

Liberty's report stage briefing on the Immigration Bill: driving offence and powers

Report Stage consideration of the Immigration Bill will take place on **Wednesday 9th** and **Tuesday 15th March**. The Bill includes a package of proposals which would facilitate discrimination, increase exploitation and destitution and make rights protections practically inaccessible to many.

Clause 42 creates an offence of driving whilst in the UK unlawfully, attracting a maximum custodial sentence of 51 weeks and/or a fine. The Bill provides for vehicle seizure where a person is arrested and for a court to order forfeiture on conviction. The implications of this provision can only be fully understood when considered in conjunction with search and seizure powers. Clause 41 provides a power for an authorised officer (police, immigration officers or third parties designated by the Secretary of State) to search premises – including a vehicle or residence an individual occupies or is present in when encountered – where the officer has “*reasonable grounds for believing*”: (i) an individual is in possession of a driving licence and is not lawfully resident; and (ii) the licence is on the premises. Authorisation should be sought from a senior officer where “*reasonably practicable*”. A further power in similar terms would allow police, IOs and designated third parties to search an individual for a driving licence.¹ The Bill also makes provision for seizure and retention of licences.²

Following a robust Committee stage debate, the Government has now tabled an amendment to the Bill which would provide for a defence to the offence of driving whilst unlawful in cases where an individual is not aware that they are unlawfully in the UK. Strict liability offences can cause serious injustice and the insertion of a defence is a positive step, however, this amendment does not address Liberty's core concern about the impact of clauses 41 and 42.

¹ Where the officer has reasonable grounds for believing the person is not lawfully resident, is in possession of a licence and that licence may be concealed on the person.

² The driving licence must then be passed on to the Secretary of State. Where the licence is not ultimately revoked it must be returned to the holder.

Liberty's principle concern lies in the enforcement of a criminal offence of this nature in conjunction with evidence that traffic stop powers are already used disproportionately against ethnic minority drivers. The Government has sought to allay concerns about enforcement action by a commitment to draft guidance on the use of powers which will be open to public consultation.

There are stop and search powers on the statute book which are subject to detailed guidance, but – thanks to the nature of the power – continue to operate in a discriminatory fashion. Section 60 of the Criminal Justice and Public Order Act 1994, provides a power to stop and search without suspicion. Statistics produced by the Metropolitan Police at the beginning of the year show that, whilst the use of this power has dropped significantly, for the period January 2015-January 2016, 72% of section 60 stops involved Black people – 242 stops – compared to the 59 stops conducted in relation to White people. Black Londoners make up just 16% of London's population.³ Section 60 is subject to detailed guidance, set out at PACE Code A, including the requirement that "*officers must take care not to discriminate unlawfully against anyone on the grounds of any of the protected characteristics set out in the Equality Act 2010.*"⁴ This clear guidance has consistently failed to prevent discriminatory outcomes.

It is the responsibility of Government and Parliament to ensure that police powers are not structured in a way which invites discrimination. A section 60 search can be triggered without any individual suspicion of criminality, leaving additional room for stereotype and personal prejudice to creep into enforcement decisions. In the same way, section 163 of the Road Traffic Act 1988 gives police a broad power to stop and search without suspicion, or even a particular reason. On the Government's own analysis, the powers set out in clause 41 will be used in conjunction with the lax power set out at section 163 of the Road Traffic Act which already disproportionately affects ethnic minority drivers.⁵ The use of immigration checks in relation to those stopped under section 163 and the creation of a criminal offence of driving whilst in the UK unlawfully will create the clear potential for an increase in the use of traffic

³ Metropolitan Police, *Stops and Searches Monitoring Mechanism*, January 2016, page . Available her

⁴ PACE Code A, paragraph 2.14A.

⁵ HMIC, *Stop and search powers 2: are the police using them effectively and fairly?*, March 2015.

Available at: <https://www.justiceinspectors.gov.uk/hmic/wp-content/uploads/stop-and-search-powers-2.pdf>. HMIC commissioned a survey of 10,094 members of the public about the use of the power. The survey indicates that 7-8% of white drivers who responded were stopped in their vehicles in the last two years compared with 10-14% of Black and minority ethnic drivers. The survey also suggested that BME drivers were more likely not to be provided with a reason for the stop and are more likely to have their vehicle searched. Yet, white drivers are proportionately more likely than BME drivers to be arrested or prosecuted which suggests that BME drivers are more likely to be stopped for no reason.

stop powers against those of a particular appearance. Even where stops are conducted on an objective enforcement basis, the insertion of routine immigration stops into the process will increase the perception of discrimination. 73% of black drivers already believe police use traffic stop powers to target those from ethnic minorities.⁶

The Government has also committed to conduct a pilot evaluation of the use of enforcement powers set out in clause 41. The Government's pilot evaluation of the right to rent scheme does not inspire confidence that a pilot will be properly conducted or that evidence of discrimination will be taken seriously. The right to rent pilot was carried out over a short, sixth month period, at a quiet time in the rental market. The rental market in the pilot area was further less competitive than that in other areas of the country, most notably London, and quantitative results produced by the survey were seriously undermined by the fact that the tenant group was largely comprised of students. Despite failures in research methodology, evidence of discrimination was found.⁷ Regardless, the Government intends to implement the national roll-out of right to rent, combined with a significant escalation of the scheme through the introduction of criminal sanctions and summary eviction powers in the present Bill.

The National Black Police Association has expressed real alarm at the potential of clauses 41 and 42 to undermine decades of vital work promoting good relations between police and the communities they serve. The NBPA has warned of:

an unwelcome return to the bad old days of SUS Laws...The potential impact of this legislation will be an undermining of community cohesion and a stirring up of racial

⁶ HMIC, *Stop and search powers 2: are the police using them effectively and fairly?*, March 2015. Available at: <https://www.justiceinspectrates.gov.uk/hmic/wp-content/uploads/stop-and-search-powers-2.pdf>.

⁷ The evaluation accepted that risks of discrimination were identified in focus group discussions which spanned "attitudes towards potential tenants with time-limited leave to remain, with one apparent instance of a tenancy being refused for this reason; a preference for tenants whose right to rent was easy to check...a preference for 'lower risk' tenants (for example people with local accents) for whom landlords felt they need not carry a Right to Rent check." One landlord expressed the view that "if the applicants were White and had a 'Brummie' accent, they didn't need to put them through the [Right to Rent] process" and focus groups of landlords found "a lack of understanding among some landlords (but not letting agents) around the right to rent of prospective tenants with limited leave to remain in the UK". Some of the landlords included in the focus groups suggested that they would not rent to potential tenants with limited as opposed to permanent leave to remain in the UK, including one who gave an example of turning down a tenant because he had eight months leave to remain left on his visa.⁷ A focus group of letting agents produced evidence that some landlords had instructed them not to let to non-EEA nationals or to any 'foreigners'.

hatred and suspicion between different racial and religious groups....and will result in the police becoming the whipping boy for the immigration service.⁸

During Committee stage consideration of the Bill, former Deputy Assistant Commissioner of the Metropolitan Police, Lord Paddick, who policed the Brixton riots as a constable in the 1980s, stressed:

...police will come under pressure to proactively enforce immigration law for the first time in almost 30 years – 30 years after the police service made a conscious decision to back away from proactive immigration law enforcement because of the damage that it was causing to police community relations.⁹

He was joined in opposition to clauses 41 and 42 by Baroness Doreen Lawrence, who has spent many years campaigning against discriminatory use of police powers. During Committee stage consideration of the Bill, Baroness Lawrence made clear that:

The Government argue that this new offence is about cracking down on unlawful immigration but it will affect countless British citizens. Inevitably, black and Asian Brits will bear the brunt. The enforcement of this offence, together with lax traffic powers, will lead to discriminatory interference with the right to private life of these citizens.¹⁰

As observed by the NBPA, the potential of clauses 41 and 42 to foster distrust and disharmony between police and the public is deeply concerning. These provisions will help to reinforce the concern that police are involving themselves in the enforcement of the immigration system, an assumption which has historically inflamed tensions between police and minority ethnic communities. Liberty is disappointed that a Home Secretary who has taken significant steps towards resolving issues of discrimination associated with stop and search, would pursue a measure which will damage race relations and undermine trust in the police.

Liberty urges Peers to vote for amendments 74 and 78 in the names of Lord Paddick and Baroness Sheehan.

⁸ NBPA Press Release, Monday 14th December 2015: <http://www.nbpa.co.uk/wp-content/uploads/2015/12/Final-NBPA-Press-statement-Immigration-Bill-14-December-2015.pdf>.

⁹ Lords Hansard - 1 Feb 2016 : Column 1590.

¹⁰ Lords Hansard, 1 Feb 2016 : Column 1593.

Liberty's report stage briefing on the Immigration Bill: immigration detention

Report Stage consideration of the Immigration Bill will take place on **Wednesday 9th March** and **Tuesday 15th March**. The Bill includes a package of proposals which would facilitate discrimination, increase exploitation and destitution and make rights protections practically inaccessible to many. The Bill further fails to provide the reforms urgently needed to our unlimited immigration detention system

Limitless immigration detention

There is now a growing consensus both inside and outside Parliament that a time-limit on immigration detention is desperately needed. In March last year, the cross-party Parliamentary Inquiry into Immigration Detention in the UK ('the Inquiry') recommended a 28 day limit, concluding:

The United Kingdom is an outlier in not having a time limit, both within the EU and further afield, on the length of time an individual can be detained for immigration purposes... detainees are held indefinitely, which creates a stressful and anxious environment. This has significant mental health costs for detainees. Additionally, long-term detention is not correlated with an increase in the likelihood that the Government will be able to effect removal – indeed the opposite is true.¹

The Inquiry's recommendations were endorsed by the House of Commons following a detailed debate on 10th September. The unanimous motion calling for a positive response to the Inquiry's findings and the overwhelming support voiced throughout the debate shows just how far we have come on this issue. Passionate opposition to limitless detention has continued at every stage of the Commons passage of the Immigration Bill. At Report stage an amendment calling for a strict 28 day limit was supported by Conservative, Labour, SNP, Liberal Democrat and Green MPs and extensively debated. Conservative Richard Fuller told

¹ All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, 'The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom', September 2015, p. 24.

the House this was an issue central to his ethical code. He spoke of the British sense of justice, and of the appetite across Parliament for reform of our inhumane immigration detention system.² He was joined in his calls for reform by Conservative colleague David Burrowes. SNP Immigration Spokesperson, Stuart McDonald, told the House his party wanted to move immediately towards a 28-day limit and Shadow Immigration Minister, Sir Keir Starmer, reminded MPs of the words of the cross-party Inquiry: *"We believe that the United Kingdom has a proud tradition of upholding justice and the right to liberty. However, the continued use of indefinite detention puts this proud tradition at risk."*³

In August, in a harrowing report into the systemic failings at Yarl's Wood IRC, HMIP added its voice to the growing consensus that limitless detention must end.⁴ HMIP found the centre failed to meet the most basic standards of safety and respect for detainees. Healthcare standards had deteriorated markedly since the last inspection, with physical and mental health needs unmet. Medical assessments were woefully inadequate. Overall, HMIP found *"a corrosive culture of disbelief"*. The majority of staff in contact roles were men, with male officers undertaking intimate health assessments, *"barging into bedrooms unannounced"*, present during rub-down searches and *"inappropriately used to provide constant support for women in acute crisis"*. The report also revealed that, of 894 women released from immigration detention in the six months before inspection, just 443 were ultimately removed. HM Chief Inspector of Prisons, Nick Hardwick, concluded that *"a strict time limit must now be introduced on the length of time that anyone can be administratively detained."*⁵

The situation at Yarl's Wood is inexcusable, but it has arisen because the system is fundamentally inhumane. The desperation, self-harm and trauma documented result from unlimited incarceration of vulnerable people purely for the administrative convenience. Detention without limit is always an invitation to abuse - and the most vulnerable suffer the most.

A recent report by the Chief Inspector of Prisons into Harmondsworth detention makes similarly damning findings.⁶ An unannounced inspection uncovered overcrowded and unclean conditions, poor ventilation, inadequate provision for clean clothes and bedding,

² Commons Hansard, 1 Dec 2015 : Column 191.

³ Commons Hansard, 1 Dec 2015 : Column 186.

⁴ *Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre*, HM Chief Inspector of Prisons, 13 April – 1 May 2015. Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-2015.pdf>.

⁵ *Ibid*, page 8.

⁶ HM Chief Inspector of Prisons, 'Report on an unannounced inspection of Heathrow Immigration Removal Centre Harmondsworth site', 7–18 September 2015, available here: <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2016/02/Harmondsworth-web-2015.pdf>.

reports of bed bugs, unsanitary showers and toilets, and ingrained dirt in surfaces. Meanwhile, “*the enhanced care unit was a depressing environment*”; “*some wings had a depressing air, as a result of rooms being bare and/or locked off*” and “*rooms for people with disabilities did not give sufficient decency or privacy*”. Worse still, much of the accommodation had actually deteriorated since a previous inspection “*so that some areas now lacked decency*”.

Current policy stipulations which dictate that detention should be “*used sparingly and for the shortest period necessary*” have proved meaningless in practice.⁷ The UK has one of the largest detention estates in Europe and in 2013/14 the cost of running it stood at £164.4 million. The longer an individual is detained, the less likely it is that that person’s detention will end in removal.⁸ Of the 178 people detained for 12 months or more and released from detention in the year ending March 2015, 38% were removed compared to the 57% ultimately released.⁹

In recent years the Home Office has repeatedly been found to have unlawfully detained individuals for protracted periods. In 2014, the High Court found the 11 month detention of a woman seeking to join her husband in the UK under the refugee family reunion rules to be a violation of both Article 5 (right to liberty) and Article 3 (freedom from torture, inhuman and degrading treatment) as protected by the Human Rights Act.¹⁰ In 2012, the Court of Appeal found that a claimant of disputed nationality, detained for an overall period of 22 months, had been unlawfully detained in circumstances where there was insufficient prospect of removing him within a reasonable period.¹¹ In the same year, the Home Office were found to have falsely imprisoned a Zimbabwean man detained under immigration powers over a 13 month period when he could not be returned due to a Government policy to suspend removals.¹² Between 2011 and 2014, £15 million was paid out in compensation for unlawful detention.

Immigration detainees further have no automatic right to have their detention reviewed by the courts. Instead new arrivals must wait a week before they are permitted to apply for bail, and if no application is made, detention is not reviewed by the Tribunal.¹³ The

⁷ Home Office Enforcement Instructions and Guidance, Chapter 55.1.3.

⁸ Report of the Inquiry, page 23.

⁹ Immigration Statistics, paragraph 13.3. Available at: <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2015/immigration-statistics-january-to-march-2015>.

¹⁰ *R (MD) v Secretary of State for the Home Department* [2014] EWHC 2249 (Admin).

¹¹ *Bizimana, R (on the application of) v Secretary of State for the Home Department* [2012] EWCA Civ 414 (02 April 2012).

¹² *AM v Secretary of State for the Home Department*, Central London County Court, 2012, judgment available at:

¹³ Immigration Act 1971, Schedule 2, paragraph 22(1)(a) and (1B).

requirement that a detainee initiate a bail application is practically concerning, particularly for the significant number of detainees with poor or no literacy, who speak limited or no English, or who have mental health problems. Concerns have been repeatedly expressed about failures to adequately explain the existence of, and the procedure for, accessing immigration bail.¹⁴

Liberty supports the Parliamentary Inquiry on the Use of Immigration Detention's calls for the introduction of a "*robust system for reviewing the decision to detain early in the period of detention.*"¹⁵ Increased judicial oversight would ensure that the decision to detain is treated with the gravity it deserves. A time limit would help to reduce ineffective case-working and poor practice, which is a major contributor to protracted detention.¹⁶

Liberty believes that the use of limitless detention – unashamedly for administrative convenience and far removed from the enforcement of removal decisions – represents one of the greatest stains on this country's human rights record in recent decades. **We urge Peers to support amendment 87 in the name of Lord Roberts**, which would place a 28 day limit on immigration detention.

¹⁴ In a December 2012 report, HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration remarked: "*During our interviews, we were surprised that of those detainees held for more than six months, nine (19%) said they had never made a bail application. This may have been because detainees were unaware of bail processes and/or had poor legal advice. A number of detainees said they did not know how to apply for bail or clearly needed help to navigate the process.*" *The effectiveness and impact of immigration detention casework: A joint thematic review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration*, December 2012, para 4.9.

¹⁵ *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, 3 March 2015, available at: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>. Page 9.

¹⁶ A team leader from the Prisons Inspectorate told the Inquiry that "*a quarter of the prolonged detention cases they looked at were as a result of inefficient case-working*". *Ibid.*, pg 19.

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

Report Stage consideration of the Immigration Bill will take place on **Wednesday 9th March** and **Tuesday 15th March**. The Bill includes a package of proposals which would facilitate discrimination, increase exploitation and destitution and make rights protections practically inaccessible to many. The Bill further fails to introduce much needed protection for Overseas Domestic Workers (ODWs).

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.

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, 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 17th December after a protracted period of Home Office delay, stated in no uncertain terms:

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.¹

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.²

In response to a robust Committee stage debate and following the publication of the Ewins Report, the Government has now proposed further changes to the Immigration Rules which would see two categories of visa provision for domestic workers. For those ODWs who do not have a Conclusive Grounds decision, a 6 month visa to undertake domestic work with another employer would be offered. This approach fails to acknowledge the difficulties - explored in the Ewins report - likely to be faced by workers who have six month or less on a 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.³

He goes on to recommend that:

¹ 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.

² Ewins, p. 6.

³ Ewins, p. 31.

...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 potential for an overseas domestic worker to stay in the UK for up to 2 years beyond the initial 6 month term.⁴

The Government's proposed changes would offer a longer period of stay of up to 2 years, but only where there has been a positive Conclusive Grounds decision. This proposal ignores the detailed findings of the Ewins report. When considering the imposition of a requirement for a positive Conclusive Grounds decisions in the Modern Slavery Act, 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.⁵

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.⁶

The Government's proposed changes simply do not provide the protection required. **Liberty supports amendment 58 in the name of Lord Hylton, Lord Rosser, and Baroness**

⁴ Ewins, p. 31.

⁵ Ewins, p. 24.

⁶ Ewins, p. 24.

Hamwee which 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 Government could further specify that a worker must 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.

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.⁷

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.⁸

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.⁹

⁷ Joint Committee on the Draft Modern Slavery Bill, 'Draft Modern Slavery Bill: Report', Session 2013-14, 3 April 2014, p. 4.

⁸ Joint Committee on the Draft Modern Slavery Bill Report, p. 101.

⁹ 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.

On the 2nd 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 experience of nearly 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 1st April 2014 and 31st 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.¹⁰

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.¹¹

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*”.¹² 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.

¹⁰ 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.

¹¹ 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.

¹² 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>.

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. Peers have been patient with the Government to date, but this situation cannot continue.

Liberty urges Peers to vote for amendment 58 in the names of Lord Hylton, Lord Rosser, and Baroness Hamwee.

Liberty's report stage briefing on the Immigration Bill: working

Report Stage consideration of the Immigration Bill will take place on **Wednesday 9th** and **Tuesday 15th March**. The Bill includes a package of proposals which would facilitate discrimination, increase exploitation and destitution and make rights protections practically inaccessible to many.

Offence of illegal working

Clause 32 of the Bill creates a stand-alone offence of illegal working for anyone who works while unlawfully resident, or works in contravention of a requirement of leave which prohibits employment. There are already a range of criminal offences on the statute book to deal with those who enter the country illegally, overstay or breach conditions. The Chief Inspector of Borders and Immigration has remarked on the lack of enforcement activity:

Section 24 of the Immigration Act 1971, under which those without leave to remain may be prosecuted as overstayers, is seen as ineffective by enforcement staff and is very rarely used: annual convictions for overstaying, for example have been in single figures for the last five years. ¹

The Immigration Minister confirmed, during Committee consideration of the Bill in the Commons, that the primary response to the discovery that an individual is in the UK illegally is to seek remove rather than to pursue a prosecution. An offence criminalising working is therefore an unnecessary distraction from the fair and lawful pursuit of removal, in addition to heightening vulnerability to exploitation and abuse.

¹ Independent Chief Inspector of Borders and Immigration, '*An Inspection of Overstayers: How the Home Office handles the cases of individuals with no right to stay in the UK*', May-June 2014. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387908/Overstayers_Report_FINAL_web.pdf. 9.7.

Following a robust Committee stage debate, the Government has now tabled an amendment to the Bill which would provide for a defence to the offence of illegal working in cases where an individual is not aware that they are unlawfully in the UK. Strict liability offences can cause serious injustice and the insertion of a defence is a positive step, however, this amendment does not address Liberty's core concern about the impact of clauses.

In a 2014 Report discussed extensively during Committee consideration of the Bill, the Migration Advisory Committee emphasised the extent of the exploitation of migrant workers:

We were struck on our visits around the country by the amount of concern that was expressed by virtually everyone we spoke to about the exploitation of migrants in low-skilled jobs...During our visits to places which had experienced relatively high levels of migrants the point that migrant workers are more likely to be exploited than resident workers as they are not aware of their rights and are afraid they may be sacked/evicted/deported if they complain was raised on a number of occasions.²

Clause 32 carries grave consequences for victims of trafficking and other forms of exploitation. The Government argues it is committed to tackling modern day slavery, but Focus on Labour Exploitation has made clear that proposals to criminalise vulnerable workers will create *"the perfect conditions for the exploitation of migrant workers to thrive. We know that exploitation depends on worker vulnerability, marginalisation and fear – which will be the consequence of these new measures."*³

These concerns were developed by Peers during the Committee stage debate on this clause by reference to the experience of Italy, where the of exploitation and abuse caused by the criminalisation of migrant work led to its decriminalisation in January 2014.

For the employers willing to take the risk for the financial benefits of an illegal workforce, criminalisation of the worker plays into a narrative of coercion and control. Their hand will be strengthened by the introduction of a new criminal offence targeting working in particular, which will add force to threats that individuals must accept dire conditions or face not only

² *Migrants in low-skilled work*, Migration Advisory Committee Full Report July 2014, paragraphs 6.68 and 6.72. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work__Full_report_2014.pdf.

³ Focus on Labour Exploitation, *'UK IMMIGRATION BILL COULD CREATE PERFECT CONDITIONS FOR MODERN SLAVERY WARNS FLEX'*, 25th August 2015. Available at: <http://www.labourexploitation.org/#!/UK-IMMIGRATION-BILL-COULD-CREATE-PERFECT-CONDITIONS-FOR-MODERN-SLAVERY-WARNS-FLEX/chyn/55dc340e0cf20831ee3da673>.

removal but also criminal sanction. **Liberty urges Peers to vote for amendment 52 in the name of Lord Rosser, Lord Kennedy of Southwark, Baroness Hamwee, and Lord Paddick.**

The right to work for asylum seekers after 6 months

Proposed changes to asylum support do not constitute an effective means of enforcement or deterrence and the savings they create for central Government will largely be transferred to local authorities. If the Government seeks to find financial savings from the asylum support system there are many more constructive and humane ways to do so, most obviously by allowing more asylum seekers to work whilst their claims are processed, generating additional tax revenue and significant savings from the asylum support system.

Amendments calling for asylum seekers to be able to work where claims are not determined within six months – the Home Office target time for a decision on asylum claims – were tabled at Committee and Report stage in the Commons. During the Committee debates, the Shadow Immigration Minister, Sir Keir Starmer, stressed that:

One of the injustices here is that those who have to exist on the low rates that the Committee has just discussed must do so under a system that prohibits them from working. More than 3,600 asylum seekers currently wait more than six months for an initial decision on their cases. They are the individuals surviving on just over £5 a day...⁴

As Lord Alton of Liverpool stressed during the Committee stage of the Bill, *“alleviating destitution amongst asylum seekers is a prerequisite if we believe in the upholding of a person’s human dignity. The right to work is fundamental to this and it also relieves the state of having to provide financial support.”* As he also noted, any concern that such a provision may incentivise so-called ‘economic migration’ are fully answered by the six month threshold, something which will, if anything, better incentivise timely Home Office decision-making.

Liberty urges Peers to support amendment 57 in the name of Lord Alton of Liverpool, Lord Rosser, Baroness Hamwee, and Lord Paddick, which would provide that an

⁴ Public Bill Committee, 10th November, Column number: 458.

asylum seeker be permitted to work where an asylum claim is not determined within the Home Office target time of six months.

Liberty's report stage briefing on the Immigration Bill: those in need of international protection

Report Stage consideration of the Immigration Bill will take place on **Wednesday 9th** and **Tuesday 15th March**. The Bill includes a package of proposals which would facilitate discrimination, increase exploitation and destitution, and make rights protections practically inaccessible to many. As drafted, the Bill further fails to take any steps to alleviate the suffering of thousands of people forced to flee their homes due to conflict and persecution.

Refugee family reunion

Liberty supports amendment 120 in the name of Lord Hylton and the Lord Bishop of Southwark. Subclause 1(b) of the amendment provides for refugee family reunion to be granted to a wider range of family members, including siblings, parents, grandchildren, grandparents and adult children. Currently, the refugee family reunion rules only apply to a pre-flight spouse, partner or minor child.

The importance of refugee family reunion as an aspect of the international protection regime was recognised by the Final Conference of Plenipotentiaries at the 1951 Refugee Convention. The Conference stressed that family unity is “an essential right of the refugee” and called upon Governments to ensure that refugee family unity is maintained, with particular regard for the protection of refugee children.¹ It is disturbing that there is currently no provision under the Immigration Rules for minor children granted refugee status or humanitarian protection in the UK to be joined by their parents. Whilst applications can be made outside of the Immigration Rules in “exceptional compassionate circumstances”, the statistics show that the system is not working. Government figures reveal that the number of applications granted outside the rules has fallen sharply from 77 in 2011 to 12 by the end of

¹ Recommendation B, available at: <http://www.unhcr.org/3b66c2aa10.html>.

2014.² Liberty believes that in every case where an unaccompanied child is granted protection in this country and wishes to be joined by a parent, compassionate circumstances make family reunion imperative.

The Government's key argument against an extension of the rules to allow refugee children in the UK to be reunited with parents is the prospect of parents sending children ahead to secure the family's passage to the UK. This argument fails to acknowledge the status of the children concerned. As this amendment is restricted to those recognised to be at risk on return, there will be no cases where a cynical bid to secure residency in the UK will be facilitated by this extension to the rules. In each case it will not be possible for the child to be reunited in his or her home country with a parent.

The UNHCR Guidelines on family reunion make clear that:

An unaccompanied minor child should be reunited as promptly as possible with his or her parents or guardians as well as with siblings. If the minor has arrived first in a country of asylum, the principle of family unity requires that the minor's next-of-kin be allowed to join the minor in that country unless it is reasonable under the circumstances for the minor to join them in another country. Because of the special needs of children for a stable family environment, the reunification of unaccompanied minors with their families, whenever this is possible, should be treated as a matter of urgency.³

The UK is seriously failing children, needlessly adding to their trauma by facilitating protracted separation from caregivers. This must change.

Partners, civil partners and spouses who became members of the refugee's immediate family after his or her flight from persecution are required to apply under the normal family visa rules. In practice, this route is inaccessible to most, thanks to onerous application fees set to raise to £1,195 in April 2016, the immigration health surcharge set at £500, an £18,600 annual earning threshold, and the requirement that a partner meet English language requirements. These onerous requirements are likely to cause particular injustice in cases where refugees have formed a family whilst displaced in a third country, including those who spend protracted periods in refugee camps across the globe waiting to be resettled.

² House of Lords Written Question 3957, 2 December 2015.

³ UNHCR GUIDELINES ON REUNIFICATION OF REFUGEE FAMILIES (July 1983).

In addition to the costs involved, applications for extended family members to join refugees in the UK involve significant and frequently insurmountable obstacles. For adult dependant relatives, this now includes the requirement to demonstrate that an applicant requires a level of long-term personal care which they are unable to get in their home country, either due to cost or availability.⁴

Clause 2 of the amendment would ensure that legal aid is available in all family reunion matters covered in clause 1 within six months of the passing of the Act. The Government has consistently maintained that family reunion matters are uncomplicated and legal assistance is unnecessary.⁵ The evidence tells a different story. According to detailed research conducted by the British Red Cross, 74% of applicants for family reunion included in the study had submitted applications which were missing documentary evidence.⁶ In situations where documents have been lost during flight, British Red Cross found that “*legal advisers frequently play an essential role in identifying alternative evidence that can support an application*”. The same report found that 23% of cases involve reunion with a step-child or an adopted child, creating extra complexity and requiring additional help in terms of assessing eligibility, evidence gathering, and reference to policy and precedent.⁷ 33% of sponsors relied on witness statements and statutory declarations produced by legal advisers.⁸ The requirements of evidence provision to demonstrate that a relationship is subsisting are complex and difficult to fulfil for anyone, never mind those with language barriers (62% of refugees identified by the BRC need English language assistance).⁹

Providing safe and legal routes to the UK

It is one thing to acknowledge that accidents of geography mean that the less developed world is likely to continue to be the first port of call for the majority of the world’s refugees. But it is another thing entirely actively to exacerbate that maldistribution of responsibility. The duty to protect refugees – if in fact a general international legal obligation as states have said it is – should be implemented in good faith by all. In our view, it is high time to embark on a more honest discussion

⁴ Appendix FM to the Immigration Rules; E-ECDR.2.4-2.5.

⁵ See e.g Ministry of Justice, *Reform of Legal Aid in England and Wales: the Government Response*, June 2011

⁶ British Red Cross, *Not So Straightforward: the need for qualified legal support in refugee family reunion*, 2015. Pg 8.

⁷ *Ibid.*, pg 8.

⁸ *Ibid.*, pg 8.

⁹ *Ibid.*, pg 8.

about the importance of refugee protection as a shared responsibility, equitably implemented.¹⁰

Liberty strongly agrees with this statement by leading authority on international refugee law, Professor James Hathaway. 86% of the world's refugees remain in developing countries, an increase from 70% some 10 years ago. This represents the vast majority of the 51.2 million people who have fled their homes worldwide. Almost half of these individuals seek protection under the Refugee Convention, whilst the remainder fall under other human rights provisions.¹¹ Only 695,435 people made applications for asylum between 2014 and 2015 in the EU. Of this, the UK processed a mere 4%.¹²

Across the globe, people who have endured persecution and indiscriminate violence face the fresh horror of treacherous journeys to Europe's shores. Of those who survive, many suffer inhuman and degrading conditions in squalid refugee camps and the emotional torment of separation from family members. This Bill offers the opportunity to ensure the UK does more to safeguard the basic human rights of those in desperate need by providing safe and legal routes to this country.

Refugees with family members in the UK

Subclause 1(a) of amendment 120 provides for safe and legal routes to the UK to be granted to individuals already identified as having international protection needs by the UNHCR or by other authorities responsible for international protection in a third country. This amendment would remove the necessity for frequently fatal journeys to Europe, reducing the power of people smugglers, avoiding the tragedy of deaths at sea and ending the protracted separation of family members. Amendment 120 additionally provides that those refugees brought to the UK would be subject to the requirement that they have no recourse to public funds. Liberty does not believe that such a requirement should be imposed. Those travelling to the UK have international protection needs and therefore should be treated in the same way as other individuals seeking protection in this country. This notwithstanding, the amendment, as drafted, would not involve any charge on the public purse.

¹⁰ James C. Hathaway and Thomas Gammeltoft-Hansen, *Non-Refoulement in a World of Cooperative Deterrence*, University of Michigan Law School Scholarship Repository. P.8.

¹¹ See UNHCR, 'Facts and figures about refugees', accessible here: <http://www.unhcr.org.uk/about-us/key-facts-and-figures.html>.

¹² *BBC News*, 'Number displaced worldwide hits record high – UN report', 18 June 2015, accessible here: <http://www.bbc.co.uk/news/world-33178035>.

The need to create safe and legal routes to the UK has never been more pressing. Around a million people undertook treacherous journeys across the Mediterranean to EU countries in 2015 – 84% of them from the top 10 refugee producing countries. According to UNHCR, of the 130,000 who have made the crossing since 1st January 2016, 90% have travelled from the world's top 3 refugee producing countries.¹³ This year alone, 400 people have died or been reported missing in the Mediterranean.¹⁴ This is not an issue of economic migration; it is a refugee crisis demanding urgent attention. A move to allow refugees to settle with family members already in the UK would represent a small gesture on the part of this country to take greater responsibility for those forced to flee their homes.

Unaccompanied asylum seeking children

Liberty further supports amendment 115 in the name of Lord Dubs, Lord Alton of Liverpool, Lord Roberts of Llandudno, and Baroness Sheehan. This amendment would require the UK to immediately accept 3,000 unaccompanied asylum seeking children who have already made it to Europe's shores. In September last year the UK Government pledged to accept 20,000 vulnerable Syrian refugees living in refugee camps in the region. In January, Immigration Minister James Brokenshire, announced the UK Government would work with UNHCR to resettle an unspecified number of unaccompanied children from conflict regions, specifying that those resettled under the new scheme will be "exceptional cases".¹⁵

Whilst asylum applications across Europe have risen by 89%, there has only been a 12% increase in the UK. The UK also chose not to opt in to a modest quota system drawn up by the European Council last September designed to help share responsibility for refugees arriving in the EU by relocating 160,000 people from Greece and Italy over 2 years. More provision is desperately needed for those thousands of refugees languishing in Europe's refugee camps or in European countries where asylum systems have collapsed under the weight of desperate need. Greece received almost 850,000 entrants in 2015 and Italy over 150,000. The situation has deteriorated to the extent that the European Court of Human Rights has held that refugees cannot be returned to Greece in light of the conditions there,¹⁶ finding that refugees endured extreme poverty, were rendered unable to properly provide for their basic needs, were vulnerable to exploitation, abuse, and crime, and lived in the

¹³ Human Rights Watch: <https://www.hrw.org/news/2016/03/03/eu/turkey-dont-negotiate-away-refugee-rights>.

¹⁴ Human Rights Watch: <https://www.hrw.org/news/2016/03/03/eu/turkey-dont-negotiate-away-refugee-rights>.

¹⁵ Resettlement of unaccompanied refugee children: Written statement - HLWS487.

¹⁶ : C-411/10 and C-493/10, *NS v Secretary of State for the Home Department*, and *MSS v Belgium and Greece* (Application no. 30696/09), respectively.

uncertainty and desperation caused by the lack of any prospect of their status being decided or their situation improving. The Court of Human Rights has more recently held that returns to Italy, in light of the conditions there and the lack of protections against the splitting up of families, may violate the ECHR as well.¹⁷ Member States have further suspended removals under the Dublin system in respect of many other countries, such as Hungary, Poland, and Malta, and on 2 January 2014 the UNHCR called for a suspension of all transfers to Bulgaria.¹⁸

Meanwhile, in the Calais Jungle – on the doorstep of this country – charities estimate that there are more than 300 children who have been separated from their families and are living in insecurity and squalor.¹⁹ The Upper Tribunal recently required the UK to process the asylum claims of 3 children and a vulnerable adult stranded in the camp, allowing them to join family members waiting to care for them in the UK.²⁰ The Tribunal described the camp as a “*living hell*”, stressing that “*the conditions prevailing in this desolate part of the earth are about as deplorable as any citizen of the developed nations could imagine.*”²¹ The Tribunal identified the dangers encountered in the camp as including “*trafficking, violence, exploitation of unaccompanied children and the abuse, including rape, of women. Other sources of danger to human health include toxic white asbestos giving rise to the risk of carcinogenic disease.*”²² This follows on from the findings of a French court that conditions in the camp gave rise to a real risk of inhuman and degrading treatment.²³ The children of the Calais camp now face the prospect of forced evictions from their makeshift homes, in a terrifying process involving teargas, water cannon and riot police. Across Europe, children are facing a similarly desperate plight. Our Government cannot continue to rely on geographical accident to avoid its responsibility for those in desperate need.

The debate on amendment 115 will inevitably and appropriately invoke memories of the Kindertransport and the role this country played in ensuring the safe passage to the UK of around 10,000 predominantly Jewish children from Germany, Austria, Czechoslovakia and

¹⁷ *Tarakhel v Switzerland* (Application no. 29217/12).

¹⁸ ILPA Information Sheet, ‘Dublin III Regulation’, January 2014.

¹⁹ Widely reported census carried out by L’Auberge des Migrants and Help Refugees. See e.g.: <http://www.theguardian.com/world/2016/feb/23/decision-on-demolition-of-jungle-refugee-camp-postponed-calais>.

²⁰ *ZAT, IAJ, KAM, AAM, MAT, MAJ and LAM vs Secretary of State*, JR/15401/2015, JR/15405/2015, 21st January 2016.

²¹ *Ibid.*, paragraph 5.

²² *Ibid.*, paragraph 16.

²³ Order dated 02 November 2015 made by the Tribunal Administratif de Lille, referenced at paragraph 15 of *ZAT vs SoS*.

Poland. They were children in need and the UK Government ultimately responded. Today the UK must rise to this challenge again.

Liberty urges Peers to vote for amendments 115 and 120.