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Liberty's briefing on the "*Protection from slavery for overseas domestic workers*" amendment for consideration of Lords amendments to the Modern Slavery Bill in the House of Commons

March 2015

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/policy/>

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1. Liberty welcomes the Modern Slavery Bill. We believe the legislation builds on a number of important protections for victims and helps the Government fulfil its human rights obligations. However, the Bill as originally proposed contained one glaring omission – protection from slavery for migrant domestic workers – which was highlighted by the cross party parliamentary Committee that considered it in draft. This situation was rectified at the Bill’s Report Stage in the House of Lords when Peers voted in favour of a cross party amendment, tabled in the names of Lord Hylton, Baroness Royall of Blaisdon, the Lord Bishop of Carlisle and Baroness Hanham, designed to ensure a minimum of protection for vulnerable domestic workers by allowing them to escape from abusive employers. **We urge MPs to retain the amendment to protect overseas domestic workers from slavery on the face of the Bill.**

“Protection from slavery for overseas domestic workers

All overseas domestic workers in the United Kingdom, including those working for staff of diplomatic missions, shall be entitled to—

- (a) change their employer (but not work sector) while in the United Kingdom;***
- (b) renew their domestic worker or diplomatic domestic worker visa, each such renewal being for a period not exceeding twelve months, as long as they remain in employment and are able to support themselves without recourse to public funds;***
- (c) a three month temporary visa permitting them to live in the United Kingdom for the purposes of seeking alternative employment as an overseas domestic worker where there is evidence that the worker has been a victim of modern slavery.”***

Purpose of the amendment

2. The amendment would restore some of the protections for overseas domestic workers that were in place before the 6 April 2012 visa changes. It would allow domestic workers to change employer and extend their leave to remain for a periods of up to 12 months while they remain in employment. In circumstances where they have left a situation of modern slavery, it would also enable workers to access a temporary three-month visa permitting them to reside in the UK while they seek alternative employment.

Introduction of the tied visa

3. The tied visa was introduced as part of the Coalition's effort to meet a self-imposed immigration cap on the number of migrants coming to the UK from outside the EU. It overturned rules in place for over 14 years which allowed domestic workers to switch employer – but not work sector - if they so wished once they were resident in the UK. The Government justified the introduction of the tied visa by saying that the ability of domestic workers to change employer and access the UK labour market was "*contrary to general Government policy on low skilled migration.*"¹ However on the Government's logic, retaining any kind of domestic worker visa runs contrary to its stated policy. It is, of course, open to the Government to stop this visa route altogether but it has declined to do so. It is therefore incumbent on Government to ensure that it complies with basic human rights obligations owed to those who are granted visas.

4. Despite a number of radical changes to the immigration rules, the Government has failed to meet its immigration cap. Instead of reducing migration to the tens of thousands, between September 2013 – 2014 net migration to the UK was at 298 000, an increase on the net migration figure for 2010 when the Coalition took office. The number of people arriving each year on domestic worker visas has stayed largely constant - approximately 15 000 domestic workers arrive each year. Domestic worker visas therefore account for a tiny fraction of UK immigration representing just over 2% of the overall migration figure.

Impact of the tied visa

Increased exploitation

5. The experience of over two years of the new tied visa shows that exploitation of domestic workers has increased. Kalayaan – the lead organisation providing assistance to migrant domestic workers in the UK – saw 120 domestic workers on the new visa between April 2012 and April 2014. Evidence Kalayaan has compiled shows that 16% of new entrants on tied visas report physical abuse, compared with 8% of those subject to the pre-April 2012 visa; 71% of those tied to an employer reported never being allowed to leave the house unsupervised, compared to 43% of those subject to the original visa; 60% of tied migrants were paid less than £50 per week as compared with 36% under the original visa; and Kalayaan assessed 69% of those present on the tied visa to be victims of trafficking as

¹ See the Home Office Impact Assessment that accompanied change to the Immigration Rules, 15 March 2012, available at - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117958/impact-assessment.pdf.

opposed to 26% of those not tied.² These statistics are shocking, but not surprising. The legal route to change employer has long been internationally recognised as one of the most effective practical measures to protect domestic workers – predominantly highly vulnerable women – from modern day slavery.

6. Tied visas are a mechanism well known to regimes with shameful records on human rights and particularly the rights of women. A report produced last year by Amnesty International catalogues the widespread abuse of domestic workers in Qatar, ranging from physical assaults to absolute restrictions on their movements.³ The Qatari ‘no objection certificate’ scheme, which prevents migrants from working for somebody else without the permission of their sponsor, is a factor widely acknowledged to sustain their abuse.⁴ In introducing a tied visa, the UK mimicked this provision and allowed for the continued servitude of women brought to this country as slaves.

7. Kalayaan has further highlighted how the 2012 switch to a tied visa system has sent a message to the employers that they could continue to exercise this type of abusive control over employees that they bring with them to the UK. There may be little we can do secure the safety of the vulnerable women held and treated as slaves by their employers elsewhere in the world, but we can say ‘not on our soil’. The current system allows the abuse to be perpetuated.

No feasible options for exploited workers

8. Overseas domestic workers are recognised as being uniquely vulnerable, invariably coming from backgrounds of extreme poverty and dependent on their employer for both accommodation and wages. The tied visa leaves domestic workers even more vulnerable – making them dependent on their employer for their immigration status and ability to lawfully remain in the UK. It leaves those who face mistreatment with few feasible options. They can stay with their employer and submit to further abuse, escape and remain in the UK as an undocumented migrant or leave and face deportation and the life changing consequences of no longer being able to provide for dependent family members. Domestic workers who are victims of trafficking have the option of going through the National Referral Mechanism process, but this offers no recourse for those who have been mistreated – sometimes for

² *Still enslaved: The migrant domestic workers who are trapped by the immigration rules*, Kalayaan, April 2014.

³ *‘My Sleep is My Break’: Exploitation of Migrant Domestic Workers in Qatar*, Amnesty International, 2014.

⁴ *Ibid*, p.12.

years – but not trafficked. Even for those who have been trafficked, choosing this uncertain route is a gamble. For some, remaining in a situation of servitude or effective slavery is the least worst option. Kalayaan has documented how the tied visa has caused workers to return to abusive employers, or escape and disappear.

9. The limited choices available to these victims is made worse by other Coalition reforms. In-country immigration checks by landlords, banks and other service providers and aggressive in-country raids and spot checks by UKBA means that those who escape and remain undocumented in the UK are even more vulnerable to enforced destitution or further exploitation by unscrupulous employers, traffickers and modern day slave owners.

Impunity for abusive employers and rise in undocumented migrants

10. The tied visa also allows abusive employers to act with impunity as workers are much less likely to report their actions to the police for fear of deportation choosing instead to sustain ill-treatment or remain in the UK undocumented. In their recent 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*”.⁵ The tied visa therefore works to undermine the strengthened criminalisation of forced labour and associated offences that this Bill otherwise works to re-inforce. It also encourages further victimisation if abusive but unpunished employers are free to bring other vulnerable workers to the UK and subject them to abuse.

Expert and parliamentary support for re-introduction of a flexible visa

11. During the passage of the Modern Slavery Bill the case for the amendment has been taken up by parliamentarians of all party political affiliations and none and been endorsed by expert cross-party parliamentary Committees. The Joint Committee on the Draft Modern Slavery Bill took evidence from a wide range of individuals and organisations and concluded that -

⁵ Hidden Away, Abuses against Migrant Domestic Workers in the UK, 31 March 2014, available at - http://www.hrw.org/sites/default/files/reports/uk0314_ForUpload.pdf.

“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.”⁶

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.”⁷

12. The Joint Committee on Human Rights has said -

“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 Bill be amended to reverse the relevant changes to the Immigration Rules and to reinstate the pre-2012 protections in the Bill.”⁸

13. The pre-April 2012 Overseas Domestic Worker Visa was described by the Home Affairs Select Committee in 2011 as *“the single most important issue in preventing the forced labour and trafficking of such workers”*.⁹ It is not hard to see why. A visa which allows vulnerable workers to change their employer not only facilitates prosecutions by allowing victims to come forward without the fear of deportation, it acts as a check on the behaviour of employers and allows individuals to remove themselves from employment relationships before they fall victim to exploitation. The amendment would also save the public purse the cost of meeting the complex needs of victims of slavery and trafficking and allow individuals already present in this country to seek gainful, non-exploitative, employment and contribute to the British economy.

⁶ Report of the Joint Committee on the Draft Modern Slavery Bill, 3rd April 2014, paragraph 5, available at - <http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/16603.htm>.

⁷ Ibid at paragraph 227.

⁸ Joint Committee on Human Rights, Legislative Scrutiny: (1) Modern Slavery Bill and (2) Social Action, Responsibility & Heroism Bill, Third Report of Session 2014-15, published 13th November 2014, available at - <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/62/62.pdf>.

⁹ Home Affairs Select Committee. The trade in Human Beings: Human Trafficking in the UK. Sixth report of Session 2008-09. Volume I. House of Commons. p26.

14. At Committee Stage consideration in the House of Commons, the Public Bill Committee tied over a similar amendment tabled by the Labour frontbench and the amendment was defeated only by the casting vote of the Chair. At Report stage in the Commons, Liberal Democrat MP, Sarah Teather, told the House that simply providing information to vulnerable domestic workers was not enough: *“[w]e need to tackle the tied visa system, which seems to have made the problem worse.”*¹⁰ Conservative MP, the Rt Hon Sir John Randall, in explaining why he would vote the amendment told Members: *“I have met too many victims to be able to say that it is a matter for another day.”*¹¹ A similar amendment was voted on at Report Stage of the Bill in the House of Commons but ultimately defeated.

15. At all stages of the Bill in the House of Lords, Peers from across the House joined the calls for urgent reform. In successfully moving the amendment at Report Stage, Lord Hylton explained how he had been working on the issue of modern slavery since the early 1990s and said –

*“There can be no doubt that domestic workers tied to one employer and living on his premises are extremely vulnerable. They are almost all sending remittances to support children and families in their home countries, where, it is most important to know and understand, there is no welfare state. This therefore makes them reluctant to complain of hardships or to leave their employer, whether that is in the Middle East or here in Britain.”*¹²

At Committee Stage, Liberal Democrat Home Affairs Spokesperson, Baroness Hamwee explained the terrible realities for those attempting to assist abused workers under the tied visa system –

*“Kate Roberts from Kalayaan explained how her organisation could no longer help workers who managed to find their way to it, which must be a tiny percentage, because the organisation has to explain the problem with the Immigration Rules. Indeed, it often cannot help because of threats from employers to workers about criminalisation.”*¹³

¹⁰ Commons Hansard: 4 Nov 2014 : Column 763.

¹¹ Commons Hansard: 4 Nov 2014 : Column 766.

¹² Lords Hansard, 25 Feb 2015 : Column 1690.

¹³ Lords Hansard, 10 Dec 2014 : Column 1865.

At Report Stage, Baroness Hamwee supported the amendment and told the House

“I do not say this lightly, but if I were not to support this amendment, I would feel complicit in slavery and servitude.”¹⁴

Also supporting the amendment at Report Stage, Labour Leader in the Lords, Baroness Royall of Blaisdon said -

“The [joint committee on the draft bill], together with the Joint Committee on Human Rights and numerous NGOs, has called on the UK Government to reverse the relevant changes to the Immigration Rules and to reinstate the pre-2012 protections in the Bill. They all base their views on evidence. How much more evidence do we need? How many more cases do we need to uncover to reach the threshold where a change will happen?”¹⁵

And Conservative Peer Baroness Hanham told the House -

“We desperately need to make the changes that will enable people who come here to feel reasonably free, reasonably able to live in this country and reasonably able to know that if things go horribly wrong with their employer—as so many of these cases clearly do—there is some redress to somebody who can help them and there is some way out... The Minister has a reputation for having responded sympathetically, pragmatically and sensibly to all the issues that have been brought up...I say now, please, will the Minister do this one further thing and listen to this particular problem? It is absolutely germane to modern slavery. It is one of the elements of modern slavery that we cannot overlook.”¹⁶

Government safeguards and concessions are insufficient

16. The Government has defended the tied visa by citing supposed safeguards against abuse and announcing some more. These include granting visas only to workers who have been with their employers for 12 months;¹⁷ requiring signed employment contracts to be submitted with ODW visa applications; piloting visa interviews; and a requirement that case-

¹⁴ Lords Hansard, 25 Feb 2015 : Column 1698.

¹⁵ Lords Hansard, 25 Feb 2015 : Column 1691.

¹⁶ Lords Hansard, 25 Feb 2015 : Column 1693.

¹⁷ See, for example, Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill, Session 2013-14 HL Paper 166/ HC 1019 (June 2014); p.27.

workers are satisfied that the national minimum wage will be paid to domestic workers before a visa is granted. But these tick box 'safeguards' while well-intentioned are easily bypassed in practice. A wealth of evidence demonstrates that long term employment provides no guarantee that appalling abuse is not already taking place - those on domestic worker visas predominantly arrive from countries where servitude and enslavement is institutionalised and domestic workers lack basic rights. Similarly, paperwork concerning an employee's rights is easy to arrange but without monitoring and enforcement just as easy to ignore.

17. In response to the widespread and growing consensus to abandon the tied visa, the Government wrote to Peers ahead of Report Stage in the Lords to say it shares *"the concern expressed across the House of Lords and in civil society that Overseas Domestic Workers must not be left vulnerable to abuse"*. However, despite *"looking carefully at the evidence"* and the *"important and carefully argued reports"* produced by the JCHR and the pre-legislative scrutiny Committee it concludes – without further explanation - that *"we do not believe that there is persuasive evidence that the so called tie to an individual employer has led to an increase in abuse"*. Instead it has suggested that the most effective way to protect overseas workers is to conduct a further review of the issue.

18. A further review of the ODW visa is not required but nor does it have to be an alternative to the amendment remaining in the Bill. Numerous Committees have now investigated the tied visa and Kalayaan and other non-governmental organisations have conducted lengthy reviews and presented compelling testimony and statistics about its impact. If the Government does not disbelieve this testimony then why the need for another review? Further, this close to a General Election, the Government is unable to make any guarantees about action that will or will once the review is completed. Instead of dragging its feet, the Government should recognise the huge amount of voluntary work that has been undertaken to unearth the impact of its policy mistake and take the opportunity presented by this Bill to put things right. **Please vote to retain the "Protection from slavery for overseas domestic workers" amendment in the Modern Slavery Bill.**

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