

## Parliamentary Briefing

# Why a UK committed to ending slavery needs to return to the pre-2012 Overseas Domestic Worker visa

### What is an Overseas Domestic Worker visa?

Around 19,000 Overseas Domestic Worker visas are issued each year. These visas are issued to domestic workers entering the UK from outside of the EU to accompany an existing employer to work in their private household. The hidden and unregulated nature of domestic work in a private household, combined by the workers' status as a migrant and dependence on their employer for work, immigration status, accommodation and information about the UK means that workers on this visa are especially vulnerable to abuse.

In 1998 important reforms were made and supported cross-Party with the creation of the original Overseas Domestic Worker visa. This meant holders of this kind of visa were allowed to change employer and, after five years, apply for indefinite leave to remain and eventually UK citizenship. This clearly identified them as workers with access in practice to UK employment law and assisted in preventing abuse and identified their status as workers in their own right.

In 2012, the government introduced restrictions which removed the rights of holders of the Overseas Domestic Worker visa to change employer and renew the visa. Instead workers entered on a 6 month long, non renewable visa, on which they were not permitted to change employer, no matter the reason. This effectively removes access to enforcing employment rights in practice. As expected reported conditions of employment worsened.<sup>1</sup> In 2016, following the publication of James Ewins' review of the Overseas Domestic Worker visa,<sup>2</sup> the government announced two reforms to the visa:

1. Overseas Domestic Worker visa holders would be allowed to change employer, for any reason, within the six month period they were admitted to the UK (but would not be eligible to extend their stay in the UK)
2. Overseas Domestic Worker visa holders who receive a positive conclusive grounds decision under its anti-trafficking screening system the National Referral Mechanism (NRM) can apply for further leave to remain as a domestic worker for up to two years

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<sup>1</sup> 'Slavery by another name: the tied migrant domestic worker visa' May 2013, Kalayaan <http://www.kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf>

<sup>2</sup> <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review>

These reforms did not go far enough to enable overseas domestic workers who have been exploited but not yet enslaved to leave employers, and even those who have been enslaved do not yet have any guarantee they will be believed and identified as trafficked through the NRM. Nor can these workers work towards the right of permanent residence in the UK. Instead, they will always remain temporary with no recourse to public funds and at risk of losing their livelihood if they become pregnant, or ill as they will have to pay very high fees for healthcare. This, in effect, allows for two tiers of workers in the UK- those with status which keeps them insecure and those with status which provides for rights.

### **Problems with relying on the National Referral Mechanism**

The National Referral Mechanism (NRM) is an anti-trafficking screening system that people who have been trafficked or enslaved can be referred to. However, the NRM is ineffective at preventing abuse. Many Overseas Domestic Worker visa holders are fearful of reporting abuse to the National Referral Mechanism due to the following:

- It can be difficult to prove that they have been a victim of trafficking and it is difficult to access legal aid for representation. Should they not be believed, they risk being removed from the UK.
- It is difficult to survive on the minimal subsistence payments provided to those referred to the NRM. As people who receive positive reasonable grounds decisions after their ODW visas expire are legally barred from working, these payments are expected to be their only income for the months and sometimes years the NRM can take to reach decisions.
- Even if they get a positive decision from the NRM, this does not guarantee any leave to remain. Workers do have the right to apply for further leave but this is limited to a maximum of two years. At the point of applying, workers have to demonstrate they can maintain and accommodate themselves without recourse to public funds which will be difficult for those who have been denied permission to work for the months or years it has taken for the NRM to make a decision.

Exploitation fuelled further by lack of employment rights

- In the UK immigration status is tied to employment rights which makes it almost impossible for undocumented workers to claim rights at work as they do not have legal status in the UK. This goes against recommenda-

tions of the International Labour Organisation that workers should be able to claim employment rights, regardless of immigration status.<sup>3</sup>

- The Immigration Act (2016) further exposed workers to harm by introducing a criminal offence for undocumented working. This meant that undocumented workers who reported abuse to the authorities might face a prison sentence and deportation.

### **Abuses suffered by Overseas Domestic Workers**

New evidence collected by the Voice of Domestic Workers (VoDW) shows how migrant domestic workers are highly likely to suffer from labour exploitations and abuse. Their survey conducted during August 2018 with 539 migrant domestic workers with a variety of immigration statuses revealed:

- 76.5% experienced physical, verbal or sexual abuse
- 50.6% reported that they were not given enough food at work
- 60.9% them were not given their own private room in employers' houses
- The majority were paid below the national minimum wage – receiving between £300 - £400 while working 60-80 per week.

This clearly shows their vulnerability and demonstrates the need for an effective escape route which provides for rights, as was the case prior to 2012, where workers can remain visible, with status and with means to challenge abusive and exploitative treatment.

### **What changes are needed?**

- A reversion to the Overseas Domestic Worker visa that existed before 2012 that allowed domestic workers to change employers and renew the visa for an unlimited time, provided they were in full time employment as a domestic worker in a private household.
- The criminal offence for undocumented working in the Immigration Act (2016) to be repealed and employment rights separated from immigration status so workers can claim their employment rights regardless of status.

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<sup>3</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_536755.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf)

Find out more

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### Case study 1

‘My male employer would suddenly touch my waist down to my bottom, I pushed him away each time and would follow me around in the house including in the toilet. I had phobia whenever he is near me because he always looked at me and sit near me. I wasn’t safe at all being alone with my male employer because I slept in the living room, so I had to run away. I did not want anything bad to happen to me so I had to escape. I thought of my husband and my children. I knew I was doing the right thing to save myself from possible rape. I was referred for National Referral Mechanism assessment. I was told my case was too weak so I didn’t pursue this NRM. It made me sad and even more frightened because I thought I would be protected in this country. What would make my case stronger was to wait until my male employer sexually abused me. To me this was what they told me about trafficking, I needed to be raped first so I pass and get protection.’

### Case Study 2

‘I received positive reasonable ground decision which gave me Leave to remain temporary for 45 days or more. But during this period I am not allowed to work because my visa was lapsed already when I signed to NRM. This is difficult because I couldn’t work and my children needs my financial support. I had to remit to them my weekly allowance as traffic victim of £35 per week. My friends would help me with my other needs. This is how I’m surviving all these years.’

**The Voice of  
Domestic Workers**



**KALAYAAN**  
justice for migrant domestic workers

