

**Employment-related settlement, Tier 5 and overseas domestic workers
Consultation, September 2011**

Eaves Response

About Eaves

Eaves is a London-based charity established in 1977, that provides high quality housing and support to vulnerable women. We also carry out research, advocacy and campaigning to prevent all forms of violence against women.

At Eaves, we put the needs of women first. We are determined to give a voice to the most excluded women in society and provide direct, innovative services to support and empower women to help themselves. There are different projects run by Eaves.

The Lilith Project

Lilith Research & Development have a wide remit ranging from research into various aspects of violence against women, to training and education for the women's sector, to lobbying for legislative change and to working directly with women who have experienced sexual violence.

The Scarlet Centre

The Scarlet Centre is an Eaves service providing advice and drop-in support to women who are affected by violence – including homelessness, rape or sexual abuse, prostitution or domestic violence – and the consequences of violence – including mental health and/or substance misuse problems.

The Poppy Project

The Poppy Project provides support, accommodation and advocacy for women trafficked into domestic slavery and sexual exploitation in the UK. We have 15 bed spaces and capacity for 50 outreach cases per year.

The Serafina Project

Formerly Eaves Women's Aid, The Serafina Project provides support and accommodation for women (and their children) fleeing domestic violence. We provide bed spaces in Westminster in comfortable and safe environments where a full range of support is provided, including help accessing benefits and legal advice.

The Sojourner Project

The Sojourner Project is a pilot scheme run by Eaves and funded by the Home Office. It is for women with no recourse to public funds, who entered the UK on a spousal or partner visa and are eligible to apply for Indefinite Leave to Remain (ILR) under the Domestic Violence Rule.

To find out more about our work please visit our website on www.eaves4women.co.uk Introduction

Introduction

Please note that we have opted to respond to the last part of the consultation, i.e. the changes proposed as regards overseas domestic workers, since these changes would affect the women we work with.

Also please note that we have based our response on, and fully endorse, the [consultation response by Kalayaan](#), an organisation which advocates and supports migrant domestic workers in the UK and the [consultation response by ILPA](#), a professional association of practitioners and advocates of all aspects of immigration, asylum and nationality laws.

We are particularly concerned that the Government is proposing to close the route for domestic workers in private households, putting such workers at risk of abuse, in the same year the International Labour Organisation (ILO) has published [The Convention Concerning Decent Work for Domestic Workers](#) recognising that such work continues to be undermined, invisible and its gender dimension not recognised – since domestic work is mainly carried out by women and girls.

The Convention urges states to take measures towards ensuring 'equal treatment between domestic workers and workers generally - making sure domestic workers enjoy conditions that are not less favourable than those applicable to workers generally', take measures to 'respect, promote and realise

the fundamental principles and rights of work' and 'protect domestic workers against all forms of abuse, harassment and violence'.¹

Questions

26. Should the route for domestic workers in private households be closed?

→ No.

The two main reasons stated in the consultation to propose the closure of this route are:

- Problems associated with the treatment of people working for others in a domestic capacity.
- Assumption that migrants coming to the UK would employ persons from the UK labour market.

Closing the route is not the right way to tackle the problem of abuse some overseas domestic workers (ODW) face.

Under the current system there are mechanisms to minimize the potential of abuse – employers, before entering the UK, have to show the ODW worked for them for at least 12 months and they have to sign a document covering the main conditions of employment. Such protection measures should be maintained and workers be given the opportunity to change employer, giving them more options to escape abuse and violence.

Closing the route would further victimise domestic workers since individuals would continue to bring domestic workers via other routes and force them to work with hardly any opportunity for the worker to escape the abuse and violence due to fear of arrest or prosecution for immigration offences. For instance, of a sample study of recognised victims of trafficking for forced labour in domestic servitude supported by the Poppy Project - 11 of 21 victims (52%) did *not* enter the UK on the ODW visa. The majority of victims were brought into the UK on visitor visas, to a lesser extent as family members and/or using false documents.

There is strong evidence that traffickers and exploitative employers are more than willing to use deceptive methods to facilitate entry to the UK to in order to

¹ Article 3, 5, 10 & 14 of the Convention Concerning Decent Work for Domestic Workers

exploit the labour of their victims. Therefore it is highly unlikely that traffickers would be deterred by removing the ODW visa. The effect of removing this route is more likely to increase the use of other entry methods by traffickers.

The assumption in the consultation that migrants coming to the UK would be willing to come to the UK without their domestic help and employ persons from the UK labour market has no evidence to back it. In reality though, as is admitted in the document itself, closure of this route could ‘inflict economic damage, because people whom the UK may want to attract to visit or work may be unable or unwilling to come if they cannot bring their domestic support staff with them’.

Closure of this route will not have the effect it’s proposed to have – reducing net migration, since except for the very few who apply for settlement, the vast majority of domestic workers coming to the UK return home again with their employer within a short period of time.

The proposal states:

“While we are restricting skilled work it would arguably be counter intuitive to retain a route into the UK labour market for low skilled domestic workers via the private household route.”

The two routes, i.e. **skilled work and low skilled domestic workers route are completely different in their purpose or requirement and are therefore not comparable and so it is not appropriate to mention one as a reason for a change in policy of the other.** Besides, the Government’s new policy to restrict the number of skilled workers entering the UK and the proposed policy to cap the number of years will not provide the desired outcome. It would have a negative impact in the economy of the country since the UK would not be attractive for migrants who are needed to filled skills gaps and not attractive to businesses who need the skills to base their business in the UK.

As mentioned in the proposal – the UK is one of the few countries in Europe acknowledged to have appropriate provisions for ODWs in terms of specific arrangements for ODWs in private households. This has been hailed to be best practice by international organisations as a means of tackling trafficking and exploitation. This should be maintained and not be abolished.

27. If we were to continue to allow domestic workers in private households to enter the UK, should their leave be capped (at a maximum of 6 months, or 12 months if accompanying a skilled worker)

→ **No.**

The proposal under this section is either to

- allow entry for a maximum period of six months as a visitor
- or allow up to 12 months without the possibility of extension

An ODW who is allowed entry as a visitor would be denied fundamental labour rights and be left with no protection or recourse to justice. By law a person who enters the UK as a visitor is not allowed to work – this will create confusion and administrative complication when allowing some group who are actually here in the UK to work but are considered as visitors.

Exploitative employers would use this opportunity to force their employee to work on expired visas with the express purpose of increasing their control over the victims they are exploiting, knowing that the victim now has no means to change employers and has no right to be in the UK.

Of the 48% (n=10) of recognised victims of trafficking sampled who entered on an ODW visa, 70% were referred to the Poppy Project with expired ODW visas. This is evidence that traffickers are more than willing to continue to exploit their victim after their visa has expired. Exploitative employers and traffickers will allow the visa to expire and continue to exert control over the worker in the exploitative conditions.

This law will also be discriminatory, since ODW's would have no recourse for justice as any worker in the country - They would not be recognised as workers to bring employment cases to an employment tribunal if they have suffered injustice at the hand of their employer, they would not be allowed to take other employment pending decision of a dispute with their employer, for instance if they haven't been paid, etc.

As mentioned above the cap of 6 or 12 months could also make skilled workers reluctant to come to the UK if they cannot bring their domestic support staff with them.

28. Given the existence of the National Referral Mechanism for identifying victims of trafficking, should the unrestricted right of overseas domestic workers in private households to change employer be removed?

→ **No.**

The NRM is a framework for identifying victims of human trafficking and ensuring they receive the appropriate care. **The NRM and the right of an ODW in private households to change employer are not** mutually exclusive as portrayed on this question.

As stated on the consultation response by Kalayaan – ***‘Before the introduction of the overseas domestic worker visa in 1998, migrant domestic worker were brought to the UK by their employers with no independent immigration status of their own. If they left their employer they became undocumented.’***

Kalayaan cite a survey which states that – *‘There were approximately 4,000 undocumented domestic workers registered with the organization Waling Waling who had been forced into an irregular situation when they fled an abusive or exploitative employer’*. They stress – ***‘It is vital that the lessons of the past are learned and the Government does not created this kind of criminalized underclass of people in an irregular situation who are vulnerable to further abuse and exploitation’***.

Not being able to change an employer ODW might be trapped in a working environment which is abusive and violent which would be a clear violation of the UK’s **obligation to protect**, which include preventing violation of a persons fundamental right, by state and **non-state actors, which in this case is the employer**.

29. Should leave for private servants in diplomatic households be capped at 12 months?

→ **No.**

The answers to questions 26 and 27 apply here.

There have been a number of **reports of forced labour of domestic workers by diplomats and relative immunity from prosecution in such cases**. Indeed this was highlighted as a concern by the most recent [US state department report](#)

[on the state of trafficking in the UK](#). It is already hard to hold diplomats accountable; to further reduce protection from such victims seems counter-intuitive, unfair and unhelpful in the extreme.

There is a grave risk too that capping leave at 12 months will result in **increased abuse as diplomats are on longer postings than this and will not want to re-recruit so may well encourage staff to overstay their visas putting them at increased risk of abuse and exploitation**. It is also possible that recruitment agencies will not inform domestic workers going, as they think for 3 or 5 years with their diplomatic employer, that they are only valid for 12 months and so will still charge huge fees that the worker cannot repay in the one year.

30. Should an avenue to settlement be removed from overseas domestic workers (private servants in diplomatic households and domestic workers in private households)?

→ **No.**

It is a universal truth that individual circumstances of people are changeable and policies should have ways of accommodating these changes. As mentioned above in most cases ODWs make a short stay in the UK with their employers and usually leave.

After analyzing the percentage stated by the UK Border Agency on grants of settlement to migrant domestic workers, Kalayaan's response to the consultation states that:

Only 795 individuals were granted settlement in 2009 – in 2009 migrant domestic workers accounted for only 0.5% of the total grants of settlement.

This shows that the planned changes will not have a significant effect on net migration.

Besides, under **the current system the right to settle is not an unrestricted right** – the ODW would generally need to show they have spent a continuous period of 5 years lawfully in the UK, demonstrate knowledge of the English language and life in the UK, should not have been dependent upon public funds during the time in which he/she had limited leave to remain in the UK, have 'good character' or be free from criminal conviction.

The **possibility of applying for settlement for these workers in fact can act as a protection against mistreatment and abuse** considering their particular vulnerability to abuse.

31. Should the right for overseas domestic workers (private servants in diplomatic households and domestic workers in private households) to bring their dependants (spouses and children) be removed?

→ No.

This proposal disregards the UK's obligation under Article 8 of the European Convention on Human Rights which states, '*everyone has the right to respect for his private and family life...there shall be no interference by a public authority with the exercise of this right except... is necessary in a democratic society...*'

This move could not be considered as 'necessary in a democratic society'; in fact it is disproportionate and counter productive. The ILPA consultation response quotes the UKBA Control of Immigration Statistics 2010 where it is stated that the **number of entry clearances granted to dependants of domestic workers in private households was 335 in 2010 and only very small number of dependants of domestic workers for diplomats.** It is surprising that the Government is spending this much in consulting and making such drastic measures for so small a number of cases.

ILPA's consultation also quotes an ILO working paper² which shows how these changes could affect women disproportionately. It states:

It is ironic that women who contribute so much to the care of others and to the work and family equilibrium of their employers sacrifice their own family lives. They are separated from their husbands and children for extended periods of time causing deep emotional distress. The material benefits of migration cannot compensate for the affective loss that the workers' own partner and children suffer.

32. If we were to continue to allow overseas domestic workers to bring their dependants, should those dependants' right to work be removed?

→ No.

² ILO Working Paper 2/2010, *Moving towards decent work for domestic workers: an overview of the ILO's work*, at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_142905.pdf

The Right to Work is one of the fundamental human rights integral to a persons dignity and independence. **Article 6 of the International Covenant on Economic, Social and Cultural Rights** recognize it stating: “States Parties recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

Besides the Government should encourage people who live in the UK to be self-sufficient and productive – not allowing dependents to work for the entire time there are in the country is a **waste of resources**.

It is also a key additional protection against abuse and should be retained - the dependant might be in a better position to access support and advice should exploitation arise and also acting as an alternative source of financial support if needed.

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