

Written evidence submitted by Focus on Labour Exploitation (FLEX) (ISSB35)

Follow-up on oral evidence given to the House of Commons Public Bill Committee on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-19 on 12 February 2019

Focus on Labour Exploitation (FLEX) works to end human trafficking for labour exploitation. To achieve this, FLEX works to prevent labour abuses, protect the rights of trafficked persons, and promote best practice responses to human trafficking for labour exploitation through research, advocacy and awareness raising. FLEX is a registered charity based in the UK.

I. Have there been Bilateral Labour Agreements under previous Temporary Migration Programmes (Question asked of FLEX by Stuart McDonald MP)

I.1 What are Bilateral Labour Agreements?

Bilateral Labour Agreements (BLAs) are formal agreements between countries of origin (“sending countries”) and destination (“receiving countries”) that set out agreed principles and procedures for labour migration.¹ A BLA sets out each side’s commitments and can be used to implement specific protections for workers, including regulation of recruitment agencies. A Memorandum of Understanding (MOU) is essentially a less formal BLA – they are non-binding agreements, which makes them easier to negotiate, implement and modify, but more difficult to enforce.

A useful example of a BLA that includes protections for workers is the [Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico – 2013](#).

I.2 Bilateral Labour Agreements (BLAs) under previous and existing UK migration schemes

The Youth Mobility Scheme (YMS) is made up of bilateral agreements between the UK and eight non-EEA countries (Australia, New Zealand, Canada, South Korea, Taiwan, Japan, Hong Kong and Monaco). Countries involved in the scheme must offer a reciprocal arrangement for young British nationals. However, the agreements do not set out any specific regulations for employers (e.g. specified wage rates) or protections for participants – employers only need to follow normal UK employment laws.

There were no BLAs under either the Seasonal Agricultural Workers Scheme (SAWS) or the Sectors Based Scheme (SBS). Under the SAWS, recruitment of workers was done through scheme ‘operators’ who could source workers from anywhere in Europe until 2007, when the scheme was restricted to Romanian and Bulgarian nationals only. There were no bilateral labour agreements between the UK and Romania or Bulgaria.

Under the SBS, companies within specific sectors (hospitality and food processing) could use the scheme to employ migrant workers from any non-EU country. From the start of 2007, the scheme was restricted to Bulgarian and Romanian nationals only. There were, however, no bilateral labour agreements between the UK and Romania or Bulgaria or other countries. Instead, recruitment was

¹ ILO. Undated. ‘Bilateral agreements and regional cooperation’. https://www.ilo.org/asia/areas/labour-migration/WCMS_226300/lang-en/index.htm

done on an individual basis with employers in the UK applying to the UK Border Agency (now UKVI) for an SBS permit on a worker's behalf.²

2. What is FLEX's opinion on extending the 12-month visa and having employers pay an annually increasing fee to employ migrant workers? (Question asked of FLEX by Afzal Khan MP)

2.1 Extending the visa timeframe to more than 12 months

As FLEX stated in our Oral Evidence to the Committee, temporary migrant workers are placed at serious risk of labour abuses and exploitation for reasons linked to their temporary migration status. Temporary migrant workers are less likely to know their rights and understand the immigration and employment systems, or develop the language skills and support networks that enable integration and build resilience to exploitation.³ Migrant workers in the UK are known to be at greater risk of exploitation if they do not speak English.⁴ 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.

Extending the visa timeframe from 12 months to two or three years would better enable migrant workers to improve their English language skills; gain knowledge and experience of employment and immigration systems; and join trade unions and other workers' rights organisations that are crucial for preventing exploitation. However, extending the visa timeframe in this way will not fully address the vulnerabilities created by temporariness. People with restricted visa timeframes will still find it more difficult to change jobs or sectors than other workers, particularly towards the end of their visa term. This has been an issue for example under the Domestic Workers in a Private Household visa.⁵ FLEX believes that the UK should recognise the economic, social and cultural contributions of all migrant workers to the UK, irrespective of their skill or wage level. Pathways to permanent residence should not, therefore, be limited only to high and medium skilled migrants. Allowing migrant workers at all skill and wage levels to settle in the UK would act as an important safeguard against employers seeking to use migration to undercut wages and working conditions. It would also promote integration and social cohesion.

2.2 Having employers of migrant workers pay an annually increasing fee

FLEX was asked by Afzal Khan MP to comment on the proposal by Lord Green of Deddington, Chairman of Migration Watch UK, made earlier in the day on 12th February 2019 to "have temporary visas for semi-skilled workers, limiting them to three years and having an escalating annual cost of £1,000, £2,000 and £3,000, so that there is a financial incentive for employers to train their own people."⁶

It is unclear how such a fee would be applied to the proposed 12-month visa scheme, which does not tie workers to a specific sponsor/employer and where migrant workers are able to move freely within the labour market. FLEX welcomes the ability to change employer within the proposed scheme as a crucial measure for preventing exploitation and would not want this removed so that a fee could be applied. We are also concerned about the potential negative consequences a fee could have for workers – employers might not want to let go of workers for whom they have paid a fee, for example.

² 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'.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257242/migrant-seasonal-workers.pdf

³ See Expert Advisory Group on Migration and Population. 2019. 'UK immigration policy after leaving the EU: Impacts on Scotland's economy, population and society,' and MAC. 2018. 'EEA migration in the UK: Final report'. p.119.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741926/Final_EEA_report.PDF

⁴ Consterdine, E. and Samuk, S. 2015. 'Closing the Seasonal Agricultural Workers Scheme: A triple loss'. <https://bit.ly/2lRzgmw>

⁵ 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>

⁶ Public Bill Committee. Immigration and Social Security Co-ordination (EU Withdrawal) Bill. First Sitting. Tuesday 12 February 2019 (Morning). <http://bit.ly/2VqIshO>

In some countries where businesses employing migrant workers have to pay a fee or 'levy', this cost has been transferred onto workers.⁷ Any costs paid by individuals to secure a job in the UK will increase their vulnerability to abuse and could lead to serious exploitation, including forced labour through debt bondage. The risk of exploitation is particularly significant when workers are paying fees for jobs that are low-wage and insecure.

Our understanding is that the rationale for charging employers an annually increasing fee for employing migrant workers would be to discourage long-term reliance on migrant workers by creating an incentive to train UK workers and/or improve wages and working conditions. It is essentially a strategy to prevent employers from using migrant workers to undercut UK workers. FLEX agrees that employers should *not* be able to use migrant workers to undercut wages and working conditions. However, the arguments for how undercutting should be prevented have focused very narrowly on either restricting the 'supply' of migrant workers (reducing labour migration routes, particularly into low-wage work) or employers' 'demand' for migrant workers (by charging them fees), or a combination of both. This is problematic for two reasons: 1) it leads to policies that put migrant workers at higher risk of exploitation, which serves to further undercut wages and working conditions for all workers; and 2) it ignores alternative measures for achieving the same result.

Immigration White Paper proposals that will both serve to make workers vulnerable to exploitation and enable greater undercutting of British workers

The 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". However, the two temporary migration programmes with which it proposes to replace free movement will make it more, not less, possible for employers to use migrant workers to institute poorer wages and conditions. Temporary migration programmes will ensure a constant turnover of people with fewer rights than their UK counterparts; less knowledge of the rights they do have; higher barriers to enforcing these rights; and limited support networks and bargaining power. In addition, restricting labour migration routes, or instituting a fee, will not reduce the number of people wanting to come to the UK to work, it will simply make those workers who do come more vulnerable to exploitation. This is particularly true given the UK's current hostile environment policies have served to marginalise migrant workers regardless of status.

FLEX's proposed measures to prevent undercutting

There are alternative means of preventing employers from using labour migration to undercut wages and working conditions that do not put migrant workers at additional risk. The most important of these is to **ensure that the UK has a well-resourced and pro-active system for enforcing existing employment standards**. As FLEX has highlighted before, the UK's labour market enforcement capacity is one of the weakest in Europe.⁸ In addition to improving the monitoring and enforcement of wages and working conditions across the labour market, the UK could introduce **targeted inspections particularly for high-risk sectors**. Such a policy has been implemented in Switzerland with the specific goal of preventing undercutting or 'social dumping'. By law, at least 2% of *all* employers in Switzerland must be inspected and in high-risk sectors this rises to 3%.⁹ 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 in the same year.¹⁰

⁷ Harkins, B. 2016. 'Review of labour migration policy in Malaysia'. International Labour Organisation. TRIANGLE II Project.

⁸ FLEX. 2017. 'Risky Business: Tackling exploitation in the UK labour market'. <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>

⁹ 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/irwu_109.pdf

¹⁰ *Ibid.*

Another way of preventing the undercutting of wages and conditions would be to **set higher wages and conditions for migrant workers employed through temporary schemes**. This has been proposed for example by the Migration Advisory Committee, which has recommended setting a higher minimum wage for workers employed through any new Seasonal Agricultural Workers Scheme.¹¹ Other conditions for employing temporary migrant workers could include providing guaranteed weekly working hours or full-time contracts instead of zero-hours. There is some indication that offering better conditions to workers on temporary migration programmes has reduced employers' use of such schemes. On the UK Sectors Based Scheme (SBS) workers had to be provided with full-time contracts and their gross pay and conditions had to be equal to or exceed those normally given to a resident worker doing similar work.¹² From 2007 onwards, when the scheme was restricted to Romanian and Bulgarian nationals only, workers on the SBS had the option of transitioning from a temporary to a more permanent status. Between 2007 and 2011, there was a 60% reduction in take up of the scheme. The MAC notes that one potential reason for this may have been employers choosing to employ migrants on more casual terms instead: "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".¹³

It is not ideal to have different working conditions for migrant workers and UK workers, and it would be preferable to set wages and working conditions across the UK labour market, either through **collective bargaining agreements** or – in sectors where collective bargaining is particularly challenging – through **tripartite wages boards**. Currently such 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 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.¹⁴

2.3 Immigration white paper proposal of having migrant workers pay an incrementally increasing visa fee

In reference to the question on charging a fee for employing migrant workers, FLEX would like to draw attention to page 52 of the Immigration White Paper, which states that:

"Workers [on the 12-month visa] will need to pay a visa fee. We will carefully consider what the overall cost of this visa should be and intend to increase the amount charged incrementally each year that the route operates to incentivise businesses to reduce their reliance on migrant labour."

It is unclear from this statement whether the "overall cost" that will be increased will be the cost paid by employers or by migrant workers. We strongly recommend that the fee not be applied to workers. Charging migrant workers a fee will not incentivise business to reduce their reliance on migrant labour and will only serve to increase the risk of labour exploitation as explained above.

3. Evidence of labour abuses and exploitation under previous UK temporary migration programmes (Question asked of FLEX by Kemi Badenoch MP)

¹¹ 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

¹² *Ibid.* p.30

¹³ 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>

¹⁴ Blagg, H. 2016. 'Work with the board: Unite condemns attacks on Scottish AWB. <https://bit.ly/2NPuF3Y>

3.1 The Seasonal Agricultural Workers Scheme (SAWS): 1945-2013

Workers on zero hours contracts being left without earnings

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.¹⁵ Increased monitoring and enforcement of employers' legal responsibilities eventually led to better compliance with minimum wage, 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 Association of Labour Providers (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."¹⁶ Given that SAWS workers had no other earning opportunities in the UK, such practices would have resulted in poverty and eventually destitution, forcing workers either to return home with little or no earnings or to seek to engage in more precarious undocumented work potentially risking exploitation.

Zero-hours contracts cannot be justified under schemes such as the SAWS and or the Seasonal Workers Pilot, which limit migrant workers' employment options and movement within the labour market. Zero-hours contracts are meant to provide two-sided flexibility to the benefit of both employers and workers.¹⁷ Under TMPs where workers have paid to come and work in the UK, have to stay in accommodation provided by their employer or labour provider, must seek permission to change employer, and are only allowed to work in a specific sector, this flexibility is completely one-sided to the benefit of the employer.

Speaking to labour providers in the agriculture sector about this issue, FLEX was told that it is common practice for employers not to charge workers for accommodation when there is less than 15h of work available. However, there is no obligation for employers to do so. An investigation by Channel 4 news in 2015 found that some migrant workers in the UK agriculture sector were being given just enough work to cover their accommodation costs, leaving them with less than £17 in weekly earnings.¹⁸

Deception in recruitment

Workers on the UK SAWS were given an expectation of at least 12 weeks 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.¹⁹ 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.²⁰

Barriers to changing employer

Though workers were technically allowed to change employer under the SAWS, in practice this was "almost impossible" as they could only switch to another farm site with permission from their scheme

¹⁵ 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>

¹⁶ *Ibid.*

¹⁷ Taylor, M. *et al.* 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

¹⁸ Channel 4 News. 2015. 'How agricultural workers are lured to the UK'. Accessed: 19 February 2019. <https://www.youtube.com/watch?v=8TF6Umo2HSQ>

¹⁹ 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>

²⁰ *Ibid.*

operator, five out of nine of whom were also their employer.²¹ Guidance issued to workers said they could only switch employers “for exceptional reasons”; otherwise leaving their employment would mean having to return home to wait for three months before being eligible for a new placement.²² Aware of the power imbalance that comes with tied-visas, some employers used the threat of deportation to implement decreases in pay.²³ The Association of Labour Providers (ALP) has referred to the SAWS as “a scheme which is basically bonded labour”, referring in particular to the fact that SAWS workers were not free to change jobs and were dependent on their employer for both work and accommodation.²⁴

3.2 Sectors Based Scheme (SBS): 2003-2013

Charging of recruitment fees and resultant debt

A Home Office review of the SBS in 2005 noted reports 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.²⁵

3.3 The Worker Registration Scheme (WRS): 2004-2011

Labour abuses, homelessness and destitution as a result of no recourse to public funds

The WRS was found to increase workers’ vulnerability to exploitation by making access to essential services, such as homelessness assistance and welfare benefits, contingent on 12 months continuous registered employment. In extreme cases, exclusion from services in this way resulted in a serious threat to life, particularly where the individuals were homeless and vulnerable.²⁶ 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.²⁷

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.²⁸

Restricting temporary migrant workers’ access to public funds makes them vulnerable 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 (ILPA) 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”²⁹. This is especially

²¹ 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>

²² 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/>

²³ 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

²⁴ ALP. 2012. ‘Position paper: Seasonal Agricultural Workers Scheme (SAWS)’. https://labourproviders.org.uk/wp-content/uploads/2012/11/position_paper-seasonal_agricultural.pdf

²⁵ 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/>

²⁶ 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>

²⁷ 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

²⁸ 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

²⁹ 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->

true when no recourse to public funds makes people vulnerable to exploitation and is likely to increase the risk of modern slavery in the UK.

Employment rights denied to unregistered workers; employers using this as leverage

A8 workers not registered under the WRS were at risk of being denied all their legal employment rights, making them highly vulnerable to exploitation.³⁰ Still, 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.³¹ 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.³² Not having their passport also meant not being able to travel or visit their home country. 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.³³

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 missing the time limit, or illegally retaining workers' passports after asking for them to enable WRS registration.³⁴

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³⁰ 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

³¹ 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>

³² *Ibid.*

³³ *Ibid.*

³⁴ 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