

# BRIEFING: DISPOSABLE WORKERS

## THE FUTURE OF THE UK'S MIGRANT WORKFORCE

MARCH 2019

### SUMMARY: LABOUR ABUSE AND EXPLOITATION RISKS IN TEMPORARY MIGRATION PROGRAMMES

This policy briefing explains the two temporary migration programmes (TMPs) proposed by government to be introduced as part of the UK's future immigration system post-Brexit. It raises key concerns about this approach, highlighting the risks of labour abuse and exploitation under such schemes including forced labour<sup>1</sup> and debt bondage<sup>2</sup>, and outlines the steps needed to prevent these risks occurring.

<sup>1</sup> The ILO Forced Labour Convention 1930 (No. 29) article 2.1 defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

<sup>2</sup> The UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1957 article 1.a. includes debt bondage as a practice similar to slavery, defined as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined."

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**FOCUS ON  
LABOUR  
EXPLOITATION**

### KEY RECOMMENDATIONS FOR GOVERNMENT

FLEX proposes the following steps to reduce the likelihood of labour abuse and modern slavery, including human trafficking and forced labour, under the new TMPs:

#### For both proposed TMPs:

- 1 Labour inspectorates should have their resources and remit increased to ensure the pro-active enforcement of labour law and targeted inspections can be carried out in high-risk sectors.
- 2 Labour providers in all sectors included in the schemes should at a minimum be licensed to ensure early identification of abuses and to enable swift licence revocation for breaches of standards.
- 3 Migrant workers under these programmes should have access to public funds.
- 4 All temporary migrant workers should be provided with information on their labour rights and support options to help identify, raise and seek remedy for cases of abuse.
- 5 Government should establish a new 24 hour multilingual helpline for workers on TMPs.
- 6 Government should establish Bilateral Labour Agreements with all sending countries in which the protection of workers' rights is embedded.

#### For the Seasonal Workers Pilot only:

- 1 Workers must be able to change employers freely and under reasonable terms.
- 2 Wages and working conditions should be established by a standard-setting board which includes worker representation.
- 3 The resources of the Gangmasters and Labour Abuse Authority (GLAA) should be extended to enable it to fully monitor overseas labour providers, pro-actively inspect labour sites and contribute to evaluating the risk to workers throughout the pilot.

In December 2018, the UK government published its immigration white paper, outlining its plans for the UK's future immigration system.<sup>3</sup> The immigration white paper includes two TMPs:

- A Seasonal Workers Pilot to bring a limited number of temporary migrants from outside the EEA<sup>4</sup> to come and work in UK agriculture for six months within any 12-month period
- A 12-month scheme, as a transitional measure, to bring workers “at any skill level” from specified “low-risk” countries to come and work in the UK for a maximum of 12 months without the possibility for immediate extension.

Lessons from other TMPs around the world and historically within the UK show that migrant workers are at higher risk of abuse or exploitation due to common risks in these schemes' designs, including: lack of access to public funds, restrictions on migrant workers' movement within the labour market, language barriers amongst temporary workers, lack of knowledge of local labour law and lack of localised support, such as trade union membership. In recognition of these real and substantial risks to temporary migrant workers, the International Labour Organisation (ILO) – the United Nations agency which oversees the Forced Labour Convention – has cautioned that “the proliferation of temporary migration schemes should not lead to the curtailment of the rights of migrant workers.”<sup>5</sup> Due to the well-documented abuses under TMPs, introducing such schemes risks creating a two-tiered labour market in the UK with citizens and those on long-term visas on the upper tier, with access to a full range of labour rights and state support, and temporary migrant workers on the lower tier with limited access to support for tackling poor working conditions and, as a result, left at a high risk of abuse and exploitation.

TMPs are significantly more restrictive than free movement, which grants EEA migrants the same employment rights as citizens, pathways to settlement and family reunification, and the possibility of switching jobs and moving freely from one sector to another. Under free movement, qualifying EEA nationals have access to tax credits and welfare benefits such as social

housing and job seekers' allowance, which makes it easier to leave exploitative working or living situations, including situations of domestic violence, without fear of destitution.<sup>6</sup> EEA nationals also have the option of taking up or combining part-time and short-term work, a strategy for supplementing income in low-wage, seasonal or precarious jobs, or balancing paid work with unpaid care responsibilities. The TMPs with which the government is proposing to replace free movement are much more restrictive, being time limited, without entitlements to “public funds or rights to extend a stay, switch to other routes, bring dependants or lead to permanent settlement”.<sup>7</sup>

FLEX does not support migration policy which serves to limit the rights of migrant workers, thereby placing them at risk of abuse and exploitation. In doing so, FLEX is fully committed to assisting the UK to meet the aims of the United Nations Sustainable Development Goal 8.8 which calls for all countries to “protect labour rights and promote safe and secure working environments for all workers, including migrant workers”<sup>8</sup>. Therefore, this paper engages with the TMPs as set out in the immigration white paper but calls into question how migrant workers' labour rights can be upheld as the schemes are currently conceived, making strong recommendations for change in order to prevent their abuse and exploitation.

<sup>3</sup> UK Home Office. 2018. 'The UK's future skills-based immigration system.' <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

<sup>4</sup> EEA = European Economic Area; that is, European Union countries and additionally, Liechtenstein, Norway, Iceland and Switzerland.

<sup>5</sup> Martin, P. International Labour Organisation. 2007. 'Towards effective temporary worker programs: issues and challenges in industrial countries.' [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_201427.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_201427.pdf)

<sup>6</sup> Kyambi, S. et al. 2018. 'Choices ahead: Approaches to lower skilled labour migration after Brexit'. <https://bit.ly/2K2kAyR>

<sup>7</sup> UK Home Office. 2018. 'The UK's future skills-based immigration system.' <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

<sup>8</sup> United Nations General Assembly. 2015. 'Transforming our world: the 2030 Agenda for Sustainable Development.' [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)

## THE TWO NEW TEMPORARY MIGRATION PROGRAMMES (TMPs)

	SEASONAL WORKERS PILOT*	12 MONTH TEMPORARY SHORT-TERM WORKER ROUTE
<b>SECTOR</b>	Agriculture/horticulture	Any
<b>SOURCE COUNTRIES</b>	All countries outside EEA	To be announced – will include ‘low risk’ countries with which UK has negotiated migration commitments and mobility proposals
<b>DURATION</b>	Six months within any 12 months	12 months, with a 12 month ‘cooling off period’ to prevent long-term working or permanent settlement.
<b>CAP</b>	2,500 workers per year	No cap; government reserves right to introduce one
<b>VISA FEE</b>	£244 per person (£189 for citizens of Macedonia or Turkey)**	Yes – precise amount to be announced but government intends to increase the charge incrementally each year
<b>LICENSING BODY</b>	Gangmasters & Labour Abuse Authority (GLAA)  Any labour provider anywhere in the world outside the EEA can send workers under this scheme if they have first obtained a licence from the GLAA	No licensing body  The Home Office will issue visas to workers who will apply individually to come to the UK under the scheme; there will be no licensing of labour providers (outside the sectors licensed by the GLAA) though it is highly likely providers will be used
<b>OPERATORS</b>	UK: Concordia UK and Pro-Force Limited	None – see above
<b>ACCESS TO PUBLIC FUNDS</b>	None	None
<b>RIGHT TO BRING DEPENDANTS</b>	None	None
<b>PATHWAYS TO PERMANENT SETTLEMENT</b>	None	None

\* UK Home Office. 2018. ‘Statement of Changes in Immigration Rules HC1779.’ [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/764738/Immigration\\_Rules\\_-\\_11\\_December\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/764738/Immigration_Rules_-_11_December_web.pdf)

\*\* This visa cost has not been confirmed by government but is based on other visa costs under Tier-5.

### WHAT IS THE PROBLEM?

#### *High risk of labour abuses and exploitation in TMPs*

Some migrant workers face substantial challenges in the UK labour market which may increase their risk of labour abuse and exploitation. These include barriers or obstacles to their integration caused by stigma, poverty or isolation which can have an impact on their awareness of labour rights and comprehension of the English language. There can also be a reluctance amongst some migrant workers to join trade unions and for trade unions to organise migrant workers, particularly short-term migrants. Finally,

the conditions in which some migrants work can leave them isolated if, for example, they work unsociable hours or in remote locations.<sup>9</sup> Evidence from lower waged TMPs around the world has consistently identified abuse and exploitation, including workers not receiving pay, minimum wage violations, unpaid overtime, fraudulent job offers and high fees charged by recruitment agencies, poor accommodation and violations of health and safety standards.<sup>10</sup>

<sup>9</sup> Migration Observatory. 2018. ‘Exploiting the opportunity? Low-skilled work migration after Brexit.’ <https://migrationobservatory.ox.ac.uk/resources/reports/exploiting-the-opportunity-low-skilled-work-migration-after-brexite/>

<sup>10</sup> Ibid.

## Key concerns for the UK's planned TMPs include:

### 1. Debt bondage

TMPs present a high risk of debt bondage, a practice similar to slavery. An individual in debt bondage is usually held in a labour situation through their forced acceptance of an obligation to pay an inflated or artificial debt. Some workers may not have their debt artificially inflated but still be forced to work for a specific employer to pay off the debts associated with travel, visa and recruitment fees, risking labour abuse and, at the extreme, forced labour. Today, it is estimated by the ILO that around 50% of victims of forced labour in the private economy are in debt bondage.<sup>11</sup>

The risk of debt bondage is present in TMPs because workers will need to pay visa and flight fees to come to the UK and may additionally be charged recruitment fees by labour brokers overseas, even though these are illegal in the UK. An evaluation of the former UK Sectors Based Scheme found workers paying over £10,000 to secure a job.<sup>12</sup> Where workers cannot pay these costs upfront, they are often packaged into loans by labour brokers or other intermediaries with artificially inflated interest rates on repayment. Workers may then be required to pay back those fees before being paid their wages, in part or in full. Clearly, if workers are effectively tied into an employment relationship via debt bondage, they will be unable to leave abusive situations or they will risk failing to repay their loan. There is also a risk that additional costs (such as accommodation fees) might be forced upon them, further increasing their indebtedness.

### 2. Poverty, with attendant increased risk of modern slavery

The previous Seasonal Agricultural Workers Scheme, which ran in the UK from shortly after the Second World War until 2013, was known to have frequent instances of labour abuse and exploitation.<sup>13</sup> Research has found workers on multiple previous UK TMPs not receiving the full pay due and working unpaid overtime.<sup>14</sup> FLEX

<sup>11</sup> International Labour Organisation and Walkfree Foundation. 2017. 'Global estimates of modern slavery, forced labour and forced marriage.' [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf)

<sup>12</sup> Migration Observatory. 2018. 'Exploiting the opportunity? Low-skilled work migration after Brexit.' <https://migrationobservatory.ox.ac.uk/resources/reports/exploiting-the-opportunity-low-skilled-work-migration-after-brexite/>

<sup>13</sup> Association of Labour Providers. 2009. 'Seasonal Agricultural Workers Scheme 2009.' <https://labourproviders.org.uk/wp-content/uploads/2012/11/ALP-Paper-Seasonal-Agricultural-Workers-Scheme-2009-July-2009.pdf>

<sup>14</sup> Migration Observatory. 2018. 'Exploiting the opportunity? Low-

skilled work migration after Brexit.' <https://migrationobservatory.ox.ac.uk/resources/reports/exploiting-the-opportunity-low-skilled-work-migration-after-brexite/>

believes that, under the Seasonal Workers Pilot, contracts are likely to be zero hours. The 12-month scheme is also likely to provide zero hours contracts rather than fixed hours due to the prevalence of these types of contracts in the sectors in which workers will likely find employment, such as care, hospitality and cleaning. Zero hours contracts are recognised to cause and contribute to in-work poverty in the UK.<sup>15</sup>

Additionally, neither of the two TMPs set out in the immigration white paper provide workers with access to public funds. If employers fail to pay the legal wage rates or withhold pay entirely, this can leave workers impoverished and potentially destitute as they will also not be able to access public funds. This may, in turn, lead to increased rates of human trafficking and forced labour as homelessness increases risks of exploitation.<sup>16</sup>

### 3. Multiple dependencies leading to inability to leave exploitative employers

Reliance on an employer or third party, such as a labour provider not only for work, but also for accommodation, transportation, food and often information about employment rights makes leaving them or making a complaint much more difficult. Migrant workers who leave or lose their job may find themselves unemployed, homeless and destitute. This is particularly true where workers are nearing the end of their visa term as new employers are less likely to take them on due to its imminent expiration. This is evident in the experience of those within the UK on the 'overseas domestic worker visa'. Since 2016, workers entering the UK on this visa have been allowed to change employers whilst here. However, as the visa lasts only six months and no extension is available when changing an employer, the main domestic worker support charity, Kalayaan, highlights that "it is almost impossible to place domestic workers for periods of six months or less."<sup>17</sup> In practice, this means workers facing labour abuse are effectively tied to their employer or risk deportation or destitution.

skilled work migration after Brexit.' <https://migrationobservatory.ox.ac.uk/resources/reports/exploiting-the-opportunity-low-skilled-work-migration-after-brexite/>

<sup>15</sup> Joseph Rowntree Foundation. 2014. 'Zero hours contracts are just one part of the UK's in-work poverty problem.' [www.jrf.org.uk/press/zero-hours-contracts-are-just-one-part-uk-s-work-poverty-problem](http://www.jrf.org.uk/press/zero-hours-contracts-are-just-one-part-uk-s-work-poverty-problem)

<sup>16</sup> Homeless Link. Undated. 'Modern slavery and human trafficking: guidance for frontline services.' <https://www.homeless.org.uk/our-work/resources/modern-slavery-human-trafficking>

<sup>17</sup> Kalayaan. 2016. 'Kalayaan briefing on the government response to the independent review of the overseas domestic worker visa.' <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-briefing-on-Government-response-to-Independent-Review-of-ODW-visa.pdf>

#### 4. No access to public funds

Under the two new TMPs proposed by the government, migrant workers will not have access to public funds. Restricting such access, including to essential services such as homelessness assistance and welfare benefits, can create extreme vulnerability among low-paid migrant workers, leaving them with no real choice to leave abusive or exploitative situations as the alternative is destitution if they cannot immediately find new paid work.

#### 5. Low knowledge of rights and language; limited support networks

Because their stay in the UK is limited to a short timeframe, temporary migrant workers are less likely to know their rights and understand the immigration and employment systems, making them more vulnerable to exploitation. They are also less likely to develop the language skills and support networks that would increase resilience to exploitation. Migrant workers in the UK are known to be at greater risk of exploitation if they do not speak English.<sup>18</sup> Language skills are crucial for workers to access information about their rights and to seek assistance when needed, particularly as the services available to provide this information, such as the Advisory, Conciliation and Arbitration Service (ACAS), predominantly provide information, tools and telephone support only in English, with limited multilingual support.

### GOVERNMENT ACKNOWLEDGES RISKS OF EXPLOITATION IN TMPs

After intensive work by FLEX in partnership with parliamentarians, the government has now acknowledged the high risk of exploitation within TMPs. On 27th November 2018, during an oral evidence session with the Home Affairs Select Committee, Home Secretary Sajid Javid confirmed that concerns around debt bondage within the Seasonal Workers Pilot were “very reasonable” and he noted that the UK government remains committed to tackling modern slavery. He stated that the government would keep this issue in mind during the design of the pilot and committed to including the risks of debt bondage in the evaluation of the pilot.<sup>19</sup>

<sup>18</sup> Consterdine, E. and Samuk, S. 2015. ‘Closing the Seasonal Agricultural Workers Scheme: A triple loss’. <https://bit.ly/2lRzgmw>

<sup>19</sup> FLEX. 2018. ‘FLEX ensures Home Secretary will protect post-Brexit farmworkers from debt bondage.’ <https://www.labourexploitation.org/news/flex-ensures-home-secretary-will-protect-post-brexit-farmworkers-debt-bondage>

Further to this, on 17th December 2018, the Minister for Immigration Caroline Nokes confirmed in response to a parliamentary question about the Seasonal Workers Pilot that “ensuring the protection and wellbeing of participating migrant workers is of primary importance”.<sup>20</sup> Two days later, the government published its immigration white paper, ‘The UK’s future skills-based immigration system’, which stated regarding the Seasonal Workers Pilot that “there needs to be proper monitoring of conditions of employment to avoid exploitation of workers”.<sup>21</sup>

**However, to date, the government has provided no information on what actions it will take to protect workers participating in either programme from the risks of exploitation.**

### WHAT NEEDS TO BE DONE?

FLEX advocates a post-Brexit migration system which enables migrant workers to enter the UK with clear protections in place for their rights under UK labour law and a commitment to upholding their human rights. The International Organisation for Migration, the global lead agency on migration, warns that TMPs “may enable some unscrupulous employers to offer jobs at inferior working conditions...allowing an almost unlimited trade-off between migrants’ rights and economic gains”.<sup>22</sup> This is of particular concern in labour markets with weak labour inspectorates and complaints mechanisms for ensuring widespread application of employment and labour law, such as the UK.<sup>23</sup> There is a real risk that labour rights for this cohort of migrant workers will be patchy at best and that temporary migrant workers with limited knowledge of rights, trade union support or local networks are treated as a ‘disposable workforce’ liable to be abused. This will be exacerbated under the 12-month scheme by the required 12-month ‘cooling off’ period, meaning workers will not be allowed to return to the UK

<sup>20</sup> Theyworkforyou. 2018. ‘Gangmasters and Labour Abuse Authority – Home Office written question.’ <https://www.theyworkforyou.com/wrans/?id=2018-12-11.201231.h&s=afzal+khan+2018-12-13..2019-01-03#g201231.q0>

<sup>21</sup> UK Home Office. 2018. ‘The UK’s future skills-based immigration system.’ <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

<sup>22</sup> Ruhs, M. Global Commission on International Migration. 2005. ‘The potential of temporary migration programs for future international migration policy.’ [https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy\\_and\\_research/gcim/tp/TP3.pdf](https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP3.pdf)

<sup>23</sup> Osborne, H. The Guardian. 2016. ‘A day in the life of a care worker: 23 house calls in 12 hours for £64.80.’ <https://www.theguardian.com/uk-news/2016/nov/17/day-in-the-life-of-a-care-worker-zero-hours-contracts>

for one year. This will create a continuous churn of low waged workers with limited access to support or rights. In order to prevent this race to the bottom, FLEX recommends a future migration system in which migrant workers have pathways towards long-term work and permanent residency.

However, if the UK is to introduce two TMPs as part of its post-Brexit immigration regime, the government must take steps to ensure the risks of labour abuse and exploitation are minimised. FLEX welcomes the decision by government not to use 'tied visas' which tie workers to specific employers; however, there are a number of further measures needed to provide necessary protections during design and implementation of these schemes, including ensuring that workers are able to change employers in practice.

## KEY RECOMMENDATIONS

To mitigate risks faced by workers on TMPs the government should, at a minimum, take the following steps.

*For both proposed TMPs:*

**1** Labour inspectorates should have their resources and remit increased to ensure the pro-active enforcement of labour law and targeted inspections can be carried out in high-risk sectors.

Due to the inherent risks in TMPs, labour inspection and labour law enforcement should be greatly increased in order to prevent abuse and exploitation. The UK currently has one of the poorest resourced labour inspectorates in Europe, less than half the ILO's recommended ratio of one inspector per 10,000 workers.<sup>24</sup> UK labour inspection relies predominantly on worker complaints to trigger investigations<sup>25</sup> which is problematic: the most at-risk workers are the least likely to make complaints, in addition to language barriers making migrant workers less likely to do so.

FLEX recommends that UK labour inspectorates' resources are increased to reach the ILO recommended ratio of one inspector per 10,000 workers at a minimum. Additionally, we

recommend that regular pro-active investigations are undertaken into the working conditions experienced under these two TMPs to evaluate whether abuse or exploitation are present, to hold abusive and exploitative employers to account, to prevent them from using migrant workers' vulnerabilities to undercut wages and working conditions and to provide workers with routes to remedy.

**2** Labour providers in all sectors included in the schemes should, at a minimum, be licensed to ensure early identification of abuses and to enable swift licence revocation for breaches of standards.

To prevent deception in recruitment, including the charging of recruitment fees that could lead to debt bondage, the GLAA's licensing of labour providers should be extended from agriculture to other high-risk sectors, including construction, cleaning, hospitality and care work. These sectors are considered 'high-risk' due to significant levels of outsourcing and subcontracting; flexible or insecure work arrangements, such as zero hours contracts, agency work and false/dependent self-employment; isolated working conditions; accommodation on site; low wages and/or piece-rate payments; and limited power of workers due to low or no unionisation and ease of replacement.

The GLAA has proven itself effective in identifying and preventing trafficking for labour exploitation through its licensing system, and there have been repeated calls from civil society organisations and domestic and international bodies for its remit to be extended.<sup>26</sup> The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) in its 2012 report on the UK recommended that the GLAA's licensing function be extended to sectors such as hospitality (including catering companies and hotels) and construction.<sup>27</sup>

<sup>24</sup> FLEX. 2017. 'Risky Business: tackling exploitation in the UK labour market.' <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>

<sup>25</sup> Metcalf, D. HM Government. 'United Kingdom Labour Market Enforcement Strategy 2018/19.' [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf)

<sup>26</sup> FLEX. 2013. 'Preventing Trafficking For Labour Exploitation, Working Paper 01.'; Centre for Social Justice. 2013. 'It Happens Here.'; Migration Advisory Committee. 2014. 'Migrants in Low Skilled Work.'

<sup>27</sup> Group of Experts on Action against Trafficking in Human Beings. 2012. 'Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom.' [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/greta\\_report\\_united\\_kingdom\\_2012\\_en\\_0.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/greta_report_united_kingdom_2012_en_0.pdf)

## LICENSING OF LABOUR PROVIDERS

Licensing is one of the ways in which governments can regulate labour recruitment and placement agencies. Under a licensing system, private labour recruiters and employment agencies must request a licence from a government body. The licence is only granted if certain conditions are met, such as documented proof of financial capability, compliance with tax and VAT regulations, and respect for health and safety and employment standards. A licence is generally renewed as long as conditions are still met; otherwise it can be withdrawn. Licensing implies that the government establishes special administrative procedures to regularly inspect agencies, measures compliance and imposes sanctions in the case of non-compliance. In some countries, certain types of agencies are required to have a licence while others may come under a general registration scheme.<sup>28</sup>

### 3 Migrant workers under these programmes should have access to public funds.

Under current plans, workers under both proposed schemes will not have access to public funds. This is likely to mean they will not be able to access welfare benefits, housing assistance, free healthcare or homelessness assistance. People without access to these support services are at high risk of destitution and frontline services may find it difficult to provide them with support due to the limited options available.<sup>29</sup> This creates extreme risk of abuse and exploitation among migrant workers and could leave many on TMPs with no real option to leave abusive or exploitative situations as, if they cannot immediately find new employment, they will risk destitution. In turn, this creates a two-tier labour market: the upper tier comprised of those with citizenship or visa statuses which enable people to access state support and therefore able to leave exploitative situations; and the lower tier of workers which unscrupulous businesses will view as having little choice but to stay in abusive

<sup>28</sup> Andrees, B., Nasri, A., and Swiniarski, P. 2015. 'Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities.' [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_377813.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf)

<sup>29</sup> Homeless Link. Undated. 'Supporting people with no recourse to public funds.' <https://www.homeless.org.uk/our-work/resources/supporting-people-with-no-recourse-to-public-funds>

situations, thereby leaving them open to abuse and exploitation.<sup>30</sup>

### 4 All temporary migrant workers should be provided with information on their labour rights and support options to help identify, raise and seek remedy for cases of abuse.

All workers in the UK under the TMPs set out in the immigration white paper should be provided with information about UK labour rights and laws, a list of recognised support providers including contacts for legal services and migrant support organisations as well as trade unions, with clear pathways provided for them to report abuse safely if it is encountered.

For those coming to the UK under the Seasonal Workers Pilot, this information should be provided to them pre-departure via the labour provider they are working with in their home country. The ILO<sup>31</sup> and the International Organisation for Migration<sup>32</sup> both recommend that migrant workers be provided with pre-departure training on living and working abroad.

For those coming to the UK under the 12-month scheme, this information should be provided within the first week of all work contracts. In its December 2018 Good Work Plan, the government committed to legislating for all workers to be provided with a written statement detailing the conditions of work from day one.<sup>33</sup> However, this does not currently include information about general UK labour laws and rights, nor routes to make complaints about mistreatment or seek support.<sup>34</sup>

### 5 Government should establish a new 24 hour multilingual helpline for workers on TMPs.

There is little provision of labour rights advice for those who do not have a good level of English, except for the charity-run Modern Slavery Helpline which does provide translators of most

<sup>30</sup> TUC Commission on Vulnerable Employment. 2008. 'Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment'. <https://bit.ly/1NFjkl0>

<sup>31</sup> International Labour Organisation. 2014. 'Need for pre-departure information and training for migrant workers stressed'. <https://bit.ly/2NgWltC>

<sup>32</sup> International Organisation for Migration. Undated. 'Best practices: IOM's migrant training/Pre-departure orientation programs' <https://bit.ly/2OvWknM>

<sup>33</sup> Department for Business, Energy and Industrial Strategy. 2018. 'Good Work Plan.' <https://www.gov.uk/government/publications/good-work-plan>

<sup>34</sup> Ibid.

common foreign languages. However, many workers may not self-identify as a ‘modern slave’ or may need advice on lower level forms of abuse. Additionally, labour inspection in the UK currently relies predominantly on complaints to guide resources and investigations. It is therefore crucial that there is a clear route for workers on TMPs to report issues in order to identify and prosecute abuse and provide remedy. The government should establish a new 24-hour helpline for migrant workers with support available in the most commonly spoken languages by these workers. This helpline would need to be trusted by workers and so mechanisms should be established to ensure that workers may report all types of labour abuse anonymously.

## 6 Government should establish Bilateral Labour Agreements with all sending countries in which the protection of workers’ rights is embedded.

The 12-month transitional scheme will be in operation for selected ‘low risk’ countries with which the government has negotiated migration commitments and mobility proposals. These countries and the nature of these commitments have not yet been announced. In contrast, the Seasonal Workers Pilot will be open to workers from any country outside the EEA. For both schemes, FLEX recommends that government establish Bilateral Labour Agreements (BLAs) which embed protection of migrant workers’ rights. This would ensure:

- i. the agreements with countries participating in the 12-month scheme have anti-abuse and anti-slavery objectives in their design, and;
- ii. the countries participating within the Seasonal Workers Pilot are limited to those with BLAs in place and therefore the GLAA is better able to perform its licensing and monitoring function to ensure labour standards are met.

BLAs are recognised by the ILO as having the potential to protect the rights of migrant workers.<sup>35</sup> In particular, it is recognised that BLAs may assist in preventing deceptive recruitment practices and the charging of recruitment fees which is a key risk of TMPs.<sup>36</sup> Any BLAs entered

<sup>35</sup> International Labour Organisation. Undated. ‘Research brief: Bilateral agreements and memoranda of understanding on migration of low skilled workers: a review.’ [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/genericdocument/wcms\\_357389.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/genericdocument/wcms_357389.pdf)

<sup>36</sup> International Labour Organisation. 2014. ‘Fair Migration: setting an ILO agenda.’ [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_242879.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_242879.pdf)

into by the UK should have regard to normative international standards on labour and migrants’ rights and embed these firmly within both content and implementation. Additionally, the ILO recommends that BLAs should include practices relating to gender concerns, social dialogue (i.e. the inclusion of workers’ organisations such as trade unions in negotiations and monitoring) and the prohibition of confiscation of travel and identity documents.<sup>37</sup> The Canada Bilateral Labour Arrangement with Mexico on agricultural workers sets out a number of conditions aimed at avoiding risks noted above, such as minimum hours per week, the requirement for the employer to pay for travel and work permits which is then deducted from the first week’s pay according to a clear cap on the amount and the payment of an advance to cover personal expenses of workers if no work is available. It also stipulates conditions to ensure wages may not go below specific levels.<sup>38</sup>

## For the Seasonal Workers Pilot only:

### 1 Workers must be able to change employers freely and under reasonable terms.

Tying workers to one employer is well-recognised as exacerbating the risk of exploitation for migrant workers. FLEX understands that under the Seasonal Workers Pilot, workers will be able to change employer as their visa will be tied to one of two UK Pilot Operators, Concordia UK and Pro-Force Limited, and these operators will not be allowed to be employers.

However, the terms under which a worker can change employer are crucial to ensuring portability is possible in practice. Workers should be given time to find new work while they are in the UK, as is the case for UK Tier-2 workers who have 60 days to find new work<sup>39</sup> and temporary migrant workers in Sweden who usually have 90 days.<sup>40</sup>

<sup>37</sup> International Labour Organisation. Undated. ‘Research brief: Bilateral agreements and memoranda of understanding on migration of low skilled workers: a review.’ [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/genericdocument/wcms\\_357389.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/genericdocument/wcms_357389.pdf)

<sup>38</sup> Government of Canada. 2013. ‘Agreement for the employment in Canada of seasonal workers from Mexico.’ [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/legaldocument/wcms\\_382417.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/legaldocument/wcms_382417.pdf)

<sup>39</sup> Sumption, M. and Fernandez Reino, M. 2018. ‘Exploiting the Opportunity? Low-Skilled Work Migration After Brexit.’ <https://bit.ly/2PkWPAV>

<sup>40</sup> Emilsson, Henrik. Nordic Journal of Migration Research, 4(3):134-143. 2014. ‘Who Gets in and Why? The Swedish Experience with Demand Driven Labour Migration – Some Preliminary Results.’



**2** Wages and working conditions should be established by a standard-setting board or other mechanism which includes worker representation.

Wages and working conditions for the Seasonal Workers Pilot should be set by relevant stakeholders, including government, worker representatives and employer representatives. This is particularly crucial for seasonal workers such as those coming under the Seasonal Workers Pilot: migrant workers under the previous SAWS reported being misled about the amount of work available, leading them to earn too little and therefore being left with no money to travel home.<sup>41</sup> This can be avoided through collectively agreed standards, such as requirements to offer minimum weekly working hours or a guaranteed period of work.

### CASE STUDY: COLLECTIVE AGREEMENT TO PROTECT SEASONAL BERRY PICKERS IN SWEDEN

Wages and working conditions for seasonal berry pickers employed through overseas labour providers are regulated through a specially designed collective agreement between the trade union Kommunal and the Federation of Swedish Forest and Agricultural Employers.<sup>27</sup> The agreement was set up in 2014, when it became apparent that the general collective agreement for 'temporary work agencies' was not effective at protecting seasonal berry pickers and an agreement adapted to the specific circumstances of seasonally employed migrant berry pickers was needed. The new agreement clarifies what wage deductions are permitted: employers must cover all costs related to transportation from accommodation to worksite, protective clothing, gloves and tools to facilitate picking, but may make deductions for food and accommodation of normal standard at cost price.<sup>42</sup>

In recognition of the inherent risk factors associated with work in the agricultural sector, wages and conditions in the agricultural sector

were set by worker-represented Agricultural Wages Boards (AWBs) throughout the UK from 1948 to 2013. However, in 2013, the same year as the SAWS ended, the AWB for England and Wales was abolished, leaving only those in Scotland and Northern Ireland in operation.<sup>43</sup> Research by Unite the Union showed that less than a year after the AWB was abolished, the majority of agricultural workers surveyed had not received the pay rise to which they would have been entitled had it not been abolished and many reported that entitlements such as sick pay had been withdrawn.<sup>44</sup>

Now that the largest AWB in the UK is no longer operational, it is particularly important that wages and working conditions for the proposed pilot temporary migration scheme are set in cooperation with worker and employer representatives. As a recent Migration Observatory report noted, temporary migration schemes can provide an opportunity to set higher standards than have previously existed.<sup>45</sup> Doing so would also help to prevent the use of temporary migration to undercut existing wages and conditions.

**3** The resources of the Gangmasters and Labour Abuse Authority (GLAA) should be extended to enable it to fully monitor overseas labour providers, pro-actively inspect labour sites and contribute to evaluating the risk to workers throughout the pilot.

The GLAA has an extensive role under the Seasonal Workers Pilot: it must license the two UK operating companies and it must also license any overseas labour providers which wish to send workers here under this route. This will require the GLAA to work across a very wide geographical spread, understanding local labour laws in potentially every country outside the EEA, and to monitor the adherence of overseas labour providers to GLAA licensing standards. It is crucial that the GLAA is resourced properly to do this as it will be an important mechanism for preventing labour exploitation, such as ensuring that recruitment fees are not being charged overseas which is prohibited under GLAA licensing.

<sup>41</sup> Association of Labour Providers. 2009. 'Seasonal Agricultural Workers Scheme 2009.' <https://labourproviders.org.uk/wp-content/uploads/2012/11/ALP-Paper-Seasonal-Agricultural-Workers-Scheme-2009-July-2009.pdf>

<sup>42</sup> Herzfeld Olsson, P. 2018. 'Towards protection of vulnerable labour migrants in Sweden: The case of the Thai berry pickers' in Rijken, C. and de Lange, T. (eds.). Amsterdam University Press. 2018. 'Towards a decent labour market for low-waged migrant workers.'

<sup>43</sup> Scotland and Northern Ireland kept their boards, whilst Wales established an Agricultural Advisory Panel. The Panel has the same function as a wages board but is less independent as it must submit its orders for approval by Welsh Ministers.

<sup>44</sup> Blagg, H. 2016. 'Work with the board: Unite condemns attacks on Scottish AWB.' <https://bit.ly/2NPuF3Y>

<sup>45</sup> Sumption, M. and Fernandez Reino, M. 2018. 'Exploiting the Opportunity? Low-Skilled Work Migration After Brexit.' <https://bit.ly/2PkWPAV>

At present, the government has made no public statements or commitments to increase GLAA resources to enable them to undertake this high resource function.

## CASE STUDY: ENFORCEMENT OF PAY AND CONDITIONS AND THE FORMER UK SEASONAL AGRICULTURAL WORKERS SCHEME

The SAWS was managed by nine approved operators on behalf of the UK Border Agency. These operators were not only in charge of recruiting participants and allocating them to employers, but also of monitoring their pay and working conditions.<sup>46</sup> The Gangmasters Licencing Authority (GLA, now the Gangmasters and Labour Abuse Authority) registered multiple operators and had the power to conduct inspections and make referrals to other enforcement authorities. Despite these measures, different investigations reported cases of underpayment of wages, long working hours, no days off or rest and poor living conditions. One study uncovered a strawberry picker earning £6 after working for three to four hours,<sup>47</sup> while another described migrants working in isolated environments, and living under poor conditions without the ability to change employers due to their tied-visa limitations.<sup>48</sup>

<sup>46</sup> Migration Advisory Committee. 2013. 'Migrant Seasonal Workers: The impact on the horticulture and food processing sectors of closing the Seasonal Agricultural Workers Scheme and the Sectors Based Scheme'. <https://bit.ly/2NhoiHt>

<sup>47</sup> Rogaly, B. 2008. 'Intensification of workplace regimes in British horticulture: the role of migrant workers'. *Population, Space and Place*. 14(6). <http://sro.sussex.ac.uk/11584/>

<sup>48</sup> López-Sala, A. et al. 2016. *Temper Working Paper Series*. 'Seasonal Immigrant Workers and Programs in UK, France, Spain and Italy'. <https://bit.ly/2MKwrPA>