

## **Combatting Labour Exploitation through Labour Inspection**

‘Compliance with and enforcement of **labour regulation** are vital to protect vulnerable British workers and migrant workers. Such **enforcement** lowers any incentive employers have to use migrants to undercut British workers’

**Migration Advisory Committee**, 2014, Migrants in Low Skilled Work. P. 4

### **Summary**

The perpetrators of modern slavery use vague employment arrangements as well as hidden costs, fees and debts to trap workers in vulnerable situations, preying on the precarity that pervades many UK employment sectors. As a result workers are exploited for their labour in the restaurants we visit, hotels we stay in, care homes we rely on and on the construction sites all around us.

There are currently two key opportunities to enhance UK labour inspection and enforcement to prevent modern slavery in the UK. First, through enhanced labour market enforcement measures promised in the **Immigration Bill 2015**, and second, the **BIS/Home Office consultation on ‘Tackling Exploitation in the Labour Market’** that closes on 7<sup>th</sup> December 2015.

To ensure that labour market enforcement means protecting workers from exploitation the Government should introduce labour market-wide oversight of labour laws that prioritises workers’ rights. Without protecting workers and preventing exploitation through strong UK labour inspectorates the Government’s aim of combating modern slavery will not be met and the UK will continue to provide fertile ground for traffickers and would-be exploiters.

### **Recommendations for the Immigration Bill, Part One**

Members of Parliament should ensure that the Bill, above all, reduces workers’ vulnerability to exploitation:

1. **C. 1(1)** The purpose, remit or function of the Director is not currently made clear on the face of the Bill. The purpose of **the Director of Labour Market Enforcement** should be to enforce the rights of workers and to protect people from exploitation;
2. **C. 2** Engagement between civil society and the **Director of Labour Market Enforcement** should be included in the development of the labour market enforcement strategy and ensured on the face of the Bill;
3. **C. 2(3) The Director of Labour Market Enforcement** should provide an assessment of the resources required for effective labour market enforcement, and should not determine how available resources should be allocated, nor should she divert labour inspectorates from existing good work;
4. **C. 8 Illegal working offence** should be removed. Vulnerable individuals in exploitative work will be marginalised and rendered powerless to threats and coercion by this provision.
5. **Schedule 6** Overlap between labour inspection and immigration control poses a real threat to the work of labour inspection authorities to identify exploitation. The **Gangmasters Licensing Authority** should be removed from Schedule 6 supporting C29 on the Supply of Information to the Secretary of State, including nationality documents.

## Background

Whilst the Government suggests up to 13,000 people could be trapped in modern slavery in the UK,<sup>1</sup> efforts to prevent people from becoming victims are limited. Modern slavery involves the coercion of people for profit, and perpetrators use threats and abuse to keep victims under their control. The Gangmasters Licensing Authority (GLA) works as an effective labour inspectorate to prevent modern slavery in the sectors in which it operates and yet it is restricted in remit, resources and powers. Experts, including Focus on Labour Exploitation (FLEX), have highlighted the importance of labour inspection in the UK as a means of preventing labour abuses from developing in to labour exploitation.

**Centre for Social Justice:** ‘The remit of the Gangmasters’ Licensing Authority should be extended to include additional sectors where high volume cheap labour is employed, such as non-food manufacturing, the hospitality industry and construction work’<sup>2</sup>

In 2015 the UK Modern Slavery Act came into force, imposing tough new penalties on perpetrators of modern slavery offences. When first introducing the Bill the Home Secretary made strong commitments to end modern slavery promising to ‘stop it at source’.<sup>3</sup> Section 55 of the Modern Slavery Act, which undertakes to review the role of the GLA is a first step towards meeting this promise and preventing modern slavery from taking root in the UK.

The Government’s open consultation on ‘Labour market exploitation: improving enforcement’ fulfils the commitment made in Section 55 of the Modern Slavery Act. However, **this consultation threatens to weaken the critical role of the GLA in monitoring and upholding labour standards through licensing.** The licensing model operated by the GLA was introduced in order to ensure a level playing field between labour providers. This system and the monitoring of gangmaster compliance with the GLA’s eight licensing standards ensures parity between providers and reduces the risk of exploitation of workers. Indeed according to a 2015 survey by the [Association of Labour Providers](#), 93 percent of labour providers support licensing.

Moves to link the GLA to immigration control efforts are also dangerous and damaging to its effectiveness. Some 78 percent of potential victims exploited for labour in the UK have the right to work here as European Economic Area nationals.<sup>4</sup> Whilst people may have the right to work on paper, in practice all migrants, documented and undocumented, face obstacles to accessing their labour rights. Migrants can be marginalised, stigmatised and made to think that they are not entitled to the same rights as British citizens. Labour inspectors tasked with checking the legal status of workers are prevented from gaining the trust of workers that is essential to uncovering exploitation.

## Detail on proposed amendments

### I. Purpose of the Director of Labour Market Enforcement

Case studies documented by FLEX show that where labour inspection is confused with immigration control or the mandate of inspectors is not clear, vulnerable workers are not uncovered. The proposed Director of Labour Market Enforcement will report to both the

<sup>1</sup> Home Office, 2014, Modern Slavery: An application of multiple systems estimation.

<sup>2</sup> Centre for Social Justice, 2013, It Happens Here. P.139

<sup>3</sup> Draft Modern Slavery Bill, 2013.

<sup>4</sup> National Crime Agency, 2014, NCA Strategic Assessment: The Nature and Scale of Human Trafficking in 2013

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Home Secretary and the Secretary of State for Business Innovation and Skills. The presence of this post in an Immigration Bill and the possible breadth of scope of the role brings concerns about overlap between immigration control and labour market enforcement.

The enforcement of labour standards ensures that there is a level playing field across the labour market and means that unscrupulous employers prevented from exploiting undocumented workers for profit. However, combining labour inspection with immigration control threatens the trust and relationships built by labour inspectors and therefore the capacity to identify vulnerable workers. The OECD has commented that ‘A rising challenge to effective labour inspection is the increasingly widespread imposition of measures that compel labour inspectors to conduct immigration enforcement activity as part of their workplace inspection agenda.’ and the International Labour Organization (ILO) confirms that ‘The primary duty of labour inspectors is to protect workers and not to enforce immigration law’.

Comparable roles in the UK have a clear mandate set out on the face of the Act that created them: the Independent Anti-Slavery Commissioner has his ‘general functions’ set out in Section 41 of the Modern Slavery Act 2015; the Commissioner for Victims and Witnesses has general functions of which the core purpose is to promote the interests of victims and witnesses set out in the Victims Act 2004; and the Children’s Commissioner has a ‘primary function’ promoting and protecting the rights of children in England set out in the Children and Families Act 2014. Yet the Director of Labour Market Enforcement in the Immigration Bill has no functions or terms of appointment set out on the face of the Bill. The primary activity of the Director is to produce a Strategy that covers non-compliance in the labour market ranging from labour abuses to serious labour exploitation. A role so broad requires a clear set of priorities, to ensure that vulnerable workers are central to work conducted by the Director.

## **2. Civil society engagement with the Director of Labour Market Enforcement is key to their success**

It is important that the Director of Labour Market Enforcement engage with civil society, including anti-trafficking organisations, migrant community representatives, trade unions, businesses and homeless organisations, in the development of the labour market enforcement strategy. Given the lack of a clear remit for the Director, a statutory duty to engage is important to ensure that priorities are rooted in the needs of those vulnerable to exploitation and those seeking to prevent exploitation.

Without a formal duty to consult, the Director risks failing to gain the breadth of frontline expertise required to prepare an evidence-based strategy. With limited resources it will be difficult for the Director to gather the range of information required to complete a comprehensive labour market assessment, and strong engagement mechanisms are therefore required to ensure all expertise is integrated in to the strategy.

## **3. The Director of Labour Market Enforcement power over resources**

The Director should provide an assessment of the resources *required* for effective labour market enforcement, and should not determine how available resources should be allocated. Nor should she divert the labour inspectorates from existing good work. The functions of the labour inspection authorities covered by the Bill are set out in the National Minimum Wage Act 1998, the Employment Agencies Act 1973 and the Gangmasters (Licensing) Act 2004. The labour market standards set out in those Acts need to be enforced based on an assessment of steps needed to combat worker exploitation, rather than the Director shifting resources and functions of labour inspectorates on the basis of a wider set of priorities. The Director should

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be able to set out what resources are required for such comprehensive enforcement under those Acts, but not to divert existing resources.

The UK has one of the least resourced labour inspectorates in Europe. Even taking all of the inspectorates set out in this Bill together, the UK has just 0.9 inspectors per 100,000 workers – compared to 4.6 in Ireland, 5.1 in the Netherlands, 12.5 in Belgium and 18.9 in France. Labour inspection authorities need more resources, not for existing scarce resources to be moved between them.

In evidence to the Immigration Public Bill Committee, **Sir David Metcalf, Chair of the Government Migration Advisory Committee (MAC)**, advocated for more funding for compliance and enforcement of labour standards:

We do not have sufficient resources to do the compliance and enforcement as effectively as one would wish. [...] In our report, we said in no uncertain terms that there were insufficient resources devoted to enforcement and that the fines and probability of prosecution were basically trivial—I do not think we used that word, but I will use it now.<sup>5</sup>

The Centre for Social Justice, the US Department of State in its annual Trafficking in Persons Report 2015, and the Migration Advisory Committee have all called for the Gangmasters Licencing Authority to have extra resources to accompany an extended remit. If we do one without the other we risk total failure of an agency already stretched beyond its current limited resources.

#### **4. The Illegal working offence should be removed**

Vulnerable individuals in exploitative work will be marginalised and rendered powerless to threats and coercion by this provision. The referral form for the UK National Referral Mechanism for victims of modern slavery lists a series of indicators for modern slavery. These include indicators directly linked to the abuse of an individual's status in order to control and coerce them in to exploitation, namely: #1. Distrustful of authorities; #9. Passport or documents held by someone else; and #16. Threat of being handed over to authorities.

These aspects of modern slavery are central to FLEX's opposition to the Clause 8 'offence of illegal working'. FLEX believes this offence would mean: a) that many victims of modern slavery in the UK would not risk referral in to the UK national referral mechanism if a negative conclusive grounds decision could mean imprisonment; and b) that traffickers would use this new offence as a threat by which to coerce victims in to exploitation. Clause 8 disempowers vulnerable workers and empowers would-be exploiters.

Further, imposing fines on undocumented workers serves to only increase their economic precarity and thus their vulnerability to exploitation. The focus of this offence on vulnerable and exploited workers as criminals, could leave the UK at risk of breaching Article 4 of the European Convention of Human Rights due to a failure to prevent, identify and protect victims and potential victims of modern slavery.

#### **5. The Gangmasters Licensing Authority should not be tied to immigration control efforts.**

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<sup>5</sup> Sir David Metcalf, Oral Evidence to the Immigration Public Bill Committee, October 2015

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The ILO makes clear that the role of labour inspectors is to ensure workers' rights are upheld and protected, not to combat undocumented work.<sup>6</sup> ILO Convention 81, the Labour Inspection Convention 1947, states that the scope of duties of labour inspectors should be focussed on enforcement and compliance with labour law and notification of abuses of such law. Convention 81, which the United Kingdom has ratified, expressly prohibits labour inspectors from carrying out duties beyond this scope where they interfere with the inspectors' impartial workplace inspections activity. The ability of labour inspectors to gain trust and uncover severe exploitation is critically undermined if their role is extended to include immigration enforcement and they are obliged to supply the Secretary of State with nationality documents.

Labour inspectors that have a dual immigration control and labour inspection function are hampered in their efforts to identify cases of modern slavery. For example, in the Netherlands, where at least 50% of inspections are conducted in conjunction with the 'Aliens Police', workers often feel too scared to speak up about exploitation because of fear of deportation.<sup>7</sup> Labour inspectors tasked with checking the legal status of workers are prevented from gaining the trust of workers that is essential to uncovering exploitation.

Identification takes trust, support and the availability and offer of a positive alternative. Immigration control breaks trust, is not victim centred, and risks returning victims to countries where they will be re-trafficked. In addition, traffickers often use fear of immigration controls to hold people in situations of extreme cruelty. Confusion between immigration control and labour inspection is one of the biggest barriers to the identification of labour exploitation. Not only are potential victims fearful of coming forward but inspectors focussed on immigration status will fail to spot indicators of modern slavery.

## **About Focus on Labour Exploitation (FLEX)**

FLEX works to end human trafficking for labour exploitation through research, advocacy and best practice to prevent exploitation and protect victims. See: [labourexploitation.org](http://labourexploitation.org)

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<sup>6</sup> ILO, 2006, International Labour Conference 95th Session, 2006 Report III (Part IB) - General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)

<sup>7</sup> The Pro-Act Project, forthcoming 2015, Pro-Active Identification and Support in the Netherlands, the UK and Romania