

FOCUS ON LABOUR EXPLOITATION

EFRA Committee

Inquiry into labour shortages in the food and farming industry

Written evidence submitted by Focus on Labour Exploitation (FLEX)

January 2022

1. Focus on Labour Exploitation (FLEX) is a research and policy organisation working towards an end to labour exploitation. FLEX seeks to achieve this vision through the prevention of labour abuses, protection of the rights of those affected or at risk of exploitation and by promoting best practice responses to labour exploitation through research and evidence-based advocacy.
2. FLEX's work builds on the understanding that labour exploitation is situated at the extreme end of a spectrum ranging from labour compliance through to labour law violations, culminating at extreme exploitation in the form of offences such as forced labour and human trafficking for labour exploitation. These are at once serious crimes, human rights breaches, and violations of labour law.
3. In the UK, FLEX has conducted research on issues relevant to the EFRA inquiry into labour shortages in the food and farming sector. Mitigating risk of exploitation in agriculture and ensuring a level playing field for decent employers is key to successful labour recruitment and ensuring a sustainable supply chain. Relevant research and recommendations includes a 2017 report which examines the impact of migration status, labour market structures, and immigration control measures on vulnerability to exploitation,¹ a 2018 briefing highlighting the risks of temporary migration schemes for the agricultural and horticultural sectors,² and a 2021 Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot.³ We have also recently

¹ FLEX. 2017. Risky business: Tackling exploitation in the UK labour market. Available at <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>

² Preventing exploitation in the shadow of Brexit: The risks of temporary migration programmes September 2018 <https://www.labourexploitation.org/publications/preventing-exploitation-shadow-brexit-risks-temporary-migration-programmes>

³ <https://www.labourexploitation.org/publications/assessment-risks-human-trafficking-forced-labour-uk-seasonal-workers-pilot>

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published an analysis and statement following the delayed publication in December 2021 of the government's evaluation of the 2019 Seasonal Workers Pilot.⁴

4. In 2015, FLEX established the Labour Exploitation Advisory Group (LEAG) - a coalition of organisations working directly with people who have experienced or are at risk of labour exploitation in the UK. LEAG promotes discussion, information-sharing and collaboration as well as learning from best practice and linking practice to policy.⁵ FLEX's CEO, Lucila Granada, co-Chairs the Home Office Modern Slavery Strategy and Implementation Group (MSSIG)'s Task and Finish Group on Preventing modern Slavery. FLEX's Head of Policy, Kate Roberts, was previously co-Chair of the MSSIG Task and Finish Group on Victim Identification and Support.
5. FLEX believes partnership with, and participation of, those affected by labour abuse and exploitation is crucial to effective research and to inform policy making. Their knowledge can help identify and shape better policy solutions. Despite their expertise by experience and despite being the ones most affected by such policy decisions, workers at risk are rarely involved by policy-makers in developing solutions to labour exploitation. For this reason, FLEX has developed and pioneered participatory approaches to research on human trafficking for labour exploitation. In 2018, we developed a 'community researcher methodology', engaging with people who shared a language and nationality with research participants and were therefore able to interview people in their first language and engage workers who otherwise might not participate. FLEX has also been piloting a participatory research approach called Feminist Participatory Action Research (FPAR). FLEX believes that working together with workers to generate knowledge and advocate for change will lead to better evidence-based policies and on-the-ground change, and that participatory research approaches are a means to achieve this by working 'with', rather than 'for' or 'on', at-risk workers.⁶ FLEX strongly recommends that in order to prevent unintended consequences for workers employed in the food and farming sectors active efforts are made to facilitate input to and learning from people with lived experience of front line work in these sectors in order to inform any recommendations for addressing labour shortages.

⁴ <https://www.labourexploitation.org/publications/flex-response-government's-review-first-year-seasonal-workers-pilot>

⁵ LEAG members include: FLEX (founder and secretariat), Latin American Women's Rights Service (chair), Unite the Union, East European Resource Centre, Ashiana Sheffield, British Red Cross, Kalayaan, Bail for Immigration Detainees, Kanlungan, Work Rights Centre, Glass Door

⁶ <https://www.labourexploitation.org/what-we-do/research-0>

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6. Short term work visas- risks

There have been warnings for years that one of the impacts of ending free movement with the EU without any proactive mitigation would lead to labour shortages. In practice, rather than planning sensibly for migration routes, immigration changes have been rushed with a scramble to open short term routes with little or no notice when labour shortages have reached crisis point. This was clear for example in September 2021 when the government announced with little warning that it would introduce short term temporary visas in two industries.⁷ These were 5,000 three-month visas for HGV drivers and 5,500 three-month visas for poultry workers. These were announced with little detail and with no evidence that their creation built on learning from similar migration schemes, proactively addressed exploitation risks, or encompassed planning to ensure the longer-term sustainability of the workforce.

7. The UK has two existing short term visa routes for low paid work. These are the Overseas Domestic Worker (ODW) visa and the Seasonal Workers Pilot (SWP) for work in agriculture. The second has now been renamed the Seasonal Workers Visa although there was no formal process or announcement around the route formally evolving from being a pilot and the evaluation of the 2019 pilot was only published at the end of December 2021, by which time significant expansion of the scheme had already taken place. Both existing short term visa routes have been found to carry a high risk of exploitation. The Seasonal Workers Pilot has been expanded significantly since 2019, and often at short notice, in response to labour shortages.

Table 1. Expansion of the SWP (evaluated year highlighted in green)⁸

Year	Number of workers recruited	Sectors, roles	Pilot operators	Sourcing countries
2019	2,481	Edible horticulture	Concordia Pro-Force	5 nationalities on the scheme: 90.7% from Ukraine, 7.2% from Moldova

⁷ <https://www.gov.uk/government/news/up-to-5500-poultry-workers-to-help-deliver-christmas-dinners>

⁸ Taken from FLEX's response to the Government's review of the first year of the Seasonal Workers Pilot (Published January 2022)

<https://www.labourexploitation.org/publications/flex-response-government's-review-first-year-seasonal-workers-pilot>

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2020	7,236	Edible horticulture	Concordia Pro-Force	14 nationalities on the scheme: 87% from Ukraine, 4% from Moldova, 3% from BelarusBelarusians
2021	Up to 30,000	Edible horticulture Haulage drivers Poultry workers	AG Recruitment and Management Ltd Concordia Ltd Fruitful Jobs Pro-Force Ltd	19 nationalities on the first quarter of 2021 only, including: Barbados, Bosnia, Nepal, Nigeria, Romania, Tajikistan
2022	Up to 40,000	Edible horticulture Ornamental horticulture	AG Recruitment and Management Ltd Concordia Ltd Fruitful Jobs Pro-Force Ltd	Unlimited number of sourcing countries
2023	30,000 (to be confirmed)	Edible horticulture Ornamental horticulture	AG Recruitment and Management Ltd Concordia Ltd Fruitful Jobs Pro-Force Ltd	
2024	28,000 (to be reviewed) (Kevin foster here)	Edible horticulture Ornamental horticulture	AG Recruitment and Management Ltd Concordia Ltd Fruitful Jobs Pro-Force Ltd	

8. **Risks of exploitation are high in short term work visas**⁹ and short term initiatives of this type do not address the structural issues in the UK labour market. Nonetheless, as these visas continue to be expanded, with the growth of the Seasonal Worker Visa, it is vital that measures are put in place to mitigate against labour exploitation.
9. While well-designed visa routes can enable safe travel and legal work, poorly designed schemes can create significant risks by restricting workers' bargaining power. **The UK needs to ensure it is not facilitating exploitation by treating workers as commodities who cannot access legal rights or safeguards.** Otherwise, it will lead to a two-tier workforce, with those entering on short term visa routes cut off from basic

⁹ <https://www.labourexploitation.org/publications/risks-exploitation-temporary-migration-programmes-flex-response-2018-immigration-white>

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rights or access to employment law - both of which are key to preventing exploitation. This would also undermine decent employers and drive down labour standards thereby increasing the challenges of recruitment.

10. The UK needs to plan for a more sustainable, fairer approach that ensures the protection of workers and industries rather than proceeding with unplanned opening and closing of routes without consultation, or proper monitoring of recruitment and working conditions, learning from existing schemes as to the practicalities and risk areas, or even allowing time for parliamentary scrutiny.

11. Short term work visas invariably carry a high-risk for workers because of the limited time people have to earn back on any potential investment they've made to secure the visa, including travel costs, visa costs, and potential recruitment fees (it is important to note that despite recruitment fees being illegal on the SWP there are allegations of workers being charged). The short visa timeframe also creates practical difficulties for workers wanting to challenge underpayment or other non-compliance with labour law, as they will have little access to legal advice, information about their rights, and must leave the UK at the end of their visa period. Short term work visas are also high risk because of the restrictions typically attached to them, such as being limited to working in a specific sector or for a particular employer, possibly having limited access to healthcare and having no recourse to public funds. There is often a dependency on the employer for accommodation and information as to the terms of the scheme and any entitlements further disrupting the power balance between worker and employer.

12. As such short-term routes are economically risky for workers and generally mean significant periods away from family and home communities, there is a risk that only those who are young and less experienced, or have few alternative options apply, meaning they are already more vulnerable due to push factors such as debt or poverty. The government needs to take into account vulnerabilities created by the nature of the routes themselves and those that are exacerbated by circumstances (e.g. language barriers, debt, poverty, lack of knowledge of rights, lack of support networks, etc.) If workers who enter on the scheme are left open to exploitation this undercuts other employers and workers, driving down labour standards, in addition to the harms caused to the individuals themselves.

13. FLEX's research into the Seasonal Workers Pilot in Scotland
FLEX, together with Fife Migrants Forum (FMF) carried out independent research into

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the Seasonal Workers pilot between March 2020 and February 2021. The research aimed to understand the risks of exploitation, including of trafficking for forced labour, for people coming to Scotland via the SWP to work in the horticultural sector.¹⁰ A framework for analysis based on the International Labour Organization (ILO) indicators of forced labour in adults was used to interpret the data.

14. Rather than aiming to identify individual cases of forced labour or trafficking, the aim of the research was to establish the risks of this for workers on the scheme. Findings are based on interviews with a total of 62 workers and triangulated through a desk-based review of existing literature and quantitative data from a comprehensive survey completed by 84 workers. Of these 84 workers, 73 per cent were SWV workers whilst 27 per cent were non SWV workers, offering a control comparison sample.¹¹ Findings covered risks of the three dimensions of forced labour: unfree recruitment; work and life under duress and impossibility of leaving an employer.
15. A high **risk of unfree recruitment** was identified due to unclear or incomplete information on working conditions being shared with workers prior to travel, an issue also identified by employers who found a mismatch between the job offer and workers' expectations. This was compounded by a reported lack of translation or provision of contracts in the workers' languages prior to arrival together with 62% of workers reporting incurring debts to travel on the scheme. This of course increased their dependency on the work on UK farms, diminishing their ability to query conditions or pay if these were not as expected.

“In 3 weeks I earned £300 only. Other guys earned even less than this. We were told we will earn £300 a week.”

Nikolai, SWV worker from Belarus, 28 July 2020

“When you start having agents and [names Pilot Operator] you have two different middle-men and if information isn't flowing correctly, they're not representing the employer.”

Interview with employer, 9 November 2020

¹⁰ Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot, March 2021
<https://www.labourexploitation.org/publications/assessment-risks-human-trafficking-forced-labour-uk-seasonal-workers-pilot>

¹¹ Ibid page 29.

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16. Findings which put workers at risk of the second dimension of forced labour; **risk of work and life under duress** included the dependency on one employer for work and accommodation so exacerbating the power imbalance between worker and employer as challenging conditions could lead not only to loss of work but also destitution (accommodation was provided by the employer for 98% of workers) together with reports of unsafe living conditions. Reported piece rate payments (payments for the amount picked) and the unlawful use of zero-hour contracts together with productivity targets and work being withdrawn when these were not met combined with accommodation costs and deductions for equipment, clothing and other services left workers economically vulnerable (particularly in the context of debt already incurred). 66% of SWV workers reported receiving threats of loss of work and 17 percent reported threats of deportation from their employer.

“Our caravan is really cold and wet. I have to put a hat on when I sleep. Our caravan is full of mould, the wall are mouldy, our mattress is mouldy. We sleep on mould.”

Nastia, Seasonal Worker from Moldova working at a Scottish farm in 2020.

17. The research also identified the **risk of impossibility of leaving an employer** for workers on the scheme with 62% of workers interviewed reporting being refused transfers to a different farm. Workers being unable to transfer employers together with reports of incurred debt to join the SWP, and with accommodation provided by their employer suggests a high level of risk of not having a realistic option to leave an employer.

“I borrow the money from the criminals, because it’s impossible to get a loan from the bank in Belarus.”

Stepan, SWV worker from Belarus, 22 October 2020

18. The research found that these risks were compounded by the short term nature of the visas and the work together with workers unlikely to be unionised or to have support or information networks in place. Inspections and enforcement of the pilot was led by UKVI (UK visas and immigration) who are not experts in labour market enforcement and who many workers would be fearful of complaining to.

19. Government’s evaluation of the Seasonal Worker Pilot 2019, published December 2021
On 24th December 2021, the Government published the long-awaited review of the first year of the Seasonal Workers Pilot (2019), an evaluation carried out by DEFRA and the

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Home Office, which recognises a number of areas needing improvements, ‘particularly with concern to migrant welfare’.¹²

20. The review relies on data either collected by the Home Office, DEFRA or the pilot operators recruiting workers onto the scheme, including 124 worker interviews conducted during inspections to 15 farms.¹³ Whilst it recognises self-selection bias as a key limitation, it is important to note that workers depend on these bodies to access work on the scheme, and possibly also to provide their accommodation, and may therefore be reluctant to provide negative feedback. In order to encourage trust and reassure workers about the protection of their anonymity and interests, it is recommended that reviews of this kind be carried out by competent individuals independent of the activity being audited¹⁴. In addition, the overall number of inspections and farms visited is very low, particularly considering the fact that this was the first year of a pilot scheme that brought up great concerns around migrant worker welfare. Finally, the data provided by the Government's review is very brief, leaving many of the key factors which would allow us to evaluate the level of risk workers are exposed to under the SWP outside of the review.

21. FLEX have published a statement which analyses and evaluates the review, according to the published data¹⁵ and risks to the workers on the scheme of the three dimensions that make up forced labour, as defined by the ILO.¹⁶ These include;

22. Risk of unfree recruitment. Almost half of the Government's compliance visits identified workers who had not received their employment contract in their native language. The review also notes that the information provided at the recruitment stage to potential worker applicants ‘did not always accurately reflect the accommodation available’.¹⁷ In addition, 10% of DEFRA's survey respondents reported not being made

¹² Home Office and DEFRA. 2021. “HO and DEFRA SWP Review 2019”.

<https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-pilot-review-2019>.

¹³ Home Office and DEFRA. “HO and DEFRA SWP Review 2019”.

¹⁴ ILO. 2013. “Audit Matrix for the ILO Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001)”. Geneva: ILO

¹⁵ FLEX response to the Government's review of the first year of the Seasonal Workers Pilot, January 2022

<https://www.labourexploitation.org/publications/flex-response-government's-review-first-year-seasonal-workers-pilot>

¹⁶ International Labour Organization (ILO). 2012. “Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children.” Geneva: ILO.

¹⁷ Home Office and DEFRA. “HO and DEFRA SWP Review 2019”.

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aware of all terms and conditions of their placements before starting work, while a further 19% reported that operators failed to adhere to their contractual agreements.¹⁸

23. Risk of work and life under duress. The Government's review does not provide sufficient information to assess all relevant indicators of risk under this area; however, a number of concerning findings were included in the review:

- Home Office inspections found that workers at four out of 15 sites were not provided with the health and safety equipment they were legally required to receive (i.e. wet weather gear, steel toe capped boots), which forced workers to purchase their own.
- Over a fifth of DEFRA's survey respondents (22%) reported not being 'treated fairly by farm managers'.
- Experiences of racism, discrimination, or mistreatment by managers (e.g. disrespectful language, being given worse tasks and/or accommodation) were linked to workers' nationality.
- DEFRA's survey also identified a range of issues with the quality of the accommodation provided: 15% said their accommodation was neither safe, comfortable, hygienic nor warm and 10% said their accommodation had no bathroom, no running water, and no kitchen.
- The evaluation shows that **only 84% of workers indicated that they were fully paid for their work** and that the majority of those reporting that Pilot operators did not adhere to all contractual agreements referred to 'pay/financials', which was followed by the broad-ranging category of 'Working conditions/Hours worked'.

24. Risk of impossibility of leaving employer. The SWV route allows workers on the scheme to change employers within the horticulture sector and instructs operators to grant transfers 'whenever possible'. This is a key preventative rule that has been further clarified in updated versions of the Government guidance for this route to say that 'participating workers can change employers if they wish and must normally be allowed to do so'.¹⁹ Unfortunately, the Government's review only reports on effective transfers, which means that we cannot know whether workers were also refused transfer requests or experienced long waiting times. FLEX's research provides a very concerning picture in

¹⁸ HM Government. 2021. "Seasonal Workers Pilot 2019 Review. Appendices. A Summary of Data Used to Inform the Seasonal Workers Pilot 2019 Review." London: HM Government.

¹⁹ Home Office. 2022. "Guidance for Sponsors: Sponsor a Seasonal Worker," <https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker-accessible-version>

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this regard, with a large number of workers interviewed (62%), reporting having been refused a transfer.²⁰

25. Opportunities to report abuse and enforcement of workers' rights

In spite of the many issues listed above, based on data provided by Pilot operators, the Government's review reports an overall complaint rate of 1%, with a follow-up rate of 80% by the operators to address any issues formally. Presumably in recognition of the fact that such a low complaint rate is an indicator of a shortcoming rather than a success, the review specifies that the monitoring template for 2020 will 'capture information on complaints addressed through informal procedures'.²¹ In addition, one in five (20%) of DEFRA's survey respondents stated that they weren't able 'to file complaints easily, if needed'.²²

26. The review also notes the limited use of local healthcare services, with only three GP and one hospital visit per 100 workers, which it attributes to the lower likelihood of poor health in what was a predominantly young group of workers. Whereas this could be interpreted as cost-effective by some, it is important to ensure that any barriers to accessing medical healthcare are addressed, particularly given the physical nature of the work and the ongoing COVID-19 pandemic. In addition, local services provide victims with a key opportunity to access independent signposting to advice and safely disclose labour exploitation.

Recommendations:

27. FLEX welcomes the commitment from the Government to continue monitoring this scheme, as well as its stated commitment to worker welfare, which will be considered one of four thematic areas for future reviews. FLEX's published statement includes recommendations to increase the effectiveness of future reviews. The DLME 2021/22 strategy, published December 2021²³ also recommends that *"the Home Office and BEIS commit to regular and ongoing monitoring of the impact of the new immigration system on labour market compliance, building on existing structures such as its Vulnerability Advisory Group. In addition, there should be an independent evaluation of these impacts after 18 months of the new*

²⁰ FLEX and FMF. 2021. "Assessment of the Risks of Human Trafficking for Forced Labour on the UK SWP.", 61.

²¹ Home Office and DEFRA. "HO and DEFRA SWP Review 2019".

²² HM Government. 2021. "Seasonal Workers Pilot 2019 Review. Appendices.", 16.

²³ United Kingdom Labour Market Enforcement Strategy 2021/22 Interim Director of Labour Market Enforcement Matthew Taylor

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040317/E026669_76_BEIS_UK_Labour_Market_Enforcement_Strategy_2021-22_Accessible.pdf

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system; Lead: Home Office and BEIS. Timescale: monthly monitoring and evaluation to report by the end of 2022”²⁴

28. In response to issues identified through its 2019 evaluation of the Seasonal Workers Pilot, Government has strengthened the guidance for this route and introduced some important updates, including making it clear that the use of zero-hours contracts is banned on the scheme, and to “establish a clear employer transfer pathway, including transparent criteria for making a transfer request and a process for considering such requests”. However, a number of additional steps are needed in order to further reduce the level of risk faced by workers engaging in this scheme, including²⁵:
1. Ensuring that employment contracts are shared with SWV workers in their country of origin, translated into workers’ native languages, with relevant information provided (e.g. employers’ details, working hours, remuneration, accommodation costs and other deductions, etc.) and signed by employers and workers prior to travel. There should be information sessions in the UK to explain the terms
 2. Enforcement of existing regulations to ensure that workers do not pay recruitment fees and the existence of a scheme to reclaim fees which are charged
 3. Provide an independently managed emergency fund for workers who have not received adequate work, or for whom the work has not been as described, who need to be able to return home and repay expenses.
 4. Set minimum standards for accommodation to be upheld for seasonal agricultural workers and prohibit employers from charging workers for accommodation or transport to work if for any reason their wages drop below the real living wage.
 5. Increase the resources to the GLAA and future Single Enforcement Body to ensure there is capacity to conduct regular proactive inspections of SWP participating workplaces, strengthen the GLAA licensing scheme by monitoring overseas labour providers, and help prevent and address non-compliance through proactive labour market enforcement (regulation alone is ineffective, particularly when visa restrictions limit workers’ bargaining positions).
 6. There should be enforcement of other standards, e.g. accommodation, health and safety.
 7. Workers should be provided with clear and accurate information on rights (in relevant languages), where to get help and what to do if labour laws or employment conditions are breached e.g. wages are not paid.

²⁴ Recommendation 6 (b)

²⁵ For the full list of recommendations to the UK and Scottish Government, please refer to: FLEX and FMF. 2021. “Assessment of the risks”, 10-16.

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8. Establish clear independently run complaints mechanisms which are informed by the needs of workers to make sure they are accessible and enforceable in practice.
 9. Guarantee SWV workers a complaints mechanism through which workplace grievances may be aired and remedied during their time in the UK.
 10. Offer financial support to trade unions to organise and provide advice to SWV workers.
 11. Ensure secure reporting mechanisms and a separation between the enforcement and monitoring of working conditions and immigration enforcement, recognising that people on insecure and temporary immigration statuses are often reluctant to report abuse due to fear of facing immigration consequences.
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29. Additionally, to avoid the creation of a two-tier workforce, all work visas must meet the following minimum standards which enable workers to exercise rights and redress in line with UK employment law:
 1. Visas should not be tied and workers should have the freedom to change employers not only on paper but in practice
 2. Visas should be renewable subject to ongoing employment and have a route to settlement
 3. Allow workers who faced exploitation and enter the National Referral Mechanism (NRM) to continue to work so reducing their dependency on their employer²⁶
 4. All work visas should enable access to the NHS and recourse to public funds
 5. All work visas should enable access to sick and maternity pay

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²⁶ There is already precedent with this with the Overseas Domestic Worker visa