

Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

Written submission from Kalayaan

Kalayaan

Kalayaan is an expert organisation on issues affecting migrant domestic workers in the UK and is the principal organisation which works to provide direct support and advice to these individuals. Kalayaan is also a recognised 'First Responder' and so can refer individuals identified as potential victims of trafficking to the Government's National Referral Mechanism (NRM). Kalayaan welcomes the introduction of this Human Trafficking and Exploitation (Scotland) Bill which aims to simplify and consolidate legislation in Scotland in order to improve prosecution rates and victim support provision.

Migrant Domestic Workers – Background

Domestic workers are workers who come into the UK with their employer to work in that employer's private household. It is generally accepted that domestic workers are a particularly vulnerable group of workers, given the power imbalance between them and their employers and the largely invisible nature of their work. This is exacerbated in the UK by the current visa regime for overseas domestic workers which ties domestic workers to their employers and in doing so increases their vulnerability to abuse and effectively denies them the right to redress for harm suffered. Moreover, this 'tied' visa regime risks violating the UK's positive obligation to protect the victims of human trafficking and prosecute traffickers.

Prior to 1998 domestic workers in private households could come to the UK under a concession which tied their immigration status to a specific employer. There were no safeguards in place for domestic workers who were abused or exploited or for those who had become undocumented having fled abuse experienced in their domestic work place. In response to the evidence of widespread abuse of workers brought to the UK under the concession, the Overseas Domestic Worker visa was introduced in 1998

This gave important protection to the visa holders in the form of an immigration status which allowed them to change employer (though not work sector) and recognition as a worker in the UK giving protections under employment law. In 2009 the Home Affairs Select Committee in its inquiry into trafficking said of that that retaining the visa was "the single most important issue in preventing the forced labour and trafficking of such workers"¹

Since 6 April 2012 migrant domestic workers have entered the UK on a 6 month long non-renewable visa and are prohibited from changing their employer. This leaves them unable to challenge any mistreatment or in practice to access their rights in UK employment law. Domestic workers abused by their employer face two equally stark

¹ House of Commons Home Affairs Select Committee, The Trade in Human Being: Trafficking in the UK, Sixth Report of the Session 2008 – 2009, Vol 1, 6 May 2009, p26

choices, endure the abuse or escape and become undocumented. Migrant domestic workers who enter the UK accompanying diplomats are also prevented from changing employers although they can remain in the UK with the same employer for up to 5 years. For these workers their inability to challenge mistreatment by their employers is compounded by their employers' claims to diplomatic immunity.

In the two years since the tied visa was implemented Kalayaan has registered 402 new workers. 120 of these workers were tied to their employers as they entered on the tied ODW visa or the diplomatic domestic worker visa. All available evidence condemns the tying or bonding of this particularly vulnerable group of workers and agrees that this has facilitated their exploitation and abuse, including trafficking.

New workers registering with Kalayaan give a report of their treatment in the job with which they entered the UK. In the two years since the tied visa was implemented Kalayaan has registered 402 new workers. 120 of these workers were tied to their employers as they entered on the tied ODW visa or the diplomatic domestic worker visa:

- Migrant domestic workers (MDWs) who were tied to their employers were twice as likely to report having being physically abused to those who were not tied (16% and 8%).
- Almost three quarters of those tied reported never being allowed out of the house where they lived and worked unsupervised (71%), compared to under half on the original visa (43%).
- 65% of tied MDWs didn't have their own rooms, so shared with the children or slept in the kitchen or lounge, compared with 34% of those not tied
- 53% worked more than 16 hours a day compared to 32% of those who had the right to change employer.
- 60% of those on the tied visa reported pay of less than £50 a week, compared with 36% on the original visa.
- Kalayaan staff internally assessed more than double (69%) of those who were tied as trafficked in contrast with 26% of those who had not been tied. Two thirds of referrals into the National Referral Mechanism for identifying victims of trafficking made by Kalayaan were of domestic workers who were tied to their employers.

The Modern Slavery Bill

The Modern Slavery Bill as published contained no provision dealing specifically with migrant domestic workers. It was believed by many including NGOs and Parliamentarians that this was a major lacuna in the Bill and without a provision to protect domestic workers, the Bill could not be considered to be effective in combating in modern slavery and protecting victims.

The Joint Committee on the Draft Modern Slavery Bill considered that the 2012 changes to the domestic worker visa "unintentionally strengthened the hand of the slave master against the victim of slavery" and that tying migrant domestic workers

to their employer “is slavery and therefore incongruous with our aim to act decisively to protect the victims of modern slavery.”²

The Joint Committee on Human Rights stated in its Report called the decision to remove the right of domestic workers to change their employer “a backward step in the protection of migrant domestic workers” and recommended that the Bill be amended to reinstate the pre-2012 protections.

An amendment was tabled at Committee stage in the Commons which would have largely reversed the 2012 and this was defeated only by the casting vote of the Chair. A similar amendment was tabled Lord Hylton (a Crossbench Peer) at Report Stage in the Lords and this was passed by 183 votes to 176. This provision, if it becomes law will provide meaningful protections to domestic workers throughout the UK and enable them to seek redress for breaches of their employment and other rights. The Modern Slavery Bill will shortly be returned to the Commons to be considered. It is essential that this clause be retained in the Bill to ensure that domestic workers in the UK are protected against abuse including trafficking for domestic servitude.

We acknowledge that immigration matters are not within the remit of the Scottish Parliament and we are therefore not recommending a similar clause should be included in the Human Trafficking and Exploitation (Scotland) Bill. We believe however, that failure to retain this clause in the Modern Slavery Bill will undermine the Scottish Bill’s effectiveness in providing adequate protection against trafficking and insuring that traffickers are protected. We therefore, we urge the Scottish Government to encourage the Westminster Parliament to retain this important provision included in the Modern Slavery Bill.

We also have a number of concerns regarding the specific provision of the Human Trafficking and Exploitation (Scotland) Bill:

Clause 1: Offence of Human Trafficking

We are concerned that the Bill does not use internationally accepted definition of trafficking which contains three distinct elements- the ‘act’, ‘means’ and ‘purpose’.³ The offence of trafficking contained in the Bill is not in accordance definition, referring only to the ‘acts’ and ‘purpose’ (exploitation). It does not include any reference to the ‘means’ by which a person is trafficked. The Council of Europe Convention defines these as ‘the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits’.

The definition set out in this clause is used throughout the Bill including for the purposes of support provision and protection. It is not clear how this definition will ensure greater support for victims or increased prosecution of traffickers.

² Joint Committee on the Draft Modern Slavery Bill, Report, Session 2013-14, HL paper 166/HC 1019,

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementary to the United Nations Convention on Transnational Organised Crime Article 3(a); Council of Europe, Convention on Action against Trafficking in Human Beings, Article 4(a)

In addition the definition in the Bill of an offence of trafficking states that “A person commits an offence if the person— (a) arranges or facilitates another person’s travel...” While travel is always involved in migrant domestic workers being trafficked to the UK, they are in a particularly vulnerable position when they escape their original employer and may end up in further exploitative situations including being re-trafficked internally in the UK. It is essential therefore that legislation on trafficking should reflect this.

Clause 3: Exploitation for the purposes of human trafficking

There is no specific reference to domestic servitude as a form of exploitation. Although this form of exploitation may come under the heading of ‘Securing services and benefits’, we believe that it should be individually named in this section.

The factors listed under Clause 3(8) (a) as the grounds on which someone may be ‘chosen’ for exploitation do not reflect the reasons why someone may be vulnerable to trafficking for domestic servitude. Domestic workers coming to the UK are required to demonstrate that they have worked with their employer for at least a year before they come to the UK. They are generally in a situation of complete dependency on the employer for their immigration status, employment, accommodation and other necessities. Usually, there is a great social and economic power imbalance between employer and domestic worker. In addition, many domestic workers pay large sums to a recruitment agency which they have to borrow leading them into situations of debt bondage. The Bill does not reflect these forms of vulnerability.

Clause 4: Slavery, servitude and compulsory labour

Section 4 of this clause enumerates a number of ‘personal circumstances’ that may render a person vulnerable than other persons. None of these factors are particularly relevant to whether a person would be more vulnerable to trafficking for domestic servitude. Factors that cause a person to be particularly vulnerable to trafficking for domestic servitude may include socio-economic factors, family circumstances, education, gender and ethnic origin .

In its call for evidence the Justice Committee invited comments on specific proposals. The following are brief comments on the proposals most relevant to Kalayaan’s work.

Placing a duty on Scottish Ministers to secure the provision of relevant immediate support and recovery services for the victims of trafficking

Kalayaan welcome the inclusion of this proposal. However, we are concerned that the support would only be provided to victims of trafficking only , rather than victims of all of the offences in the Bill and would therefore recommend that immediate support and recovery services should be provided to victims of slavery, servitude and forced or compulsory labour.

We note that support is to be provided where there are 'reasonable grounds to believe that an adult is a victim of an offence of human trafficking'. In 2014, 187 clients registered with Kalayaan. 54 (29%) of these were considered by Kalayaan to have been trafficked for domestic servitude and less than half (25) were referred to the NRM. We therefore consider that support should not be tied to referral to the NRM

There is no specific reference to the 'recovery and reflection' period in the Bill. This is currently 45 days under the NRM, however many experts believe that a period of at least 90 days is required to enable a victim of trafficking to begin to recover from their experience and make informed decisions regarding their future and cooperation with the authorities where relevant.

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