

FLEX response to the Government’s review of the first year of the Seasonal Workers Pilot

13th January 2022

On 24th December 2021, the Government published, as a web page, the long-awaited review of the first year of the Seasonal Workers Pilot (2019), an evaluation carried out by DEFRA and the Home Office, which recognises a number of areas needing improvements, ‘particularly with concern to migrant welfare’¹.

The Seasonal Workers Pilot (SWP) was originally opened for the recruitment of up to 2,500 non-EEA migrant workers for edible horticulture in 2019. When the scheme was launched, and in response to concerns about known risks of forced labour associated with this type of temporary migration programme, the Government committed to carrying out and publishing an evaluation of the pilot to inform the future of this route. Despite not having yet met this commitment, and coinciding with the end of free movement with the EU, the SWP was expanded to 10,000 workers in 2020 and then initially to 30,000 in 2021. Two additional pilot operators were included in the scheme and, in September 2021, in response to increased pressure resulting from further labour shortages, Government expanded this Tier 5 (Temporary Worker) Seasonal Worker route to recruit migrant HGV food drivers, poultry workers and pork butchers² on short three-month visas. Overall, in a period of three years, the scheme was expanded from 2,500 workers being recruited by two pilot operators from a handful of nearby countries, to four labour providers recruiting over 30,000 from virtually anywhere in the world into a wider range of seasonal roles.

For the current year (2022), this route is set up to bring up to 30,000 workers into edible and ornamental horticulture, a number that can be further extended to 40,000, if needed. It is clear that the 2022 version of the scheme is significantly different from the 2019 version, which was not only much smaller in scale but also pre-COVID-19. This statement summarises and reflects on key points included in the Government’s review, focusing on workers welfare and providing

¹ 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>.

² FLEX. 2021. “Treating workers like commodities: Short term work visas and the risks of exploitation”

<https://www.labourexploitation.org/news/treating-workers-commodities-short-term-work-visas-and-risks-exploitation>

further insight by drawing on the findings of our own research in this area³, which provides the first independent assessment of the experiences of workers on the scheme.

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

Year	Workers recruited	Sectors, roles	Pilot operators	Sourcing countries
2019	2,481	Edible horticulture	Concordia Pro-Force	5 nationalities: 90.7% from Ukraine, 7.2% from Moldova
2020	7,236	Edible horticulture	Concordia Pro-Force	14 nationalities: 87% from Ukraine, 4% from Moldova, 3% from Belarus
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)	Edible horticulture Ornamental horticulture	AG Recruitment and Management Ltd Concordia Ltd Fruitful Jobs Pro-Force Ltd	

³ FLEX and FMF. 2021. “Assessment of the Risks of Human Trafficking for Forced Labour on the UK SWP.”

The first point to note is that 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 farms⁴. 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 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 audited⁵. 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, 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.

Key stats from Government's review of the 2019 SWP:

- 2,545 visa applications received: 2,494 granted, 50 withdrawn, 1 refused
- 2,481 workers used their visas
- 65 farms engaged in the scheme
- 77% (1,905) of workers were placed in England, 23% (567) in Scotland and <1% in Northern Ireland
- Over half (53%) had no prior experience in the sector

Acknowledging these significant limitations, as well as the well-evidenced risk of exploitation in seasonal agricultural programmes⁶, the following section highlights how the available data relates to the three dimensions that make up forced labour, as defined by the ILO⁷.

Forced labour dimension: Risk of unfree recruitment

Unfree recruitment may be characterised by debt bondage and deception related to issues such as the nature of the work, the working conditions, the content of the employment contract, the wages, etc.

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

⁴ Home Office and DEFRA. "HO and DEFRA SWP Review 2019".

⁵ ILO. 2013. "Audit Matrix for the ILO Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001)". Geneva: ILO

⁶ Shamir, H. 2017. "The Paradox of 'Legality': Temporary Migrant Worker Programs and Vulnerability to Trafficking" Revisiting the law and governance of trafficking, forced labor and modern slavery (ed. Prabha Kotiswaran), SSRN: <https://ssrn.com/abstract=3198528>. Strauss, K., McGrath, S. 2017. "Temporary migration, precarious employment and unfree labour relations: Exploring the 'continuum of exploitation' in Canada's Temporary Foreign Worker Program", Geoforum, Volume 78, 199-208, ISSN 0016-7185. <https://doi.org/10.1016/j.geoforum.2016.01.008>.

⁷ International Labour Organization (ILO). 2012. "Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children." Geneva: ILO.

provided at the recruitment stage to potential worker applicants 'did not always accurately reflect the accommodation available'⁸. In addition, 10% of DEFRA's survey respondents reported not being made 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 agreements⁹.

FLEX's research conducted in Scotland with workers engaged in the scheme in 2020 also identified lack of translation and pressure to sign contracts upon arrival, as well as high levels of inaccuracy in the information received reported by workers. In addition, a high number of workers (62%) had taken on debt to be able to travel to the UK, which further compounded this risk¹⁰. Debt is an important indicator of risk not covered by the Government's review, especially given the opening of the scheme to virtually any country in the world. The higher travel costs for workers coming from more distant countries is likely to lead to higher debt and increased financial vulnerability.

Forced labour dimension: Risk of work and life under duress

Indicators in this area may include deterioration of working conditions, including verbal and physical abuse, discrimination and threats; degrading living conditions; multiple dependencies on employers (e.g. for housing), limited freedom of movement and communication, isolation, financial penalties, etc.

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.

⁸ Home Office and DEFRA. "HO and DEFRA SWP Review 2019".

⁹ 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.

¹⁰ FLEX and FMF. 2021. "Assessment of the Risks of Human Trafficking for Forced Labour on the UK SWP.", 38.

With regards to pay, the Government's review states that 'all Pilot workers were paid rates in line with UK legislation, with all workers paid at least the National Minimum Wage'. However, there is extensive evidence of underpayment across many low-paid sectors, which particularly affects young workers¹¹. FLEX's own research with seasonal workers in Scotland found that over 45% of the Seasonal Worker Visa (SWV) workers surveyed by the study reported being paid less than the minimum wage, given the inadequate regulation of piece rate calculations in Scotland. Other issues with wages included the use of zero-hours contracts in spite of these being banned on the scheme, and the withdrawal of promised work as a penalty for not meeting piece rate targets¹². The Government's own data 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'.

Forced labour dimension: Risk of impossibility of leaving employer

Workers' ability to leave an employer is determined by a number of factors, such as having the legal right to change employers, having their identity documents in their possession, being financially able to do so, and not being subjected to financial, physical or other kinds of punishment.

The SWV route allows workers on the scheme to change employers within the horticulture sector and instructed 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'¹³. 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 this regard, with a large number of workers interviewed (62%), reporting having been refused a transfer¹⁴. The study found that refused employment transfers, coupled with debt and dependency on their employer for housing, resulted in workers having reduced freedom to leave their employer.

The Government's review does not provide information about other key factors determining workers' ability to leave their jobs (e.g. level of debt, level of dependency on employer, confiscation of documents, etc.). For instance, FLEX's research found high levels of economic

¹¹ Low Pay Commission. 2021. "National Minimum Wage: Low Pay Commission Report 2021" https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039488/LPC_Report_2021_web_version.pdf

¹² FLEX and FMF. 2021. "Assessment of the Risks of Human Trafficking for Forced Labour on the UK SWP.", 34.

¹³ 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>

¹⁴ FLEX and FMF. 2021. "Assessment of the Risks of Human Trafficking for Forced Labour on the UK SWP.", 61.

vulnerability resulting from debt and a combination of low earnings and deductions by employers for accommodation, services, equipment and clothing, leading to increased dependency on work.

Opportunities to report abuse and enforcement of workers' rights

Providing appropriate channels for reporting abuse and grievance is essential to ensure compliance with existing legislation and standards, and to prevent severe forms of abuse from being overlooked. Home Office guidance requires Pilot operators to ensure procedures enable workers to report concerns¹⁵.

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'¹⁶. In addition, one in five (20%) of DEFRA's survey respondents stated that they weren't able 'to file complaints easily, if needed'¹⁷.

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 may be read 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 step away from their exploiter's watch and safely disclose labour exploitation.

On the other hand, enforcement of immigration rules and scheme regulations is carried out by the Home Office Compliance Network (UKVI) and the GLAA, with UKVI holding responsibility for carrying out farm inspections.¹⁸ The GLAA supports this role and may join farm visits. In 2019, there were a total of 15 farm inspections carried out by UKVI, including only two in Scotland, with the GLAA joining six of these visits. The Government also notes a number of issues being reported to the competent authorities and/or to the relevant Pilot operators as part of the review process; however, no details are provided about how claims were followed-up, whether the issues were resolved, and/or whether workers were able to access any form of compensation¹⁹.

¹⁵ Home Office. 2022. "Guidance for Sponsors: Sponsor a Seasonal Worker,

¹⁶ Home Office and DEFRA. "HO and DEFRA SWP Review 2019".

¹⁷ HM Government. 2021. "Seasonal Workers Pilot 2019 Review. Appendices.", 16.

¹⁸ Foster, K. 2021. Seasonal Agricultural Workers Scheme, UK Parliament: Written answer, 15 January 2021, HC 132880. <https://questions-statements.parliament.uk/written-questions/detail/2020-12-30/132880>

¹⁹ Home Office and DEFRA. "HO and DEFRA SWP Review 2019".

As GLAA licensed labour providers, both Pilot operators and the in-country agents they work with must also comply with the licensing standards, which prohibit recruitment fees, physical and mental mistreatment, restricting workers' movement, withholding wages, and providing poor quality accommodation²⁰. However, the GLAA lacks sufficient resources to carry out regular inspections in the UK and does not conduct in-country licence or compliance inspections of overseas labour providers, which increases risk of unfree recruitment for workers²¹. The review does not provide any information on the monitoring of overseas recruitment agents, instead stating that no licensing issues were reported by the GLAA.

Agriculture is a high-risk sector for human trafficking for forced labour due to the nature of its supply chain, remote working and isolation, and high prevalence of migrant workers who often face additional barriers accessing information and support due to factors such as the language barrier, limited access to information, and low unionisation rates, among others. In the UK, agriculture is considered the highest risk sector (next to car washes) by the UK Director of Labour Market Enforcement²², as well as a 'priority sector' by the Health and Safety Executive due to it having the highest rate of fatal injury of all industrial sectors²³. In addition to this, temporary and tied migration programmes such as the SWP have a range of risks associated with the conditions and restrictions attached to these routes²⁴, including:

- Debt bondage due to upfront migration costs and illegal recruitment fees;
- Deception in recruitment;
- Barriers to changing job or sector;
- Discrimination;
- Temporariness and lack of pathways to permanent residence;
- Multiple dependencies;
- No recourse to public funds;
- Barriers to accessing justice; and
- Lack of guaranteed working hours.

²⁰ GLAA. 2020. "Licensing Standards" <https://www.gla.gov.uk/media/5963/licensing-standards-october-2018-final-reprint-jan-2020.pdf>

²¹ DLME. 2021. "United Kingdom Labour Market Enforcement Strategy 2020/21". <https://www.gov.uk/official-documents>

²² DLME. 2019. "United Kingdom Labour Market Enforcement Strategy 2019/20." <https://www.gov.uk/official-documents>

²³ HSE. 2020. "Fatal injuries in agriculture, forestry and fishing in Great Britain 2019/20." <https://www.hse.gov.uk/agriculture/pdf/agriculture-fatal-injuries-1920.pdf>

²⁴ FLEX. 2019. "The Risks of Exploitation in Temporary Migration Programmes: A FLEX Response to the 2018 Immigration White Paper." <https://labourexploitation.org/publications/risks-exploitation-temporary-migration-programmes-flex-response-2018-immigration-white>

From the above, it is clear that the Tier 5 SWV route for agriculture can and must be strengthened to reduce risk of labour abuse and exploitation for workers and ensure that the UK's agricultural sector abides by decent recruitment, working and accommodation standards.

FLEX welcomes the commitment from 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. In order to ensure the effectiveness of future reviews:

1. **Data should be available on a timely basis:** the official review of the first year of the SWP (2019) was published at the end of its third year of operation, when the scheme had already gone through a significant expansion in workers numbers, sourcing countries, labour sectors and pilot operators. As such, the data presented by this review is very limited and may not reflect the experiences of workers currently on the scheme. In order to provide useful and timely data to effectively monitor this scheme, the monitoring and evaluation should be more effective. This should include regular monitoring visits, including visits which are unannounced and surveys with workers should be carried out by independent bodies (see below), there should be increased transparency and accountability around findings, with data being published more regularly and on a timely basis to inform the work of pilot operators, labour market enforcement agencies, local authorities and public services, and all other relevant stakeholders.
2. **Gaps in data must be addressed:** The review does not provide information on a number of key indicators of risk that would allow assessment of the risks of modern slavery or forced labour on the scheme (e.g. debt, deductions to wages, confiscation of documents, resolution for workers, access to compensation, etc.). Some findings also lack context and may hide deeper issues. For instance, it is impossible to say from the review whether the low complaints rate is related to a high level of satisfaction among workers or to poor reporting channels. Recruitment practices, illegal charging and incidence and level of debt should be actively monitored closely, particularly in light of recent expansions of this route. It should also be made clear what actions are taken in response to any structural issues identified and how individual workers have been supported to access redress.
3. **Improve worker's input to strengthen the future of the scheme:** Establish an independent annual evaluation of the treatment of low wage temporary workers in the UK, including in-depth worker evidence, in order to inform labour market enforcement allocation and direction of resources. An independent process is likely to provide workers with a stronger guarantee of anonymity and impartiality as well as confidence to constructively engage, and lead to an improved response rate. In addition, it is key for future reviews to build on the findings of this review and for assessment questions to be informed by people with lived experience, as well as experts in the field, including trade unions, anti-trafficking organisations and immigration experts.

4. **Existing risks should be assessed prior to expansions being introduced:** data should be used for the purpose of informing the future of the scheme, with particular consideration given to any additional sector-specific risks prior to the route being expanded to greater numbers of workers or new types of work (e.g. poultry processing, ornamentals).

Finally, in response to issues identified through the review, 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.
2. 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.
3. Set minimum standards for accommodation to be upheld for seasonal agricultural workers and prohibit employers from charging workers for accommodation if for any reason their wages drop below the real living wage.
4. 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 (e.g. the fact that zero-hour contracts were used despite being banned).
5. Establish clear independently run complaints mechanisms which are informed by the needs of workers to make sure they are accessible and enforceable in practice.
6. Guarantee SWV workers a complaints mechanism through which workplace grievances may be aired and remedied during their time in the UK.
7. Offer financial support to trade unions to organise and provide advice to SWV workers.
8. 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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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.