



## BRIEFING PAPER

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# Calls to change overseas domestic worker visa conditions

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## Summary

An independent review of the conditions attached to domestic worker visas, published in December 2015, recommended that all migrant domestic workers in the UK be given the right to change employer and apply for further leave to remain (but not permanent settlement). The Government disagrees with the recommendation. Instead, it has made more limited changes to the Immigration Rules, with the effect that all domestic workers can change employer during their six month visa, but only those who are found to be victims of trafficking or modern slavery can change employer and apply to stay for longer in the UK.

### Controversial visa changes made in 2012

There are two types of visa for migrant ('overseas') domestic workers accompanying employers to the UK: one for domestic workers in private households, and one for private staff in diplomatic households.

More restrictive visa conditions for both visa categories were introduced in April 2012. The changes removed the entitlement to change employer whilst in the UK and introduced further restrictions on how long domestic workers could stay in the UK. They have been strongly opposed by overseas domestic worker advocates and anti-trafficking campaigners. The right to change employer is regarded by advocates as an important protection against abusive employers.

The Coalition Government argued that the 2012 changes were necessary to bring the visas in line with its strategy of prioritising entry for the "brightest and best" skilled migrants and restricting eligibility for permanent residence. It said that many overseas domestic workers changed employer for reasons unrelated to abuse, and that there were other ways of providing protection from abusive employers, such as through the National Referral Mechanism for identifying victims of trafficking.

### The Independent Review of Overseas Domestic Worker Visa Conditions

The Coalition Government commissioned an independent review of the visas, in response to concerns about the effect of the 2012 on vulnerable migrant domestic workers.

The report was published in December 2015. It called for all overseas domestic workers to be given the right to change employer and apply for further leave to remain in the UK for up to 30 months. It found that the domestic worker visa terms were incompatible with the protection of domestic workers' fundamental rights whilst in the UK, and made a number of other recommendations for changes to the visa system.

### The Government's response

The Government has accepted many of the report's recommendations, but does not agree with reinstating a universal right to change employer and extend stay in the UK for two years. It successfully resisted an attempt to implement those recommendations through an amendment to the *Immigration Bill 2015-16*. Instead, it has changed the Immigration Rules in order to allow all migrant domestic workers to change employer (for any reason) during the validity period of their six month visa, and to enable domestic workers found to be a victim of trafficking or slavery to apply for limited leave to remain for up to two years, with permission to work as a domestic worker (but no access public funds).

# 1. Domestic workers and the risk of exploitation, abuse and trafficking

It has long been recognised that migrant ('overseas') domestic workers are vulnerable to abuse, exploitation, and trafficking. The nature of abuse may span from minor breaches of employment and health and safety law, to physical and sexual violence, slavery, forced labour and trafficking, for example.

The Independent Review of the Overseas Domestic Workers Visa, which was commissioned under the Coalition Government and published in late 2015, identified some of the underlying reasons for overseas domestic workers' vulnerability:

29.1. their predominant motivation, and consequently their mentality, is often one of relative desperation: being unable to find adequate (or any) work in their own community/country, they have left that country to find other work abroad in order to make remittances back home - sometimes as little as £25 per week - for the general living, health and education costs of their relatives;

29.2. they are, by definition, not working in their home community and do not have the safety net of their friends and family and other social support networks;

29.3. they are often working in locations where culture and language are, at best, unfamiliar, and more often represent a significant barrier to wider social interaction and a cause of social exclusion or marginalisation;

29.4. they often work long hours, limiting the opportunities to develop social or other connections or interactions in their local community and they often lack knowledge of wider networks of support;

29.5. they often do not have knowledge of their legal rights;

29.6. they predominantly work in private homes, not a public workspace, in which public oversight and regulation is difficult;

29.7. the work they undertake is often part of an informal economy, in which pay is not made through bank accounts and income is not declared to tax authorities;

29.8. their permission to enter the UK rests solely on their employer's professed want/need of them, and they therefore have a consequent dependency on that employer, which extends to their legal status in the UK;

29.9. they have no recourse to public funds;

29.10. in the case of those employed by diplomats, there is the further layer of diplomatic immunity which can give employers the appearance (if not the reality) of impunity.<sup>1</sup>

Home Office guidance on identifying modern slavery cases includes an illustration of how it can arise in the context of domestic work:

Migrant domestic workers can be vulnerable to abuse and exploitation due to their dependency on employers for their work, accommodation and immigration status

<sup>1</sup> James Ewins, [Independent Review of the Overseas Domestic Workers Visa](#), 16 December 2015, para 29

## 5 Calls to change overseas domestic worker visa conditions

Domestic servitude often involves people working in a household where they are:

- ill treated
- humiliated
- subjected to exhausting working hours
- forced to live and work under unbearable conditions
- forced to work for little or no pay

The problems of domestic workers held in servitude are made worse by the fact it is often very difficult for them to leave their employers and seek help. Abusive employers create physical and psychological obstacles by, for example, instilling fear in the domestic slave by threatening them, or their relatives, with further abuse or deportation, or by withholding their passport.<sup>2</sup>

### 1.1 What is the scale of the problem in the UK?

17,000 domestic worker visas were issued in the year ending September 2015.<sup>3</sup> The Home Office does not collect data on disclosures of abuse made by people who have applied/entered the UK under the domestic worker visa provisions.

Data on disclosures of abuse made by migrant domestic workers is not collected

A PQ answered in June 2015, which referred to Home Office management information, indicated that out of 1,623 confirmed trafficking cases between May 2009 and May 2015, 71 were linked to people who had previously been issued a domestic worker visa.<sup>4</sup>

The Independent Review of the Overseas Domestic Worker Visa has called on the Government to collate and analyse data on the use of domestic worker visas, in order to enhance understanding of how the visa is operating in practice.<sup>5</sup>

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<sup>2</sup> Home Office, *Modernised Guidance, Victims of Modern Slavery: Competent Authority Guidance*, August 2015

<sup>3</sup> Home Office, *Immigration statistics July – September 2015*, 16 November 2015 table vi06w

<sup>4</sup> [Written Question HL314](#) [answered on 24 June 2015]

<sup>5</sup> James Ewins, *Independent Review of the Overseas Domestic Workers Visa*, 16 December 2015, para 15

## 1.2 The significance of the right to change employer

### Is there a link between 'tied' visas and the risk of abuse?

A significant body of material from UK and international sources supports the view that migrant domestic workers' vulnerability to abuse increases if their visa is tied to a specific employer, and that allowing a change of employer is an effective means of providing some protections to them.<sup>6</sup> The UN Special Rapporteur on contemporary forms of slavery recommended in 2010 that visas linked to sponsorship by a single employer (including diplomats) should be abolished, and that states should consider creating a special immigration status for domestic workers who substantiate allegations of abuse or exploitation.<sup>7</sup> In 2010, the OSCE Special Representative on Trafficking recommended a visa regime for domestic workers that allows them to change employer and leads on to permanent settlement.<sup>8</sup>

The right to change employer is seen by advocates as a means of protecting workers against exploitation

The Independent Review of the Overseas Domestic Workers Visa concluded that, although the extent of the abuse remains unquantified, the available evidence does suggest that there is a link between abuse (and the risk of abuse) and the 'tied' visa. It recognised that leaving an abusive employer is not always as simple as changing employer, but suggested that "sometimes it is". It went on to suggest that the ability to change employer gives victims "a clear and obvious self-help route out of their immediate abuse", and that the ability to obtain safe and secure alternative employment can result in a willingness to assist with bringing the perpetrators of abuse to justice.<sup>9</sup>

### Arguments in favour of the right to change employer

The Independent Review of the Overseas Domestic Workers Visa summarised some of the reasons commonly advanced by supporters of the right to change employer:

71.1. A migrant domestic worker is already in a weak bargaining position relative to her employer, so freedom to change employer helps to recalibrate the balance of power between employer and employee: employees can leave an abusive employer without breaching the terms of their visa and employers cannot truthfully threaten the employee with serious consequences as to their immigration status if they leave.

<sup>6</sup> See, for example, US Department of State, [Trafficking In Persons Report 2011 - UK](#), 27 June 2011; Home Affairs Committee, [The Trade in Human Beings: Human Trafficking in the UK](#), HC 23-I, 14 May 2009, para 59

<sup>7</sup> UN General Assembly, [Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences](#), A/HRC/15/20, 18 June 2010, p.21

<sup>8</sup> OSCE Occasional Paper series no. 4, [Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude](#), 2010. For an indication of the Government's response, see [HC Deb 15 March 2012 c372W](#)

<sup>9</sup> James Ewins, [Independent Review of the Overseas Domestic Workers Visa](#), 16 December 2015

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71.2. For those workers with knowledge or experience of the *kafala* system, the psychological, if not legal, comparison with a tied visa reinforces the employee's perception of being 'owned' by an employer, or at least being trapped in an employment relationship, even where that relationship is abusive.

71.3. A tied visa risks creating a hidden undocumented workforce of escaped workers who are illegal, invisible and fearful, living outside the protection of the law – all of which increases their vulnerability to further abuse.<sup>10</sup>

Domestic workers' right to change employer after entry to the UK had been introduced in 1998, as a means of providing some protection against abusive employers. The pre-April 2012 rules for domestic workers in private households had been recognised as representing good practice by the International Labour Organization and the UN Special Rapporteur on the Human Rights of Migrants.<sup>11</sup>

### Counter-arguments

On the other hand, the current and previous Government have contended that there are alternative ways of protecting vulnerable workers. The Government has argued against reinstating a universal right to change employer in the UK, on the basis that the overseas domestic worker visa is based on the worker's relationship with their employer and, therefore, it would be illogical to allow a domestic worker to stay in the UK for longer than their employer.

The Government has also argued that focussing on the right to change employer risks oversimplifying the complex underlying causes of abuse or exploitation of domestic workers and the support and protections that victims may need – as demonstrated by the fact that there are also cases involving British and EEA national victims of slavery. Furthermore, it has suggested that allowing domestic workers to change employer would not help identify cases of abuse or exploitation of workers (since victims might not bring the abuse to the attention of the authorities), and that there are other ways to provide targeted protection to victims.<sup>12</sup>

The Government has argued that there are more appropriate ways of protecting exploited workers

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<sup>10</sup> James Ewins, [Independent Review of the Overseas Domestic Workers Visa](#), 16 December 2015, para 71

<sup>11</sup> ILO, [ILO Multilateral Framework on Labour Migration Non binding principles and guidelines for a rights- based approach to labour migration](#), 2006, p.82; Report of the Special Rapporteur on the human rights of migrants, [Mission to the United Kingdom of Great Britain and Northern Ireland](#), 16 March 2010, pp.15-16, 19-20

<sup>12</sup> [HC Deb 17 March 2015 c654](#)

## 2. April 2012 changes to visa conditions

Overseas domestic workers are only eligible to come to work in the UK if their overseas-based employer comes here – they do not have an independent route of entry. There are two visa categories which may be relevant to their circumstances:

- **Domestic workers in private households:** this visa enables people overseas to bring their domestic staff with them when they come to the UK (for example as a worker or entrepreneur). It is not part of the points-based system for immigration.
- **Private servants in diplomatic households:** the [Vienna Convention on Diplomatic Relations 1961](#) requires that signatory states facilitate the entry of diplomats' private domestic staff. They are covered by the terms of the [Tier 5 \(Temporary Worker International Agreement\)](#) category within the points-based system.

The Coalition Government consulted on making changes to visas for overseas domestic workers in summer 2011, as part of a wider consultation on restricting various categories of workers' settlement rights.<sup>13</sup> The Home Secretary confirmed the outcome of the consultation in a [Written Ministerial Statement](#) on 29 February 2012.<sup>14</sup> In summary:

- **Domestic workers in private households** would only be allowed to accompany their employer on a short visit to the UK, for up to six months, and would not be allowed to change employer after entry.
- **Private servants in diplomatic households** (who already could not change employer in the UK) could stay for longer, but would also lose their eligibility to settle permanently in the UK.

Domestic workers are only eligible for a work visa if they are accompanying their employer to the UK

In April 2012 domestic workers lost their entitlements to change employer and to apply to stay permanently in the UK

<sup>13</sup> UKBA, [Employment-related settlement, Tier 5 and Overseas Domestic Workers A consultation](#), June 2011

<sup>14</sup> The Home Office also published a summary of responses to the summer 2011 consultation, a 'statement of intent' with further details about the reforms, and an impact assessment for the policy changes: see Home Office website, 'Changes affecting employment-related settlement, Tier 5 and overseas domestic workers'

**Box 1: Comparison of visa conditions, before and after April 2012****Domestic workers in private households**

|                                       | <b>Before April 2012</b>   | <b>Since April 2012</b>  |
|---------------------------------------|--|--|
| <b>Basic eligibility criteria</b>     | For staff who had been working in their employers' household for at least a year, to accompany employer on a short-term visit or longer stay                   | For staff who have been working in their employers' household for at least a year, to accompany employer on a short-term visit to the UK   |
| <b>Length of stay permitted</b>       | 6-12 months' initially; extensions permitted   | 6 months maximum   |
| <b>Permanent settlement allowed?</b>  | Yes, after 5 years   | No   |
| <b>Allowed to change employer?</b>    | Yes (but must continue to work as a domestic worker)   | No (Yes, since April 2016)   |
| <b>Allowed to sponsor dependents?</b> | Yes  | No   |
| <b>Employers' obligations</b>         | Provide the employee written confirmation of the terms and conditions of employment; sign an undertaking to adequately accommodate and maintain their employee | Provide written terms and conditions of employment in the UK, including confirmation that employment will comply with minimum wage legislation; provide a letter and evidence confirming the employee has worked for them for a year |

**Private servants in diplomatic households**

|   | <b>Before April 2012</b>   | <b>Since April 2012</b>   |
|---|--|---|
| <b>Basic eligibility criteria and purpose of visa</b> | For people employed by members of staff of a diplomatic or consular mission who had diplomatic privileges and immunity, or by an official employed by an international organisation who enjoyed certain privileges under UK or international law | As previously   |
| <b>Length of stay permitted</b>                       | 6 years maximum (through grants of temporary leave)  | 5 years maximum, or the duration of employer's posting (whichever is shorter)                               |
| <b>Permanent settlement allowed?</b>                  | Yes, after 5 years   | No  |
| <b>Allowed to change employer?</b>                    | No   | No (Yes, since April 2016)  |
| <b>Allowed to sponsor dependents?</b>                 | Yes  | Yes   |
| <b>Employers' obligations</b>                         | To guarantee that the worker was aged over 18; would be employed full-time as a private servant in their household; and would leave the UK when their visa expired   | As previously, as well as to confirm that the employment will comply with national minimum wage legislation |

## 2.1 Why did the Government make the changes?

Some of the points made by the then Government in the 2011 consultation document, in support of its proposals were as follows:<sup>15</sup>

- retaining an unrestricted route of entry to the UK labour market for low skilled domestic workers was not in line with its policy of restricting the number of skilled and highly skilled migrants and raising the minimum skills levels required;
- the pre-April 2012 rules had not prevented abuses of domestic workers in private households;
- the UK's visa arrangements for domestic workers were more generous than various other EU countries';
- granting a route to permanent settlement in the UK was not necessarily the "correct" response to domestic workers' vulnerability to abuse, and it was arguably not "logical or fair" to offer permanent settlement to low skilled workers whilst restrictions were being introduced for higher skilled workers;
- other arrangements for protecting workers who experience abuse in the UK had been established - specifically, the National Referral Mechanism for identifying victims of trafficking.<sup>16</sup>

The then Government described the April 2012 changes as restoring the visas to their original purpose

The Home Secretary described the April 2012 visa changes as "restoring [the visas] to their original purpose". An accompanying Home Office impact assessment gave a fuller explanation for why domestic workers ['ODWs'] in private households lost the right to change employer. It cited evidence that in many cases, this right was not being used in order to obtain protection from abusive employers:

... evidence shows that many ODWs change employer for other reasons and we do not consider that an ability to change employer is the only way to provide protection. Over the period 2005-2009, 60% of ODWs who changed employer, changed for reasons other than abuse. Stakeholders have indicated a desire to change employers for reasons such as widening skills, which is contrary to the original aim of the policy.<sup>17</sup>

The Home Office argued that many workers were changing employer for other reasons than to escape an abusive employer, and that there were other ways to protect those in need

The Government also said that it was developing further measures to reduce the possibility of abuse and give assistance to abused workers in the UK. These would apply during the visa application process (such as by requiring written terms and conditions of employment agreed by the employer and the worker; and by providing translated information to domestic workers about their rights in the UK), and after entry to the UK (such as through assistance from the National Referral Mechanism for victims of trafficking and the Pay and Work Rights Helpline for people in need of employment advice).<sup>18</sup>

<sup>15</sup> UKBA, [Employment-related settlement, Tier 5 and Overseas Domestic Workers A consultation](#), June 2011 para 7.2

<sup>16</sup> Discussed in Library standard note [SN/4324 Human Trafficking: UK responses](#)

<sup>17</sup> Home Office, [Impact Assessment Changes to Tier 5 of the Points Based System and Overseas Domestic Worker routes of entry, IAHO0053](#), 15 March 2012

<sup>18</sup> Home Office, [Statement of intent: Changes to Tier 1, Tier 2 and Tier 5 of the points based system; Overseas domestic workers; and visitors](#), 29 February 2012, p.16

## 11 Calls to change overseas domestic worker visa conditions

The visa changes came into effect on 6 April 2012, through changes to the Immigration Rules.<sup>19</sup> Domestic workers granted visas under the Immigration Rules in place prior to 6 April remained subject to the previous visa conditions.

### 2.2 Stakeholder's objections to the changes

The consultation (and subsequent Immigration Rules changes) immediately proved controversial. [Kalayaan](#) (a charity that provides advice and support services to migrant domestic workers) and Anti-Slavery International issued a joint press release detailing their concerns about the April 2012 changes, which they argued would “turn the clock back 15 years” and were contrary to the Government’s commitment to fighting slavery. They warned that workers who escaped abuse would immediately lose their immigration status, and would be less likely to seek help from the authorities and more likely to go ‘underground’.<sup>20</sup>

Kalayaan and some other NGOs continue [to campaign](#) against the amended domestic worker visa conditions, which they characterise as ‘tying’ the domestic worker to their employer. Key areas of disagreement with the Government have included the importance of the right to change employer, the effectiveness of alternative protection mechanisms, and whether there is a higher incidence of abuse amongst workers subject to the ‘tied’ visa.

Calls to reverse the changes have also been made by the Centre for Social Justice, Human Rights Watch, and the Joint Committee on the *Draft Modern Slavery Bill*.<sup>21</sup>

A 2013 report by the Centre for Social Justice suggested that the April 2012 visa changes had exacerbated the difficulties faced by exploited overseas domestic workers in the UK:

Domestic workers with abusive employers are now left with three choices: to remain in the situation and submit to the abuse their job entails; to leave the UK and return home (this is very often not seen as a viable option for domestic workers who are under significant financial pressure with dependents at home); or to leave their employer and their home (many migrant domestic workers live with their employers) and face the prospect of living and working illegally in the UK. The option of reporting their abuse is effectively non-existent as they would have nowhere to live and no right to earn money legally while their complaint is investigated. The removal of the protections inherent in the ODW visa, given the particular vulnerabilities of this group of workers,

The Joint Committee on the Draft Modern Slavery Bill, the Centre for Social Justice and Human Rights Watch have said that the changes should be reversed

<sup>19</sup> Statement of Changes to the Immigration Rules, [HC 1888 of 2010-12](#)

<sup>20</sup> Kalayaan/Anti Slavery International *press release*, ‘[Home Office changes to migrant domestic worker rules will facilitate slavery](#)’, 29 February 2012. See also Kalayaan, [Government proposes return to slavery for domestic workers in the UK](#), June 2011

<sup>21</sup> Centre for Social Justice, [It Happens Here: Equipping the United Kingdom to fight modern slavery](#), March 2013; Human Rights Watch, [Hidden Away Abuses against migrant domestic workers in the UK](#), 31 March 2014; Joint Committee on the Draft Modern Slavery Bill, [Draft Modern Slavery Bill](#), HC 1019 of 2013-14, para 5; paras 227-8

makes workers less visible, less accountable, and fundamentally less safe.<sup>22</sup>

The Joint Committee on the Draft Modern Slavery Bill said that reversing the 2012 visa changes would facilitate the prosecution of modern slavery offences, because workers would be able to access assistance leaving their abusive employers and report abuse to the police without fear of adverse consequences for their own immigration status. The Committee considered that the April 2012 changes had “unintentionally strengthened the hand of the slave master against the victim of slavery”, and argued that “the moral case for revisiting this issue is urgent and overwhelming”.<sup>23</sup>

The Government disagreed with the recommendation.<sup>24</sup> It continued to reject calls to amend the conditions attached to overseas domestic worker visas during the passage of the *Modern Slavery Bill* (now Act). However, at ping-pong stage, it made a concession to allow for domestic workers found to be victims of slavery or trafficking to be granted six months leave to remain with permission to find alternative domestic work (discussed in section 4 of this briefing).

## 2.3 Further changes made since April 2012

As discussed in the rest of this briefing, there have been further changes to the Immigration Rules since April 2012, which have amended some of the conditions attached to visas for domestic workers in private households and private servants in diplomatic households. In particular, since April 2016, domestic workers in private households have been allowed to change employer (on condition that they continue to work as a domestic worker) during the validity period of their six month visa. Private servants in diplomatic households have also been allowed to change employer.<sup>25</sup>

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<sup>22</sup> Centre for Social Justice, [It Happens Here: Equipping the United Kingdom to fight modern slavery](#), March 2013, para 4.3.3.1

<sup>23</sup> Joint Committee on the Draft Modern Slavery Bill, [Draft Modern Slavery Bill](#), HC 1019 of 2013-14, para 5; paras 227-8

<sup>24</sup> [Government response to Joint Committee on the Draft Modern Slavery Bill](#), Cm 8889, June 2014

<sup>25</sup> Statement of Changes in Immigration Rules, [HC 877 of 2015-16](#)

## 3. What protections are available to overseas domestic workers in the UK?

### 3.1 Safeguards to prevent trafficking, slavery or abuse in the UK

The eligibility criteria and application process for domestic worker visas are intended to incorporate some safeguards to prevent trafficking, exploitation and slavery of overseas domestic workers.

- **Domestic workers in private households:** specified evidence must be provided in order to demonstrate that the worker has been employed by the employer's household for at least one year prior to the visa application, and that written terms and conditions for the employment in the UK - including that the employment will comply with national minimum wage legislation - have been agreed between the employer and employee.
- **Private servants in diplomatic households:** written evidence of the terms and conditions of the employment in the UK must be provided, signed by the employer and worker. This must include confirmation that the worker will be paid at least the National Minimum Wage.

Applicants (or sponsoring employers) are not interviewed as a matter of routine. The visa is issued alongside a letter informing domestic workers of their rights in the UK. The Home Office has piloted a scheme at Heathrow Terminal 5 which informs domestic workers of their rights upon arrival in the UK, and a scheme in West Africa to interview all visa applicants.<sup>26</sup> It also intends to introduce an information sheet to prospective employers informing them of their obligations to their employees whilst in the UK.

The Independent Review of the Overseas Domestic Worker Visa concluded that the application process offers an opportunity to inform domestic workers about their rights in the UK. However, its ability to identify potentially abusive relationships is limited, principally due to limited resources, and employers' and employees' motivations at that stage in the process.<sup>27</sup>

### 3.2 Protections offered in the event of trafficking, slavery or abuse in the UK

#### Immigration law

Victims of trafficking and modern slavery are officially identified through the [National Referral Mechanism \(NRM\) process](#). The NRM process

Some additional measures have been introduced since April 2012 in order to strengthen protections available to overseas domestic workers who are abused or exploited

<sup>26</sup> Home Office, *Factsheet, Modern Slavery Bill Overseas Domestic Workers*, November 2014; James Ewins, *Independent Review of the Overseas Domestic Workers Visa*, 16 December 2015, para 49

<sup>27</sup> James Ewins, *Independent Review of the Overseas Domestic Workers Visa*, 16 December 2015, paras 60-61

grants a minimum 45 day reflection and recovery period whilst the case is assessed. During this time, the person is provided with accommodation and is not liable to immigration enforcement action.

The NRM's remit in England and Wales was extended to cover identifying victims of slavery, as well as trafficking, with effect from 31 July 2015 (in accordance with the *Modern Slavery Act 2015*).<sup>28</sup> Domestic workers can access the NRM, although there is reportedly some reluctance to do so, for example due to the limited protection it offers.<sup>29</sup>

People who are recognised as a victim of slavery/trafficking through the NRM are not automatically eligible for leave to remain in the UK, although there is some scope to grant permission to remain in the UK to people (including domestic workers) who are found to be victims of trafficking or slavery, as discussed below.

### **Eligibility for Discretionary Leave to Remain**

Victims of slavery, servitude and forced and compulsory labour who receive a 'conclusive grounds' decision through the NRM can request Discretionary Leave to Remain in the UK if they do not qualify for another type of leave to remain and the circumstances justify a grant of leave, namely:

- there are particularly compelling personal circumstances (e.g. the person is receiving a course of medical treatment in the UK); or
- they are pursuing a claim for compensation against their traffickers/modern slavery facilitators and it would be unreasonable to expect them to pursue the claim from overseas; or
- they have agreed to cooperate with police enquiries and the investigating police force has requested a grant of Discretionary Leave.

The length of Discretionary Leave granted, and scope to apply for an extension, depend on the individual circumstances of the case. Leave is not usually granted for less than 12 months or more than 30 months, although it is possible to do so.<sup>30</sup>

### **Eligibility for two years' leave to remain as a domestic worker victim of trafficking or slavery**

In addition to the above, since 6 April 2016, the Immigration Rules have allowed for two years' temporary leave to remain to be granted to domestic workers who have recently been found to be victims of slavery or trafficking through the NRM process ([paragraphs 159I – K](#) of the Immigration Rules as amended).<sup>31</sup> At the time of making these changes, the Government was resisting an amendment to the *Immigration Bill*

Recognised victims of trafficking or modern slavery might be eligible for temporary permission to stay in the UK

<sup>28</sup> Victims of modern slavery in Scotland and Northern Ireland can request Discretionary Leave in accordance with the policy described in this section.

<sup>29</sup> James Ewins, [Independent Review of the Overseas Domestic Workers Visa](#), 16 December 2015, para 82

<sup>30</sup> For further details, see Home Office, *Modernised Guidance, Victims of Modern Slavery: Competent Authority Guidance*, August 2015

<sup>31</sup> HC 395 of 1993-4 (as amended by [HC 877](#), laid before Parliament on 11 March 2016)

## 15 Calls to change overseas domestic worker visa conditions

2015-16 which would have reinstated a right to change employer and extend stay in the UK for all migrant domestic workers (discussed further in section 4.3 below).

Leave to remain granted in this context is subject to conditions:

- permission to work only extends to working as a domestic worker in a private or diplomatic household; and
- domestic workers have no recourse to public funds.

Under the previous version of these rules, which had been in force since 15 October 2015, domestic workers could apply for six months' temporary leave to remain if they had been recognised as victims of slavery or trafficking.<sup>32</sup>

The rules are intended to enable domestic worker victims of trafficking or slavery to remain in the UK legally for a short period of time, in order to earn some money to assist them when they depart.<sup>33</sup> They were originally introduced as a result of section 53 of the [Modern Slavery Act 2015](#), which requires the Immigration Rules to provide for temporary leave to remain to be granted to domestic workers found to be victims of slavery or trafficking. Section 53 was introduced by the Government at a late stage in the *Modern Slavery Bill's* parliamentary approval process, in response to attempts made by Parliamentarians to amend the Bill in order to undo the effects of the 2012 visa changes.

The provisions to grant six months' leave had been criticised by some organisations that work with and represent migrant domestic workers as unrealistic and inadequate.<sup>34</sup> The Independent Review of the Overseas Domestic Workers Visa had also found that the rules did not go far enough:

79. (...) 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.

The review advocated instead for all domestic workers to have the right to change employer (discussed further in section 5 below). Since 6 April 2016 all ODWs (including those in diplomatic households) have been able to change employer, for any reason, within the six month period they are initially admitted to the UK (but they are not eligible to extend their stay in the UK for longer than six months).

### UK employment law

Rules allowing domestic worker victims of slavery or trafficking to stay and work in the UK were introduced in October 2015 and have recently been extended

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<sup>32</sup> HC 395 of 1993-4 (as amended by [HC 437](#), laid before Parliament on 17 September 2015)

<sup>33</sup> [HC 437, Explanatory Memorandum, paras 7.2-7.4](#)

<sup>34</sup> Kalayaan and J4DW, [joint statement](#), September 27 2015

Overseas domestic workers in the UK are covered by UK employment law, including the right to be paid at least the National Minimum Wage, the right to a written contract, advice from ACAS and a range of other bodies including the Pay and Work Rights Helpline.

They also have access to Employment Tribunals. However, some critics of the domestic worker visa conditions highlight particular legal and practical barriers. For example, in order to make use of protections in employment law, exploited workers need to be able to access appropriate sources of legal advice, and accommodate and maintain themselves whilst they pursue their case.

The Government's 'hostile environment' agenda, which seeks to make it more difficult to function in the UK without a valid immigration status, has also been identified by domestic worker advocates as having potentially negative consequences for workers who are fleeing abusive or exploitative working arrangements. For example, some concerns have been raised about clause 34 of the *Immigration Bill* currently before Parliament, which would create a specific criminal offence of illegal working. However, the Government has said that the offence is not aimed at victims of slavery, and that section 45 of the *Modern Slavery Act 2015*, which establishes a statutory defence for victims of slavery or trafficking who commit an offence, would apply.<sup>35</sup>

The UK has not ratified the International Labour Organization's Convention on Domestic Workers, which was adopted in June 2011 (the UK did not participate in the vote to adopt it).<sup>36</sup> The Convention states that domestic workers must have the same basic labour rights as other workers on issues including hours of work, weekly rest, a limit on in-kind payment and clear information on terms and conditions of employment. This was the subject of a [Westminster Hall debate on 29 June 2011](#).<sup>37</sup> Ed Davey, then Minister for Employment Relations, argued that the Convention would make little practical difference in the UK, since domestic workers already have basic employment rights protected in law. He argued that the "key question" was one of enforcement and compliance.

### **Diplomatic households**

There are some limitations on the forms of redress available to domestic workers in diplomatic households.

Embassy premises are part of the soil of a foreign sovereign state; employers within the premises are protected by the *State Immunity Act*

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<sup>35</sup> [HC Deb 1 December 2015 c208](#)

<sup>36</sup> International Labour Conference, [Text of the Convention concerning decent work for domestic workers](#)

<sup>37</sup> [HC Deb 29 June 2011 cc269-293WH](#)

## 17 Calls to change overseas domestic worker visa conditions

1978. This would normally prevent domestic workers at an embassy from asserting UK employment rights against their employer.

However, a February 2015 Court of Appeal decision threw this blanket immunity into question.<sup>38</sup> In that case, the Court held that the UK's blanket prohibition of claims against foreign states exceeded its obligations in public international law and in violated Article 6 of the European Convention on Human Rights (the right to a fair trial). The effect of the judgment is that, in some cases, members of domestic staff at diplomatic missions will be able to rely on UK employment rights.

A related category of migrant domestic worker - employees of diplomatic agents - are subject to a different legal regime. In these circumstances, the diplomat, as an employer, is protected by the [Diplomatic Privileges Act 1964](#), which implements the *Vienna Convention on Diplomatic Relations 1961* into domestic law. The Act provides diplomatic agents with immunity against criminal prosecution and civil claims, except in limited circumstances identified in Article 31 of the Convention, set out in Schedule 1 to the 1964 Act.

The Government has said that it will request a waiver of a diplomat's immunity if an allegation of mistreatment of abuse requires further police investigation.<sup>39</sup>

This immunity has also been considered by the Court of Appeal.<sup>40</sup> The Court considered the position of Philippine nationals employed as domestic workers by a Saudi diplomat. The workers brought discrimination and National Minimum Wage claims against their employer. The diplomat stated that he had diplomatic immunity; the claimant responded that this had been revoked in respect of their claims, by reason of Article 31.1(c) of the Convention, which disapples diplomatic immunity in relation to "commercial activity exercised by the diplomatic agent ... outside his official functions". The Court of Appeal held that Article 31.1(c) did not apply, as employing domestic staff could not be construed as commercial activity outside the diplomat's functions. The consequence of this is that domestic workers of diplomatic agents are unable to assert UK employment rights against their employers.

Domestic workers in diplomatic households have more limited protection under UK employment law

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<sup>38</sup> [Benkharbouche & Anor v Embassy of the Republic of Sudan \(Rev 1\) \[2015\] EWCA Civ 33](#)

<sup>39</sup> [PQ 225509, 4 March 2015](#)

<sup>40</sup> [Reyes & Anor v Al-Malki & Anor \[2015\] EWCA Civ 32](#)

## 4. The Independent Review of Overseas Domestic Worker Visa Conditions

The Home Secretary announced an independent review of overseas domestic worker visas in February 2015. The review was initiated in response to concerns about exploitation of overseas domestic workers, including the impact of the visa changes made in April 2012.

The review was conducted by James Ewins, a barrister who had worked on modern slavery issues with the Centre for Social Justice think-tank.

The [Terms of Reference](#) for the review centred around whether the visa arrangements were effective in protecting potential victims from abuse. The review was also required to take into account the need to maintain the integrity of the immigration system.<sup>41</sup>

The report was [published by the Home Office on 17 December](#), alongside a [Written Ministerial Statement](#). The Government's substantive response was set out in a [Written Ministerial Statement on 7 March 2016](#).

An independent review recommended reinstating a right to change employer and apply for a visa extension for two more years for all domestic workers

### 4.1 The review's conclusions and recommendations

Mr Ewins found that the current terms of the visa are "incompatible with the necessary protection of overseas domestic workers' fundamental rights while in the UK", and that the protection offered by section 53 of the *Modern Slavery Act 2015* does not go far enough:

116. (...) In particular, the effect of the tie to a specific employer, coupled with the absence of any general right to extend the initial six month term severely restricts the opportunity - and thereby creates a practical barrier - to overseas domestic workers seeking the basic protection provided by an ability to leave an abusive employer. The Government has recognised, as enacted in s.53 of the Modern Slavery Act 2015, the need to relax such rules in certain cases. However, the pre-condition attached to such concession by s.53 - a positive conclusive grounds decision - is an unacceptable threshold, that acts more as a barrier in practice. Not only does it create an undesirable hierarchy of abuse, but the fear of not reaching that threshold and the impracticality of finding work for the limited six month extension that is offered under the concession create a practical disincentive to those who may otherwise apply.<sup>42</sup>

The two key recommendations of the report were:

- That all overseas domestic workers be granted the right to change employer and apply for further leave to remain in the UK as a domestic worker (up to a maximum of 30 months in the UK).

<sup>41</sup> [DEP 2015-0233](#) Home Office, *Review of the overseas domestic worker visa – terms of reference*

<sup>42</sup> James Ewins, [Independent Review of the Overseas Domestic Workers Visa](#), 16 December 2015

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They should be required to register a change of employer with the Home Office, with the option of giving reasons for the change. They should also be required to provide evidence confirming that the new employment contract complies with the terms specified in the Immigration Rules.

- That all overseas domestic workers in the UK for more than 42 days must be required to attend group meetings to inform them of their rights whilst in employment in the UK.

The report argued that a universal right to change employer would give abused workers a practical way out of abuse without risking a precarious immigration status or threat to their livelihood. It considered that allowing a maximum stay of two and a half years is the minimum required to give effective protection to abused ODWs, and that the victims who pursue action against former abusive employers tend to be those who have found safe and secure alternative employment:

80. 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.

It further contended that a universal right to change employer was needed, since it would be “impractical and invidious to discriminate between seriously abused, mildly abused and non-abused workers”.

It acknowledged that an unintended consequence is that some people who had not been abused would be able to change employer and extend stay in the UK. It argued that this “is of limited detriment compared to the benefit of the central intended consequence.” But it also highlighted the “real possibility” that many ODWs would not make use of the right to change employer, owing to their good relationships with their employers.

The report recommended a number of other changes, as detailed in the Annex to this note.

### 4.2 The Government’s response

The Government announced its response to Mr Ewins’ report in a [Written Ministerial Statement on 7 March](#). It accepted many of the recommendations. But it did not agree with Mr Ewins’ recommendation that all ODWs should be able to change employer and extend their stay in the UK by a further two years.

The Government’s explanation for rejecting Mr Ewins’ recommendation is that, although it is sympathetic to the argument that ODWs need an immediate escape route from abuse, it is concerned that workers may be less likely to report abuse if they are able to change employer and extend their stay in the UK regardless of whether or not they report abuse.

The Government disagrees with the recommendation and has made more limited changes to ODWs’ rights to change employer and extend stay in the UK

Having taken advice from the Independent Anti-Slavery Commissioner, the Government tabled some changes to the Immigration Rules on 11 March ([HC 877](#)), which provide a different remedy (as discussed in section 3.2 of this briefing):

- All ODWs (including those in diplomatic households) to be allowed to change employer, for any reason, within the six month period they are admitted to the UK (but not be eligible to extend their stay in the UK)
- ODWs who receive a positive conclusive grounds decision under the NRM to be allowed to extend their stay in the UK to two years (rather than six months as is currently the case)

### 4.3 Proposed amendment to *Immigration Bill 2015-16*

On 9 March, at Lords report stage of the *Immigration Bill*, an amendment intended to ensure the implementation of recommendations arising from James Ewins' review was approved upon division by 226 votes to 198.<sup>43</sup> It was proposed by Lord Hylton, Lord Rosser and Baroness Hamwee (Crossbench, Labour and Liberal Democrat peers).

In line with Mr Ewins' recommendation, the amendment would have enabled all ODWs to change employer for any reason during their initial six month stay in the UK, and then apply to extend their visa for a further two years.

Speaking at Lords report stage, Lord Hylton explained why, in his view, the Government's response to the review was inadequate:

The Statement candidly admits that the Government have taken the advice of the anti-slavery commissioner rather than implementing in full the recommendations of the review. The weakness of that decision is, first, that it allows the domestic workers to find alternative employment only during the balance of their original six-month stay. In practice, that is likely to be just a few months or weeks. Few employers will want to take someone for such a short time—all the more if they have no references from an employer here. There is therefore a serious risk that the worker leaving their original job will become destitute and then be deported. The Government have failed to produce, in the very words of the Statement,

“an immediate escape route from abuse”.

(...) The second weakness is that the Minister in Committee and in the recent Statement relies heavily on the national referral mechanism, which was never designed to deal with the problems of tied domestic workers. They enter this country perfectly legally with their employers, whereas most trafficked and enslaved people come in illegally or as sham visitors or students. Some slaves may have been trafficked within this country, usually from one brothel to another. I therefore ask: how many overseas domestic workers' cases has the NRM handled? How many employers have been prosecuted or banned from importing domestics as a result? Lastly, have some workers received

An attempt to implement the review's more generous recommendations on the right to change employer and extend stay in the UK, through an amendment to the *Immigration Bill*, was unsuccessful

<sup>43</sup> Division No. 2, HL Deb 9 March 2016 c1348-1351

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compensation or extensions of stay as a result of the NRM? One can say that the mechanism is not entirely relevant to the wrong we seek to address; it is not suited to important hardships that may be less than crimes. How are workers even to know that the NRM exists?<sup>44</sup>

In response, Lords Bates gave some details of ODW NRM cases:

Between January 2009 and December 2015, there were 80 positive conclusive grounds decisions under the NRM in respect of non-EEA nationals admitted as overseas domestic workers. Those admitted as overseas domestic workers accounted for 3% of all NRM referrals between July and December 2015. Of those overseas domestic workers in the NRM process, so far about 30% have obtained a positive conclusive grounds decision and at least 29 referrals still await a decision.

He went on to outline the Government's concerns with the amendment:

Our primary aim is to ensure that, where abuse takes place, it is brought to light so that victims can be supported and action can be taken against perpetrators. Our concern is that if overseas domestic workers enjoyed an unconditional freedom to change employers and extend their stay for as long as two years, this would undermine the national referral mechanism and perpetuate a revolving door of abuse. The Government have also noted the view of the Independent Anti-slavery Commissioner that such arrangements might create a situation in which the trafficking of victims between employers flourished more easily.

(...) [The Government's measures] strike the right balance between ensuring that overseas domestic workers have a "self-help" remedy and ensuring that the national referral mechanism is not undermined.

(...) The Government have made it clear that they will implement the planned changes through changes to the immigration rules. No amendment of primary legislation is required. The Government consider their response to the independent reviewer's report to be a coherent approach to the issues, balancing the need to encourage those who are victims to access the national referral mechanism, the need to provide support to victims where they are identified, and the need to adopt more measures to deter employers who think the system is blind to their activities.

... I personally firmly believe that his amendment would put more people at risk than the current policy, as set out and amended, before us today—it is a carefully considered mechanism. I ask the noble Lord and the Opposition to think very carefully about that. They are proposing that there should be no obligation for people to go through the national referral mechanism, but if they do not, we do not have a record of who employers have been carrying out this abuse on. It is a revolving door for abuse: the employers can go on abusing and go on bringing people in, and they will not be prosecuted. That is a tragedy and a complete failure, not just for the people who are here but for those who are going to be brought here in the future.

He also outlined the benefits to ODWs for going through the NRM process:

Under the national referral mechanism, people get access to a whole range of benefits provided by the Salvation Army. They get safe accommodation; emergency medical treatment; material assistance; access to a complaints service; translation and interpretation services; information and signposting; advocacy for specialist services; access to education for dependent school-age minors; transport services. They get access to all those things but under this amendment they would not.<sup>45</sup>

On 25 April, when the Bill returned to the Commons for consideration of Lords amendments, the Commons disagreed with the Lords amendment by 304 votes to 268.<sup>46</sup> The reason given (Reason 60A) was that “appropriate measures to ensure the protection of overseas domestic workers can be put in place using existing legislative powers”. On 26 April, Peers agreed with a motion not to insist on the Lords amendment.<sup>47</sup>

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<sup>45</sup> [HL Deb 9 March 2016 c1345-7](#)

<sup>46</sup> [Division No. 247, HC Deb 256 April 2016 c1242-1246](#)

<sup>47</sup> [HL Deb 26 April 2016 c1080](#)

## 5. Annex

### **Box 2: Summary of recommendations made in the Independent Review of the Overseas Domestic Worker visa**

#### **Application process**

- Visa Application Centre (VAC) operators to ensure that all applicants provide and receive information at the VAC without the employer being present. Compliance with this obligation to be rigorously monitored.
- All applicants must be communicated with by VAC and UKVI staff in a language which they understand. Compliance with this obligation to be rigorously monitored.
- All applicants must be provided with clear information about their rights and obligations, along with practicable steps to take in the event of suffering abuse while in the UK. The current information sheet should be redrafted by the Home Office in consultation with stakeholders.
- Employers should be given clear information about their rights and obligations and the potential consequences of a failure to discharge those obligations, and required to provide a signed acknowledgment that they have received and understood that information.
- The Home Office should develop and implement clear policy and practice to ensure the effective feed-back of information and intelligence drawn from the entry/exit data and change of employer/renewal applications to the application process itself.

#### **Terms of the visa**

- The terms of the visa to be amended in order to provide for entry for a maximum initial term of six months, with a right to change employer (but limited to domestic work in a private household); a requirement to register any change of employer with the Home Office (with the option to give a reason for the change); and the right to apply for extensions of up to 12 months each, up to a maximum of 2 ½ years.
- All overseas domestic workers who receive a positive conclusive grounds decision from the National Referral Mechanism (NRM) to be given recourse to public funds and permission to work other than as a domestic worker in a private household for the duration of their stay.
- All overseas domestic workers to be subject to the immigration health surcharge, rather than a private insurance requirement.

#### **Identification and support of victims**

- To require that every overseas domestic worker who remains in the UK for more than 42 days shall attend an information, advice and support meeting conducted in a language they can understand (attendance to be a mandatory condition of the employer and employee's visas).
- The meetings to provide domestic workers with information about their rights whilst in the UK, how to enforce those rights, and how to access specific support and services in the UK.
- The costs of the meetings to be covered by an increase in the visa fee.
- The meetings to be held through independent entities at neutral (non-government/police) premises.
- To ensure that Legal Aid is provided for all overseas domestic workers who have received a positive conclusive grounds decision from the NRM, to make claims in the Employment tribunal or from the Criminal Injuries Compensation Scheme.
- To provide Legal Aid to fund a limited number of cases to establish clear precedent as to an overseas domestic workers' rights to enforce her contract of employment in the Employment Tribunal.
- The Government to support a non-legal aid support service to facilitate and support overseas domestic workers' access to Employment Tribunals and the Criminal Injuries Compensation Scheme (possibly funded by a visa fee increase).
- To exempt overseas domestic workers from the two-year limit on enforcing payment of the national minimum wage.

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- The costs of the meetings to be covered by an increase in the visa fee.
- The meetings to be held through independent entities at neutral (non-government/police) premises.
- To ensure that Legal Aid is provided for all overseas domestic workers who have received a positive conclusive grounds decision from the NRM, to make claims in the Employment tribunal or from the Criminal Injuries Compensation Scheme.
- To provide Legal Aid to fund a limited number of cases to establish clear precedent as to an overseas domestic workers' rights to enforce her contract of employment in the Employment Tribunal.
- The Government to support a non-legal aid support service to facilitate and support overseas domestic workers' access to Employment Tribunals and the Criminal Injuries Compensation Scheme (possibly funded by a visa fee increase).
- To exempt overseas domestic workers from the two-year limit on enforcing payment of the national minimum wage.

### **Effective prosecution of offenders**

- Every police force should have a Single Point of Contact for overseas domestic workers pursuing criminal complaints.
- Every NGO working with domestic workers to receive advice and training on disclosure and criminal proceedings.
- Issues relating to overseas domestic workers should form part of universal police and judicial training, and targeted training for lawyers and the CPS.

### **Diplomatic Overseas domestic workers visa**

- Sponsorship licence conditions to be changed, to require that all overseas domestic workers to be employed by the mission rather than individual diplomats.
- All diplomatic missions to be provided with a re-drafted Employers' Information Sheet, and provide signed acknowledgement of receipt.

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