

## Questionnaire on domestic servitude

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This questionnaire addressed to Member States and other stakeholders is meant to assist the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Ms. Urmila Bhoola, to elaborate a comprehensive report on the domestic servitude of migrant women and girls that will be presented to the Human Rights Council in September 2018.

The responses to the questionnaire should be submitted to the Special Rapporteur on contemporary forms of slavery, including its causes and consequences in English, French or Spanish at [srslavery@ohchr.org](mailto:srslavery@ohchr.org)

The deadline for submissions is 18 May 2018.

### Question 1

**A. Are there provisions in place within your country's national legal framework which criminalise contemporary forms of slavery (e.g. forced labour, bonded labour, domestic servitude, serfdom, etc.)?**

**B. Please specify these provisions, including specific references to the source of law.**

In 2015 the Modern Slavery Act was introduced in the UK. This landmark legislation gave law enforcement agencies the tools to tackle modern slavery (Part 1 and 2), including a maximum life sentences for perpetrators and enhanced protection for victims (Part 5).

The Act established the Independent Anti-Slavery Commissioner, whose mandate (set out in Part 4 of the Act) covers the whole of the UK, working with law enforcement agencies, local authorities and third sector organisations to encourage identification, prevention, detection, investigation and prosecution of modern slavery crimes.

Section 53 of the Act specified new protections for Overseas Domestic Workers who have been determined as a victim of slavery or human trafficking, including a period of leave to remain and permission to change employers. These provisions have been implemented through the UK Immigration Rules (see question 2).

Section 52 of the Act introduced a 'duty to notify', which requires public authorities in England and Wales to notify the Government when they come across potential victims of slavery and Section 54 introduced new requirements for large businesses to report on how they are eradicating modern slavery from their organisation and supply chains.

Equivalent legislation has been passed in the devolved administrations. The Human Trafficking and Exploitation (Scotland) Act 2015 introduced two new offences in Scotland: human trafficking and slavery, servitude and forced or compulsory labour. The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 made equivalent provision for Northern Ireland.

The UK has also introduced measures to tackle worker exploitation through the Immigration Act 2016. This created the post of the Director of Labour Market Enforcement to ensure better coordination and strategic focus on labour market enforcement legislation. The Act also expanded the remit and powers of the Gangmasters and Labour Abuse Authority (formerly the Gangmasters Licensing Authority) to investigate serious labour market offences across all labour market sectors in England and Wales.

The Modern Slavery Act 2015 is available here:

<http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

The Human Trafficking and Exploitation (Scotland) Act 2015 is available here:

<http://www.legislation.gov.uk/asp/2015/12/contents>

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 is available here:

<http://www.legislation.gov.uk/nia/2015/2/contents>

The Immigration Act 2016 is available here:

<http://www.legislation.gov.uk/ukpga/2016/19/contents/enacted>

## **Question 2**

**Are there provisions in place within your country's national legal framework which establish distinct rights and/or restrictions for domestic workers, including migrant domestic workers (in regards to, for instance, salary, working hours, freedom of movement, freedom of association, limited freedom to change employers, etc.)?**

The rights of migrant workers are protected in domestic legislation, including under the [Human Rights Act 1998](#) and the [Equality Act 2010](#). In Scotland human rights are also protected through the [Scotland Act 1998](#), which requires all Acts of the Scottish Parliament and all actions of the Scottish Government to be compatible with the European Convention on Human Rights. The Northern Ireland Act 1998 makes equivalent provision in respect of all Acts of the Northern Ireland Assembly.

Migrants who are legally working in the UK enjoy the full protection of UK employment law including national minimum wage. Legislation, such as that enforced by the Gangmasters and Labour Abuse Authority and the Employment Agency Standards Inspectorate, exists to protect vulnerable workers, including those from overseas. Migrant workers are also entitled to the same protections under health and safety legislation as any other worker in the UK.

In addition, the [UK Immigration Rules](#) include provisions for overseas domestic workers, wishing to enter or remain in the UK. The Immigration Rules make up UK immigration law and clearly set out what we expect from those wishing to employ domestic workers. These

rules are intended to minimise any risk that the worker will be subject to exploitative working conditions in the UK and in order to qualify for a visa, a domestic worker and their employer must submit a contract of terms and conditions, which has been signed to confirm both parties understand and consent. This document appears as [Appendix 7 to the Immigration Rules](#) and sets out UK employment regulations, accommodation and living space and working hours.

We also ask that employers sign and submit a written statement which confirms the overseas domestic worker's duties will not constitute work which falls within any permitted exemptions from the UK National Minimum Wage in force at that time.

In March 2015, the Government commissioned James Ewins QC to conduct a review to assess how far existing arrangements for the Overseas Domestic Worker UK Visa were effective in protecting workers from abuse and exploitation. The review was published on 17 December 2015 and the Minister of State for Immigration James Brokenshire responded to James Ewins QC's on 7 March 2016. The Minister's [written statement](#) acknowledged the lack of direct evidence but reiterated the Government's position that abuse will not be tolerated. In line with the commitments made in that statement, the UK Government has, from April 2016 implemented changes in the UK Immigration Rules to:

- remove the condition which tied a worker to a specific employer by allowing them to switch to a different employer within the 6 month validity of their visa. This provision was also extended to domestic workers employed in diplomatic households.
- increase the period of leave which can be granted to an Overseas Domestic Worker found to be a victim of slavery or trafficking from 6 months to two years. This is in addition to existing provisions for Discretionary Leave which are available to all victims of human trafficking or modern slavery.

The Government has also agreed to implement the review's second recommendation to introduce a programme of information and advice meetings for domestic workers, hosted by an organisation independent of the Home Office.

It has also committed to introducing an employer register which will require anyone wishing to sponsor a domestic worker to, as a condition of that registration, agree to honour their obligations under UK employment and Modern Slavery legislation with consequences for any failure to do so.

### **Question 3**

**A. Please specify whether reporting mechanisms or institutions are available for human rights violations suffered by domestic workers, including to migrants if applicable; if no reporting mechanisms or institutions are in place, please specify what kind of support is available to enable victims to file complaints in case of alleged abuse and to pursue effective and adequate remedies for their rights violations.**

**B. Please specify these provisions, including specific references to the source of law. The rights of migrant workers are protected in domestic legislation, including under the [Human Rights Act 1998](#) and the [Equality Act 2010](#).**

The Equality Advisory and Support Service (EASS) is a free helpline service open to anyone in England, Scotland and Wales who feels that they have been the victim of unlawful discrimination or had their Human Rights infringed. While the helpline does not provide legal advice, it identifies the options that are open to individuals, can support them in resolving their issue using informal dispute resolution and, in certain circumstances, write to organisations on behalf of a client to initiate a resolution.

Human Rights violations suffered by domestic workers and immigrants can also be reported to the Equality and Human Rights Commission (EHRC). The EHRC meets the standards required under the United Nations Paris Principles and the European Union Equality Directives to ensure it maintains its status as a National Human Rights Institution and European national equality body.

In addition, the UK provides comprehensive support to victims of modern slavery and human trafficking. Since 2009, the UK's National Referral Mechanism (NRM) has worked to identify, safeguard and support potential victims of modern slavery. Potential victims are entitled to a Reflection and Recovery period, during which time potential victims receive comprehensive support, including accommodation, counselling, legal aid, medical care and translation services depending on their unique needs. In England, Wales, Northern Ireland the formal Reflection and Recovery period lasts for a minimum of 45 days, and until a conclusive grounds decision is made. In England and Wales, the Reflection and Recovery period is followed by an additional 'move-on' support period, when victims are supported to reintegrate into their longer-term communities. This period can be extended to reflect the unique needs of each victim. In Scotland, as of 1<sup>st</sup> April 2018, the Reflection and Recovery period lasts for 90 days.

#### **Question 4**

**A. Please provide any available data on the number of migrant domestic workers in your country. Is there gender-disaggregated data available, specifying the number of female and male domestic workers?**

**B. Please also provide data/estimates on the number of formal and informal migrant domestic workers in your country.**

In 2017 the UK issued over 19,000 entry clearance visas (outside the UK) to overseas domestic workers (main applicants). Our records indicate that more than two thirds were issued to women.

During the same period, over 1,300 grants of extensions (leave to remain) were issued (in-country) to individuals wishing to extend their stay in the UK, as overseas domestic workers.

These statistics exclude EEA nationals and visas issued under the Youth Mobility Scheme for 18-30 year olds from Australia, Canada, Japan, Monaco, New Zealand, Hong Kong, Republic of Korea and Taiwan, although we know that such migrants may live and work as au pairs whilst travelling and working in the UK.

UK Migration Statistics are available here:

<https://www.gov.uk/government/collections/migration-statistics>

### Question 5

**A. Please describe how often the labour inspectorate conducts inspections in private households to investigate abuses in domestic work and if any investigations of such a nature have taken place.**

In Great Britain there are three labour market enforcement bodies: the Employment Agency Standards (EAS) Inspectorate, which covers England Wales and Scotland; and the Gangmasters and Labour Abuse Authority (GLAA) and the HMRC National Minimum Wage and National Living Wage Team (HMRC-NNW), which covers the whole of the UK. The Director of Labour Market Enforcement is responsible for setting priorities and the strategy for these three organisations in Great Britain.

On 30 April 2017 the Gangmasters and Labour Abuse Authority (GLAA) took hold of new powers in England and Wales, to investigate labour market offences, including modern slavery across the economy. Since then the GLAA has investigated three cases of domestic servitude in private households. Two of these cases did not result in any prosecution and one investigation is ongoing.

The Employment Agency Inspectorate (EAI) is the equivalent agency to EAS in Northern Ireland. The EAI has conducted no inspections in private households in Northern Ireland to investigate abuses in domestic work and has had no intelligence to suggest that abuses have taken place.

**B. Please specify if there are specific trainings of labour inspectorates to identify practices which may amount to slavery-like conditions or to contemporary forms slavery in domestic work.**

As part of the induction programme all Gangmasters and Labour Abuse Authority staff are given an introduction to Modern Slavery, including how victims may present – “Spotting the Signs”. Frontline investigators are further instructed in Legislation, Policies and Guidance in respect of the GLAA’s investigations of Modern Slavery and Labour Market offences. This training builds upon the guidance issued to all staff around the [GLAA Licensing Standards](#) and also reflects the GLAA produced guidance [Labour Exploitation – Spot the Signs](#).

Similarly, the Employment Agency Standards (EAS) Inspectorate staff have all received full and appropriate training to enable them to identify the signs of slavery-like conditions or contemporary forms of slavery. EAS inspectors when conducting inspections actively challenge behaviours and seek reassurance that employment businesses and agencies are not using methods of employment that could support modern slavery i.e. not allowing payments for multiple workers in to one bank account; not allowing representation made by one person for multiple workers; ensuring workers have free and easy access to their personal documentation.

### **Question 6**

**Please detail relevant jurisprudence, including any landmark cases, which demonstrate effective access to justice for victims of domestic servitude (including migrant workers), and provide copies of any judgments if possible.**

Please see below some illustrative cases.

- OOO & others v. The Commissioner of Police for the Metropolis [2011] EWHC 1246 (QB) – see <http://www.bailii.org/ew/cases/EWHC/QB/2011/1246.html>
- NM v. The Secretary of State for the Home Department [2017] EWHC 2798 (Admin) <http://www.bailii.org/ew/cases/EWHC/Admin/2017/2798.html>

### **Question 7**

**What measures are in place for victims of contemporary forms of slavery to pursue access to justice and remedy for violations of their human rights taking place in domestic work, in particular as pursued by migrant domestic workers?**

The National Referral Mechanism (NRM) is the process by which potential victims of human trafficking and modern slavery are identified and supported (please see question 4 for further details).

Victims of modern slavery can obtain compensation through the criminal justice system. Following a successful conviction of the victim's perpetrator, the prosecution can request that the court make a compensation order against the perpetrators, in order to compensate the victim for the harm they have endured. In addition, section 8 of the Modern Slavery Act 2015 confers upon the criminal courts the power to make a reparation order against a perpetrator, if they are convicted of a crime under the Act.

However, there are other means by which victims can seek compensation that are not dependent on a successful criminal prosecution. Victims of human trafficking can obtain compensation by applying to the state funded Criminal Injuries Compensation Scheme. In 2012, the Government revised the criteria of the scheme to ensure all victims of human

trafficking, regardless of nationality, can apply for consideration. This is not dependent on the conviction of a perpetrator but does require a victim's cooperation with the police.

In addition, compensation can be awarded by the civil courts, if the victim successfully brings a civil claim against their perpetrator. The threshold of proof is lower than the criminal standard of proof and, under Section 47 of the Modern Slavery Act 2015, civil legal aid was extended to all identified victims of modern slavery in the National Referral Mechanism to assist victims to bring civil claims for compensation. In Scotland victims of such abuses would be likely meet statutory eligibility tests for legal aid in the civil court or employment tribunal.

Victims of modern slavery are also eligible for legal aid in Northern Ireland. Section 10 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 provides powers for courts in Northern Ireland to make a reparation order against a perpetrator. Victims of modern slavery in Northern Ireland are also able to apply for compensation under the Northern Ireland Criminal Injuries Compensation Scheme.

*Thank you for your cooperation. Please feel free to include any additional pertinent information on access to justice and remedy that you think would help the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.*