Focus on Labour Exploitation (FLEX) works to end human trafficking for labour exploitation. To achieve this, FLEX works to prevent labour abuses, protect the rights of trafficked persons, and promote best practice responses to human trafficking for labour exploitation through research, advocacy and awareness raising. FLEX is a registered charity based in London, UK.

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Summary
The UK’s membership of the European Union (EU) has played a significant role in shaping domestic efforts to tackle modern slavery and human trafficking.

Focus on Labour Exploitation (FLEX) believes that the EU has had a considerable, positive influence on UK efforts to combat these crimes, particularly in the area of preventing labour exploitation.

To make sure these efforts are not lost as the UK leaves the EU, FLEX is supporting Amendment 21 the EU (Withdrawal) Bill 2017-19, as tabled by Peers in the House of Lords (see box 1 below). This amendment seeks to prevent the dilution of employment entitlements, rights and protections, among others, by ensuring that the laws protecting them can only be changed post-Brexit to the extent that “such modification will not limit the scope of or weaken” these provisions.

This briefing summarises the potential impact of the UK’s withdrawal (‘Brexit’) on efforts to prevent modern slavery and trafficking for labour exploitation, and outlines why FLEX supports the incorporation of Amendment 21 into the EU (Withdrawal) Bill.

Box 1. Amendment 21, EU (Withdrawal) Bill

After Clause 3

Insert the following new Clause—
“Future treatment of retained EU law

1 See here for full list of amendments tabled to date: [http://bit.ly/2EDddrz](http://bit.ly/2EDddrz)
(1) Following the day on which this Act is passed, no modification may be made to retained EU law except by primary legislation, or by subordinate legislation made under this Act insofar as this subordinate legislation meets the requirements in subsections (2) to (6).

(2) The Secretary of State must by regulations establish a schedule listing technical provisions of retained EU law that may be amended by subordinate legislation.

(3) Subordinate legislation to which subsection (2) applies must be subject to an enhanced scrutiny procedure, to be established by regulations made by the Secretary of State.

(4) Regulations under subsections (2) and (3) may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.

(5) The enhanced scrutiny procedure provided for by subsection (3) must include a period of consultation with the public and relevant stakeholders.

(6) Regulations under this section may be used only to modify provisions of retained EU law listed in any schedule made under subsection (2) to the extent that such modification will not limit the scope of or weaken—
   (a) employment entitlements, rights and protection,
   (b) equality entitlements, rights and protection,
   (c) health and safety entitlements, rights and protection,
   (d) consumer standards, or
   (e) environmental standards and protection.”

**What is the issue?**
The EU (Withdrawal) Bill 2017-19 provides the legal basis for implementing Brexit by repealing the European Communities Act 1972 and determining how EU law will be kept or transferred into UK law. As it currently stands, the Bill makes it possible for post-Brexit governments to repeal or water down EU-derived employment rights and protections without proper parliamentary scrutiny. In doing so, the Bill risks increasing vulnerability to exploitation among all workers in the UK.

A significant proportion of workers’ rights in the UK come from the EU. These include limits on maximum weekly working hours; access to paid annual holidays; equal treatment rights for part-time, fixed-term, and agency workers; maternity and paternity rights; provisions protecting workers from having their contracts changed or terminated due to a company takeover; and various health and safety provisions, among others.

Some of these protections are already part of UK primary legislation, including equal pay and maternity rights. Many others, however, are in secondary legislation or have not been written into UK law at all. This has not been a problem up until now, because these protections have been underpinned by EU law or supported by judgements of the Court of Justice of the
European Union. However, once the UK leaves the EU, this important backing will be lost, and secondary legislation can be used to “chip away” at employment standards.

**Box 2. Why does weakening of employment standards increase vulnerability to exploitation?**

An environment that permits the existence of sub-standard working conditions increases the likelihood of labour exploitation, including human trafficking and modern slavery offences. Research by FLEX and the Labour Exploitation Advisory Group have identified a strong causal link between labour abuses, such as failure to pay minimum wage, and labour exploitation, such as forced labour, slavery and servitude, including trafficking for these purposes.²

A lack of employment rights and protections, or their inefficient enforcement, make workers vulnerable to other labour abuses, which can develop into extreme exploitation. For example, a worker who is paid poverty wages, and is dependent on this income for survival, will be less able to leave or report abusive or exploitative situations.

The UK already has one of weakest labour law enforcement structures in Europe³, which means abusive employers are often able to operate with impunity. The loss or weakening of important employment rights would leave workers in an even worse situation, and risk increasing the prevalence of modern slavery.

Though the Withdrawal Bill seeks to keep all existing EU law as it currently applies in the UK, it does so in a way that does not sufficiently safeguard many important rights and protections.⁴ The bill also grants ministers so-called “Henry VIII powers” to change legislation that has originated from the EU, including UK primary legislation such as the Equalities Act and the Modern Slavery Act, without proper Parliamentary oversight.⁵ The Bill includes no clear prohibition to prevent these powers from being used to erode hard-won rights and protections, leaving them at serious risk.

**Why does this matter?**

In order to prevent labour exploitation, we must make sure that safeguards and minimum standards for workers are not lost as the UK leaves the EU.

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Protections that have come from the EU, such as the Working Time Directive and Agency Workers Directive, are particularly important due to the rise in agency work in the UK in general and in particular for migrant workers, who are overrepresented in agency work. Agency workers already have limited employment protections and are at risk of exploitation.

Removal of rights, such as maximum working hours, breaks, and the right of agency workers to the same basic terms and conditions as directly hired staff after a 12-week period, would place these workers at even greater risk.

Working time protections are also important because sectors such as cleaning, where shifts are already very long, could be open to excessive hours becoming the norm.

Box 3. Vulnerability of agency workers to exploitation

Research conducted in 2017 by FLEX into key risk indicators in workers vulnerable to labour exploitation highlights the importance of EU-derived employment rights for preventing labour exploitation, including trafficking for labour exploitation. FLEX found a reliance on migrant and agency labour can increase vulnerability to abuse and exploitation and therefore such workers are particularly in need of the protections derived from the EU.

Agency workers are five times more likely to be on zero hours contracts than the rest of the labour market and make an average of 22p less per hour than non-agency colleagues doing the same jobs. FLEX has found agency workers facing discrimination on the basis of their employment status. The temporary and transient nature of agency work also means there is very limited opportunity for collective bargaining and peer-to-peer information sharing which are important mechanisms for protecting workers from abuse and exploitation.

The UK’s Agency Workers Regulations 2010, Working Time Regulations 1998 (Amended 2007), and Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) all of which have come from the EU, are crucial for addressing labour abuses faced by agency workers.

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9 The Agency Workers Regulations 2010 give agency workers the entitlement to the same or no less favourable treatment as comparable employees with respect to basic employment and working conditions, if and when they complete a qualifying period of 12 weeks in a particular job.

10 The Working Time Regulations provide rights to a limit on working hours, paid annual leave, and daily rest and break times, among other rights.

11 TUPE Regulations preserve employees’ terms and conditions when a business or undertaking, or part of one, is transferred to a new employer.
When employment standards and protections are weakened, vulnerability to exploitation increases. Hard-won employment entitlements that protect workers from abuse and exploitation should not be left vulnerable to erosion.

Are rights really at risk?
The Government has stated that “EU exit cannot, and will not, lead to weaker rights and protections in the UK”¹² and that the Withdrawal Bill will maintain the protections and standards that benefit workers.¹³ However, unless changes are made to the Bill, there is nothing in practice to stop this from happening.

Some EU laws relating to employment and workers’ rights have proven to be controversial and resisted by the Government, for instance the Agency Workers Regulations 2010, which implements Directive 2008/104/EC, and the Working Time Regulations 1998, which implements EU Working Time Directive 2003/88/EC.¹⁴ In addition, there have been recurrent calls from past¹⁵ and present¹⁶ cabinet ministers, along with the Prime Minister¹⁷, to deregulate the labour market, implying that there may well be an appetite to reduce employment protections. A recent Whitehall impact assessment specifically singles out workers’ protections as an area that could be used for “maximising regulatory opportunities” post-Brexit.¹⁸

What should be done?
Recognising the risks inherent in the Withdrawal Bill, the House of Lords Select Committee on the Constitution has called for all retained direct EU law to be treated as domestic primary legislation.¹⁹ Such a move would ensure that employment and other rights that come from the EU could only be changed through primary legislation, with a full debate in Parliament. The Committee’s report also calls for the “overly-broad” and “unacceptably wide” Henry VIII powers to be restricted and subject to better scrutiny.²⁰

Amendment 21 (see Box 1 above) seeks to do exactly this.

²⁰ Ibid.
Inserting a new Clause after Clause 3 of the Withdrawal Bill, amendment 21 specifies that retained EU law should only be changed by primary legislation. If changes are to be made by secondary or subordinate legislation, this can only be done after an enhanced scrutiny procedure. Importantly, provisions related to “employment entitlements, rights and protection” can only be modified to the extent that “such modification will not limit the scope of or weaken” these provisions.

FLEX urges Peers to support this amendment when it is debated at the Bill’s Committee Stage in the House of Lords on **Monday 26 February 2018.**