

Focus on Labour Exploitation (FLEX)

Written submission to the Immigration Bill Committee

29th October 2015

Background to FLEX

1. FLEX works towards an end to 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 by undertaking research, advocacy and by building awareness in this field. FLEX is a registered charity, number 1159611.

Submission Summary

2. This submission sets out key definitions of relevance in considering the role of the Director of Labour Market Enforcement set out in Part One of the Immigration Bill for clarity. The submission also sets out key laws and regulations of relevance to modern slavery indicators to be considered within the remit of the Director. Finally it argues that victims of modern slavery will be made more vulnerable to exploitation by the Clause 8 'offence of illegal working'.

Definitions

Human Trafficking

3. Human trafficking is an internationally recognised human rights violation and crime. The international prohibition on trafficking is found in the UN Human Trafficking Protocol which states:
"“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.’¹
4. This definition of trafficking is commonly broken down into three elements, which helps to remember and explain it clearly:
 - ACT: recruitment; transportation; transfer; harbouring; receipt.
 - MEANS: threat; force; coercion; abduction; fraud; deception; abuse of power; giving or receiving payments or benefits.
 - PURPOSE: exploitation.
5. The crime of trafficking in persons therefore occurs when an ACT is undertaken through the use of one of the MEANS listed, in order to achieve an EXPLOITATIVE PURPOSE. This means, for example, victims of trafficking could be recruited through the means of coercion for the purpose of exploitative labour.

¹ Article 3, United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). The two primary European prohibitions on trafficking, Council of Europe Convention on Action Against Trafficking in Human Beings (European Trafficking Convention) and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (EU Trafficking Directive), also follow the UN prohibition almost word-for-word.

6. The key aspect of this crime is the use of coercive techniques to control victims, so that they may be exploited for financial or other gain. The victim's choice (to work or not to work) is removed and the exploiter controls the victim's activities and movements.
7. Trafficking for purposes of exploitation is often divided into two categories - trafficking for sexual exploitation and trafficking for labour exploitation. The term 'labour exploitation' refers to exploitation of a person's labour in industries other than the sex industry, including construction, agriculture and domestic work.
8. While the UK is a party to the UN Human Trafficking Protocol, and uses the international definition to identify victims under the National Referral Mechanism (NRM) for victims of trafficking, the trafficking provision in Section 2 of the Modern Slavery Act differs from the Protocol, and focuses on the 'movement' aspect of trafficking. It prohibits: 'the arrangement or facilitation of travel' into, within, or out of the UK with the intention to exploit.

Slavery and Forced Labour

9. Slavery and forced labour are forms of labour exploitation that are included in the definition of trafficking, and are also crimes in their own right.
10. The UK has made slavery, servitude and forced labour a crime under Section 1 of the Modern Slavery Act 2015.
11. Slavery is defined in the UN Slavery Convention of 1926 as:
The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
12. This is not restricted to the 'legal' ownership of a person but includes all situations where a person is treated as if they are owned e.g. being bought, sold, and forced to work without pay.
13. Forced labour is defined in the International Labour Organisation's Forced Labour Convention of 1930 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.
14. The 'menace of any penalty' can include physical and psychological abuse, threats of abuse, threats to report to authorities, and non-payment of substantial wages owed and "relates to the freedom of the worker to leave the abusive employment".
15. The fact that a person willingly entered work initially does not prevent it from becoming forced labour if the worker is subsequently unable to leave.

UK laws and regulations relevant to modern slavery indicators

16. Despite the wide range of laws and regulations in place to protect workers' rights in the UK, vulnerable workers continue to face abuse. FLEX hears of cases in the UK where workers are not paid for weeks at a time, forced to work long unsociable hours without corresponding remuneration, made to work without a contract and

of widespread abuse due to migrant status.² The enforcement of labour laws would prevent such cases from developing in to severe exploitation, and yet in the UK pro-active inspections have been reduced, meaning protections for workers are limited.

LAW/REGULATION	MODERN SLAVERY INDICATORS ³
National Minimum Wage Act 1998; National Minimum Wage Regulations 2015	Low or no salary; wage manipulation; withholding of wages
Gangmasters (Licensing) Act 2004; Gangmasters (Licensing Conditions) Rules 2009	Threat to impose worse working conditions; confiscation of documents; violence on victims; withholding of wages; isolation; bad living conditions.
Employment Rights Act 1996	No respect of labour laws or contract signed; No social protection; very bad working conditions
Equality Act 2010	Violence on victims; Abuse of lack of education/information; Abuse of undocumented status; Threat of denunciation to authorities; confiscation of documents.
Employment Agencies Act 1973; The Conduct of Employment Agencies and Employment Businesses Regulations 2003	Debt Bondage; withholding of wages.
Health and Safety at Work etc. Act 1974; Management of Health and Safety at Work Regulations 1999;	Hazardous work; very bad working conditions
Working Time Regulations 1998; Maternity and Parental Leave Regulations 1999; Statutory Sick Pay Regulations 1982	Excessive working days or hours; withholding of wages.

Indicators of modern slavery

17. The UK National Referral Mechanism for victims of modern slavery, referral form lists a series of indicators for modern slavery. Three indicators included in this list link directly to the abuse of an individual's status in order to control and coerce them in to exploitation:

1. Distrustful of authorities
9. Passport or documents held by someone else
16. Threat of being handed over to authorities ⁴

18. These aspects of modern slavery are central to FLEX's opposition to the Clause 8 'offence of illegal working'. FLEX believes this offence would mean: a) that many victims of modern slavery in the UK would not risk referral in to the UK national

² FLEX correspondence with potential victims of trafficking for labour exploitation and focus groups with organisations working with potential and actual victims of trafficking for labour exploitation between February-November 2014.

³ International Labour Organisation, 2009, Operational Indicators of Trafficking in Human Beings, Indicators of trafficking of adults for labour exploitation.

⁴ National Referral Mechanism form for potential adult victims of modern slavery (England and Wales), available at: <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms>

referral mechanism if a negative conclusive grounds decision could mean imprisonment; and b) that traffickers would use this new offence as a threat through which to coerce victims in to exploitation. Clause 8 disempowers vulnerable workers and empowers would-be exploiters.

International Labour Organisation principles of labour inspection

19. The International Labour Organization (ILO) makes clear that the role of labour inspectors is to ensure workers' rights are upheld and protected, not to combat undocumented work.⁵ ILO Convention 81, the Labour Inspection Convention 1947, states that the scope of duties of labour inspectors should be focussed on enforcement and compliance with labour law and notification of abuses of such law. Convention 81, which the United Kingdom has ratified, expressly prohibits labour inspectors from carrying out duties beyond this scope where they interfere with the inspectors' impartial workplace inspections activity. The ability of labour inspectors to gain trust and uncover severe exploitation is critically undermined if their role is extended to include immigration enforcement or conducted in co-operation with immigration officials.

⁵ Ibid.