

# THE RISKS OF EXPLOITATION IN TEMPORARY MIGRATION PROGRAMMES

A FLEX RESPONSE TO THE 2018  
IMMIGRATION WHITE PAPER

**F**OCUS ON  
**L**ABOUR  
**E**XPLOITATION



---

**The risks of exploitation in temporary migration programmes:**  
A FLEX response to the 2018 Immigration White Paper, FLEX 2019

Written by FLEX

Copyright © 2019 Focus on Labour Exploitation.  
All rights reserved.

Cover photo by Pashminu Mansukhani.  
The cover image does not feature individuals in exploitation.

Focus on Labour Exploitation (FLEX) works to end human trafficking  
for labour exploitation. For more information, please visit our  
website: [www.labourexploitation.org](http://www.labourexploitation.org)

---

Funded by



# CONTENTS

Acronyms	4
<b>EXECUTIVE SUMMARY</b>	<b>5</b>
<b>INTRODUCTION</b>	<b>8</b>
<b>1. WHAT IS HUMAN TRAFFICKING FOR LABOUR EXPLOITATION AND WHY ARE MIGRANT WORKERS AT RISK?</b>	<b>10</b>
Human trafficking for labour exploitation	10
How does migration policy make people more vulnerable to exploitation and what is the evidence?	11
How does an individual's migrant status increase their vulnerability to human trafficking for labour exploitation?	12
<b>2. WHAT ARE TEMPORARY MIGRATION PROGRAMMES AND WHY ARE THEY BEING PROPOSED AS PART OF THE UK'S POST-BREXIT MIGRATION POLICY?</b>	<b>16</b>
What are temporary migration programmes?	16
The UK's post-Brexit migration policy	18
<b>3. WHAT RISKS DO TEMPORARY MIGRATION PROGRAMMES POSE TO WORKERS OF EXPLOITATION?</b>	<b>23</b>
<b>4. MEASURES THAT CAN BE TAKEN TO MITIGATE THE RISK OF WORKER EXPLOITATION IN TEMPORARY MIGRATION PROGRAMMES</b>	<b>36</b>
<b>5. CONCLUSION AND RECOMMENDATIONS</b>	<b>45</b>

## ACRONYMS

<b>ALP</b>	Association of Labour Providers
<b>Brexit</b>	Britain's exit from the European Union
<b>EASI</b>	Employment Agencies Standards Inspectorate
<b>EEA</b>	European Economic Area
<b>EU</b>	European Union
<b>FLEX</b>	Focus on Labour Exploitation
<b>GLA</b>	Gangmasters Licensing Authority
<b>GLAA</b>	Gangmasters and Labour Abuse Authority
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>LEAG</b>	Labour Exploitation Advisory Group
<b>NFU</b>	National Farmers Union
<b>SAWS</b>	Seasonal Agricultural Workers Scheme
<b>SBS</b>	Sectors Based Scheme
<b>SWP</b>	Seasonal Workers Pilot
<b>TMPs</b>	Temporary migration programmes
<b>UK</b>	United Kingdom
<b>UNODC</b>	United Nations Organization for Drugs and Crime
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>WRS</b>	Worker Registration Scheme
<b>YMS</b>	Youth Mobility Scheme

# EXECUTIVE SUMMARY

In December 2018, the UK government published its long-awaited Immigration White Paper, entitled *'The UK's future skills-based immigration system white paper'* (the Immigration White Paper),<sup>1</sup> which outlined its plans for a future immigration system after the UK leaves the European Union ('Brexit').

The Government states in the Immigration White Paper that Brexit will mean an end to free movement, thereby bringing EU nationals under domestic immigration control and requiring new visa pathways to allow EU citizens into the UK. Ensuring UK industry has enough workers after Brexit is a key focus of many public and private sector stakeholders and the Immigration White Paper reflects this by proposing three immigration pathways to provide temporary labour, as described in the box below.

## PATHWAYS PROPOSED BY THE IMMIGRATION WHITE PAPER

### 1 Seasonal Workers Pilot

This pilot will bring 2,500 workers per year to the UK from outside the EU to work on farms within edible horticulture on six-month long visas. Workers will not be allowed to return to the UK under the same route for a period of six months ('cooling off period'). The pilot is already operational, having been introduced under Immigration Rules on 11 December 2018 and is referred to within the Immigration White Paper under Section 6. Workers will be tied to a sponsoring operator company who will then send them to an employer farm.

### 2 12-month short-term visa

This proposed new route would allow workers at any skill level to come to work in the UK for a maximum period of 12 months. This would be followed by a 12-month cooling off period during which the person cannot reapply under the scheme. Workers will not be tied to any specific employer, operator or sector. It will be open to people from "low risk" countries only. These countries have not yet been specified by government.

### 3 UK-EU Youth Mobility Scheme

This would be a continuation of the already-existent Youth Mobility Scheme (YMS) though would be amended to take into account "EU specificities". The current YMS allows individuals aged 18 to 30 from eight countries to come to the UK to work or study for up to two years. The visa is non-renewable. To date, the YMS has not been a major source of UK migrant labour.

Chapter 2 of this report describes each of these proposed new routes in detail.

<sup>1</sup> UK Government. 2018. 'The UK's future skills-based immigration system'. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf)

“

Migrant workers, whilst not inherently more vulnerable to labour exploitation than others, can have vulnerabilities created by problematically designed visa routes and in-country policies.”

“

Temporary migration programmes (TMPs) of the types proposed in the Immigration White Paper are well-recognised by international experts to raise the risks of abuse and exploitation.”

Focus on Labour Exploitation (FLEX) recognises that human trafficking for labour exploitation occurs as the result of a range of structural factors and is at the sharp end of a continuum of labour conditions that range from decent work, through lower level labour abuses to forced labour and ‘modern slavery’. Migrant workers, whilst not inherently more vulnerable to labour exploitation than others, can have vulnerabilities created by problematically designed visa routes and in-country policies. Under the United Nations Human Trafficking Protocol, ‘abuse of a position of vulnerability’ is identified as a method by which people can be trafficked. It is defined as intentionally using, or otherwise taking advantage of, an individual’s personal, situational or circumstantial vulnerability to recruit, transport, transfer, harbour or receive that person for the purpose of exploitation.<sup>2</sup> Research by FLEX, the Labour Exploitation Advisory Group (LEAG) and others has shown that when people are put in a position of vulnerability by labour abuses, labour market structures or restrictive immigration policies, they are at higher risk of labour exploitation. Specific factors relevant to migrant workers which may create vulnerabilities and therefore act as drivers of exploitation are detailed in Chapter 1. They include deception in recruitment, insecure migration status, criminalisation of undocumented working and low knowledge of rights and language alongside limited support networks.

Temporary migration programmes (TMPs) of the types proposed in the Immigration White Paper are well-recognised by international experts to raise the risks of abuse and exploitation even further for migrant workers, with key aspects of their design holding the potential to compound vulnerabilities already present. Chapter 3 of this report explores the risks present in TMPs, which include:

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

Despite the numerous and evidenced risks of labour abuse and exploitation in TMPs, there are a number of measures which can be taken to mitigate against them. FLEX welcomes the Government’s decision to ensure that workers are not tied to a specific employer under any of the proposed schemes as tied visas are recognised to drive exploitation by preventing workers from leaving problematic employment. However, there are still significant measures which must be put in place to protect workers coming to the UK under any TMPs after Brexit. The recommendations made in this report would seek to ensure that post-Brexit labour migration programmes are designed with labour protections and access to justice at their centre, ensuring the prevention of exploitation.

<sup>2</sup> United Nations. 2003. ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime’. <https://www.ohchr.org/en/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

## RECOMMENDATIONS TO THE GOVERNMENT ON THE UK'S FUTURE IMMIGRATION SYSTEM

- 1** Remove cooling-off periods between visas and provide pathways to permanent residence and family reunification for migrant workers at all wage levels.
- 2** Increase the resources and remit of labour inspectorates to ensure the enforcement of legislation to prevent forced labour, including labour law.
- 3** Provide migrant workers with access to public funds.
- 4** Provide migrant workers with information on their labour rights and support options to help identify and seek remedy for cases of abuse.
- 5** Establish a multilingual helpline for workers.
- 6** Embed labour protections into the design of any new TMPs proposed
- 7** Integrate trade unions and workers' organisations into the design, governance and evaluation of temporary migration programmes.
- 8** Take steps to eradicate direct and indirect discrimination from TMPs.
- 9** Improve the resources and capacity of Gangmasters and Labour Abuse Authority and the Employment Agencies Standards Inspectorate to oversee labour intermediaries in the UK and overseas.
- 10** Expand the Gangmasters and Labour Abuse Authority's licensing of labour providers to other high-risk sectors.
- 11** Ensure workers do not face barriers to changing employers.

# INTRODUCTION

Focus on Labour Exploitation (FLEX), like many other experts working in the field of human trafficking, understands human trafficking for labour exploitation to be part of a continuum of labour conditions that range from decent work through to poor working conditions and labour abuses and finishing at forced labour and slavery.

Particularly serious labour abuses or a cumulation of labour abuses may be severe enough to constitute labour exploitation or may create the conditions in which labour exploitation occurs. Many national governments, including the UK, have often taken an alternative approach to tackling human trafficking for labour exploitation. Instead of looking at the structural labour market oversights that give rise to exploitation, they have focused almost exclusively on the role of private actors in exploiting vulnerable individuals and have looked to prosecution as the main deterrent to prevent this crime from taking place. In doing so, they often ignore the active role that state policies can play in creating vulnerability to exploitation. However, in establishing the office of the Director of Labour Market Enforcement, the UK government has started acknowledging the need to address abuses across the spectrum, from minor workplace violations to serious exploitation. By addressing the overarching labour market structures that give rise to exploitation, the Government has begun to reveal the impact of poor labour market protections, inadequate enforcement and related gaps in law and policy on creating the conditions within which human trafficking can thrive and which all too often mean that traffickers operate with impunity.<sup>3</sup>

Migration policy and the way in which it can serve to create the conditions which leave migrant workers at risk of exploitation is the focus of this report. In particular, this report builds on previous FLEX work to look in detail at the impact of temporary migration programmes (TMPs) on the risk of migrant worker exploitation. TMPs are defined as migration routes that aim to alleviate labour market shortages without increasing the number of permanent migrants in a country.<sup>4</sup>

In December 2018, the UK government published its long-awaited Immigration White Paper, outlining plans for a future migration system, entitled '*The UK's future skills-based immigration system white paper*' (the Immigration White Paper).<sup>5</sup> The Immigration White Paper reiterates that Britain's exit (Brexit) from the European Union (EU) will mean an end to free movement, bringing EU nationals under domestic immigration control.<sup>6</sup> The Immigration White Paper introduced a single route for workers the Government considers 'highly skilled and skilled' as well as

---

“ Migration policy and the way in which it can serve to create the conditions which leave migrant workers at risk of exploitation is the focus of this report.”

---

<sup>3</sup> Shamir, H. 2017. 'The Paradox of "legality": Temporary migrant worker programs and vulnerability to trafficking'. p.488. In P. Kotiswaran (Ed.), *Revisiting the law and governance of trafficking, forced labour and modern slavery*. Cambridge: Cambridge University Press.

<sup>4</sup> Costa, D. and Martin, P. 2018. 'Temporary labour migration programs: Governance, migrant worker rights, and recommendations for the U.N. Global Compact for Migration'. <https://www.epi.org/publication/temporary-labor-migration-programs-governance-migrant-worker-rights-and-recommendations-for-the-u-n-global-compact-for-migration/>

<sup>5</sup> UK Government. 2018. 'The UK's future skills-based immigration system'. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf)

<sup>6</sup> For the sake of simplicity, the term 'EU nationals' or 'EU migrants' will be used to refer to nationals of all EU countries bar the UK, as well as nationals of Iceland, Lichtenstein, Norway and Switzerland.



‘intermediate level skills’. In addition, it stated the Government’s support for the position taken by the Migration Advisory Committee who oppose the introduction of “a route specifically for low skilled workers”. Yet, in recognition of the need for what the Government termed ‘a transitional measure’ to facilitate industry adjustment to the end of free movement, the Immigration White Paper set out proposals for a 12-month temporary migration programme to bring workers at any skill level from unspecified “low-risk” countries to work in the UK for a maximum of 12 months, followed by a 12-month cooling off period. It also detailed two other schemes which seem ostensibly for the same purpose: an agricultural sector specific ‘Seasonal Workers Pilot’ for a limited number of temporary migrant workers from outside the EU; and a reciprocal UK-EU Youth Mobility Scheme (UK-EU YMS) for British and EU nationals between the ages of 18 and 30 to work or study in each other’s countries for up to two years.

This report will focus primarily on two of these three temporary migration programmes, the Seasonal Workers Pilot, which launched in March 2019, and the 12-month temporary short-term visa. Whilst the proposals for the 12-month visa mean that it could feasibly be used by any employer in any sector employing workers at any skill or wage level, the focus of this report is on migration into low-wage work and the risks to workers therein. This is because FLEX’s analysis shows that workers on higher wages tend to be better protected against the risk of forced labour and human trafficking.

This report provides an in-depth analysis of these two proposed TMPs, alongside case studies of international comparative schemes and schemes used historically in the UK. It seeks to engage productively with the Immigration White Paper consultation and to understand the risks of labour abuse and exploitation associated with the policies proposed by the Government therein. It is vital that all stakeholders, including Government, industry, trade unions and civil society, work together to prevent the establishment of a future migration system that serves to facilitate labour abuse and exploitation and, crucially, does not by its very nature undermine the Government’s modern slavery objectives. This paper intends to inform such a conversation and sets out practical migration policy alternatives where global evidence demonstrates that high risks of exploitation could arise from the policies proposed in the Immigration White Paper.

Throughout the paper we will refer to ‘low-wage’ and ‘high-wage’ rather than ‘low-skilled’ or ‘high-skilled’ work. This is in recognition of the fact that many jobs, particularly those done by women, are deemed low-skilled because they are underpaid, undervalued and under-appreciated and not because they do not require training or skills. In addition, in the UK the term ‘low-skilled’ is often used to refer to workers earning less than the Tier-2 salary threshold of £30,000, despite a significant number of jobs that require formal training and qualifications falling below this wage level. In this context it is more accurate to refer to wages rather than skills when discussing labour migration.<sup>7</sup>

---

“  
It is vital that all stakeholders, including government, industry, trade unions and civil society, work together to prevent the establishment of a future migration system that serves to facilitate labour abuse and exploitation and, crucially, does not by its very nature undermine the Government’s modern slavery objectives.”

<sup>7</sup> There are four occupations that are exempt from the Tier-2 salary threshold: nurses, paramedics, midwives and teachers. Three out of four of these occupations are women-dominated, reflecting the fact that women tend to be concentrated in occupations that do not meet salary thresholds for high-wage migration routes which often offer better rights and protections for workers than temporary routes.

# 1

## WHAT IS HUMAN TRAFFICKING FOR LABOUR EXPLOITATION AND WHY ARE MIGRANT WORKERS AT RISK?

“

One of the key mechanisms through which human trafficking for labour exploitation occurs is through the ‘abuse of a position of vulnerability’.”

### HUMAN TRAFFICKING FOR LABOUR EXPLOITATION

Human trafficking for labour exploitation is trafficking for the purposes of forced labour, slavery or servitude in sectors other than the sex sector. One of the key mechanisms through which human trafficking for labour exploitation occurs is through the ‘abuse of a position of vulnerability’. This concept, established by the United Nations Human Trafficking Protocol, is defined as intentionally using, or otherwise taking advantage of, an individual’s personal, situational or circumstantial vulnerability to recruit, transport, transfer, harbour or receive that person for the purpose of exploitation.<sup>8</sup> There are a number of forms that the abuse of vulnerability can take. The United Nations Office on Drugs and Crime’s Guidance Note on ‘abuse of a position of vulnerability’ gives the following examples:

- personal vulnerability may relate to a person’s physical or mental disability;
- situational vulnerability may relate to a person being undocumented in a country where they are socially or linguistically isolated, and;
- circumstantial vulnerability may relate to a person’s unemployment or economic destitution.<sup>9</sup>

Research by FLEX, the Labour Exploitation Advisory Group (LEAG) and others shows how people are put in a position of vulnerability – and subsequently at higher risk of trafficking for labour exploitation – by labour abuses and labour market structures that restrict their rights and opportunities.<sup>10</sup> Labour abuses, such as non-payment of minimum wages, non-payment of holiday or sick leave and withholding of wages, can directly create vulnerability to exploitation by impacting a person’s ability to leave or report abusive or exploitative situations.<sup>11</sup> Where a person is in poverty and struggling to pay their rent or their bills, they are less likely to complain of abuse for fear of losing the little income they have to survive. This is particularly true if they do not believe that complaining will improve their situation or lead to meaningful financial or other remedy.<sup>12</sup>

<sup>8</sup> United Nations. 2003. ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime’. <https://www.ohchr.org/en/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

<sup>9</sup> UN Office on Drugs and Crime. 2012. ‘Guidance Note on ‘abuse of a position of vulnerability’ as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime’. p.2. [https://www.un.org/ruleoflaw/files/UNODC\\_2012\\_Guidance\\_Note\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability\\_E.pdf](https://www.un.org/ruleoflaw/files/UNODC_2012_Guidance_Note_-_Abuse_of_a_Position_of_Vulnerability_E.pdf)

<sup>10</sup> FLEX. 2017. ‘Risky Business: Tackling exploitation in the UK labour market’. pp.6-12. <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>; LEAG. 2016. ‘Labour Exploitation Advisory Group (LEAG) position paper: Labour compliance to exploitation and the abuses in-between’. <https://www.labourexploitation.org/publications/labour-exploitation-advisory-group-leag-position-paper-labour-compliance-exploitation>; Skrivankova, K. 2010. ‘Between decent work and forced labour: Examining the continuum of exploitation’. <https://www.jrf.org.uk/report/between-decent-work-and-forced-labour-examining-continuum-exploitation>

<sup>11</sup> LEAG. 2016. ‘Labour Exploitation Advisory Group (LEAG) position paper: Labour compliance to exploitation and the abuses in-between’. p.4 <https://www.labourexploitation.org/publications/labour-exploitation-advisory-group-leag-position-paper-labour-compliance-exploitation>

<sup>12</sup> *Ibid.*

“

The link between a person’s migrant status and their vulnerability to human trafficking for labour exploitation is internationally recognised.”

Structures that increase vulnerability to exploitation by restricting workers’ rights and opportunities include restrictive labour migration policies; the use of precarious employment models, such as dependent self-employment<sup>13</sup>, agency work and zero-hours contracts<sup>14</sup>; the decline in sector-wide collective bargaining and increased obstruction to worker organising; extensive subcontracting and layers in supply chains that make it difficult to know against whom rights should be enforced; limited access to, or availability of, welfare services, such as homelessness assistance or unemployment support; deregulation of the labour market and the poor oversight and enforcement of labour rights, among others.<sup>15</sup>

The vulnerabilities created by labour abuses and other structural factors often intersect with other vulnerabilities, including those stemming from gender inequality, poverty and migrant status, reducing workers’ resilience to exploitation. For example, being paid at or below the minimum wage will increase most workers’ vulnerability to exploitation, but it will have a particularly negative effect for workers who are also single parents or carers, have limited financial security or no access to social safety nets like homelessness assistance, unemployment benefits or tax credits. Similarly, having no guaranteed working hours will create insecurity and uncertainty for most workers, but temporary migrant workers whose visa conditions only allow them to work for one specific employer will be less resilient if their hours are cut and are at higher risk of destitution as a result.

## HOW DOES MIGRATION POLICY MAKE PEOPLE MORE VULNERABLE TO EXPLOITATION AND WHAT IS THE EVIDENCE?

The link between a person’s migrant status and their vulnerability to human trafficking for labour exploitation is internationally recognised.<sup>16</sup> Factors that generate vulnerability and impact the ability of migrant workers to access or enforce their rights may relate to a person’s identity or circumstances and can occur in the country of origin, in transit, or at destination.<sup>17</sup> It is important to note that migrants are not inherently vulnerable or lacking in agency or resilience. Instead, vulnerability to exploitation results from “multiple and intersecting forms of discrimination, inequality and structural and societal dynamics that lead to diminished and unequal levels of power and enjoyment of rights”.<sup>18</sup> It is the existence of these diminished and unequal levels of power and rights that enables human trafficking for labour exploitation.

<sup>13</sup> Dependent self-employment, also referred to as ‘false’ or ‘bogus’ self-employment, is when employees are falsely classified as self-employed by employers in order to circumvent collective agreements, labour laws, tax or insurance contributions and other employer liabilities. See ILO. 2017. ‘Dependent self-employment: Trends, challenges and policy responses in the EU’. [https://www.ilo.org/employment/Whatwedo/Publications/working-papers/WCMS\\_614176/lang-en/index.htm](https://www.ilo.org/employment/Whatwedo/Publications/working-papers/WCMS_614176/lang-en/index.htm)

<sup>14</sup> Rolfe, H. and Hudson-Sharp, N. 2016. ‘The impact of free movement on the labour market: case studies of hospitality, food processing and construction’. <https://bit.ly/2KtrCxl>

<sup>15</sup> See FLEX. 2017. ‘Risky Business: Tackling exploitation in the UK labour market’. pp.6-12. <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market> for further details.

<sup>16</sup> See the European Court of Human Rights’ ruling in *Chowdury and Others v. Greece* (App. no. 21884/15), ECHR, 30 March 2017; IOM. 2018. ‘IOM handbook: Protection and assistance for migrants vulnerable to violence, exploitation and abuse’. [https://www.unodc.org/documents/human-trafficking/GLO-ACT/IOM\\_Handbook\\_on\\_Protection\\_ADV\\_COPY\\_1.PDF](https://www.unodc.org/documents/human-trafficking/GLO-ACT/IOM_Handbook_on_Protection_ADV_COPY_1.PDF); UNOHCHR. 2018. ‘Principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations’. <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>; and UNODC. 2013. ‘Issue Paper: Abuse of a Position of Vulnerability and other “means” within the definition of trafficking in persons’. p.15 [https://www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Issue\\_Paper\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability.pdf](https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf)

<sup>17</sup> UN OHCHR. 2018. ‘Principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations’. p.5. <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>

<sup>18</sup> *Ibid.* p.6

## Box 1. Abuse of migrant workers' undocumented status for the purpose of forced labour

In 2017, the European Court of Human Rights (the Court) made a landmark ruling on the case of *Chowdury and Others v Greece*<sup>19</sup>. It was the first case under Article 4(2) of the European Convention on Human Rights – the right not to be subject to forced labour – where the Court found that the exploitation of undocumented migrant workers amounts to forced labour.<sup>20</sup> The applicants to the case were 42 undocumented Bangladeshi nationals in Greece, who had been recruited to work on a strawberry farm. They were promised wages of €22 per seven-hour working day, with an additional €3 for each overtime hour. However, the Bangladeshi nationals worked much longer hours (7am to 7pm) under the supervision of armed guards, lived in appalling conditions and were never paid their wages. They continued to work as they feared that if they left, they would never be paid. The workers had gone on strike a few times previously and, when their employer recruited new migrants to replace them, demanded their wages again. This led to an altercation during which one of the armed guards opened fire, injuring several of the complainants.

The Court found that the employer had taken advantage of the vulnerability stemming from their workers' undocumented status – and the associated risk of being arrested and detained to be deported – to exploit them for forced labour. The Court also recognised that consent is irrelevant in a case in which a person's position of vulnerability is abused. Where an employer abuses power or takes advantage of the vulnerability of their workers in order to exploit them, the workers do not offer themselves for work voluntarily.

<sup>19</sup> European Court of Human Rights. 2017. 'Chowdury and Others v. Greece (App. no. 21884/15)'. <http://hudoc.echr.coe.int/eng?i=001-172701>

<sup>20</sup> Stoyanova, V. 2017. 'Irregular migrants and the prohibition of slavery, servitude, forced labour and human trafficking under Article 4 of the ECHR'. <https://www.ejiltalk.org/irregular-migrants-and-the-prohibition-of-slavery-servitude-forced-labour-human-trafficking-under-article-4-of-the-echr/#more-15156>

“

FLEX finds that a worker's migrant status is a relevant indicator of vulnerability to human trafficking for labour exploitation where that status impacts their ability to access or enforce their labour rights.”

FLEX finds that a worker's migrant status is a relevant indicator of vulnerability to human trafficking for labour exploitation where that status impacts their ability to access or enforce their labour rights.<sup>21</sup> Research by LEAG has found that relevant factors include language barriers; lack of awareness of labour rights; not knowing where to seek help; lack of trust in authorities; insecure immigration status; discrimination; no recourse to public funds; limited employment opportunities; and an over-representation in work that is insecure, low-wage, informal, non-unionised and/or isolated.<sup>22</sup> The following section explains these factors in more detail and how the vulnerability they create can be abused for the purpose of exploitation.

### HOW DOES AN INDIVIDUAL'S MIGRANT STATUS INCREASE THEIR VULNERABILITY TO HUMAN TRAFFICKING FOR LABOUR EXPLOITATION?

#### RECRUITMENT DEBT AND DEBT BONDAGE

Debt is one of the key drivers of labour exploitation, as workers become dependent on their employer to pay back loans. There are a number of ways in which individuals may accrue debt as part of the migration process. Migrant workers often have to pay a number of upfront costs to secure a job abroad, including visa fees, health surcharges and

<sup>21</sup> FLEX. 2017. 'Risky Business: Tackling exploitation in the UK labour market'. p.6. <https://bit.ly/2A1xTun>

<sup>22</sup> See FLEX and Labour Exploitation Advisory Group (LEAG). 2017. 'Lost in Transition: Brexit and Labour Exploitation'. pp.5-6. <http://www.labourexploitation.org/sites/default/files/publications/LEAG%20POSITION%20Impacts%20of%20Brexit-Final.pdf>

travel costs. Migrant workers may also be charged recruitment fees by employers or labour intermediaries for arranging travel, entry, access to work or accommodation, despite these being illegal in many countries, including the UK. The longer the recruitment chain, the more difficult it is to ensure that such costs are not being charged. These costs can be prohibitive, particularly for low-wage workers, leading people to take loans or use up their savings in order to migrate.

Where workers cannot pay the price of migrating or securing a job abroad upfront, the costs 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, increasing the hold their employer has on them.<sup>23</sup> Individuals may also borrow money from family or friends, or use their savings to secure a job, creating pressure to stay in exploitative situations in order to make their investment worthwhile and avoid disappointing those at home.

“

Today, it is estimated by the International Labour Organization (ILO) that around 50% of victims of forced labour in the private economy are in debt bondage.”

Recruitment debt can easily lead to debt bondage, a form of forced labour. 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 International Labour Organization (ILO) that around 50% of victims of forced labour in the private economy are in debt bondage.<sup>24</sup> If workers are effectively tied into an employment relationship via debt bondage, they will be unable to leave abusive situations or 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.

## DECEPTION IN RECRUITMENT

Deception in recruitment is another key factor in creating vulnerability to exploitation and one that is closely linked to debt bondage. Third-party recruiters are often the only source of employment information available to migrants, making it easy for them to lie about the nature of jobs and conditions of work.<sup>25</sup> Migrant workers may be misled about the hours and/or the number of days of work available; wages and working conditions; housing and living conditions; legal documentation and legal migration status; recruitment costs; and travel and recruitment conditions, among other things.<sup>26</sup> Where workers have been lied to about their potential earnings, they may be more willing to pay recruitment fees and other costs to secure a job.

Migrants recruited into the UK agriculture sector under free movement were promised full-time work and opportunities for overtime, which never emerged:

<sup>23</sup> Dwyer, P. et al. 2011. 'Forced labour and UK immigration policy: status matters?'. [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/forced\\_labour\\_and\\_uk\\_immigration\\_policy\\_status\\_matters\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/forced_labour_and_uk_immigration_policy_status_matters_1.pdf)

<sup>24</sup> Alliance 8.7. 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>25</sup> ILO. 2016. 'Forced labour: Deceptive recruitment and coercion'. <https://www.ilo.org/infostories/en-GB/Stories/Forced-Labour/Deceptive-Recruitment-and-Coercion#introduction-deceptive-recruitment-and-coercion>

<sup>26</sup> ILO. Undated. 'Details of indicators for labour exploitation.' [https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_105035.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105035.pdf)

“In two weeks I worked five days. Only five days. I’ve reached a stage where I no longer have money to eat. And I’ve got colleagues who don’t have anything to eat. They beg for a slice of bread. That’s how bad things are.”<sup>27</sup>

The same investigation found that workers were being lied to about their accommodation by their recruitment agency. Workers had been shown pictures of a holiday park for tourists, but in reality they were housed in dirty, unhygienic, and cramped caravans with blocked toilets and leaking roofs:

“I was told one thing over the phone and when I arrived here the reality was very different. Toilet? In the Caravan? No. Water? There’s water leaking every time it rains. The conditions are lamentable.”<sup>28</sup>

## INSECURE MIGRANT STATUS AND THE CRIMINALISATION OF UNDOCUMENTED WORKING

Another widely recognised factor that makes migrant workers vulnerable to exploitation is an individual’s migrant status within their country of destination.<sup>29</sup> Where workers fear arrest or imprisonment due to being undocumented, employers may leverage a migrant worker’s status to exploit them by threatening to report the individual to immigration authorities if they complain about the labour abuse or try to leave.<sup>30</sup> It also impacts workers who are documented, as they may be unsure of their rights or fear that they will be penalised for speaking up. Irregular migrant status can also lead to workers accepting any employment, including employment where they might be exploited, because their options are limited.

In addition, the criminalisation of undocumented workers and the failure to separate labour market enforcement from immigration enforcement creates conditions in which migrant workers are made more vulnerable to forced labour and human trafficking. Workers are highly unlikely to report abuses if there is a risk that the information they provide could lead to an investigation that could result in them losing their right to work.<sup>31</sup> The sharing of information between immigration enforcement and labour market enforcement agencies, combined with the fact that a migrant workers’ undocumented status makes their employment contract void, put migrant workers at considerable risk of exploitation.

## LACK OF ACCESS TO PUBLIC FUNDS

Restricting access to essential services such as homelessness assistance and welfare benefits can create extreme vulnerability among migrant workers, leaving them with no real choice to leave abusive or exploitative situations, as the alternative is often homelessness and destitution if

“

Workers are highly unlikely to report abuses if there is a risk that the information they provide could lead to an investigation that could result in them losing their right to work.”

<sup>27</sup> Channel 4 News. 2015. ‘How agricultural workers are lured to the UK’. Accessed: 19 February 2019. <https://www.youtube.com/watch?v=8TF6Umo2HSQ>

<sup>28</sup> *Ibid.*

<sup>29</sup> UNODC. 2013. ‘Issue Paper: Abuse of a Position of Vulnerability and other “means” within the definition of trafficking in persons’. p.15 [https://www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Issue\\_Paper\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability.pdf](https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf)

<sup>30</sup> FLEX and Labour Exploitation Advisory Group (LEAG). 2017. ‘Lost in Transition: Brexit and Labour Exploitation’ p.12. <http://www.labourexploitation.org/sites/default/files/publications/LEAG%20POSITION%20Impacts%20of%20Brexit-Final.pdf>

<sup>31</sup> FLEX. 2017. ‘Risky Business: Tackling exploitation in the UK labour market’. p.26. <https://bit.ly/2A1xTun>

they cannot immediately find new paid work.<sup>32</sup> This may, in turn, lead to increased rates of human trafficking and forced labour as homelessness increases risks of exploitation.<sup>33</sup>

## MULTIPLE DEPENDENCIES

Being reliant on an employer (or third parties, such as gangmasters or agencies) not only for work, but also for accommodation, transportation, food, information, and/or other necessities, makes leaving an exploitative situation or making a complaint much more difficult. Workers who leave or lose their job may find themselves unemployed and homeless. This is compounded if migrants do not have access to social welfare such as housing assistance or unemployment benefits.<sup>34</sup>

## LOW KNOWLEDGE OF RIGHTS AND LANGUAGE; LIMITED SUPPORT NETWORKS

Migrant workers in the UK can often find themselves isolated without support networks, facing language barriers and without information available about employment rights and how to access them. This reduces migrants' resilience to labour abuses and creates vulnerability to exploitation. Migrant workers in the UK are known to be at greater risk of exploitation if they do not speak English.<sup>35</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.

“

Migrant workers in the UK can often find themselves isolated without support networks, facing language barriers and without information available about employment rights and how to access them.”

<sup>32</sup> TUC Commission on Vulnerable Employment. 2008. 'Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment'. [http://www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf)

<sup>33</sup> Homeless Link. 2018. 'Modern slavery and human trafficking: Guidance for homelessness services'. <https://www.homeless.org.uk/sites/default/files/site-attachments/Modern%20Slavery%2C%20Human%20Trafficking%20and%20Homelessness%202018.pdf>

<sup>34</sup> Dwyer, P. et al. 2011. 'Forced labour and UK immigration policy: status matters?'. [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/forced\\_labour\\_and\\_uk\\_immigration\\_policy\\_status\\_matters\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/forced_labour_and_uk_immigration_policy_status_matters_1.pdf)

<sup>35</sup> Consterdine, E. and Samuk, S. 2015. 'Closing the Seasonal Agricultural Workers Scheme: A triple loss'. <https://bit.ly/2lRzgmw>

# 2

## WHAT ARE TEMPORARY MIGRATION PROGRAMMES AND WHY ARE THEY BEING PROPOSED AS PART OF THE UK'S POST-BREXIT MIGRATION POLICY?

### WHAT ARE TEMPORARY MIGRATION PROGRAMMES?

“

The defining feature of TMPs is that leave to remain is granted for a fixed period of time only, ranging from several months to a few years.”

“

However, analyses of previous and existing programs show how TMPs often lead to worker exploitation.”

Temporary migration programmes are migration schemes that aim to alleviate labour market shortages without increasing the number of permanent migrants in a country.<sup>36</sup> TMPs have been widely used by higher-income countries to recruit migrant workers into largely low-paid work for limited stays and with restricted access to rights. The defining feature of TMPs is that leave to remain is granted for a fixed period of time only, ranging from several months to a few years, after which workers must return to their country of origin or apply for a new visa. Many, but not all TMPs, use sponsored or ‘tied’ visas, making participants’ right to work and stay in a country dependent on a specific employer or labour provider. Other common features of TMPs include multiple dependencies on employers, such as the requirement to stay in employer-provided accommodation; limited or no family reunification rights; limited or no access to benefits and public services; and no pathways to permanent residence. TMPs are generally designed for specific sectors and are particularly common in agriculture and food processing, though they have also been used in care, construction and hospitality.<sup>37</sup>

TMPs can be seen as a ‘triple win’ that meet the interests of three parties: destination countries gain by filling labour market gaps; countries of origin gain from remittances and the alleviation of un- or under-employment; and migrants themselves gain from access to higher earnings and skills development.<sup>38</sup> However, analyses of previous and existing programmes show how TMPs often lead to worker exploitation.<sup>39</sup> As adopted in other countries and in past schemes in the UK, TMPs have also been criticised for undercutting wages and working conditions by allowing industries to implement wages and conditions for migrant workers that would not be acceptable to the resident workforce.<sup>40</sup> They provide a steady turnover of new migrants with fewer rights than national workers; less knowledge of the rights they do have; higher barriers to enforcing these rights; and limited support networks and bargaining power. The International Organisation for Migration, the United Nations migration agency, warns that TMPs “may enable some unscrupulous employers to offer jobs at inferior working conditions... allowing an almost unlimited trade-off

<sup>36</sup> Costa, D. and Martin, P. 2018. ‘Temporary labour migration programs: Governance, migrant worker rights, and recommendations for the U.N. Global Compact for Migration’. <https://www.epi.org/publication/temporary-labor-migration-programs-governance-migrant-worker-rights-and-recommendations-for-the-u-n-global-compact-for-migration/>

<sup>37</sup> See for example the Live-in Caregiver Programme in Canada; the H-2 Guestworker Program in the United States; and the Sectors Based Scheme in the UK.

<sup>38</sup> Barker, F. 2017. ‘Maximising the migration policy buck: Uniting temporary labour, development and foreign policy goals in New Zealand’. <https://www.tandfonline.com/doi/full/10.1016/j.polsoc.2010.09.008>

<sup>39</sup> Mayer, R. 2005. ‘Guestworkers and exploitation’. *The Review of Politics*. 67(2). pp.311-334; Shamir, H. 2017. ‘The Paradox of “legality”: Temporary migrant worker programs and vulnerability to trafficking’. p.488. In P. Kotiswaran (Ed.), *Revisiting the law and governance of trafficking, forced labour and modern slavery*. Cambridge: Cambridge University Press; Strauss, K., and McGrath, S. 2017. ‘Temporary migration, precarious employment and unfree labour relations: exploring the ‘continuum of exploitation’ in Canada’s temporary foreign worker program’. *Geoforum*. Vol. 78: 199–208.

<sup>40</sup> Preibisch, K. 2010. ‘Pick-your-own labour: Migrant workers and flexibility in Canadian agriculture’. *International Migration Review*. 44(2).



“

TMPs can be seen as a way of “gaining workers while keeping down social costs by keeping people in situations of disadvantage through the denial of citizenship rights.”

between migrants’ rights and economic gains”.<sup>41</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 in the UK.<sup>42</sup>

At their worst, TMPs can be seen as a way of “gaining workers while keeping down social costs by keeping people in situations of disadvantage through the denial of citizenship rights”.<sup>43</sup> Employing migrant workers through restrictive and temporary migration schemes means there is no need for employers to cover social costs like family commitments (pregnancy, child care, care of the elderly), skills training or other ways of retaining staff. Temporary migrants do not enjoy the same social or political rights associated with citizenship: they cannot vote, stand for election or access social benefits.<sup>44</sup> This has significant implications, as migrant workers are often unable to change the structural conditions under which they are employed.

TMPs are significantly more restrictive than free movement, which currently grants EU migrants in the UK the same employment rights as local workers, pathways to settlement and family reunification, and the possibility of switching jobs and moving freely within the labour market. Under free movement, qualifying EU nationals have access to tax credits and welfare benefits such as housing assistance and jobseekers’ allowance, which makes it easier to leave exploitative working or living situations, including situations of domestic violence, without fear of destitution.<sup>45</sup> EU nationals also have the option of switching between or combining different part-time and short-term jobs, a potential strategy for supplementing income in low-wage, seasonal or precarious jobs, or of balancing paid work with unpaid care responsibilities. The same is rarely possible under TMPs, where people are usually limited to working for a specific employer or sector and are barred from bringing their dependents.

While some of the features associated with TMPs, such as tied visas, are also common in ‘high-skilled’ migration programmes such as the UK’s Tier-2 visa route, they are less likely to lead to exploitation in those programmes. Tied visas are more problematic in low-wage jobs where workers are more easily replaced and there are unfavourable wages and working conditions. Employer-sponsored migrant workers in higher wage sectors tend to have better bargaining power owing to specialised or scarce skills and enjoy more secure, permanent and full-time employment contracts. They also tend to receive higher wages, which can give them the financial capacity to leave their job even if they do not have a new employment offer. Those in low-wage sectors with inferior employment conditions and lower pay may find it harder to leave their job due to financial concerns and, knowing they can be easily replaced or have their hours cut, face greater pressure to maintain their existing employment relationship. In turn, this makes them more vulnerable to mistreatment.<sup>46</sup>

<sup>41</sup> Rhus, M. 2005. ‘The potential of temporary migration programmes in 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>42</sup> FLEX. 2017. ‘Risky Business: Tackling exploitation in the UK labour market’. <https://bit.ly/2A1xTun>

<sup>43</sup> Castles, S. and Davidson, A. 2000. p.119 in Hennebry, J. L. and Preibisch, K. 2010. ‘A model for managed migration? Re-examining best practices in Canada’s Seasonal Agricultural Worker Program’. *International Migration*. Vol 50.

<sup>44</sup> Preibisch, K. 2010. ‘Pick-your-own labour: Migrant workers and flexibility in Canadian agriculture’. *International Migration Review*. 44(2). p.413.

<sup>45</sup> Kyambi, S. et al. 2018. ‘Choices ahead: Approaches to lower skilled labour migration after Brexit’. <https://bit.ly/2K2kAyR> p.7

<sup>46</sup> Wright, C.F., Groutsis, D. and van den Broek, D. 2016. ‘Employer-sponsored temporary labour migration schemes in Australia, Canada and Sweden: enhancing efficiency, compromising fairness?’.

## THE UK'S POST-BREXIT MIGRATION POLICY

The 2018 Immigration White Paper states that the Government does not plan to open a dedicated route for 'unskilled' labour in recognition of "the public's view...that lower skilled migrant labour may have depressed wages or stifled innovation in our economy"<sup>47</sup>. Instead, three new TMPs are being piloted or proposed by the UK government to fulfil continued demand in certain sectors for low-wage labour migration after Brexit. The following sections explain the characteristics of each of these programmes in as much detail as is available to date. All three programmes are at design stage: the 12-month temporary short-term visa programme and UK-EU Youth Mobility Scheme are currently being discussed by the Home Office with five key stakeholder groups along with other aspects of the Immigration White Paper. The Seasonal Workers Pilot is also included in this consultation process and will be reviewed upon its conclusion at the end of two years of operation in order to assess the need for and inform the design of a future seasonal workers scheme for the agricultural sector.

### a) THE SEASONAL WORKERS PILOT

In September 2018, the UK Government announced a two-year Seasonal Workers Pilot (SWP or "the pilot") to bring 2,500 workers per year from outside the EU to work on UK farms on six-month visas. The stated aim of the pilot is to alleviate labour shortages in the agriculture sector during peak production periods and "keep the horticulture industry productive and profitable".<sup>48</sup> It was designed within a short timeframe without consultation of key stakeholders and will now be evaluated without the engagement of worker representatives. The pilot went live in March 2019.

The scheme is operated by two labour providers, Concordia UK and Pro-Force Limited, who are recruiting workers from outside the EU<sup>49</sup> and placing them with employers in the UK. Based on conversations with UK Government representatives, workers can ask their operator to change employers, but there is no guarantee that such requests will be fulfilled or respected, particularly towards the end of a worker's visa period. Workers on the scheme will have to pay a £244 visa fee, their travel costs and for accommodation (capped at £49 per week) once on site. They will also have to provide bank statements showing they have had at least £945 in savings in their bank account for 90 days before applying to the scheme, unless their scheme operator has agreed to provide them with food and accommodation for the first month.<sup>50</sup> Participants will have no right to take on permanent employment, get public funds, bring family members with them or do work that is not described in their certificate of sponsorship. While workers will have access to free medical care from a GP or hospital in an emergency under the National Health Service (NHS), these and other medical services may be chargeable and must be covered by the workers' health insurance policy.<sup>51</sup>

<sup>47</sup> UK Government. 2018. 'The UK's future skills-based immigration system'. p.51. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf)

<sup>48</sup> UK Government. 2018. 'New pilot scheme to bring 2,500 seasonal workers to UK farms'. <https://bit.ly/2QfkN27>

<sup>49</sup> The countries of origin that have been confirmed with FLEX at the time of publication are Moldova, Russia and Ukraine.

<sup>50</sup> UK Government. 2019. 'Temporary Worker – Seasonal Worker Visa (Tier 5)'. <https://www.gov.uk/tier-5-seasonal-worker-visa/eligibility>

<sup>51</sup> See Q513. House of Commons Scottish Affairs Committee. 23 April 2019. 'Oral evidence: The future of Scottish agriculture post-Brexit'. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/scottish-affairs-committee/the-future-of-scottish-agriculture-post-brexit/oral/100514.pdf>

“  
It was designed within a short timeframe without consultation of key stakeholders and will now be evaluated without the engagement of worker representatives.”

“

Workers may still not have a guaranteed right to change employers in practice as they will have to gain their operator’s permission to do so.”

In the Seasonal Workers Pilot Request for Information<sup>52</sup>, the Government sets out its expectations of any potential Pilot Operators, including that they will protect migrant workers from modern slavery and other labour abuses. Potential operators must explain the arrangements they will put in place to ensure the safety and protection of participating workers, including how they will monitor that they are treated fairly by their employer, are paid properly, allowed time off and are housed in hygienic and safe accommodation, among other things. While this is a positive step to protect workers on the scheme, these arrangements are not being made public, which makes it difficult to assess whether the measures implemented by the Pilot Operators are sufficient.

There are some key differences between the SWP and the previous version of this scheme, the Seasonal Agricultural Workers Scheme (SAWS), which ended in 2013 (see Chapter 3 for more detail on this).<sup>53</sup> Whereas the SAWS was a contractual agreement between the Home Office and the scheme operators, the SWP will be operated under the terms and conditions of the immigration system, meaning the Home Office will decide whether to grant a visa or not. Workers will be recruited under the Tier-5 (Temporary Worker) Seasonal Worker category of the immigration system and must meet associated conditions (such as paying the £244 visa fee) and mandatory eligibility requirements that were not in place for the SAWS. The SWP is significantly smaller in scale than the SAWS, with a quota of only 2,500 workers per year compared to 25,000 workers under the SAWS at its peak. The Pilot will be managed by only two operators compared to nine under the SAWS.

Interestingly, while under the SAWS growers were licensed to recruit their own workers, under the SWP operators are only allowed to recruit workers for dispersal to other companies and may not source workers for employment within their own businesses. Organisations like the Association of Labour Providers (ALP) have advocated for this change as a way of preventing workers from being tied to one employer.<sup>54</sup> This is an improvement on the previous scheme but, as noted above, workers may still not have a guaranteed right to change employers in practice as they will have to gain their operator’s permission to do so.

#### **b) THE PROPOSED 12-MONTH ‘TEMPORARY SHORT-TERM VISA’**

The Immigration White Paper set out plans for a new route for ‘temporary short-term workers’ at any skill level to come to work in the UK for a maximum period of 12 months. This would be followed by a mandatory 12-month cooling off period – to prevent ‘long-term working’ – during which the person cannot reapply. The visa is not intended to be tied to a specific employer or sector, meaning workers should be able to move freely within the labour market. This is an important and highly welcome measure for preventing labour exploitation.

The Government has said it will set restrictions on nationalities and possibly numbers accessing the scheme. Only people from ‘low-risk’ countries “with whom the UK negotiates an agreement concerning their

<sup>52</sup> UK Government. 2018. ‘Seasonal Workers Pilot Request for Information’. <https://www.gov.uk/government/publications/seasonal-workers-pilot-request-for-information/seasonal-workers-pilot-request-for-information>

<sup>53</sup> *Ibid.*

<sup>54</sup> ALP. 2017. ‘Building a model Seasonal Agricultural Workers’ Scheme’. <https://labourproviders.org.uk/wp-content/uploads/2017/05/Building-a-Model-Seasonal-Workers-Scheme-ALP-Position-Paper-July-2017.pdf>

“

According to the Immigration White Paper, workers on this temporary short-term visa will have no right to access public funds, bring dependents, access the NHS (beyond emergency care), extend their visa or switch to another visa route.”

supply of labour, including returns arrangements” will be eligible.<sup>55</sup> The scheme is intended as a transitional measure that will be kept under review; the Government plans to work with the Migration Advisory Committee (MAC), business and local community representatives to consider by 2025 whether it should be discontinued. This timeframe is meant to give employers enough time to change their business practices so as not to need migrant workers for low-wage work.

According to the Immigration White Paper, workers on this temporary short-term visa will have no right to access public funds, bring dependents, access the NHS (beyond emergency care), extend their visa or switch to another visa route. This is said to reflect the “typical requirements of these individuals” as “those coming for shorter periods do not generally require such entitlements”.<sup>56</sup> Workers will have to pay a yet-to-be-determined visa fee and they may have to pay the Immigration Health Surcharge, which was doubled in December 2018 to £400 per year.<sup>57</sup> The Immigration White Paper also proposes that the visa fee charged to workers be increased “incrementally each year that the route operates to incentivise businesses to reduce their reliance on migrant labour”.<sup>58</sup> This is a worrying proposal as there is substantive evidence to show that costs related to migration can put workers at high risk of exploitation, particularly when workers are forced to pay fees to access jobs that are low-wage and insecure (see Chapter 1 on recruitment debt and debt bondage). It is unlikely that charging migrant workers to access work through the 12-month scheme will disincentivise people from using the scheme or act as a disincentive for employers.

### c) UK-EU YOUTH MOBILITY SCHEME

The Immigration White Paper proposes establishing a new UK-EU Youth Mobility Scheme (UK-EU YMS) to “ensure that young people can continue to enjoy the social, cultural and educational benefits of living in the EU and the UK”.<sup>59</sup> It proposes that the scheme would be very similar to the existing YMS (see box 2 below) while taking into account “EU specificities”. It is not clear at this stage whether the UK-EU YMS could serve as a large source of labour migration post-Brexit or remain a relatively minor migration route, as the current YMS has been until now.

<sup>55</sup> UK Government. 2018. ‘The UK’s future skills-based immigration system’. p.52. <https://www.google.com/search?q=immigration+white+paper&ie=utf-8&oe=utf-8&client=firefox-b-ab>

<sup>56</sup> *Ibid.* p.52.

<sup>57</sup> UK Home Office. 2018. ‘Increase to Immigration Health Surcharge gives NHS extra funding’. <https://www.gov.uk/government/news/increase-to-immigration-health-surcharge-gives-nhs-extra-funding>

<sup>58</sup> UK Government. 2018. ‘The UK’s future skills-based immigration system’, p.52. <https://www.google.com/search?q=immigration+white+paper&ie=utf-8&oe=utf-8&client=firefox-b-ab>

<sup>59</sup> *Ibid.* p.55.

## BOX 2. THE EXISTING YOUTH MOBILITY SCHEME

The Youth Mobility Scheme (YMS) allows individuals aged 18 to 30 from eight countries (Australia, Canada, Hong Kong, Japan, Monaco, New Zealand, South Korea and Taiwan) to come and work or study in the UK for up to two years. The visa is non-renewable: those who have already been in the UK under the scheme, or under the former ‘working holidaymaker’ category, are not eligible to participate a second time. There is no obligation to work under the YMS and there are very few restrictions on the type of work participants can do.<sup>60</sup> Since there are no employer sponsorship requirements for most participants, very little is known about the employment experiences or labour market activity of workers on the YMS. However, according to the Government, “it is believed that most people who come to the UK under a [YMS] engage in lower skilled work”.<sup>61</sup>

In addition to the age restriction, participants must meet other eligibility criteria. All participants must pay the visa fee (£244) and the immigration health surcharge (£300 per year), as well as demonstrate that they have £1,890 in savings or available as a loan. Individuals who have children that live with them or that they are financially responsible for (i.e. paying maintenance) cannot participate in the scheme.<sup>62</sup> Citizens of Hong Kong and South Korea must have a certificate of sponsorship – a unique reference number that holds information about the job they will be doing – before applying.<sup>63</sup> Participants from the other six countries can enter the UK without a prior job offer. As with most other TMPs, participants have no right to public funds or to bring family members with them.

The YMS is based on reciprocal bilateral agreements between the UK and the eight participating countries. The agreements do not set out any specific regulations for employers or protections for participants. The YMS has caps for each participating country, although the caps have mostly exceeded the number of applicants.<sup>64</sup>

<sup>60</sup> Participants cannot work as a professional sports person or as a doctor or dentist in training (unless they qualified in the UK).

<sup>61</sup> UK Government. 2018. ‘The UK’s future skills-based immigration system’. p.55 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf)

<sup>62</sup> *Ibid.*

<sup>63</sup> UK Government. Undated. ‘Youth Mobility Scheme visa (Tier 5)’. <https://www.gov.uk/tier-5-youth-mobility/eligibility>

<sup>64</sup> Migration Observatory. 2018. ‘Exploiting the opportunity? Low-skilled work migration after Brexit’. <https://migrationobservatory.ox.ac.uk/wp-content/uploads/2018/08/Exploiting-the-Opportunity-Low-Skilled-Work-Migration-After-Brexit-1.pdf>

Workers on the proposed UK-EU YMS are likely to face similar restrictions as workers on the 12-month visa outlined in the Immigration White Paper and those on the existing YMS: high upfront migration costs, no recourse to public funds, no right to bring dependents and no pathways to permanent residence. A positive feature of the proposed UK-EU YMS would be its longer visa timeframe of two years, which may increase workers’ resilience to labour abuses through increased time to build up knowledge and support networks. The scheme will hopefully also replicate the existing YMS in not restricting participants to specific sectors or employers.

**TABLE 1. PROPOSED TEMPORARY MIGRATION PROGRAMMES IN THE IMMIGRATION WHITE PAPER**

	<b>SEASONAL WORKERS PILOT*</b>	<b>12-MONTH TEMPORARY SHORT-TERM WORKER ROUTE</b>	<b>UK-EU YOUTH MOBILITY SCHEME</b>
<b>SECTOR</b>	Agriculture/horticulture	Any	Any
<b>SOURCE COUNTRIES</b>	All countries outside EU (though as of April 2019 the source countries are Moldova, Russia and Ukraine)	Not confirmed – will include ‘low risk’ countries with which UK has negotiated migration commitments and mobility proposals	Not confirmed – likely to include all EU countries
<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	Not confirmed – likely to be two years based on existing YMS
<b>CAP</b>	2,500 workers per year	No cap; government reserves right to introduce one	Not confirmed
<b>VISA FEE</b>	£244	Yes – precise amount to be announced but Government intends to increase the charge incrementally each year	Not confirmed – likely to be £244 based on existing YMS
<b>IMMIGRATION HEALTH SURCHARGE</b>	Not applied – workers will need to pay NHS overseas visitor treatment charges	£400 per year	Not confirmed – likely to be £300 per year based on existing YMS
<b>SAVINGS REQUIRED</b>	£945 in account for three months prior to applying, except if the scheme operator agrees to guarantee accommodation and meals for the first month	Not confirmed	Not confirmed – likely to be £1,890 based on existing YMS
<b>LICENSING BODY</b>	Gangmasters & Labour Abuse Authority (GLAA)  Any labour provider anywhere in the world outside the EU 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 labour providers will be used	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 labour providers will be used
<b>OPERATORS</b>	UK: Concordia UK and Pro-Force Limited	None – see above	None – see above
<b>ACCESS TO PUBLIC FUNDS</b>	None	None	None
<b>RIGHT TO BRING DEPENDANTS</b>	None	None	None
<b>PATHWAYS TO PERMANENT SETTLEMENT</b>	None	None	None

\* UK Government, 2018. ‘Seasonal Workers Pilot request for information’. <https://www.gov.uk/government/publications/seasonal-workers-pilot-request-for-information/seasonal-workers-pilot-request-for-information>

# 3

## WHAT RISKS DO TEMPORARY MIGRATION PROGRAMMES POSE TO WORKERS OF EXPLOITATION?

This chapter highlights some of the core risks to workers within the TMPs proposed in the Immigration White Paper, as identified by FLEX. Using examples from previous and existing TMPs in the UK and internationally, it seeks to explain the mechanisms by which TMPs can make workers vulnerable and enable human trafficking for labour exploitation.

### DEBT BONDAGE DUE TO UPFRONT MIGRATION COSTS AND ILLEGAL RECRUITMENT FEES

The risk of debt bondage, where a person is held in a labour situation through their forced acceptance of an obligation to pay an inflated or artificial debt, is present in the SWP, the 12-month visa and the UK-EU YMS. Workers will need to pay visa and travel costs to come to the UK, as well as a £300-400 per year immigration health surcharge if their visa is for longer than six months. These costs alone can add up to more than £1,000, a sum that many low-wage workers will not be able to pay upfront without borrowing money. Workers may additionally be charged illegal recruitment fees by labour brokers overseas and in the UK, as has happened under previous UK TMPs (see case study below). Even in the agriculture sector, where recruitment agencies are overseen by the GLAA, investigations have found workers being charged illegally for 'optional extras' like online courses and insurance, in addition to fees for transportation.<sup>65</sup> Workers interviewed as part of a Channel 4 investigation reported that there was nothing optional about the costs: "They say it's a contract and that you have to pay for that contract. They didn't explain exactly what the money was for, but I know that I paid a commission."<sup>66</sup>

“

Investigations have found workers being charged illegally for 'optional extras' like online courses and insurance, in addition to fees for transportation.”

#### CASE STUDY: RECRUITMENT DEBT IN THE UK SECTORS BASED SCHEME

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.<sup>67</sup> In 2013 the entire scheme was discontinued.

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.<sup>68</sup> Recruitment fees and the resultant debt is one of the key drivers of forced labour and human trafficking.

<sup>65</sup> Channel 4 News. 2015. 'How agricultural workers are lured to the UK'. Accessed: 19 February 2019. <https://www.youtube.com/watch?v=8TF6Umo2HSQ>

<sup>66</sup> *Ibid.*

<sup>67</sup> MAC. 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'. p.22 <https://bit.ly/2u8vadv>

<sup>68</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-brexit/>

“

As a result, there were cases of SAWS workers only being employed for a month to cover the peak picking season, leaving them with no earnings for the other five months of their visa.”

## DECEPTION IN RECRUITMENT

Deception in recruitment is an ILO forced labour indicator<sup>69</sup> and has been documented under numerous TMPs globally.<sup>70</sup> It has also been documented in the UK. Workers on the Seasonal Agricultural Workers Scheme (SAWS, see case study below) were given an expectation of at least 12 weeks of work at 39 hours per week. However, employment contracts issued to workers were not required to offer minimum weekly working hours or a guaranteed period of work.<sup>71</sup> As a result, there were cases of SAWS workers only being employed for a month to cover the peak picking season, leaving them with no earnings for the other five months of their visa. Since they were only allowed to work in the agriculture sector and only for the farm to which they were allocated, these workers had no option but to hope for more work or return home. Some workers reported being left with no money to travel home.<sup>72</sup>

There is a risk that similar issues of workers being deceived about their wages, working hours and other terms and conditions will occur on the TMPs proposed in the Immigration White Paper. This is particularly a concern under the SWP where, based on the current design of the scheme, workers are restricted from accessing alternative jobs in other sectors and require permission from their scheme operator to change jobs. Therefore, if workers on the SWP are deceived about their terms and conditions of employment, they will have few alternatives but to accept what they are offered or return to their country of origin. However, because the SWP covers a sector licensed and overseen by the GLAA, there will at least be more safeguards against deception in recruitment than is likely to be available for workers migrating into unlicensed sectors under the 12-month scheme or the UK-EU YMS.

### CASE STUDY: THE UK SEASONAL AGRICULTURAL WORKERS SCHEME

Until 2013, the UK operated the Seasonal Agricultural Workers Scheme (SAWS) that allowed the agriculture and horticulture sectors to employ migrant workers for short-term, seasonal agricultural and food processing work. Eligibility rules, quota size, and operations changed through the years to accommodate the sector's need for labour, especially during peak seasons.<sup>73</sup> Permission to work in the UK was granted for a maximum of six months. Participants could reapply after a break of three months, with many workers returning to the same farms.<sup>74</sup> Workers on the scheme were entitled to receive the national minimum wage, paid holiday, agricultural sick pay, night work pay, on-call allowance, rest breaks, and pay even if bad weather stopped work.

The SAWS was managed by a total of nine operators on behalf of the UK Border Agency, five of whom were 'sole operators' supplying labour only to their own farms, while the remaining four were 'multiple operators' supplying labour to a number of different growers.

<sup>69</sup> ILO. 2012. 'ILO indicators of forced labour'. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf)

<sup>70</sup> Andrees, B. et al. 2015. 'Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities'. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_377813.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf); Southern Poverty Law Centre. 2013. 'Close to slavery: Guestworker programmes in the United States'; Strauss, K., and McGrath, S. 2017. 'Temporary migration, precarious employment and unfree labour relations: exploring the 'continuum of exploitation' in Canada's temporary foreign worker program'. *Geoforum*. Vol. 78: 199–208. [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf)

<sup>71</sup> ALP. 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>72</sup> *Ibid.*

<sup>73</sup> MAC. 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'. p.48. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257242/migrant-seasonal-workers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257242/migrant-seasonal-workers.pdf)

<sup>74</sup> *Ibid.* p.59



The scheme operators were not only in charge of recruiting workers and allocating them to employers, but also of monitoring their pay and working conditions.<sup>75</sup> The Gangmasters Licencing Authority (GLA, now the Gangmasters and Labour Abuse Authority, GLAA) registered 'multiple operators' and had the power to conduct inspections. In addition, once a year, the UK Border Agency conducted inspections on farms and operators that were using SAWS workers.

Despite these preventative measures, 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.<sup>76</sup> One study uncovered a strawberry picker earning £6 after working for three to four hours,<sup>77</sup> while another described migrants working in isolated environments and living under poor conditions without the ability to change employers.<sup>78</sup>

Participants on the SAWS had to work for the farmer to whom they were allocated. 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.<sup>79</sup> Guidance issued to workers said they could only switch employers "for exceptional reasons"; otherwise leaving their employment would mean having to return home and wait for three months before being eligible for a new placement.<sup>80</sup> From the perspective of employers, the SAWS provided a 'flexible and reliable workforce' that was "unlikely to leave for other work ... or when conditions are particularly difficult"<sup>81</sup>. However, from the perspective of workers, the scheme made them more vulnerable to labour abuses and exploitation by effectively tying them to their employer<sup>82</sup> and impeding their ability to remove themselves from unsafe situations.<sup>83</sup> Aware of the power imbalance that comes with tied visas, some employers used the threat of deportation to implement decreases in pay.<sup>84</sup>

## TIED VISAS AND BARRIERS TO CHANGING JOB OR SECTOR

Tying a person's right to work and stay in a country to a particular employer, sector or type of work has been shown to significantly increase vulnerability to abuse and exploitation.<sup>85</sup> Workers on tied visas are more likely to accept poor working conditions and are less likely to make

**75** MAC. 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'. p.51-52. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257242/migrant-seasonal-workers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257242/migrant-seasonal-workers.pdf)

**76** López-Sala, A. et al. 2016. 'Seasonal Immigrant Workers and Programs in UK, France, Spain and Italy'. p.14. <http://www.temperproject.eu/wp-content/uploads/2015/06/Working-Paper-1-DF2.pdf>

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

**78** López-Sala, A. et al. 2016. 'Seasonal Immigrant Workers and Programs in UK, France, Spain and Italy'. p.14. <http://www.temperproject.eu/wp-content/uploads/2015/06/Working-Paper-1-DF2.pdf>

**79** Consterdine, E. and Samuk, S. 2015. 'Closing the Seasonal Agricultural Workers Scheme: A triple loss'. <https://www.sussex.ac.uk/webteam/gateway/file.php?name=mwp83.pdf&site=252>; Lopez-Sala et al. 2016. Temper Working Paper Series. 'Seasonal Immigrant Workers and Programs in UK, France, Spain and Italy'. <http://www.temperproject.eu/wp-content/uploads/2015/06/Working-Paper-1-DF2.pdf>

**80** 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/>

**81** MAC. 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'. p.62. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257242/migrant-seasonal-workers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257242/migrant-seasonal-workers.pdf)

**82** Consterdine, E. and Samuk, S. 2015. 'Closing the Seasonal Agricultural Workers Scheme: A triple loss'; Lopez-Sala et al. 2016. Temper Working Paper Series. 'Seasonal Immigrant Workers and Programs in UK, France, Spain and Italy'. ALP. 2012. 'Position paper: Seasonal Agricultural Workers Scheme (SAWS)'. [http://labourproviders.org.uk/wp-content/uploads/2012/11/position\\_paper-seasonal\\_agricultural.pdf](http://labourproviders.org.uk/wp-content/uploads/2012/11/position_paper-seasonal_agricultural.pdf)

**83** López-Sala, A. et al. 2016. 'Seasonal Immigrant Workers and Programs in UK, France, Spain and Italy'. p.14. <http://www.temperproject.eu/wp-content/uploads/2015/06/Working-Paper-1-DF2.pdf>

**84** Donna Simpson. 2011. 'Salads, Sweat and Status: Migrant Workers in UK Horticulture'. [http://sro.sussex.ac.uk/7601/1/%282012.12.01%29\\_Simpson%2C\\_Donna.pdf](http://sro.sussex.ac.uk/7601/1/%282012.12.01%29_Simpson%2C_Donna.pdf)

**85** Wright, C.F., Groutsis, D. and van den Broek, D. 2016. 'Employer-sponsored temporary labour migration schemes in Australia, Canada and Sweden: enhancing efficiency, compromising fairness?.'

“

The conditions under which a worker will be enabled to change employer remain vague and at the discretion of the operating company.”

complaints about abusive employers, as loss of employment can result in deportation or irregular status. Unscrupulous employers may use the power imbalance created by tied visas to exploit workers, for example by threatening to fire them if they complain.

Being tied to one employer has been repeatedly highlighted as exacerbating the risk of exploitation for migrant workers<sup>86</sup> and any post-Brexit temporary migration programme should enable workers to change employer not only technically, but also in practice. While the proposed 12-month visa is not tied, workers on the SWP will be dependent on the scheme operators to move them to another farm and will be restricted from working in any other sector. This is an improvement on the pre-2013 SAWS under which the operator could be the same as the employer, meaning that workers had to make their request to be moved to the company which may have been both their employer and an operator of the scheme and were additionally only allowed to move under exceptional circumstances. This characteristic of the scheme that has been criticised by numerous researchers and organisations<sup>87</sup>, including the ALP, who referred to the previous SAWS as “basically bonded labour”.<sup>88</sup> Clearly, lessons have been learned and changes have been made for the SWP; however, the conditions under which a worker will be enabled to change employer remain vague and at the discretion of the operating company.

#### CASE STUDY: EXPLOITATION UNDER TIED VISAS ON THE UNITED STATES H-2 GUESTWORKER PROGRAM

The United States H-2 Guestworker Program provides tens of thousands of temporary farmworkers and labourers to industries such as agriculture, forestry, and construction, for a maximum stay of three years.<sup>89</sup> Guestworkers may work only for the employer who sponsored their visa and must leave the country when their visa expires. Critics have reported that this restriction has led to workers being ‘systematically exploited and abused’, as they are forced to choose between remaining in exploitative working conditions or returning home.<sup>90</sup> According to the Southern Poverty Law Center (SPLC):

*The most fundamental problem with guestworker programs, both historically and currently, is that the employer — not the worker — decides whether a worker can come to the United States and whether he [sic] can stay. Because of this arrangement, the balance of power between employer and worker is skewed so disproportionately in favour of the employer that, for all practical purposes, the worker’s rights are nullified. At any moment, the employer can fire the worker, call the government and declare the worker to be “illegal.”<sup>91</sup>*

Abuses such as non-payment of wages, withholding of documents, poor living conditions and denial of medical benefits for on-the-job injuries have been reported to be widespread within this scheme, but workers are unable to challenge them due to fear of losing their job and future right to return to the US, as leaving an abusive employer means becoming undocumented.<sup>92</sup> The Government Accountability Office specifically found that “the structure of the H-2A and H-2B programs may create disincentives for workers to report abuse” and pointed specifically to the fact that workers are restricted to working for

<sup>86</sup> Demetriou, D. 2015. ‘Tied visas’ and inadequate labour protections: A formula for abuse and exploitation of migrant domestic workers in the United Kingdom’. *Anti-Trafficking Review*. <https://bit.ly/2pclv2r>

<sup>87</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>

<sup>88</sup> ALP. 2012. ‘Position paper: Seasonal Agricultural Workers Scheme (SAWS)’. <https://bit.ly/2xgFna9>; ALP. 2017. ‘Position paper: Building a model Seasonal Workers’ Scheme’. <https://bit.ly/2OubEBi>

<sup>89</sup> US Government. ‘H-2A Temporary Agricultural Workers’. <https://bit.ly/2kmmLgs>

<sup>90</sup> Southern Poverty Law Centre. 2013. ‘Close to Slavery: Guestworker Programs in the United States’. p.1. <https://bit.ly/2xt0sNU>

<sup>91</sup> *Ibid*

<sup>92</sup> *Ibid*. See also Polaris, ‘Labor Trafficking in the US: A closer look at temporary work visas’. [https://polarisproject.org/sites/default/files/Temp%20Visa\\_v5%20%281%29.pdf](https://polarisproject.org/sites/default/files/Temp%20Visa_v5%20%281%29.pdf)

their sponsoring employer.<sup>93</sup> The lack of legal protections and lack of enforcement of the protections offered to workers under this scheme also contribute to the endemic abuse suffered by workers.<sup>94</sup> Further, the fact that non-agricultural workers were not entitled to federally funded legal services meant that accessing legal information or taking legal action to enforce rights were simply not affordable for many workers.<sup>95</sup>

## DISCRIMINATION

Discrimination within TMPs can be direct or indirect. Direct discrimination can take the form of employers recruiting workers based on characteristics such as age, gender, race or ethnicity, to the exclusion of those who do not meet their criteria. Indirect discrimination can result from TMPs being designed in ways that prevent certain social groups, such as workers with disabilities or with dependent children, from migrating. Discrimination, whether direct or indirect, leads to the denial of economic opportunities and access to regular migration routes for certain social groups, such as ethnic or racial minorities and women. Some individuals that are marginalised may believe they are not entitled to the same rights or protections as other groups, even if this is not the case.<sup>96</sup> The lack of opportunities created by discrimination means that certain groups have fewer rights and options, increasing their vulnerability to abuse and exploitation.

### BOX 3. DISCRIMINATION AGAINST WOMEN WORKERS ON TEMPORARY MIGRATION PROGRAMMES

The work available to women migrant workers through regular migration channels tends to replicate gendered divisions of labour and is often only temporary. Women are less likely to work in sectors or at wage levels that enable access to longer-term or more permanent 'high-skilled' migration routes, which generally include fewer restrictions on rights than temporary routes. For example, proportionally fewer women than men work in occupations that would allow them to meet the £30,000 salary threshold for the UK's Tier-2 visa, meaning more women than men are barred from accessing long-term migration routes that include pathways to permanent residence and the right to bring dependents.<sup>97</sup> This reflects the global non-recognition and undervaluing of work carried out predominantly by women, such as caring and cleaning, which are often underpaid and classed as 'low-skilled'. The migration system proposed in the Immigration White Paper risks reproducing this gendered division of labour and putting women migrant workers at higher risk of exploitation by channelling them into lower wage sectors under more restrictive conditions.

The design of TMPs can also have directly and indirectly discriminatory outcomes. Most TMPs provide no option for migrant workers to bring dependent children or other family members with them to their country of work, meaning that people with care responsibilities, a disproportionate number of whom are women, will face barriers to participating.<sup>98</sup> Restricting the right to bring

<sup>97</sup> Expert Advisory Group on Migration and Population. 2019. 'UK immigration policy after leaving the EU: Impacts on Scotland's economy, population and society'. <https://www.gov.scot/publications/uk-immigration-policy-leaving-eu-impacts-scotland-s-economy-population-society/>

<sup>98</sup> Centro de los Derechos del Migrante and University of Pennsylvania Law School. 2018. 'Engendering Exploitation: Gender inequality in U.S. labour migration programs'. Policy Brief. <http://cdmigrante.org/wp-content/uploads/2018/01/Engendered-Exploitation.pdf>; <https://www.theglobeandmail.com/news/national/labour-program-faces-inequality-claim/article19884001/> p.13

<sup>93</sup> United States Government Accountability Office. March 2015 (revised May, 2017). 'H-2A and H2B Visa Programs: Increased Protections Needed for Foreign Workers', p.37. <http://www.gao.gov/assets/690/684985.pdf>

<sup>94</sup> Southern Poverty Law Centre, 2013. 'Close to Slavery: Guestworker Programs in the United States', p.2. Available at [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf).

<sup>95</sup> *Ibid.* p.41.

<sup>96</sup> FLEX. 2016. 'Vulnerability to human trafficking for labour exploitation'. <https://www.labourexploitation.org/publications/vulnerability-human-trafficking-labour-exploitation>

dependents is likely to lead to a system where migrants coming to the UK to care for the children and other dependents of UK nationals have to leave their own children and dependents at home.

The sectors into which men and women migrate through TMPs are often highly gendered. Men tend to be predominantly concentrated in agriculture, while women work in care. Statistics from 2013 show that 96% of agricultural workers on the US H-2A scheme were men<sup>99</sup>; 60% of workers under the UK's former Seasonal Agricultural Workers Scheme (SAWS) were men<sup>100</sup>; and 89.6% of all seasonal and temporary workers in France, over 90% of whom work in agriculture, were men.<sup>101</sup> In contrast, 95.5% of workers on the Canadian Live-in Caregiver Program in 2013 were women<sup>102</sup> and the majority of workers on the UK Domestic Workers in a Private Household visa are women.

Roles within sectors are also highly gendered. Research by Centro de los Derechos del Migrante, a US-based migrants' rights organisation, found that women migrant workers in the US on both the H-2A and H-2B visas were relegated into gendered, lower paying jobs, denying them earnings and professional development opportunities.<sup>103</sup> Under the UK SAWS scheme, certain jobs, such as cutting asparagus or broccoli, were seen as "male work" and paid better than picking jobs, which were mainly done by women.<sup>104</sup>

Some TMPs, including the Canadian Seasonal Agricultural Workers Program<sup>105</sup> and the now discontinued SAWS in the UK<sup>106</sup>, let employers specify the preferred sex and nationality of the migrant workers employed during recruitment.<sup>107</sup> This highly problematic feature of TMPs allows employers to directly discriminate based on social stereotypes and racist or sexist perceptions. For example, the Spanish strawberry sector has typically employed women based on a perception that women workers are more obedient, competent and 'suitable' for the work.<sup>108</sup> Similarly, research from Canada has shown how recruitment agencies hiring workers for the Live-in Caregiver Programme have used racialised recruitment strategies to recruit "more pliant and accommodating" Southeast Asian women over Caribbean women.<sup>109</sup>

Finally, the disproportionate power TMP employers have over their employees due to restrictive elements such as tied visas, 'live-in' requirements and no recourse to public funds increases the risk of sexual harassment and gender-based violence, which disproportionately impacts women workers and makes reporting such crimes difficult.<sup>110</sup>

<sup>99</sup> Centro de los Derechos del Migrante and University of Pennsylvania Law School. 2018. 'Engendering Exploitation: Gender inequality in U.S. labour migration programs'. Policy Brief. Available at: <http://cdmigrante.org/wp-content/uploads/2018/01/Engendered-Exploitation.pdf>

<sup>100</sup> MAC. 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'. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257242/migrant-seasonal-workers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257242/migrant-seasonal-workers.pdf) p. 59

<sup>101</sup> López-Sala, A. et al. 2016. 'Seasonal Immigrant Workers and Programs in UK, France, Spain and Italy'. p.24. <http://www.temperproject.eu/wp-content/uploads/2015/06/Working-Paper-1-DF2.pdf>

<sup>102</sup> Hudon, T. 2015. 'Women in Canada: A gender-based statistical report: Immigrant Women' Statistics Canada. p.6. [https://www150.statcan.gc.ca/n1/en/pub/89-503-x/2015001/article/14217-eng.pdf?st=mm9\\_aGI](https://www150.statcan.gc.ca/n1/en/pub/89-503-x/2015001/article/14217-eng.pdf?st=mm9_aGI)

<sup>103</sup> Centro de los Derechos del Migrante and University of Pennsylvania Law School. 2018. 'Engendering Exploitation: Gender inequality in U.S. labour migration programs'. Policy Brief. p.5 Available at: <http://cdmigrante.org/wp-content/uploads/2018/01/Engendered-Exploitation.pdf>

<sup>104</sup> Dench, S. et al. 2006. 'Employers' use of migrant labour: Main report'. Home Office Online report 04/06. p.24 and 27. <https://webarchive.nationalarchives.gov.uk/20110218141405/http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0406.pdf>

<sup>105</sup> <https://www.theglobeandmail.com/news/national/labour-program-faces-inequality-claim/article19884001/>

<sup>106</sup> Dench, S. et al. 2006. 'Employers' use of migrant labour: Main report'. Home Office Online report 04/06. p.44. <https://webarchive.nationalarchives.gov.uk/20110218141405/http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0406.pdf>

<sup>107</sup> Recruiting workers based on sex or other protected characteristics is now regulated by the UK under the Equalities Act 2010.

<sup>108</sup> López-Sala, A. et al. 2016. 'Seasonal Immigrant Workers and Programs in UK, France, Spain and Italy'. p.30f. <http://www.temperproject.eu/wp-content/uploads/2015/06/Working-Paper-1-DF2.pdf>

<sup>109</sup> [https://www.researchgate.net/publication/265598049\\_Global\\_Inequities\\_A\\_Gender-based\\_Analysis\\_of\\_the\\_Live-In\\_Caregiver\\_Program\\_and\\_the\\_Kirogi\\_Phenomenon\\_in\\_Canada](https://www.researchgate.net/publication/265598049_Global_Inequities_A_Gender-based_Analysis_of_the_Live-In_Caregiver_Program_and_the_Kirogi_Phenomenon_in_Canada) p.5

<sup>110</sup> Weiler, A. and Cohen, A. 2018. 'Farm work program leaves women vulnerable to sexual violence'. <https://thetyee.ca/Opinion/2018/05/07/Farm-Work-Program-Sexual-Violence/>

“

Short visa timeframes mean that migrants have less time to gain the kinds of skills or knowledge that increase resilience to exploitation.”

“

Workers on temporary visas may find it difficult to change employers, particularly towards the end of their visa period, which can lead them to stay in exploitative situations.”

## TEMPORARINESS AND THE LACK OF PATHWAYS TO PERMANENT RESIDENCE

Short visa timeframes mean that migrants have less time to gain the kinds of skills or knowledge that increase resilience to exploitation, such as language ability, networks and knowledge of immigration systems and employment rights. Research in the UK shows that migrants on short stays are less likely to make complaints to Employment Tribunals compared to residents and those intending to settle.<sup>111</sup> Short-term visas also make it more difficult for trade unions to organise migrant workers and may reduce incentives for migrants to join unions due to fear that their employer may retaliate by firing them, causing them to lose the right to remain in the country and earn back the investment they have made to obtain their job.<sup>112</sup> Long cooling-off periods during which individuals are barred from reapplying for a visa, such as the six-month requirement under the SWP and the one year requirement under the 12-month visa, can compound these issues.

Workers on temporary visas may find it difficult to change employers, particularly towards the end of their visa period, which can lead them to stay in exploitative situations, especially if the only alternative is to leave the country before their visa has run out.<sup>113</sup> This has been the case for workers entering the UK on the Domestic Workers in a Private Household (DWP) visa, a TMP which allows only a six-month stay in the UK. Though workers on a DWP visa have been allowed to change employers since 2016, the fact that their visa period is so short, and no extension is available when changing employer, makes finding new work very difficult. The domestic worker support charity, Kalayaan, highlights that: “it is almost impossible to place domestic workers for periods of six months or less”.<sup>114</sup> In practice, this means workers facing labour abuse are effectively tied to their employer or risk deportation or destitution.

In addition to risks associated with temporariness, the lack of pathways to permanent residence offered to workers on TMPs means they have limited social and political rights, such as the right to vote or stand for election, which limits their power to change the structural conditions under which they are employed. Very few TMPs offer pathways to residence, though there are examples, including the UK’s SBS post-2007. For non-EU nationals, leave to remain under the SBS was granted for 12 months at a time and tied to a specific job. Workers had no right to bring dependents or to access welfare benefits.<sup>115</sup> Upon departure, individuals could reapply for another SBS permit after a two-month cooling off period.<sup>116</sup> However, in 2007 when the scheme was restricted to nationals from the A2 accession countries (Romania and Bulgaria), leave to remain could be extended

<sup>111</sup> Barnard, C. and Ludlow, A. 2015. ‘Enforcement of employment rights by EY-8 migrant workers in employment tribunals’. *Industrial Law Journal*. <https://www.repository.cam.ac.uk/bitstream/handle/1810/252375/Barnard%20%26%20Ludlow%202015%20Industrial%20Law%20Journal.pdf?sequence=1&isAllowed=n>

<sup>112</sup> Costa, D. and Martin, P. 2018. ‘Temporary labor migration programs: Governance, migrant worker rights, and recommendations for the U.N. Global Compact for Migration’. *Economic Policy Institute*. p.43 <https://www.epi.org/files/pdf/152373.pdf>

<sup>113</sup> Wright, C.F., Groutsis, D. and van den Broek, D. 2016. ‘Employer-sponsored temporary labour migration schemes in Australia, Canada and Sweden: enhancing efficiency, compromising fairness?’ p.1858

<sup>114</sup> Kalayaan. 2016. ‘Kalayaan briefing on the Government response to the independent review of the overseas domestic workers (ODW) visa’. <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-briefing-on-Government-response-to-Independent-Review-of-ODW-visa.pdf>.

<sup>115</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>116</sup> Wiese, J. L. and Thorpe, K. 2011. ‘Temporary and circular migration: Empirical evidence, current policy practice and future options in EU member states’. [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/circular-migration/27\\_united\\_kingdom\\_national\\_report\\_circular\\_migration\\_final\\_version\\_15\\_april\\_2011\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/circular-migration/27_united_kingdom_national_report_circular_migration_final_version_15_april_2011_en.pdf)

“

Preventing migrants from bringing dependents is also likely to lead to discrimination against women.”

“

Workers with no recourse to public funds are often left with no real choice to leave abusive or exploitative situations as the alternative is often homelessness and destitution.”

beyond the initial 12 months if the applicant had sufficient funds to support themselves and their dependents.<sup>117</sup> Therefore, unlike most low-skilled TMPs, it was possible to transition from temporary to permanent resident status, allowing workers to become more established and build their skills, knowledge and networks. Employers would also have benefitted from not having to constantly invest in the recruitment and training of new workers.

### NO RIGHT TO BRING DEPENDENTS

Preventing migrants from bringing their children or other dependent family members with them will increase migrants' isolation and impede integration. People with children are more likely to access a range of public services, such as schools and healthcare, and additionally community activities that help support integration. Preventing migrants from bringing dependents is also likely to lead to discrimination against women as women are more likely than men to be prevented from migrating by such restrictions.

### NO RECOURSE TO PUBLIC FUNDS

The TMPs proposed in the Immigration White Paper may increase risk of labour exploitation if they are not revised to grant workers access to public funds, including essential services such as homelessness assistance and welfare benefits. Workers with no recourse to public funds are often left with no real choice to leave abusive or exploitative situations as the alternative is often homelessness and destitution if they cannot immediately find new paid work. People with low or insecure wages, such as workers with no guaranteed weekly working hours, will also face difficulties as they are unable to claim benefits to top-up their income and are dependent on unstable and expensive accommodation in the private sector.<sup>118</sup> Individuals with no recourse to public funds are often left in an incredibly vulnerable position, having nowhere to live and relying solely on the support of friends and family.<sup>119</sup> Debts and arrears accrued over time make people vulnerable to exploitation in dependent relationships and in work. Putting workers in this position will increase the risk of human trafficking and forced labour in the UK.

Previous TMPs where workers have had no recourse to public funds have been shown to create vulnerability to exploitation among workers. For example, workers employed under the Worker Registration Scheme (see case study overleaf) had no access to essential services such as homelessness assistance and welfare benefits, unless they had completed a continuous 12-month period of registered work. In extreme cases, exclusion from services in this way resulted in a serious threat to life, particularly where the individuals were homeless and vulnerable.<sup>120</sup> The Trades Union Congress (TUC) has documented how the WRS's welfare restrictions made workers more likely to tolerate abusive labour practices, such as non-payment of minimum wage.<sup>121</sup>

<sup>117</sup> MAC. 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'. p.22 <https://bit.ly/2u8vadv>

<sup>118</sup> NRPF Network. 2018. 'Opposition increases to use of NRPF condition that causes destitution'. <http://www.nrpfnetwork.org.uk/News/Pages/LTR-NRPF-wider-change.aspx>

<sup>119</sup> Lewisham Refugee and Migrant Network. 2018. 'Making change happen: The impact of national policies on our clients' lives'. <https://migrantsrights.org.uk/wp-content/uploads/2018/03/Making-Change-Happen-Lewisham-Refugee-and-Migrant-Network-2018.compressed.pdf>

<sup>120</sup> Northern Ireland Human Rights Commission. 2009. 'Submission of evidence to the UK Border Agency regarding the impact of the workers registration scheme'. <http://www.nihrc.org/uploads/documents/advice-to-government/2009/of-ukba-regarding-worker-registration-scheme-march-2009.pdf>

<sup>121</sup> TUC Commission on Vulnerable Employment. 2008. 'Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment'. [http://www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf)

## CASE STUDY: EXPLOITATION DUE TO NO RECOURSE TO PUBLIC FUNDS UNDER THE WORKER REGISTRATION SCHEME

In addition to the SAWS and the SBS, between 2004 and 2011 migrant workers from specified countries could come to the UK through the Worker Registration Scheme (WRS), a transitional arrangement used to monitor the participation of new EU member countries' nationals in the UK workforce. It applied to A8<sup>122</sup> country nationals between 2004 and 2011. Similar restrictions were applied to A2 country nationals between 2007 and 2013, and most recently to Croatian nationals from 2013 until June 2018.

Under the WRS, workers' access to certain rights and benefits were restricted, though only for a set time. For the first 12 months of their stay, A8 workers had to be registered with the Home Office and only had the right to reside in the UK while in employment. Workers only had access to public funds or benefits after having completed a 12-month period of continuous registered employment. Registration originally cost £50 but was raised first to £70 and then to £90.<sup>123</sup> It had to be completed in English and workers had to enclose their passport when posting the form – to be returned to a permanent registered address.<sup>124</sup>

The WRS was widely used in the Agriculture, Hotels and Catering, Construction, and Administration, Business and Management sectors.<sup>125</sup> The vast majority of workers on the WRS were employed in low-wage jobs as cleaners, housekeepers, kitchen porters, receptionists, waiters and waitresses, seasonal pickers and packers, general factory and warehouse workers, and carers. However, according to research by the Home Office, employers “were often prepared to train and develop these staff, so that they could move on to more skilled work or supervisory positions within the organisation, provided there was a strong possibility they would stay.”<sup>126</sup>

The WRS was found to increase workers' risk of exploitation by making access to essential services, such as homelessness assistance and welfare benefits, contingent on 12-months continuous registered employment.<sup>127</sup> It also left those not registered at risk of being denied all their legal employment rights, making them highly vulnerable to exploitation.<sup>128</sup> Many A8 workers did not register under the scheme due in part to the cost and complexity of the process. Migrant workers were often living in temporary or insecure accommodation and were reluctant to have their passports and registration documents returned to such an address.<sup>129</sup> It often took at least three months for applications to be processed and for documents to be returned; this was a significant problem for workers as their passports were often their main, or only, form of identification.<sup>130</sup> The cost of registering was also a problem: for workers in low-paid and insecure jobs even £50 was a large sum, especially if they had only just arrived in the country.<sup>131</sup>

There were a number of documented cases of employers using the scheme as a tool to exploit workers, for instance by pretending to have registered workers but deliberately

**122** The 'A' in A8 and A2 refers to 'accession', the technical name for joining the EU. The A8 countries are Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. The A2 countries are Bulgaria and Romania.

**123** Dench, S. et al. 2006. 'Employers' use of migrant labour. Research, Development and Statistics Directorate, UK Home Office Online Report' 04/06. p.51. <https://webarchive.nationalarchives.gov.uk/20110218141405/http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0406.pdf>

**124** TUC Commission on Vulnerable Employment. 2008. 'Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment'. [http://www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf)

**125** Dench, S. et al. 2006. 'Employers' use of migrant labour. Research, Development and Statistics Directorate, UK Home Office Online Report' 04/06. p.49. <https://webarchive.nationalarchives.gov.uk/20110218141405/http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0406.pdf>

**126** *Ibid.* p.50

**127** Northern Ireland Human Rights Commission. 2009. 'Submission of evidence to the UK Border Agency regarding the impact of the workers registration scheme'. <http://www.nihrc.org/uploads/documents/advice-to-government/2009/of-ukba-regarding-worker-registration-scheme-march-2009.pdf>

**128** TUC Commission on Vulnerable Employment. 2008. 'Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment'. [http://www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf)

**129** Dench, S. et al. 2006. 'Employers' use of migrant labour. Research, Development and Statistics Directorate, UK Home Office Online Report' 04/06. p.51. <https://webarchive.nationalarchives.gov.uk/20110218141405/http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0406.pdf>

**130** *Ibid.*

**131** *Ibid.*

missing the time limit, or illegally retaining workers' passports after asking for them to enable WRS registration.<sup>132</sup> Employers were also found to have used the scheme to deny workers access to state support by employing them for 11 months and then sacking them before they reached the 12-month threshold. This allowed them to violate employment laws with impunity, while workers continue to be denied access to welfare support.<sup>133</sup>

The WRS existed consecutively to the SAWS scheme until 2011, when this transitional measure stopped applying to A8 nationals. Despite the cases of abuse linked to the WRS, it did allow workers more freedoms than were available to those on the SAWS. Employers reported preferring SAWS workers to those on the WRS who were "less tied to a particular job/employer and were more likely to move around".<sup>134</sup>

## LACK OF INTEGRATION PROGRAMMES/POLICIES

There is often a reluctance to provide integration support such as language training to temporary migrants due to fears that this may encourage workers to stay longer and to seek a permanent status.<sup>135</sup> However, the risk of exploitation of migrant workers has been shown to be much greater if they do not speak the local language.<sup>136</sup> Language skills are crucial for workers to access information about their rights and to seek assistance when needed.

## MULTIPLE DEPENDENCIES

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 and other rights, can make it easier for labour abuses to go unaddressed and for exploitation to develop. Workers who are dependent in multiple ways will find leaving an exploitative situation or making a complaint more difficult, particularly if they are working and living in an isolated environment like a farm or a private home.<sup>137</sup> Migrant workers who leave or lose their job may find themselves unemployed, homeless and destitute, and without the social networks and support other workers may rely on. Multiple dependencies have been an issue under previous UK TMPs. Under the SAWS, employers and scheme operators were responsible for providing work, accommodation and transportation, which made workers highly dependent on their employers.<sup>138</sup> They were also often the main source of information for migrant workers on their rights and life in the UK. This system is currently being replicated under the SWP.

“

Workers who are dependent in multiple ways will find leaving an exploitative situation or making a complaint more difficult, particularly if they are working and living in an isolated environment like a farm or a private home.”

**132** TUC Commission on Vulnerable Employment. 2008. 'Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment'. [http://www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf)

**133** *Ibid.*

**134** Dench, S. et al. 2006. 'Employers' use of migrant labour. Research, Development and Statistics Directorate, UK Home Office Online Report' 04/06. p.47. <https://webarchive.nationalarchives.gov.uk/20110218141405/http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0406.pdf>

**135** Consterdine, E. and Samuk, S. 2015. 'Closing the Seasonal Agricultural Workers Scheme: A triple loss'. <https://www.sussex.ac.uk/webteam/gateway/file.php?name=mwp83.pdf&site=252>

**136** *Ibid.*

**137** It is important to note that employer-provided accommodation can be a positive and attractive option for migrant workers, particularly where it is regulated by a government agency such as the GLAA. See Consterdine, E. and Samuk, S. 2018. 'Temporary migration programmes: The cause or antidote of migrant workers' exploitation in UK agriculture'. p.1017. <https://link.springer.com/content/pdf/10.1007%2Fs12134-018-0577-x.pdf>

**138** Consterdine, E. and Samuk, S. 2015. 'Closing the Seasonal Agricultural Workers Scheme: A triple loss'. <https://www.sussex.ac.uk/webteam/gateway/file.php?name=mwp83.pdf&site=252>



“

Temporary migrants are less likely to know their legal and employment rights, where and how to make a complaint, or the available resources for assistance.”

“

Clarity and guarantees are needed regarding the guaranteed amount of work which workers under this pilot can expect and how responsibility for ensuring this takes place will be allocated.”

## BARRIERS TO ACCESSING JUSTICE

Temporary migrants are less likely to know their legal and employment rights, where and how to make a complaint, or the available resources for assistance. Even when workers are aware of their rights, they may be afraid to actually exercise them due to the risks of losing their job or, where the work is seasonal, not being given work the following year.<sup>139</sup> Other barriers may include costs, particularly if there is no free legal advice available, and time constraints – because temporary migrants have limited leave to remain, their case may be stalled or effectively terminated if they cannot stay in the country. The barriers that temporary migrant workers face in enforcing their own rights is compounded where labour market enforcement bodies are under-resourced, lack the capacity to carry out pro-active enforcement, and cooperate with immigration enforcement in ways that discourage migrant workers from reporting abuses.

## NON-GUARANTEED HOURS/ZERO-HOURS CONTRACTS

Workers coming to the UK through the SWP and the proposed 12-month temporary visa and UK-EU YMS are likely to be employed in low-wage work. Research by FLEX indicates that workers under the SWP will be paid around the minimum wage and has also identified discrepancies in plans regarding the number of hours for which they will be employed. In May 2019, the Minister of State for Immigration, Caroline Nokes, responded to a written parliamentary question asking whether workers under this pilot will be guaranteed a set number of working hours and whether employers under the scheme will be able to offer zero-hours contracts to workers. Her response states that scheme operators are “required to provide pilot workers with full-time employment” and that they are “not permitted to offer zero hours contracts to workers”.<sup>140</sup> Yet she also states that operators are responsible for ensuring that workers are “not left destitute if, for any reason, full-time work is not available over any particular period.” This seems contradictory and is at odds with former information provided to FLEX. Zero-hours contracts are recognised to cause and contribute to in-work poverty in the UK<sup>141</sup> and, as such, clarity and guarantees are needed regarding the guaranteed amount of work which workers under this pilot can expect and how responsibility for ensuring this takes place will be allocated between government, operators sponsoring the workers and the employers who hire those workers. If such guarantees are not provided, it is difficult to understand how zero-hours contracts can be justified under schemes such as the SWP which limit migrant workers’ opportunities and movement within the labour market. Zero-hours contracts are meant to provide two-sided flexibility to the benefit of both employers and workers.<sup>142</sup> However, under TMPs where workers must seek permission to change employer and are restricted to working in a specific sector, no such flexibility exists for the worker. Though the 12-month temporary visa allows migrant workers to work in any sector at any skill level, it is intended to meet demand for workers in low-wage sectors currently

<sup>139</sup> Hastie, B. 2017. ‘The inaccessibility of justice for migrant workers: A capabilities-based perspective’. *The Peter A. Allard School of Law Faculty Publications*. [https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1446&context=fac\\_pubs](https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1446&context=fac_pubs)

<sup>140</sup> UK Parliament, Agriculture: Seasonal Workers: Written Questions – 250784, 3rd May 2019 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-05-03/250784/>

<sup>141</sup> JRF. 2014. ‘Zero-hours contracts are just one part of the UK’s in-work poverty problem’. <https://www.jrf.org.uk/press/zero-hours-contracts-are-just-one-part-uk%E2%80%99s-work-poverty-problem>

<sup>142</sup> Taylor, M. 2017. ‘Good work: The Taylor review of modern working practices’. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

“

Research has found workers on multiple previous UK TMPs not receiving their full pay due and working unpaid overtime.”

reliant on migrant workers from the EU<sup>143</sup>, such as food processing, warehousing, social care, construction, cleaning and hospitality<sup>144</sup>. Workers in these sectors are often employed in non-standard and often precarious forms of work, such as dependent self-employment, zero-hours contracts, and temporary, on-call, and agency-based work.

Research has found workers on multiple previous UK TMPs not receiving their full pay due and working unpaid overtime.<sup>145</sup> Under the SAWS, workers were employed on zero-hours contracts and often paid by ‘piece rate’ i.e. a fixed amount for each unit produced or action performed, regardless of time spent on the job. This system may have enabled some workers to earn more, but workers not meeting picking targets for any reason, including because they were learning the job or there was less crop to pick, would in some cases earn less than the minimum wage.<sup>146</sup> Increased monitoring and enforcement of employers’ legal responsibilities eventually led to better minimum wage compliance, with workers’ wages being topped up when they did not meet picking targets. However, because workers did not have any guaranteed hours, it also led to slower workers being swiftly removed or not given work. As a 2009 report by the ALP notes: “In some cases, after an initial training and induction period, workers are measured after two hours work and if not sufficiently productive they are stopped working for the day, thus avoiding having to pay the slow worker for the whole day.”<sup>147</sup> Given that SAWS workers had no other earning opportunities in the UK, such practices would have resulted in poverty and eventually destitution, forcing workers to return home with little or no earnings.

#### CASE STUDY: GUARANTEED FULL-TIME WORK ON THE UK SECTORS BASED SCHEME

The SBS had some positive features that are worth noting. SBS workers were required to be working full time, making their earnings more secure and regular compared to workers on other schemes, such as SAWS, who were not guaranteed hours. Gross pay and employment terms and conditions had to be equal to or exceed those normally given to a resident worker doing similar work.<sup>148</sup> Median hourly earnings on the SBS in 2011 ranged from £6.92 to £8.37 an hour, which was at least 13% more than the National Minimum Wage at that time.<sup>149</sup> Unlike with the SAWS, workers were not required to live ‘on site’ in employer-provided accommodation, making them less dependent on their employers and providing more opportunities for integration.

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

<sup>143</sup> UK Government. 2018. ‘The UK’s future skills-based immigration system’. p.52. <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

<sup>144</sup> IPPR. 2017. ‘Lack of EU migrant packers, food workers and cleaners could result in post-Brexit labour shortages’. <https://www.ippr.org/news-and-media/press-releases/lack-of-eu-migrant-packers-food-workers-and-cleaners-could-result-in-post-brexit-labour-shortages>; Independent Age. Undated. ‘Brexit and the future of migrants in the social care workforce’. <https://independent-age-assets.s3.eu-west-1.amazonaws.com/s3fs-public/2016-09/IA-Brexit-Migration-report.pdf>; Financial Times. 2018. ‘London reliant on EU for 28% of building workers as Brexit looms’. <https://www.ft.com/content/bc94676c-73af-11e8-b6ad-3823e4384287>

<sup>145</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-brexit/>

<sup>146</sup> ALP. 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>147</sup> *Ibid.*

<sup>148</sup> *Ibid.* p.30

<sup>149</sup> *Ibid.* p.33

induct workers.<sup>150</sup> However, there was a 60% decline in the use of the scheme between 2007 and 2011.<sup>151</sup> The MAC notes that employers may have been put off by delays in the application process, or not have needed to hire more workers since the SBS could lead to permanent employment. Alternatively, employers may have been choosing to employ migrants on casual terms instead, through agency contracts: “As staff taken on as required by the SBS would receive greater protection [...], particularly after twelve months, employers may have been disincentivised from using the scheme”.<sup>152</sup>

---

**150** Dench, S. et al. 2006. *Employers' use of migrant labour*. Research, Development and Statistics Directorate, UK Home Office Online Report 04/06. p.52. <https://webarchive.nationalarchives.gov.uk/20110218141405/http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0406.pdf>

**151** MAC. 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'. p.35 <https://bit.ly/2u8vadv>

**152** *Ibid.* p.35

# 4

## MEASURES THAT CAN BE TAKEN TO MITIGATE THE RISK OF WORKER EXPLOITATION IN TEMPORARY MIGRATION PROGRAMMES

There are a number of measures that can be taken to mitigate the risks to workers in TMPs. This chapter outlines what can be done to increase migrant workers' resilience and help to ensure that the UK's post-Brexit migration policy does not create an environment in which human trafficking for labour exploitation can thrive.

### 1. REMOVING COOLING-OFF PERIODS BETWEEN VISAS AND PROVIDING PATHWAYS TO PERMANENT RESIDENCE AND FAMILY REUNIFICATION

Offering migrant workers on temporary migration programmes opportunities for continuous employment, without deliberate cooling-off periods, and pathways to permanent residence and family reunification, either immediately or after a specified number of years, could help mitigate the risk of exploitation associated with TMPs in a number of ways. Temporary migrants are less able to protect themselves against workplace abuses and legal violations by their employers in fear that complaining to the authorities might mean risking the termination of their employment and their right to stay in the country, removing their ability to earn back any investments made to obtain the job.<sup>153</sup> Where workers have the right to reside in a country that is not tied to a job, they will be better able to protect themselves against exploitation. This is also good for resident workers, as it helps stop employers from using vulnerable migrant workers to undercut wages and conditions.

Longer visa timeframes and pathways to residence would additionally enable workers to build up the language skills, knowledge of rights and processes, and community networks that create resilience to labour exploitation.<sup>154</sup> Where migrants are able to settle they are also more likely to integrate into society, making long-term investments into education and training or starting a business, aspects that will further contribute to the destination country and help protect workers against the social isolation that can breed vulnerability.

#### CASE STUDY: SWEDEN AND PATHWAYS TO PERMANENT RESIDENCE

In Sweden, workers who have held a work permit and worked for a total of four years within a seven-year period can be granted a permanent residence permit.<sup>155</sup> This applies to all workers, regardless of sector or occupation, as long as they meet certain requirements, such as having earned over SEK13,000 (approx. £1,000) per month before taxes. Restrictions apply to certain categories of worker, such as *au pairs*, berry pickers, seasonal workers. However, the Swedish Migration Agency states that individuals on these

<sup>153</sup> Costa, D. and Martin, P. 2018. 'Temporary labor migration programs: Governance, migrant worker rights, and recommendations for the U.N. Global Compact for Migration'. *Economic Policy Institute*. p.40 <https://www.epi.org/files/pdf/152373.pdf>

<sup>154</sup> FLEX. 2017. 'Risky Business: Tackling exploitation in the UK labour market'. p.7 <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>

<sup>155</sup> Swedish Migration Agency. 2018. 'Extending a work permit'. <https://www.migrationsverket.se/English/Private-individuals/Working-in-Sweden/Extending-a-permit.html>

“Where workers have the right to reside in a country that is not tied to a job, they will be better able to protect themselves against exploitation.”

visas should be able to change jobs and apply for a new work permit from within Sweden that enables them to eventually apply for permanent residence.<sup>156</sup>

In order to qualify for permanent residence, a worker must apply for an extension to their work permit. Any worker who has held a work permit for six-months or more can apply for an extension to their permit and are entitled to keep working while awaiting a decision. Individuals who are changing employer or occupation (such as seasonal workers) and apply for a new permit before their previous permit expires can start working before having received a decision regardless of how long they have held a work permit in Sweden. After 24 months, migrant workers can change employer without applying for a new work permit as long as they stay in the same occupation or profession. If they change profession, they must submit a new application, but do not need to wait for a decision before starting work in their new job.

Any worker staying longer than six months in Sweden can bring their family.<sup>157</sup> This includes the worker's spouse, registered partner or common law spouse, and children up to the age of 21.

## 2. ENSURING MIGRANT WORKERS ARE AWARE OF AND ABLE TO ACCESS THEIR RIGHTS

Migrant workers usually have the same rights as resident workers; the problem is that they may be less aware of their rights or face barriers to accessing their rights in practice. This is particularly true for temporary migrants, whose short visa timeframes and dependence on their employer often compound difficulties in accessing rights. There are a number of measures that can be taken to ensure migrant workers on temporary visas are more aware of their rights and better able to enjoy them in practice. These include: 1) providing clear information to migrant workers about their rights and how to enforce them pre-departure and on arrival (see the case study below); 2) providing migrant workers with free access to language training; 3) providing information about worker and migrant support organisations; and 4) ensuring there are clear pathways to reporting labour abuses which are anonymous and accessible in the relevant languages.

### CASE STUDY: PRE-DEPARTURE TRAINING FOR MIGRANT WORKERS

Pre-departure training that provides migrant workers with job-specific skills and knowledge and greater awareness of their rights, entitlements, and responsibilities has been internationally recognised as a positive way to prevent migrant worker exploitation.<sup>158</sup> It has been incorporated into a number of international programmes supporting the rights of migrant workers, including UK Department for International Development and ILO Work in Freedom programme which ran from 2013-18. The Work in Freedom Programme provided up to 50,000 women and girls are being provided with pre-departure training designed to help them secure legal work contracts and a decent wage.<sup>159</sup> The trainings contributed to an overall aim of preventing trafficking of women and girls in South Asia and the Middle East by promoting education, fair recruitment, safe migration and decent work.

<sup>156</sup> Swedish Migration Agency. 2018. 'Extending a work permit'. <https://www.migrationsverket.se/English/Private-individuals/Working-in-Sweden/Extending-a-permit.html>

<sup>157</sup> Swedish Government. 2019. 'Obtaining a work permit'. <https://sweden.se/society/obtaining-a-work-permit/>

<sup>158</sup> ILO. 2014. 'Need for pre-departure information and training for migrant workers stressed'. <https://bit.ly/2NgWltC>; IOM. Undated. 'Best practices: IOM's migrant training/Pre-departure orientation programs'. <https://bit.ly/2OvWknM>

<sup>159</sup> ILO. 2013. 'Question and answers on Work in Freedom programme'. [https://www.ilo.org/global/topics/forced-labour/news/WCMS\\_217617/lang-en/index.htm](https://www.ilo.org/global/topics/forced-labour/news/WCMS_217617/lang-en/index.htm)

Pre-departure training has the potential to equip migrant workers with the information they need to make informed decisions, stand up for their rights and seek assistance when needed. However, as an independent review of the Work in Freedom programme notes, pre-departure training will not help reduce exploitation where migrant workers do not have the power to act on their knowledge.<sup>160</sup> For pre-departure training to be an effective tool in preventing exploitation, it must be combined with changes in the destination country that enable migrant workers to assert and defend their labour rights.

“

Workers on TMPs should be guaranteed the right to change employers and, ideally, employment sectors.”

“

The lack of recourse to public funds that is usually a condition of TMPs creates a two-tier labour market.”

“

It is crucial that state labour market enforcement can proactively enforce standards across workplaces and sectors.”

Even when migrant workers know their rights and have channels for reporting abuse, it does not mean they will be able to assert their rights. Fear of losing their job and ending up homeless or destitute, or having to return home without earning back the money they have invested into securing a job abroad, will act as barriers to workers reporting abuses or using other means to assert their rights, leaving them vulnerable to exploitation. To help mitigate this fear, workers on TMPs should be guaranteed the right to change employers and, ideally, employment sectors. The ability to change sectors as well as employer is crucial for reassuring workers that they will be able to find alternative employment if they are blacklisted by employers within a specific sector.

Having recourse to public funds is another way of mitigating the fear that workers might have of reporting or leaving an abusive employer and enabling them to access their rights. People without access to welfare benefits, housing assistance, healthcare or homelessness assistance and support 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>161</sup> Ensuring that workers have access to these services may make them more willing to enforce their rights. It will also help prevent people from becoming so destitute that they are willing to accept any employment available, including exploitative conditions. The lack of recourse to public funds that is usually a condition of TMPs 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 situations, thereby leaving them open to abuse and exploitation.<sup>162</sup>

### 3. PROACTIVE LABOUR MARKET ENFORCEMENT, INCLUDING TARGETED INSPECTIONS IN HIGH-RISK SECTORS

In addition to making sure that migrant workers on temporary schemes are able to enforce their rights individually, it is crucial that state labour market enforcement can proactively enforce standards across workplaces and sectors. The ILO regards proactive inspection, of workplaces as a core activity of labour inspectorates for the prevention of exploitation.<sup>163</sup> According to the World Bank, inspectorates should “aim for a goal of 60 percent proactive inspections, and 40 percent reactive (accidents,

<sup>160</sup> Mak, J. et al. 2019. ‘Pathways to prevent labour exploitation in Nepal: Do pre-migration interventions work?’. <https://www.lshtm.ac.uk/files/swift-evaluation-nepal-research-report-pathways-to-prevent-labour-exploitation-feb-19.pdf>

<sup>161</sup> Homeless Link. 2016. ‘Supporting people with no recourse to public funds’. <https://www.homeless.org.uk/our-work/resources/supporting-people-with-no-recourse-to-public-funds>

<sup>162</sup> TUC Commission on Vulnerable Employment. 2008. ‘Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment’. <https://bit.ly/1NFjk>

<sup>163</sup> International Labour Organisation. 2010. ‘Labour inspection: what it is and what it does’. [http://www.ilo.org/wcmsp5/groups/public/---eddialogue/---labadmin/documents/instructionalmaterial/wcms\\_141400.pdf](http://www.ilo.org/wcmsp5/groups/public/---eddialogue/---labadmin/documents/instructionalmaterial/wcms_141400.pdf)

“

Proactive enforcement involves seeking out workplaces where abuses may be happening.”

complaints) based on an application of risk prioritization towards highest risk workplaces”<sup>164</sup>. Whereas reactive inspection is in response to complaints or other intelligence, proactive enforcement involves seeking out workplaces where abuses may be happening. This is why it is particularly important for mitigating exploitation among temporary migrant workers, as they are among the groups that are least likely to self-report.<sup>165</sup> Proactive inspections targeting high-risk sectors of the labour market, particularly when combined with powers to enforce penalties immediately, can provide a strong disincentive to non-compliance for businesses, as well as enabling the detection of violations before they develop into severe exploitation (see case study below for an example of labour inspectorates targeting high-risk sectors in Switzerland).

#### **CASE STUDY: TARGETED LABOUR INSPECTIONS FOR HIGH-RISK SECTORS IN SWITZERLAND**

To protect workers and prevent employers using migrant workers to undercut wages and working conditions, Switzerland has introduced a targeted and proactive system for monitoring and enforcing employment standards. By law, at least 2% of *all* employers must be inspected. In high-risk sectors this rises to 3%.<sup>166</sup> In addition, 50% of posted workers (workers who, for a limited period of time, carry out their work in another EU country from the one they normally work in) and 50% of all foreign self-employed workers must be inspected each year.

As a result of these quotas, in 2016, 3.5% of all employed persons in Switzerland had their wages and working conditions checked. This is significantly higher compared to the UK, where only 0.2% of workers had their wages checked by HMRC national minimum wage inspection team. Where collective agreements are in place, inspections in Switzerland are carried out by a bipartite commission of trade union and employer representatives.

## **4. LICENSING OF LABOUR INTERMEDIARIES TO PREVENT RECRUITMENT DEBT AND DECEPTION**

“

Licensing is one of the ways in which governments can regulate labour recruitment and placement agencies.”

Licensing is one of the ways in which governments can regulate labour recruitment and placement agencies and prevent the charging of illegal recruitment fees and deception in recruitment. 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>167</sup>

<sup>164</sup> The World Bank. 2011. 'International Experiences in Reforming Labour Inspection Services'. p.3. <http://siteresources.worldbank.org/UKRAINE/UKRAINIANNEXTN/Resources/455680-1310372404373/UkraineLaborInspectorateEng.pdf>

<sup>165</sup> FLEX. 2017. 'Risky Business: Tackling exploitation in the UK labour market'. p.16 <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>

<sup>166</sup> Meardi, G. 2017. 'What does migration control mean? The link between migration and labour market regulations in Norway, Switzerland and Canada'. *Warwick Papers in Industrial Relations*. No.109. p.14 [https://warwick.ac.uk/fac/soc/wbs/research/irru/wp/irru\\_wp\\_109.pdf](https://warwick.ac.uk/fac/soc/wbs/research/irru/wp/irru_wp_109.pdf)

<sup>167</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'. Available at [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)

## CASE STUDY: GLAA LICENSING OF LABOUR PROVIDERS IN THE UK AND OVERSEAS

The GLAA is a non-departmental public body that regulates companies or individuals who provide workers into agriculture, horticulture, and shellfish gathering – and any associated processing and packaging – through its licencing scheme.<sup>168</sup> It carries out proactive inspections to ensure labour providers are compliant with licensing standards, which cover health and safety, accommodation, pay, transport and training. Tax, National Insurance and VAT regulations must also be met. Operating without a licence is a criminal offence carrying a prison sentence of up to ten years. Using an unlicensed labour provider is also a criminal offence.

The GLAA's licensing scheme is unique in its requirement that all overseas employment agencies engaged with British businesses must also be licensed with the GLAA. Recognising the large number of EU workers recruited into the sectors it regulates, the GLAA has imposed this extra-territoriality aspect to its licensing to prevent exploitative practices across supply chains.<sup>169</sup> To enforce its licences abroad, the GLAA has actively sent enforcement officers to countries of origin to conduct training exercises and to support local authorities in applying labour laws in situations where workers are recruited by overseas employment agencies.<sup>170</sup>

## 5. FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Trade unions provide members with information on their rights, as well as mechanisms by which to exercise them, and low unionisation – or even awareness of unions – in low-paid professions leaves workers without support to access labour market protections. FLEX finds that the level of unionisation amongst individuals that end up in exploitation in the UK is extremely low.<sup>171</sup> Unions are especially important for low-wage workers who may have little power to act individually to improve their wages and working conditions.

Rates of unionisation amongst temporary migrant workers are low and as such, community organisations which support and work with migrant workers can provide a crucial role in lieu of formal unionisation. Research conducted by FLEX, Adpare and Fair Work into the identification of human trafficking in the UK, the Netherlands and Romania in 2016, found that the majority of migrant trafficked persons interviewed had been identified by contact with a member of their migrant community or a migrant community organisation, which was viewed as trusted and able to support their ultimate referral to the national referral mechanism.<sup>172</sup>

The benefits of union membership are clear, particularly when it comes to wages. Research by the Trades Union Congress (TUC) shows that sectors covered by collective bargaining agreements have higher pay compared to sectors that do not, even where high levels of migrant workers are employed.<sup>173</sup> The implication is that where collective bargaining

“

Unions are especially important for low-wage workers who may have little power to act individually to improve their wages and working conditions.”

“

Rates of unionisation amongst temporary migrant workers are low and as such, community organisations which support and work with migrant workers can provide a crucial role.”

<sup>168</sup> See [www.gla.gov.uk](http://www.gla.gov.uk)

<sup>169</sup> Andrees, B. Nasri, A. Swiniarski, P. 2015. 'Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities'. Available at [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>170</sup> Maroukis, T. 2016. Open Democracy. 'The UK Gangmasters Licensing Agency: A model to be followed and how to undermine it'. Available at <https://www.opendemocracy.net/beyondslavery/pt/thanos-maroukis/uk-gangmasters-licensing-agency-model-to-be-followed-and-how-to-underm>

<sup>171</sup> FLEX. 2017. 'Risky Business: Tackling exploitation in the UK labour market'. p.7 <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>

<sup>172</sup> FLEX, FairWork and Adpare. 2016 Identification and Support of Victims of Trafficking for Labour Exploitation in the Netherlands the UK and Romania'. <https://labourexploitation.org/publications/identification-and-support-victims-trafficking-labour-exploitation-netherlands-uk-and>

<sup>173</sup> TUC. 2017. 'EEA workers in the UK labour market: TUC submission to the Migration Advisory Committee'. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/693380/TUC.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693380/TUC.PDF)



agreements are in place, employers have been less able to use migration to undercut wages and working conditions. Experiences from Norway (see case study below) also show how the extension of collective bargaining agreements to cover entire sectors has been an effective way of protecting wages and conditions in a context of high rates of immigration.

#### **CASE STUDY: THE BINDING EXTENSION OF COLLECTIVE BARGAINING AGREEMENTS IN NORWAY<sup>174</sup>**

To address any downward pressure on wages and working conditions as a result of free movement within the European Economic Area (EEA), Norway passed a law that made it possible to extend provisions in sectoral collective agreements to all workers in a sector. Where a collective bargaining agreement is extended across a sector, all employers must offer wages and working conditions in accordance with the agreement even if they are not party to it. Decisions to extend collective bargaining agreements are made by a tripartite Tariff Board. The law was not applied until the expansion of the EU in 2004, which led to a significant increase in migration to Norway and tensions in the labour market. Sectors where collective bargaining agreements have been extended include construction, shipbuilding, agriculture, cleaning, electricians, fish processing, freight transport by road, and passenger transport by bus.

The sector-wide extension of collective agreements has not fully eliminated issues with wage stagnation or other labour conditions associated with a larger labour supply. There are also issues with agency work and zero-hours contracts being used to undercut wages and conditions. However, in contrast to the UK, these issues are being tackled through proposals for better labour regulation rather than limits to immigration. Changes include improved recognition of foreign qualifications, regulations on agency work, making zero-hours illegal and applying joint and several liability in the construction sector. Norway has also introduced compulsory health and safety cards for construction and cleaning, which has limited false self-employment and undeclared work – only 11% of construction workers in Norway self-employed compared to 41% in UK.

“

These boards, also referred to as wages councils, are usually made up of representatives of employers, trade unions and independent members.”

Some sectors, like agriculture, where seasonal work is common and much of the workforce are temporary migrants, collective bargaining can be highly challenging. One way to address this issue is through the establishment of independent tripartite wages boards. These boards, also referred to as wages councils, are usually made up of representatives of employers, trade unions and independent members who together set minimum wage rates for different grades of worker, holiday pay and other terms of employment, taking into account the particularities of a sector. Wages boards used to be common in the UK with 66 wages councils covering 3.5 million workers at their peak in 1953. Historically, wages councils have not offered the most effective protection for workers: they have been criticised for following rather than leading in terms of pay, “so that the relative position of the low-paid remained largely unchanged for long periods”<sup>175</sup> and for not having enough inspectors to enforce standards. However, they did provide a forum for sector-wide collective bargaining that would otherwise have been missing.

Currently tripartite wages boards exist only in the agricultural sector and only in Scotland and Northern Ireland, though they were common across the UK labour market until the 1980s. The Agricultural Wages Board (AWB) for England and Wales was scrapped at the same time as the

<sup>174</sup> See Meardi, G. 2017. 'What does migration control mean? The link between migration and labour market regulations in Norway, Switzerland and Canada'. *Warwick Papers in Industrial Relations*. No.109. pp.5-10 [https://warwick.ac.uk/fac/soc/wbs/research/irru/wpir/wpir\\_109.pdf](https://warwick.ac.uk/fac/soc/wbs/research/irru/wpir/wpir_109.pdf)

<sup>175</sup> Edwards, P. 1999. 'The UK's first national minimum wage'. Eurofund. <https://www.eurofound.europa.eu/publications/article/1999/the-uks-first-national-minimum-wage>

SAWS ended in 2013; Wales has since introduced an Agricultural Wages Panel. The worker-represented AWBs were set up in 1948 in recognition of the inherent risk factors associated with work in the agricultural sector. Research by Unite the Union shows that less than a year after the AWB for England and Wales was abolished, the majority of agricultural workers surveyed had not received the pay rise to which they would have been entitled to had it not been abolished and many reported that entitlements such as sick pay had been withdrawn.<sup>176</sup>

#### **CASE STUDY: COLLECTIVE AGREEMENT TO PROTECT NON-UNIONISED MIGRANT BERRY PICKERS IN SWEDEN**

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>177</sup> Originally a different collective agreement intended for more regular sectors was applied, but was found to be ineffective in the specific context of seasonal berry picking. A significant factor in this was the difficulty of organising seasonal berry pickers: Swedish law requires trade unions to have members at a work site in order for them to get access and check working conditions, but most seasonal berry pickers are not union members. To account for the difficulty of organising temporary migrant workers in the berry sector, a collective agreement adapted to their specific circumstances was developed. Now, Kommunal can enforce working time and health and safety provisions even if it has no members at a work site. Employers are obliged to hand over wage lists, picking lists, working time schedules and other documents demanded by the union.<sup>178</sup> In order to get trade union sign-off on its work permits, all overseas temporary work agencies employing seasonal berry pickers in Sweden must sign up to the collective agreement.

## **6. EMBEDDING WORKER PROTECTIONS INTO TMPs**

Another key way to prevent TMPs from increasing the risk of exploitation for workers is to embed worker protections, or conditions for employers seeking to employ workers through TMPs, into the design of the schemes themselves. Unions and other workers' organisations should be a central part of this process, as they will be best placed to identify likely issues within sectors and appropriate protections. Potential protections that could be included within schemes could include things like poor weather payments for workers whose work is weather dependent; a minimum wage rates that reflects salaries paid to resident workers within the same sector; minimum guaranteed working hours; health and safety responsibilities for employers; and what deductions are allowed, among other things.

The case studies below give an example of conditions set by the Swedish state for employers hiring migrant berry pickers in and those agreed between Canada and Mexico under the Seasonal Agricultural Workers Program. It is important to note that conditions such as these are only effective if they are enforced. For example, the US Department of Labour will not approve applications under the H-2 migration scheme unless employers agree to offer full time work. In addition, workers on the scheme must be guaranteed at least 75% of the hours promised in their

<sup>176</sup> Blagg, H. 2016. 'Work with the board: Unite condemns attacks on Scottish AWB. <https://bit.ly/2NPUF3Y>

<sup>177</sup> Herzfeld Olsson, P. 2018. 'Towards protection of vulnerable labour migrants in Sweden: The case of the Thai berry pickers'. p.159. in Rijken, C. and de Lange, T. (eds.). *Towards a decent labour market for low-waged migrant workers*. Amsterdam University Press.

<sup>178</sup> *Ibid.* p.160

---

“ Unions and other workers' organisations should be a central part of this process, as they will be best placed to identify likely issues within sectors and appropriate protections.”

---

“ Conditions such as these are only effective if they are enforced.”

employment contract. However, while this can be seen as an example of good practice, there is virtually no enforcement of this requirement in practice.<sup>179</sup> State labour market enforcement is one way through which such standards can be enforced. Another alternative would be to include workers' organisations like trade unions in the enforcement of terms and conditions.

#### **CASE STUDY: CONDITIONS SET BY THE STATE FOR HIRING MIGRANT BERRY PICKERS IN SWEDEN**

There are a number of requirements set by the Swedish Government that an employer must meet in order to obtain a work permit to employ or engage a person to work in the berry picking industry in Sweden. These include a number of protections for workers, including a minimum monthly salary and guarantees that they employer can pay this wage even if the berry harvest is poor. Employers must:

1. Offer terms of employment that are at least on par with Swedish collective agreements or what is customary in the occupation or industry.
2. Give the relevant trade union the opportunity to state its opinion about the terms of employment.
3. Offer a monthly pre-tax salary of at least SEK 13,000 (approx. £1,100).
4. Prove that any previously employed or engaged berry pickers have had their salaries paid in full.
5. Show that they can afford to pay the monthly salary (gross salary plus any social security contributions) even if the berry harvest is poor or the employee is unable to pick the required number of berries. This can be done by showing the company has liquid assets in the bank or the equivalent overdraft facilities or bank guarantees (applies only to banks in the EU/EEA area or Switzerland). Employers can also show a legally binding commitment from another financier or a guarantee that their company has liquid assets. Income statements and balance sheets may be submitted as verification.
6. Show that they are able to provide guidance to the people they employ or hire on their work and organise transport, room, board and other practical matters in a manner that is customary for the industry. This planning must be described in writing.
7. Present all costs that the seasonal berry pickers are liable for.
8. Produce documentation to show they have provided sufficient information to workers about the job, the terms of employment offered, the legal right of access to private land and traffic regulations in Sweden.

<sup>179</sup> Southern Poverty Law Centre, 2013. 'Close to Slavery: Guestworker Programs in the United States'. p.22. [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf).

## CASE STUDY: CANADA-MEXICO BILATERAL LABOUR AGREEMENT ON SEASONAL AGRICULTURAL WORKERS

The 2013 *Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico*, a bilateral agreement between Canada and Mexico, sets out the key terms and conditions for workers and employers participating in the scheme.<sup>180</sup>

The terms and conditions cover:

1. The scope and period of employment, including normal daily working hours and the conditions for overtime; minimum guaranteed working hours; the minimum and maximum length of employment; and workers' entitlement to days off.
2. Conditions for lodging, meals and rest periods, including cost of accommodation (free), length and frequency of rest breaks, and the provision of meals and/or cooking facilities.
3. Payment of wages, including holiday pay, average minimum working hours, the payment of an advance to cover workers' personal expenses if no work is available, minimum wage rates equal to or exceeding whichever is the greatest: a) the minimum wage, b) the relevant wage agreed for the sector or c) the rate being paid by the employer to their Canadian workers performing the same type of work.
4. Deductions to wages, including caps on deductions for medical insurance, the costs of meals and utility costs.
5. Travel and reception arrangements, including that the employer must cover the upfront costs of the worker's air travel to and from Mexico to Canada and the process by which the worker will reimburse these costs.
6. Insurance for injury, disease and death.
7. Maintenance of work records and payslips.
8. Other obligations of the employer and the worker.
9. Processes for premature repatriation and transferring from one employer to another.

<sup>180</sup> Government of Canada. 2013. 'Agreement for the employment in Canada of seasonal agricultural workers from Mexico - 2013'. [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)

# CONCLUSION AND RECOMMENDATIONS

In the Immigration White Paper, the Government proposed three new temporary migration programmes intended to alleviate labour shortages linked to Brexit and the end of free movement: a Seasonal Workers Pilot for the agriculture sector, a 12-month ‘temporary short-term’ visa for all sectors and skill levels, and a new UK-EU Youth Mobility Scheme.

Research from around the world has found examples of temporary migration programmes leading to the full spectrum of labour abuses, from minor violations to severe exploitation. This report has identified and explained the key features of TMPs that can increase migrant workers vulnerability to exploitation and recommends ways in which these risks could be mitigated.

Chapter 1 introduced the concept of ‘abuse of vulnerability’ as a means of human trafficking for labour exploitation and explained the individual and circumstantial factors that can create situations of vulnerability for migrant workers. Chapter 2 explained what temporary migration programmes are and provided details on what schemes have been proposed in the Immigration White Paper. Chapter 3 analysed what features of temporary migration programmes make migrant workers vulnerable to labour exploitation, using examples from previous and existing schemes from the UK and internationally. Chapter 4 highlighted ways in which the risks of TMPs can be mitigated, again with examples from the UK and elsewhere.

There are a number of factors associated with TMPs generally, and those outlined in the Immigration White Paper specifically, that contribute to creating situations of vulnerability for migrant workers. These include debt bondage and deception in recruitment; tied visas; discrimination; lack of pathways to permanent residence and short visa timeframes that prevent workers from gaining the skills and networks that build resilience; multiple dependencies on employers or agents; no right to bring dependents or access public funds; and barriers to accessing justice. Other contributing factors relate to broader labour market structures, such as the insufficient capacity for pro-active inspection and enforcement among UK labour inspectorates; data sharing between labour inspectorates and immigration enforcement agencies; the prevalence of insecure employment models; and limited information and channels of advice for migrant workers.

While this report has identified many risks, there are also positive features within the Government’s proposals, namely the efforts made within the SWP to ensure workers are able – at least on paper - to change employers, a feature that was not available to migrant workers under the previous SAWS. On the proposed 12-month short-term visa scheme and the UK-EU YMS the Immigration White Paper suggests that workers will be able to change employer and sector without restrictions. This learning from past mistakes should be encouraged.

However, the primary recommendation of this report is that instead of introducing temporary and more restrictive migration policies for workers in lower-paid jobs and sectors, the Government should ensure the same rights for all migrant workers in order to prevent exploitation. This should include: pathways into permanent residence; the right to change employer and move freely within the labour market; access to essential services

---

“

Research from around the world has found examples of temporary migration programmes leading to the full spectrum of labour abuses, from minor violations to severe exploitation.”

---

“

The Government should ensure the same rights for all migrant workers in order to prevent exploitation.”

such as healthcare, housing assistance and unemployment benefits; and the right to bring family members.

Migration policies that restrict the rights of workers will contribute to an increased risk of labour abuse and exploitation for migrant workers and may create situations in which workers have to choose whether to remain with exploitative employers or risk destitution, homelessness and deportation. International evidence shows that preventing the exploitation of low-wage migrant workers requires integrating strengthened labour standards and their enforcement into immigration reform proposals. The following policy recommendations outline the key steps that FLEX believes must be taken to achieve meaningful protection for migrant workers entering the UK under any new schemes.

---

## RECOMMENDATIONS TO THE GOVERNMENT ON THE UK'S FUTURE IMMIGRATION SYSTEM

### 1. REMOVE COOLING-OFF PERIODS BETWEEN VISAS AND PROVIDE PATHWAYS TO PERMANENT RESIDENCE AND FAMILY REUNIFICATION FOR MIGRANT WORKERS AT ALL WAGE LEVELS.

The Government should remove the six-month and one-year cooling-off periods from the SWP and the 12-month visa respectively, and provide migrant workers at all wage levels with pathways to permanent residence and family reunification, either immediately or after a specified period of time. The current proposals to limit low-wage workers' access to the UK labour market to temporary and rights-restrictive migration schemes risks creating a two-tier labour market where those earning higher wages have access to more rights and protections than those earning less. This will place those workers who are already at risk of exploitation, for a variety of reasons, at greater risk of harm. Providing pathways to permanent residence, and the rights and benefits that accompany that status, including family reunification, to all workers would rightly recognise that people on lower wages, including workers in social care, construction, agriculture and hospitality, contribute economically, socially and culturally to the UK. It would also help protect employment standards across the UK economy by preventing a constant churn of new workers entering the labour market. The longer people stay in a country the greater their chance of integration and developing knowledge, skills and networks that reduce risk of exploitation.

---

“

This will place those workers who are already at risk of exploitation, for a variety of reasons, at greater risk of harm.”

### 2. INCREASE THE RESOURCES AND REMIT OF LABOUR INSPECTORATES TO ENSURE THE ENFORCEMENT OF LEGISLATION TO PREVENT FORCED LABOUR, INCLUDING LABOUR LAW.

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

“

FLEX recommends that UK labour inspectorates' resources are increased to reach the ILO recommended ratio of 1 inspector per 10,000 workers at a minimum.”

“

No recourse to public funds can create extreme risk of abuse and exploitation.”

ratio of one inspector per 10,000 workers.<sup>181</sup> UK labour inspection relies predominantly on worker complaints to trigger investigations<sup>182</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 1 inspector per 10,000 workers at a minimum.<sup>183</sup> Additionally, we recommend that regular pro-active investigations are undertaken into the working conditions experienced under TMPs to evaluate whether abuse or exploitation are present, to hold abusive and exploitative employers to account, to prevent them from using people's migrant status as a tool to undercut wages and working conditions and to provide workers with routes to remedy.

### **3. PROVIDE MIGRANT WORKERS WITH ACCESS TO PUBLIC FUNDS.**

All workers in the UK, including those on TMPs, should be granted access to public funds and services such as healthcare, unemployment support and homelessness assistance. No recourse to public funds can create extreme risk of abuse and exploitation 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. Denial of access to public funds makes migrant workers vulnerable to exploitation and does not take into account the fact that all migrants on work-based visas pay tax on their UK earnings. As the Immigration Law Practitioners Association has noted: “It is therefore unclear as to what policy reason exists to deny people who pay for public services through general taxation the right to then access those self-same public services that are paid for through general taxation”.<sup>184</sup>

### **4. PROVIDE MIGRANT WORKERS WITH INFORMATION ON THEIR LABOUR RIGHTS AND SUPPORT OPTIONS TO HELP IDENTIFY AND SEEK REMEDY FOR CASES OF ABUSE.**

All new entrants into the UK labour market 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 SWP, this information should be provided to them pre-departure via the labour provider they are

<sup>181</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>182</sup> Director of Labour Market Enforcement, 2018. 'United Kingdom labour market enforcement strategy 2018/19'. p.40. [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>183</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>184</sup> ILPA. 2019. 'ILPA response to the Government White Paper: The UK's future skills-based immigration system'. <http://www.ilpa.org.uk/resources.php/34996/ilpa-response-to-immigration-white-paper-the-uks-future-skills-based-immigration-system-19-december->

working with in their home country as well as upon arrival. The ILO<sup>185</sup> and the International Organisation for Migration<sup>186</sup> both recommend that migrant workers be provided with pre-departure training on living and working abroad. This pre-departure training should be overseen by the GLAA as part of their licensing programme.

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>187</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>188</sup>

## 5. ESTABLISH A MULTILINGUAL HELPLINE FOR WORKERS.

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. 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.

There is currently little provision of labour rights advice for those who do not have a good level of English. The charity-run Modern Slavery Helpline provides translation in most common foreign languages, but their focus is not on employment advice. Many workers may not self-identify as a ‘modern slave’ or may need advice on lower level forms of abuse.

## 6. EMBED LABOUR PROTECTIONS INTO THE DESIGN OF ANY NEW TMPs PROPOSED

In order to prevent exploitation on TMPs, the Government must embed labour protections into their design. This will not only provide enhanced protection for workers made vulnerable by their temporary visas, but may also help prevent employers from using TMPs to undercut wages and conditions. The Migration Advisory Committee (MAC) for example has recommended setting a higher minimum wage for workers “employed through any new Seasonal Agricultural Workers Scheme”<sup>189</sup>, something the Government has said it will consider if the SWP is extended.<sup>190</sup> This would be preferable to current proposals in the Immigration White Paper that aim to reduce

“

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.”

<sup>185</sup> ILO. 2014. ‘Need for pre-departure information and training for migrant workers stressed’. <https://bit.ly/2NgWltC>

<sup>186</sup> IOM. Undated. ‘Best practices: IOM’s migrant training/Pre-departure orientation programs’. <https://bit.ly/2OvWknM>

<sup>187</sup> UK Government. 2018. ‘Good work plan’. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766167/good-work-plan-command-paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766167/good-work-plan-command-paper.pdf)

<sup>188</sup> *Ibid.* p.31

<sup>189</sup> MAC. 2018. ‘EEA migration in the UK: Final report’. p.120. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/741926/Final\\_EEA\\_report.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741926/Final_EEA_report.PDF)

<sup>190</sup> UK Government. 2018. ‘The UK’s future skills-based immigration system’. p.54 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf)



employer demand for migrant workers by charging workers an annually increasing fee to come to the UK.<sup>191</sup>

The Government should set out in guidance key conditions for employers who wish to hire migrant workers through TMPs. These should be developed in consultation with worker representatives and employers. We recommend that employers should:

1. Provide all workers with a day-one statement of the terms of their contracts and their labour rights;
2. Guarantee workers' base salary or a minimum number of hours;
3. Not have any workers on TMPs on zero-hours contracts;
4. Have clear rules for overtime working and how it will be paid;
5. Consider signing up to the Employer Pays Principle<sup>192</sup>, which sees employers investigate whether recruitment payments have been made by workers and ensure this cost is paid back to them;
6. Ensure workers are paid the same or higher wages as those offered to resident workers in the sector;
7. Give the relevant trade union the opportunity to state its opinion about the terms of employment;
8. Cover the cost of health and related insurance;
9. Cover the cost of travel to the UK to undertake work under TMPs. This may be deducted from workers' wages, but deductions must be capped at a reasonable rate based on market prices;
10. Ensure decent standards in accommodation with a cap on how much can be charged, including for utilities. For workers with no guaranteed earnings, accommodation and utilities must be free if earnings fall below a set level;
11. Set out any and all wage deductions that are allowed, including caps where relevant;
12. Prove that they can pay workers the guaranteed base amount (see point 2) even if the business income is unexpectedly low, for example due to a poor harvest;
13. Prove that any previously employed or engaged migrant workers have had their salaries paid in full.

Additionally, employers who have violated labour laws must be excluded from participation in any TMPs.

“

Additionally, employers who have violated labour laws must be excluded from participation in any TMPs.

<sup>191</sup> UK Government. 2018. 'The UK's future skills-based immigration system', p.52 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf)

<sup>192</sup> Institute for Human Rights and Business. Undated. 'Leadership Group for Responsible Recruitment: The employer pays principle'. [https://www.ihrb.org/uploads/news-uploads/Employer\\_Pays\\_Principle\\_-\\_Leadership\\_Group\\_for\\_Responsible\\_Recruitment\\_updated2.pdf](https://www.ihrb.org/uploads/news-uploads/Employer_Pays_Principle_-_Leadership_Group_for_Responsible_Recruitment_updated2.pdf)

“

There is no worker-led or independent process of auditing and evaluating the scheme.”

## **7. INTEGRATE TRADE UNIONS AND WORKERS' ORGANISATIONS INTO THE DESIGN, GOVERNANCE AND EVALUATION OF TMPs.**

Integrating trade unions and other workers' and migrant community organisations into both the design and governance/monitoring processes of temporary migration schemes would help ensure that the rights of migrant workers are a key consideration. It would also help make sure these schemes take into account the risks associated with specific occupations and sectors. The Seasonal Workers Pilot currently has an internal evaluation planned and Pilot Operators are conducting their own audits as the scheme is rolled out. However, there is no worker-led or independent process of auditing and evaluating the scheme. The integration of worker and migrant community organisations into the evaluation of this scheme would ensure that there is a greater chance of capturing the true experiences of migrant workers in this and future schemes.

## **8. TAKE STEPS TO ERADICATE DIRECT AND INDIRECT DISCRIMINATION FROM TMPs.**

“

Data should be collected on who is participating in TMPs as well as any complaints made by workers on those schemes.”

This should include consulting widely with a variety of experts and organisations working to combat discrimination under guidance from the Equalities and Human Rights Commission, the Scottish Human Rights Commission, and the Northern Ireland Human Rights Commission when designing the TMPs so as to remove or mitigate features that might indirectly discriminate against certain social groups. There should be clear rules against direct discrimination by recruitment agencies and employers, particularly in the recruitment process, and these rules should be enforced. In addition, data should be collected on who is participating in TMPs as well as any complaints made by workers on those schemes. This data should be disaggregated at a minimum by gender, age, ethnicity, disability, nationality/country of origin, and sector of work.

## **9. IMPROVE THE RESOURCES AND CAPACITY OF THE GANGMASTERS AND LABOUR ABUSE AUTHORITY AND THE EMPLOYMENT AGENCIES STANDARDS INSPECTORATE TO OVERSEE LABOUR INTERMEDIARIES IN THE UK AND OVERSEAS.**

To prevent deception in recruitment and the charging of illegal recruitment fees to workers under TMPs, both the Gangmasters and Labour Abuse Authority (GLAA) and the Employment Agencies Standards Inspectorate (EASI) should have their resources and capacity extended to enable them to effectively oversee labour intermediaries.

The GLAA has an extensive role under the SWP. Anyone providing workers to the UK for the specified sectors will need a licence, even if their business is located overseas. Due to its remit, the GLAA will be responsible for licensing the two UK operating companies and any overseas labour providers involved in sending people to work in the UK under the SWP. This will require the GLAA to work across a very wide geographical spread, understanding local labour laws in potentially every country outside the EU, and to monitor the

“

It is crucial that the GLAA is resourced properly to license and monitor labour intermediaries and proactively inspect labour sites under the SWP.”

“

For EASI to effectively carry out its current work, let alone additional oversight of labour providers bringing workers from overseas, it will need a significant increase in its resources.”

adherence of overseas labour providers to local labour laws and GLAA licensing standards. It is crucial that the GLAA is resourced properly to license and monitor labour intermediaries and proactively inspect labour sites under the SWP. This will be an important mechanism for preventing labour exploitation under the scheme, such as ensuring that recruitment fees are not being charged overseas. At present, the government has made no public statements or commitments to increase GLAA resources to enable them to undertake this high resource function. In 2017/18, the GLAA had a resource budget of £6,090,000 and a staff of 101.

The GLAA's licensing and monitoring system currently only applies to the agriculture, horticulture and shellfish gathering, meaning that other high-risk sectors are currently without this additional layer of labour market enforcement. EASI oversees labour intermediaries in the rest of the UK economy. It investigates breaches of the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Businesses Regulations 2003, and is responsible for protecting the rights of agency workers. In 2018/19, the EASI was responsible for overseeing 18,000 employment agencies covering 1.1 million workers. It has a staff of 13 and a budget of £725,000. EASI does not oversee employment agencies outside the UK. For EASI to effectively carry out its current work, let alone additional oversight of labour providers bringing workers from overseas, it will need a significant increase in its resources.

## 10. EXPAND THE GANGMASTERS AND LABOUR ABUSE AUTHORITY'S LICENSING OF LABOUR PROVIDERS TO OTHER HIGH-RISK SECTORS.

To prevent deception in recruitment, including 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 significant levels of outsourcing and subcontracting; flexible or insecure work arrangements such as zero-hours contracts, agency work and false or dependent self-employment; isolated working conditions; accommodation on site; low wages and piece-rate payments; and limited power of workers due to low or no unionization and ease of replacement. Licensing labour providers in high-risk sectors would ensure early identification of abuses and to enable swift licence revocation for breaches of standards. This is particularly important for workers under the 12-month temporary short-term work scheme and the UK-EU YMS who are more likely to be recruited from overseas into sectors not licensed by the GLAA, but also for anyone hired within the UK through labour intermediaries – a practice which is likely to increase as the available workforce shrinks after the end of free movement.

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>193</sup> The

<sup>193</sup> See FLEX. 2013. 'Preventing Trafficking For Labour Exploitation'. <https://www.labourexploitation.org/publications/flex-working-paper-01-prevention-trafficking-labour-exploitation/>; Centre for Social Justice. 2013. 'It Happens Here'. p.139. <https://www.centreforsocialjustice.org.uk/library/happens-equipping-united-kingdom-fight-modern-slavery/>; and MAC. 2014. 'Migrants in Low Skilled Work'. p.5. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/333083/MAC-Migrants\\_in\\_low-skilled\\_work\\_Full\\_report\\_2014.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf)

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>194</sup>

## **11. ENSURE WORKERS DO NOT FACE BARRIERS TO CHANGING EMPLOYERS.**

“

FLEX does not support any TMP that limits workers' ability to leave abusive or exploitative situations or restricts workers' bargaining power by limiting their visas to a specific sector or type of work.”

FLEX welcomes that the 12-month scheme proposed in the Immigration White Paper will allow workers to move freely within the labour market. However, workers under the SWP Pilot will not have the same freedom and will instead be limited to working in the horticulture sector and require permission from their Pilot Operators, either Concordia UK or Pro-Force Limited, to change employer. Unless it is closely monitored, this system is likely to enable labour abuse as similar arrangements under the previous SAWS have been shown to have done. FLEX does not support any TMP that limits workers' ability to leave abusive or exploitative situations or restricts workers' bargaining power by limiting their visas to a specific sector or type of work. The Government must make sure that workers' requests to change employer are respected. Any requests made should be reported to the Government and those that are rejected must be accompanied by clear reasons for why. The Government should set clear guidelines for operators regarding when it acceptable to reject a request to change employer and communicate these clearly to workers.

**In conclusion, there are clear ways in which the proposals in the Immigration White Paper can be improved in design and implementation to protect from labour abuse and exploitation. FLEX looks forward to engaging with the Government and key stakeholders, including migrants' rights organisations, trade unions and businesses, to design post-Brexit migration policies that protect the rights of migrant workers and ensure no one is made vulnerable to human trafficking for labour exploitation.**

<sup>194</sup> GRETA. 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)

**FOCUS ON  
LABOUR  
EXPLOITATION**