</sup>

The Government has further introduced a longer period of stay of up to 2 years, but only where there has been a positive Conclusive Grounds decision.<sup>8</sup> This change ignores the detailed findings of the Ewins report. When considering the imposition of a requirement for a positive Conclusive Grounds decision, the report makes clear:

The danger of the conditional approach embodied in s.53 is that the only route out of abuse puts the evidential burden on the worker/victim and is coupled with a threat of not only having lost their job but also becoming illegal immigrants if they fail to meet that burden and are not found to have been in slavery or to have been trafficked. There is a keenly felt risk of such victims being worse off for having asked for help. And furthermore, the proviso of s.53 only applies to slavery and human trafficking, not any other abuse on the continuum of exploitation referred to above.<sup>9</sup>

The Government argues that the approach it advocates is based on a concern that, without the requirement of a NRM decision, workers will simply move to new employment without reporting employers guilty of their enslavement or abuse. James Ewins addresses this concern directly in his Report stressing that:

The evidence in this regard is instructive and reassuring: 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, how to enable them to take control of their lives and how to support them 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.<sup>10</sup>

The Government's changes simply do not provide the protection required and were rejected by the House of Lords during Report Stage consideration of the Immigration Bill.

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<sup>7</sup> Ewins, p. 31.

<sup>8</sup> Immigration Rules, 159J as amended.

<sup>9</sup> Ewins, p. 24.

<sup>10</sup> Ewins, p. 24.

### *Consensus on the need for reform*

James Ewins is not alone in calling for this long overdue change. The Joint Committee on the Draft Modern Slavery Bill took evidence from a wide range of individuals and organisations and concluded that:

In the case of the domestic workers visa, policy changes have unintentionally strengthened the hand of the slave master against the victim of slavery. The moral case for re-visiting this issue is urgent and overwhelming.<sup>11</sup>

It recommended that:

the Home Office reverse the changes to the Overseas Domestic Worker Visa. This would at the very least allow organisations and agencies to remove a worker from an abusive employment situation immediately. It would also enable the abuse to be reported to the police without fear that the victim would be deported as a result. This in turn would facilitate the prosecution of modern slavery offences.<sup>12</sup>

In 2014, the Joint Committee on Human Rights further stressed:

We regard the removal of the right of an Overseas Domestic Worker to change employer as a backward step in the protection of migrant domestic workers, particularly as the pre-2012 regime had been cited internationally as good practice. We recommend that the [Modern Slavery] Bill be amended to reverse the relevant changes to the Immigration Rules and to reinstate the pre-2012 protections in the Bill.<sup>13</sup>

On the 2<sup>nd</sup> December 2015, the London Assembly joined the fight for an end to the tied visa system, calling on the Mayor of London to make the case to the Home Secretary for its repeal.

The Ewins recommendation is significantly more modest than the recommendations of both the Draft Modern Slavery Bill Committee and the JCHR, in that it does not allow for a route to settlement in the way provided for under the pre-April 2012 visa.

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<sup>11</sup> Joint Committee on the Draft Modern Slavery Bill, 'Draft Modern Slavery Bill: Report', Session 2013-14, 3 April 2014, p. 4.

<sup>12</sup> Joint Committee on the Draft Modern Slavery Bill Report, p. 101.

<sup>13</sup> Joint Committee on Human Rights, 'Legislative Scrutiny: (1) Modern Slavery Bill and (2) Social Action, Responsibility and Heroism Bill', Third Report of Session 2014–15, 5 November 2014, HL Paper 62, HC 779, p. 44.

## *Conclusion*

Overseas domestic workers are uniquely vulnerable, frequently coming from backgrounds of extreme poverty and dependent on their employer for both accommodation and wages. The tied visa system leaves them even more vulnerable, making them dependent on their employer for their immigration status and ability to lawfully remain in the UK. The tied visa system allows abusive employers to act with impunity: workers are much less likely to report their actions to the police for fear of deportation, choosing instead to suffer ill-treatment or remain in the UK undocumented. In a 2014 report on the experiences of migrant domestic workers, Human Rights Watch report that “*several migrant domestic workers who had escaped cited fear of police discovering their undocumented status as the main reason they did not file a complaint*”.<sup>14</sup> Tied visas are a mechanism well known to regimes with shameful records on human rights and particularly the rights of women. There may be a limited amount we can do secure the safety of the vulnerable women held and treated as slaves by their employers in Qatar, but we can fight against slavery on our own soil.

The Government has bitterly resisted changes to the system to safeguard vulnerable workers and reduce modern day slavery. They have failed to heed the central recommendation of the Ewins Report, which offers a practical route out of abuse and exploitation for workers.

**Liberty urges MPs to vote for clause 40 to remain in the Immigration Bill, ending the tied visa and implementing the recommendations of James Ewins QC.**

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<sup>14</sup> Human Rights Watch, ‘Hidden Away’, 30 March 2014, available here: <https://www.hrw.org/report/2014/03/30/hidden-away/abuses-against-migrant-domestic-workers-uk>.