

**April 2020**

## **SUMMARY**

This briefing focuses on how the Bill relates to exploitation in the workplace and the factors that support its prevention, FLEX's core remit. Immigration policy is crucial to preventing and addressing exploitation, including modern slavery offences, as it can make migrants more or less vulnerable to such abuses and their continuation. The overhaul of the immigration system currently taking place therefore represents a major opportunity to address identified issues and prevent the abuse and exploitation of migrant workers. The COVID-19 pandemic has highlighted the importance of migrant workers in low-paid sectors, many of which are now classified as essential. However, the bill as it is currently formulated is omitting crucial policy changes and/or safeguards that would ensure migrant workers are able to come to the UK safely and with appropriate protection from vulnerability. In order to ensure future migration policy does not encourage or exacerbate instances of modern slavery, including human trafficking, and that the UK has a sufficient workforce to operate healthily in future, FLEX recommends parliamentarians support the following changes.

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## **KEY POINTS AND RECOMMENDATIONS**

### **1. Ensure the Bill provides sufficient parliamentary scrutiny of future immigration policy-making.**

Part 1 Section 4 of the Bill (the 'Henry VIII' clause) provides the Secretary of State with powers to make secondary legislation and has been described as a 'blank cheque' for government. Secondary legislation does not benefit from the levels of scrutiny afforded to primary legislation and, as such, significant changes to immigration policy should not be made in this manner. Instead, the government ought to put forward a comprehensive package of immigration policy changes and allow parliament to perform its crucial democratic role in scrutinising, amending and enhancing those changes.

This is of particular concern due to recent developments in immigration policy. In 2018, the government introduced a 'seasonal workers pilot' scheme through the Immigration Rules. This scheme sought to bring 2,500 workers to the UK from non-EEA countries to work in edible horticulture for a maximum term of six months. It included no access to public funds, no provision for additional labour inspection, no ability to renew the visas in-country, a mandatory cooling off period of six months before returning, and no guarantee of wages earned. See point 2 for further information on why such schemes are problematic.

Despite the risks of such schemes and their potential to undermine espoused anti-slavery objectives, in early 2020 the government confirmed the expansion from the scheme from 2,500 workers to 10,000. It made this change with no parliamentary scrutiny and without publishing any form of evaluation of the scheme nor confirming that one had been undertaken, despite making the commitment in March 2019 that “the pilot will be reviewed before any decisions are taken on running a future scheme”.

Given this precedent of lack of evaluation and scrutiny of a change to the Immigration Rules, there is significant cause for concern that Part 1 Section 4 of the proposed Bill will lead to more such failures. The Covid-19 pandemic makes this more vital: it is highly likely that urgent measures will be needed to ensure the UK has enough key workers in the coming months and years. The measures introduced must be subject to the expertise and efficient deliberation of parliamentarians to ensure both the prevention of modern slavery offences and a reduction in the risk of such harm taking place and our best possible economic future.

**Recommendation: Part 1 Section 4 should be removed.**

**Recommendation: This Bill must provide for parliamentary scrutiny over any future immigration policy changes.**

## **2. The Bill must embed protections and safeguards for migrant workers.**

In providing the government with the powers described above, and in failing to set out a major low-paid route for migrant workers with comparable rights and protections to free movement, the government risks paving the way for more temporary migration schemes like the ‘seasonal workers pilot’ scheme.

Temporary migration schemes are well-recognised to increase the risks of abuse and exploitation of workers, including of modern slavery offences. This is due to:

- Debt bondage, due to debt taken on to pay upfront migration costs and illegal recruitment fees
- Deception in recruitment, leading to destitution or over-work
- Barriers to changing job or sector, including temporariness
- Destitution due to no recourse to public funds
- Lack of rights knowledge or how to seek support
- Multiple dependencies on employer or third-party
- Barriers to accessing justice, such as tribunal timeframes
- Non-guaranteed hours / zero-hours contracts

For more in-depth information on these risks, please see section 3 of [The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper](#).

### **Case Study: The previous UK Seasonal Agricultural Workers Scheme – labour abuses and poor conditions**

*Until 2013, the UK operated the Seasonal Agricultural Workers Scheme (SAWS) which allowed the agriculture and horticulture sectors to employ migrant workers for short-term, seasonal agricultural and food processing work. Permission to work in the UK was granted for a maximum of six months. Participants could reapply after three-month cooling-off period, with many workers returning to the same farms. Different investigations reported cases of misinformation about the number of working hours which would be available, underpayment of wages, long working hours, no days off for rest, and poor living conditions. Though workers were technically allowed to change employer, in practice this*

was "almost impossible" as they could only switch to another farm site with permission from their scheme operator, five out of nine of whom were also their employer.

**Case Study: The UK Sectors Based Scheme – some positive features but drivers of human trafficking still present**

The Sectors Based Scheme (SBS) was introduced in 2003 to address shortages in low-skilled jobs in hospitality (hotels and catering) and food processing (meat, fish and mushroom processing). It was originally open to migrants aged 18-30 from any non-EU country, but this was later restricted to Romanian and Bulgarian nationals in 2007. The SBS was quota-based with 10,000 workers allowed annually per sector. In 2005, the hospitality sector was removed from the scheme and the quota for the food processing sector was reduced to 3,500. In 2013 the entire scheme was discontinued. According to a 2006 report from the Home Office, employers felt that the scheme was a good way of dealing with labour shortages, but that the one-year period for which an SBS permit was initially valid was too short owing to the time and effort needed to train and induct workers.

The SBS had some positive features that are worth noting: gross pay and employment terms and conditions had to be equal to or exceed those normally given to a resident worker doing similar work.

However, and highly problematically from an anti-trafficking perspective, a 2005 Home Office review of the scheme found cases of workers paying over £10,000 to access the scheme, which was more than they could realistically repay from their earnings during the course of their 12-month stay. Recruitment fees and the resultant debt, is one of the key drivers of forced labour and human trafficking.

**Recommendation: This Bill must set out government plans for safe routes for labour migration, including any plans and safeguards for temporary migration schemes.**

**It should ensure that visa restrictions do not generate risk to exploitation by including the following provisions for any future temporary migration programme:**

- length of employment and minimum number of guaranteed hours;
- the ability to change employers without needing to seek approval from employers or operating bodies;
- wages to be equal to the highest of a) National Minimum Wage rates b) a wage set by a relevant collective bargaining agreement c) wages for UK workers doing the same work or d) wage rates set by the state for the specific scheme;
- pre-departure and on-arrival information about working conditions and rights should be provided to all migrant workers;
- labour inspection must be given additional resource to undertake targeted enforcement in any sectors with temporary migrant workers;
- all visas should be renewable in-country;
- all visas should have a pathway to accessing public funds;
- all schemes should have appropriate provisions made for fast-track complaints mechanisms;
- no schemes should be introduced or expanded without a published evaluation.

**3. The provisions in this Bill, and important gaps, will likely lead to an increase in undocumented workers and therefore in modern slavery cases.**

The failure to provide physical documentation to those undertaking the EU Settlement Scheme; the lack of a major low-paid migrant worker route into the UK; the short-term nature of the proposed Youth Mobility Scheme; and the high demand for workers in some sectors will all combine to lead to a rise in undocumented workers.

Undocumented workers, or documented workers who are unsure of their status and their rights, are at heightened risk of exploitation, including modern slavery offences. Research exploring labour exploitation of adult migrants in eight EU member states conducted by the EU Agency for Fundamental Rights found that “vulnerability linked to residence status is the most important risk factor causing or contributing to labour exploitation”.<sup>ii</sup> Its prior research has noted the same issue and found that this is because “victims of severe labour exploitation who are in an irregular situation of residence are discouraged by their status from reporting to any public authority”.<sup>iii</sup> When immigration statuses are criminalised, people do not report abuse or exploitation at work due to fear of negative repercussion to themselves. These include an unlimited fine, a six-month prison sentence and the confiscation of any income earned during the relevant working period, in addition to detention and/or deportation.

In the UK, the ‘illegal working’ offence means that victims are not identified and supported because they cannot come forward, and their exploiters are not identified and pursued to justice. It also hands perpetrators a tool with which to control their victims: the threat of immigration enforcement. This is supported by findings of the Labour Exploitation Advisory Group, a group of ten experts working to end human trafficking for labour exploitation (coordinated by FLEX). Drawing on the experiences of these experts and their work with at-risk workers, the LEAG position paper, ‘Labour Compliance to Exploitation and the Abuses In-Between’ (2016), found that fear of immigration authorities is a major barrier to reporting abuses for undocumented and documented migrant workers, the latter being unaware of, or insecure in, their migration status. It noted that,

*“The threat of reporting to police or immigration authorities is routinely used by unscrupulous employers to hold workers in abusive situations. Even if the threat does not come directly from the employer, undocumented workers often will not report abuse as they are afraid of coming to the attention of authorities and being deported.”*

FLEX is currently undertaking research into several high-risk labour sectors to understand the nature of abuse and exploitation taking place. Whilst our results will not be published until later in 2020, the following interview excerpt is illustrative of the issue:

*Interviewer:* How do they [employers] know that people have no documents?

*Worker:* When I was recommended to this role, they asked it and said to my friend that they liked people without secure status.

*Interviewer:* Why do you think that is?

*Worker:* Because if we are illegal here we have no rights to complain or report.

The worker interviewed is clear that as someone with insecure status, they do not feel able to challenge or report abusive behaviour. This issue was recognised in 2019 in a report from the United Nations Special Rapporteur on Trafficking in Persons which recommends that states “establish firewall protections for undocumented workers so that they may come forward to raise complaints or avail themselves of other opportunities to approach certain authorities, without fear of investigations or reprisals from immigration authorities.”<sup>iv</sup>

The Bill and current immigration plans will increase the number of people with insecure or undocumented migration status, leading to more exploitation, including modern slavery offences. The Bill also misses the opportunity to repeal the ‘illegal working’ offence that

would ensure the protection of those with insecure status as they would be able to report harm without fear.

**Recommendation: The Bill should be considered as a crucial tool in the fight against modern slavery. It should:**

- **repeal the illegal working offence and ensure that all workers in the UK are protected by employment rights to enable them to cooperate with labour inspection and report labour abuses. This would prevent the targeted recruitment of migrants for exploitative purposes and ensure employers perpetrating abusive or exploitative behaviours can be brought to justice.**
- **Include the provision of a safe route for regular labour migration to reduce the risk of increasing the size of the UK's undocumented workforce and therefore the spread of exploitation.**

#### **4. The Bill must include provisions for secure reporting in order to tackle labour exploitation.**

Migrants – both documented and undocumented – are at heightened risk of labour abuse and exploitation. This is partially due to the 'illegal working' offence as described in point 3: the offence prevents migrant workers from reporting exploitation and seeking support from the state agencies meant to address such harm, i.e. police and labour inspection, due to the fear of immigration repercussions. Exploiters are also able to use this threat to coerce and control workers.

If the illegal working offence is not to be repealed, the Bill represents a major opportunity to ensure that all workers have their rights protected and that unscrupulous employers cannot abuse those with insecure status: it must introduce secure reporting. Secure reporting means that a worker's information is kept securely and safely in the hands of labour inspection/police, without being passed (passively or actively) to Immigration Enforcement. This ensures exploiters do not operate with impunity and all workers can access help and safety from harm. In turn, our labour market is made healthier overall.

FLEX research has found that no labour inspectorate currently has a legal duty to report undocumented workers to the Home Office, but permission does exist.

**Recommendation: This Bill should establish a new safeguard to ensure that no personal information about workers that is processed or held labour inspectorates or the police is passed to the Home Office for the purposes of Immigration Enforcement, whether through active channels such as direct reporting or passive channels such as database sharing/access.**

Such mechanisms already exist in Amsterdam, the USA, Brazil and other jurisdictions. This will ensure our future migration system does not undermine decent work considerations and anti-slavery objectives.

#### **5. A general low-paid worker migration route is needed and must embed rights and protections.**

The COVID-19 pandemic has highlighted the importance of migrant workers for the UK as they work in many vital sectors. For example, 32% of cleaners in the UK are migrants, with numbers reaching 53% in London.<sup>v</sup> Migrant workers are over-represented in low paid sectors, many of which are now classified as 'essential' by government, and are crucial for occupying jobs that we need for a healthy economy and well-functioning society.

In addition, there is clearly appetite from businesses and society to ensure the UK has enough workers in future, particularly in low-paid sectors which are not covered under the new Points-Based System. The Bill seeks to remove a considerable portion of our future labour market and does not provide sufficient mechanisms with which to replace these workers. A general low-paid route is preferable to a) no route or b) sector-specific routes because it will enable sufficient labour supply without provoking the modern slavery risks described in part 2 above. A general route for low-paid workers should therefore be introduced in this Bill and should recognise the importance of labour market enforcement and protections for workers as a part of any new such policy. This means including:

- Sufficient resourcing for labour inspection to meet the ILO recommended ratio of 1 inspector per 10,000 workers – the UK is currently at 0.4% per 10,000<sup>vi</sup>;
- Providing equal employment rights to *all* workers, regardless of whether they are on this low-paid route or on an alternative route;
- Enabling workers to change from one route to another without having to leave the country;
- Ensuring people doing low-paid work have access to social protections to prevent unscrupulous employers using the threat of destitution to drive down standards and perpetrate exploitation – the COVID-19 pandemic has highlighted that lack of access to social protections puts people at risk of destitution, with poverty being a recognised driver of exploitation<sup>vii</sup>;
- Providing people doing low-paid work with the same routes to settlement as those on 'skilled' routes;
- Ensuring any such policies and practices are gender-informed – that is, they recognise the specific issues and circumstances women workers may face, such as additional caring responsibilities or part-time working needs.

Introducing such a pathway would help to ensure industry needs are met whilst migrant workers are not put in positions that are at heightened vulnerability of modern slavery offences.

**Recommendation: Introduce a general low-paid migrant worker pathway that meets the requirements listed above to ensure labour supply is sufficient and the UK does not see an increase in modern slavery offences.**

## REFERENCES

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- iii EU Agency for Fundamental Rights. 2017. 'Fundamental rights and the interoperability of EU information systems: borders and security.' [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-interoperability-eu-information-systems\\_en-1.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-interoperability-eu-information-systems_en-1.pdf) p.41
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