

POSITION PAPER
FLEX-LEAG
AUGUST 2017

LOST IN TRANSITION: BREXIT & LABOUR EXPLOITATION

LEAG

LABOUR
EXPLOITATION
ADVISORY GROUP

**FOCUS ON
LABOUR
EXPLOITATION**

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Published by Focus on Labour Exploitation (FLEX) and the Labour Exploitation Advisory Group (LEAG), August 2017

Focus on Labour Exploitation (FLEX) works to end human trafficking for labour exploitation. The Labour Exploitation Advisory Group (LEAG) is a group of experts from key organisations working with potential and actual victims of trafficking for labour exploitation.

The cover image does not feature exploitative working.

EXECUTIVE SUMMARY

This paper explores the impact of the United Kingdom leaving the European Union (Brexit) on workers' vulnerability to labour exploitation. Combining desk-based research and interviews with members of the Labour Exploitation Advisory Group (LEAG), this paper sets out how migrant worker vulnerability to exploitation has been affected by the UK referendum vote to leave the European Union. It looks both at the immediate impact of that decision and considers the key risk areas for the future as the UK transitions out of the EU. It sets out areas for consideration and action during Brexit negotiations and transition, and makes recommendations for the government to mitigate risks to protect workers from labour exploitation.

UNCERTAINTY IS CREATING CONDITIONS FOR VULNERABILITY

Confusion and lack of information about the future rights and status of EU nationals in the UK is causing high levels of anxiety and misinformation, making it harder for workers to understand and access their rights and easy for unscrupulous employers to take advantage.

RECOMMENDATIONS

For the UK government:

- Initiate an information campaign targeting EU workers and UK employers, clearly communicating EU workers' status and rights in a range of languages.
- Introduce a specific migrant support and advice funding stream available to support migrant community organisations to respond to the exponential growth in demand on their services.

INCREASE IN HATE CRIME, HOSTILITY AND DISCRIMINATION TOWARDS MIGRANTS

A rise in hate crime and hostility post-referendum contributes to a general sense of being unwelcome and makes migrant workers feel like 'second class citizens' in the UK. This undermines confidence in rights and makes it more difficult to speak out about poor treatment.

RECOMMENDATIONS

For the Home Affairs Select Committee:

- Re-open Home Affairs Select Committee inquiry into hate crime and its violent consequences in light of the recent rise in hate crime and speech following Brexit.

INCREASE IN VULNERABILITY DUE TO IMMIGRATION STATUS

Uncertain or irregular immigration status is a known barrier to reporting abuse and a method of control used by exploiters. Increased restrictions on immigration and removal of right to work status will place more workers in extremely vulnerable positions.

RECOMMENDATIONS

For the UK government:

- Ensure routes to regularise status are clear, simple and low-cost.
- Ensure EU workers have access to affordable, regulated immigration information and advice and that potential trafficking victims have early and easy access to legal assistance on immigration matters.
- Ensure immigration officials receive mandatory in-depth training on identifying human trafficking and modern slavery.
- Require that experts in the identification and support of victims of labour exploitation are included in all immigration enforcement operations targeting workers.
- Develop a memorandum of understanding between immigration enforcement and labour inspection to ensure that immigration enforcement does not interfere with the protection of workers' rights.

WORKERS' RIGHTS AND ROUTES TO JUSTICE

Under the Great Repeal Bill, there is a danger that some progressive EU legislation on workers' rights could be revoked. Access to justice could also be affected by loss of case law.

RECOMMENDATIONS

For the UK government:

- Maintain existing workers' rights and protections for all UK workers by transferring and maintaining all relevant EU legislation in domestic law.
- Conduct an extensive review of UK employment law post-Brexit to identify any remaining gaps previously filled by European case law or other EU law, and requiring further domestic legislation.

CONTINUED DEMAND FOR MIGRANT LABOUR POST-BREXIT

The terms of existing visa and work permit schemes for non-EU nationals have been highlighted as creating vulnerability to exploitation, for example by tying workers to a single employer. There is a danger that, if similar work permit or visa schemes are put in place for EU workers following Brexit, EU workers will be at increased risk of exploitation.

RECOMMENDATIONS

For the UK government:

- Enable workers on temporary and seasonal worker schemes to change employers without losing their status or entitlements.
- Ensure that workers on temporary and seasonal worker schemes are informed of their rights in their native language, and have an assigned point of contact to provide advice and assistance in cases of abuse.
- Establish a universal helpline providing information, advice and assistance for workers in their native language.

IMPACT ON ANTI-TRAFFICKING EFFORTS IN THE UK AND INTERNATIONALLY

Existing efforts to tackle human trafficking and modern slavery in the UK will be adversely affected by Brexit if there is a loss of: legislation protecting workers' rights; European obligations on victim protections; cross-border cooperation; or access to European criminal justice measures. Restrictive immigration policies will also make more people vulnerable to human trafficking, while increased focus on immigration enforcement makes it more difficult to identify victims.

RECOMMENDATIONS

For the UK government:

- Ensure free and easily accessible expert legal support for all victims of modern slavery before, during and after they have been through the NRM.
- Ensure that all European obligations on human trafficking and modern slavery are fully transposed into UK law.
- Ensure that decisions regarding a person's status as a victim of human trafficking are made by a panel of experts in the needs of trafficked persons rather than UK Visas and Immigration.

INCREASED NEED FOR EFFECTIVE LABOUR MARKET ENFORCEMENT

Increased vulnerability to labour exploitation caused by Brexit means it is newly critical for UK labour inspection to be fully resourced to tackle non-compliance across the UK labour market.

RECOMMENDATIONS

For the UK government:

- Clarify law on employment status to ensure that the full range of rights and protections are extended to all those who should legally be designated as 'workers'.
- Ensure resourcing for labour inspection responds to the level of risk of abuse and exploitation across the UK labour market.

METHODOLOGY

Desk-based research provided an overview of key areas of potential impact of Brexit on workers, which affect vulnerability to exploitation, as discussed in reports, government communications and in the media.

Semi-structured interviews with LEAG member organisations working with vulnerable and exploited workers:

- explored the experiences of frontline and community support organisations and their users in relation to Brexit, including impact already taking effect and key areas of concern for future vulnerability to labour exploitation;
- gathered anecdotal evidence and case studies; and
- discussed possible practical and policy measures to mitigate risks for workers as the UK transitions out of the EU.

FINDINGS

UNCERTAINTY IS CREATING CONDITIONS FOR VULNERABILITY

“The fact that there is no certainty as to how many of the existing conditions or rights are going to be protected is already causing vulnerability”

Lucila Granada, Latin American Women’s Rights Service

Although no changes have yet been made to the rights or status of EU migrant workers in the UK, uncertainty and confusion as to the immediate impact of the referendum result and what future rights and status will look like for EU workers is already creating increased vulnerability to exploitation among these workers. A high level of anxiety around status has been evidenced by a huge increase in demand for advice services from migrant community organisations; in the case of one LEAG member organisation, demand for advice services increased by 734% following the UK’s vote to leave the EU.

The main areas of enquiry from those anxious about the immediate and future consequences of the referendum result were, unsurprisingly, closely connected concerns about immigration status and labour rights. This uncertainty had an immediate impact at work, with LEAG member organisations receiving multiple cases of workers calling for advice because they were being told by colleagues or employers that they were “not a legal worker any more”.

“I received one woman who is European, she was working under terrible conditions, and her boss made her think that after Brexit she will become illegal and that she will not be able to work.”

Migrant community organisation

Confusion about status and entitlements makes it more difficult for workers to understand and access their rights, and easier for unscrupulous employers to take advantage. Even though the official status of EU workers has not yet changed, where workers are uncertain they are likely to fear the worst and are extremely vulnerable to deliberate misinformation. One research participant explained: “A lot of people never knew their employment rights. Now, they’re getting all these narratives that they don’t have rights. It’s easy to go from not knowing to being certain that it’s ok to be pushed around, to be overworked, to be forced to work extra hours, to not get paid.”

The same research participant said:

“A woman was given additional work within her working hours, so a higher workload that leads you to work extra hours that you don’t get paid for. And she was given additional work and told she ‘should behave, now,’ because she’s a European. You don’t really need to say much more than that, because the employer knows that in the future they may have more power over them.”

Migrant community organisation

This power differential between employer and employee, as a result of lack of information, was repeatedly cited by LEAG members as a key factor allowing unscrupulous employers to take advantage of those who they perceive to be in a position of dependence. This is compounded by comments from colleagues and, as will be discussed, a more general climate of hostility towards migrants which makes them feel or fear they have fewer entitlements because they are EU nationals. Therefore, even without any actual removal of rights, exploitative practices are enabled by uncertainty. As one LEAG member explained:

“Hate crime incidents, or harassment even, around the issue of Brexit within the workplace, is something that in the end makes you more vulnerable to exploitation – and it’s making you more vulnerable now. That is only enabled by uncertainty”

Lucila Granada, Latin American Women’s Rights Service

Uncertainty is also affecting employers' hiring decisions. One organisation reported recent cases where clients had had job offers removed when they revealed that they were in the process of seeking permanent residence. Another had encountered newly arrived migrant workers who reported that people were being asked to provide proof of permanent residence to get a job, and another cited cases of companies rejecting EU nationals' apprenticeship applications because they feared these applicants would have to leave the UK after Brexit. Where it is more difficult to obtain jobs, those most vulnerable have become more likely to be pushed into unsafe work where they are at higher risk of exploitation.

"There are lots of adverts on websites where you can find job offers with immediate start promising lots of money, and there's no name, just a phone number. People are being kicked out from the job after two or three weeks without being paid. And people take it – one of the clients told me that, 'you know, at the moment you shouldn't be asking who is giving you the job because you may not get it if you ask too many questions'."

Katarzyna Zagrodniczek, East European Resource Centre

RECOMMENDATIONS

To the UK government:

- Initiate an information campaign targeting EU workers and UK employers, clearly communicating EU workers' status and rights in a range of languages.
- Introduce a specific migrant support and advice funding stream available to support migrant community organisations to respond to the exponential growth in demand on their services.

INCREASE IN HATE CRIME, HOSTILITY AND DISCRIMINATION TOWARDS MIGRANTS

Increase in hate crime

LEAG members have reported increased hate crime, discrimination and hostility towards the migrant communities with whom they work, with one organisation reporting that in an internal survey of service users, 19% had experienced hate crime since the June 2016 referendum and a further 20% knew someone who had experienced hate crime. Research participants cited many examples of hate speech experienced by migrants following the referendum, some of which have been made public by the East European Resource Centre (EERC).¹ This included incidents in the street, at school, at the GP, and in workplaces where individuals have been told: "you are not a legal worker anymore".

**EMPLOYERS AND COLLEAGUES ARE TELLING EU WORKERS:
"YOU ARE NOT A LEGAL WORKER ANYMORE."**

Hate speech, hate crime and discrimination at work

Hate speech and discrimination by employers and colleagues creates fear and misinformation which increases vulnerability as migrants feel insecure and unsupported in the jobs they rely on, and therefore less able to speak out about abuse. One participant described incidents in workplaces of workers "being told to shut up because they were going to be deported soon and that they soon would become illegal." Incidents in workplaces ranged from discrimination linked to being a European national: "being treated differently ... told 'you don't know how long you'll get to stay here', being pushed around by bosses or by colleagues," to not being paid, and physical attacks:

"We had a man working in a restaurant and the owner attacked him with a knife telling him to 'fuck off to Poland'. This man decided that staying in employment is more important than reporting the case to the police"

Migrant community organisation

¹ East European Resource Centre, case study slideshow, 2017. Available at <http://www.eerc.org.uk/2017/02/16/hate-crime-after-brexit/>

“We had a team of ten builders working on a site, and the manager gave them the wrong instructions so the ceiling was set up on the wrong height. He wanted to sack those people without paying them despite the fact that it wasn’t their fault. When they started asking for the money he told them where to go because they are Poles and he’s not going to deal with them, he’s not going to pay them.”

Katarzyna Zagrodniczek, East European Resource Centre

Impact of hostility

LEAG members perceive hostility and hate speech linked to Brexit as an extension or amplification of the ‘hostile environment’ already fostered in the UK by an increasingly punitive immigration agenda and by more openly xenophobic public and media discourse. Though not all incidents reported were explicitly linked to Brexit, participants felt Brexit campaigns have lent legitimacy to more generalised anti-migrant feeling. This has a broader impact, serving to undermine confidence in migrants’ rights and entitlements, and to engender fear and insecurity which ultimately leaves migrants more vulnerable to poor treatment and less able to challenge abuse.

RECOMMENDATIONS

To the Home Affairs Select Committee

- Re-open Home Affairs Select Committee inquiry into hate crime and its violent consequences in light of the recent rise in hate crime and speech following Brexit.

INCREASE IN VULNERABILITY DUE TO IMMIGRATION STATUS

Though decisions about future immigration policy and the status of EU nationals in the UK are still in progress, the prominence of immigration control as a key issue during lead-up to the EU referendum and more recently the general election, as well as the Conservative government’s already restrictive immigration agenda, mean it is highly likely that immigration will be curtailed following the UK’s exit from the EU. Indeed, the government’s Brexit white paper sets out an intention to ‘ensure we can control the number of people coming to the UK from the EU’, stating ‘It is simply not possible to control immigration overall when there is unlimited free movement of people to the UK from the EU.’²

Increased vulnerability due to irregular or insecure status

“In many of our cases with non-EEA nationals, fear of prosecution due to being in the UK without the legal right to live and work was a consistent fear which made them wary of speaking with police forces and accessing forms of support which might bring them to the attention of the Home Office. We have had cases where this fear was so severe that they preferred to remain in the situation of exploitation than come to the attention of the authorities. We fear this may become wider spread across all nationalities with our exit from the European Union.”

Alex Walsh, British Red Cross

One of the biggest concerns expressed by all research participants was that increased restrictions on immigration and removal of right to work status for EU nationals will place many more workers in extremely vulnerable positions. All participants agreed that increased barriers to entering UK and working legally would increase numbers of undocumented workers or people working in breach of visa conditions, creating a hidden workforce who are much more vulnerable due to lack of status.

² HM Government, *The United Kingdom’s exit from and new partnership with the European Union*, London, 2017, p.25. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf

Further, the threat of future irregularity is already making some workers much more vulnerable to exploitation. For example, the anticipated need for EU nationals to be able to prove they had been exercising treaty rights in order to secure documentation or permanent residence, is leading workers to accept unsafe jobs and abusive treatment. One participant spoke of cases where individuals are so desperate to have proof that they have been working, that they are staying in exploitative situations rather than risk losing their job. “If people learn that they have to be in employment to secure their status they go into employment no matter what. They just focus on ‘ok, so I have to keep my job. I can’t afford to drop it.”

The case of homeless EU nationals

Rough sleeping is considered by the current government as a breach of EU treaty rights and EU nationals who are homeless are consequently subject to administrative removal.³ A recent study commissioned by the Independent Anti-Slavery Commissioner has shown that the homeless population in Britain is extremely vulnerable to exploitation.⁴ This vulnerability is compounded for EU nationals by threat of removal, and according to one LEAG member working in the homelessness sector, makes them much more likely than UK nationals to enter unsafe work and end up in situations of exploitation. The case of homeless EU nationals highlights how the link between work and residency rights and the threat of deportation of some EU workers already directly impacts upon their vulnerability to labour exploitation, and should be taken as a warning of potential consequences for all EU nationals if their rights in the UK are removed.

Transitional and visa arrangements

Previous restrictions on EU workers’ rights to employment in the UK – for example the transitional arrangements for Romanian and Bulgarian workers pre-2014 – made it difficult to access the labour market safely and led to exploitation.⁵ For example, LEAG members reported that migrant workers from Romania and Bulgaria in low paid work were forced into self-employment by transitional restrictions and, as a result, many suffered exploitation in cases of ‘bogus’ self-employment. Being restricted to particular types of work makes it more difficult to exercise choice and control over one’s employment situation, and when options are limited it is easier for unscrupulous employers to take advantage, particularly if the types of employment legally available to workers (such as self-employment) offer very few rights and protections. Members raised concerns that similar transitional arrangements could be made for all EU workers while new deals on rights and status are made and implemented, and stressed that this would lead to an increase in exploitation.

As will be discussed in more detail below, participants also pointed to the likely increase in tied and seasonal working visas as a result of more closely controlled immigration as a key area of risk for exploitation.

Increased risk of human trafficking

Fewer legal routes and increased barriers to entering the UK also means an increased risk of traffickers bringing people to the UK illegally, using debt and the threat of criminalisation as a means of holding victims in exploitation. Irregular or insecure status is a known tool of traffickers who threaten victims with arrest, imprisonment or deportation if they complain or try to leave their situation.

³ Home Office guidance, *European Economic Area (EEA) administrative removal*, February 2017, p.16.
Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590663/GI-EEA-admin-removal-v3.pdf

⁴ The Passage, *Understanding and responding to modern slavery within the homelessness sector*, 2017.
Available at <http://passage.org.uk/wp-content/uploads/2017/01/The-Passage-anti-slavery-document-for-web-24.01.17.pdf>

⁵ Institute for Public Policy Research, *In Transition: Romanian and Bulgarian Migration to the UK*, 2013, p.29
Available at <https://www.barrowcadbury.org.uk/wp-content/uploads/2013/12/IPPR-In-Transition-2013.pdf>

Article 5 of the Council of Europe Convention on Action Against Trafficking in Human Beings, which focuses on prevention of human trafficking, requires that 'Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.'⁶ This provision suggests that there is a greater risk of trafficking where migration is prevented and where lack of clear information throws the legal status of migrants into question. If legal status is denied to EU nationals, this represents an extremely large group of people who are at higher risk of falling prey to human traffickers.

Criminalisation of victims of exploitation

If legal immigration and right to work is restricted, there is a danger that intensifying policing around immigration control and undocumented working could lead to victims of trafficking and labour exploitation being criminalised. Previous government operations such as Operation Magnify, intended to clamp down on illegal working in sectors which have high risk of exploitation, have shown a worrying preference for criminalising workers over investigating potential cases of exploitation.⁷

Some of the individuals LEAG members encounter become undocumented as a result of being exploited, most notably in cases of overseas domestic workers who are held in situations of exploitation after their visas expire or workers who, as a result of unpaid or extremely low wages, are simply unable to afford the cost of regularising their status. These victims of exploitation must be recognised as such and their rights as workers and as victims should be upheld regardless of their immigration status.

In a 2016 review of UK Border Force's identification and treatment of potential victims of modern slavery, the Independent Chief Inspector of Borders and Immigration found that insufficient training of front line staff meant they were not equipped 'with the skills needed to identify modern slavery'.⁸ LEAG members emphasised that, due to the likely increase in human trafficking and labour exploitation as a result of more restrictive immigration policy, more effective training for border control, labour market enforcement and Home Office officials is needed to ensure that EU nationals who are victims of human trafficking and labour exploitation are not wrongly criminalised, detained or deported post-Brexit, but are identified and supported.

Key concerns in relation to future immigration policy impact for EU nationals

Research participants highlighted several areas of concern for their service users in relation to their rights under immigration law. The following are those which most directly affect vulnerability to exploitation:

ACCESS TO PUBLIC FUNDS

Many migrant workers in the UK experience in-work poverty, and despite working one or often multiple jobs, also rely on welfare in order to survive. One participant explained: "If EU migrants are no longer able to access welfare, it would be devastating for the community that we work with. Even though take up of benefits is really low, a lot of times they depend on welfare as well even though they're working many many hours." If access to help is removed, dependence on work increases which means workers are more likely to stay in exploitative employment in order to survive.

⁶ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series No. 197, 2005, p.3.

⁷ At the time of writing the Home Office was unable to provide information in response to parliamentary questions and a Freedom of Information Request about the number of cases of potential exploitation uncovered as a result of Operation Magnify.

⁸ Independent Chief Inspector of Borders and Immigration, An Inspection of Border Force's Identification and Treatment of Potential Victims of Modern Slavery: July to October 2016, 2016, p.7. Available at <http://icinspector.independent.gov.uk/wp-content/uploads/2017/02/Potential-Victims-of-Modern-Slavery-Inspection-report.pdf>

FAMILY REUNIFICATION AND EARNING THRESHOLDS

EU nationals and their family members are not currently subject to earning thresholds in order to enter and work in the UK. The potential imposition of high earning thresholds similar to those in place for some non-EU nationals is highly concerning for low-paid workers planning to reunite separated families or bring spouses to the UK. If these family members are placed under earning restrictions, the likelihood of them becoming undocumented in the UK and consequently being at increased risk of exploitation is high.

COST OF REGULARISATION

Costs are one of the barriers to obtaining status for workers in poverty or low-paid employment, particularly for those with children. This includes the cost of immigration advice as well as obtaining documents. This is already an issue for EU nationals who could apply for British citizenship. As one participant explained, one of the main reasons why “service users who have been working and living in the UK for more than six years are not applying [for British citizenship] is that they can’t pay for them and their families.” As sometimes happens for non-EU nationals, the high cost of regularisation can create a situation whereby workers become undocumented as a result of being exploited – for example if they are not paid and therefore cannot afford it – and then, as a result of becoming undocumented, they are at continued or increased risk of exploitation. The cost of obtaining status in the UK for EU nationals after Brexit should be carefully considered and kept as low as possible to ensure that workers are not made more vulnerable to exploitation because they are not able to pay for their documents. Further, affordable immigration advice should be available to ensure that workers understand the implications of gaining residence or citizenship and can make informed decisions about applying for status in the UK.

RECOMMENDATIONS

To the UK government:

- Ensure routes to regularise status are clear, simple and low-cost.
- Ensure EU workers have access to affordable, regulated immigration information and advice and that potential trafficking victims have early and easy access to legal assistance on immigration matters.
- Ensure immigration officials receive mandatory in-depth training on identifying human trafficking and modern slavery.
- Require that experts in the identification and support of victims of labour exploitation are included in all immigration enforcement operations targeting workers.
- Develop a memorandum of understanding between immigration enforcement and labour inspection to ensure that immigration enforcement does not interfere with the protection of workers’ rights.

WORKERS' RIGHTS AND ROUTES TO JUSTICE

EU legislation has strengthened workers' rights in the UK, for example through Directives such as the Working Time Directive and Agency Workers Directive.^{9 10} Though many protections have already been enshrined in domestic law, some EU-derived rights exist in secondary legislation, and are therefore susceptible to revocation.¹¹ There has therefore been concern that some progressive EU legislation on workers' rights could be dropped. Some have also warned that as new trade deals are negotiated outside of EU, there is a danger that workers' rights will not be prioritised.¹²

Protections such as the Working Time Directive and Agency Workers Directive were seen as particularly important by LEAG members due to the rise in agency work in the UK in general and in particular for migrant workers, who are overrepresented in agency work.¹³ Agency workers already have limited employment protections and are at risk of exploitation.¹⁴ Removal of rights, such as maximum working hours, breaks, and the right of agency workers to the same basic terms and conditions as directly hired staff after a 12 week period, would place these workers at even greater risk. Working time protections were also considered important as sectors such as cleaning, where shifts are already very long, could be open to excessive hours becoming the norm. In order to prevent labour exploitation for all UK workers, it is crucial to ensure that safeguards and minimum standards for workers are not lost as a result of leaving the EU.

There has also been some concern that following Brexit, loss of case law from the European Court of Justice (ECJ) could leave UK workers at a disadvantage and affect access to justice.¹⁵ According to the TUC, access to the ECJ has improved employment rights and working conditions for UK workers, 'including in areas such as holiday pay, TUPE protections, equal pay, maternity rights and discrimination.'¹⁶ Currently, domestic courts are obliged to follow ECJ case law interpreting EU employment rights which 'has enlarged the scope of rights beyond the limits that would have been set by domestic courts.'¹⁷ However, if the UK does not remain subject to the jurisdiction of the ECJ post-Brexit, UK courts would not have any obligation to take ECJ decisions into account. If UK courts are no longer required to follow ECJ judgements this could weaken access to justice for UK workers. Access to justice for labour abuses is critical to preventing labour exploitation; as LEAG has previously shown, severe exploitation can develop when labour abuses are left unchecked.¹⁸

RECOMMENDATIONS

To the UK government:

- Maintain existing workers' rights and protections for all UK workers by transferring and maintaining all relevant EU legislation in domestic law.
- Conduct an extensive review of UK employment law post-Brexit to identify any remaining gaps previously filled by European case law or other EU law, and requiring further domestic legislation.

9 Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32003L0088>

10 Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGIS-SUM:c11329>

11 House of Commons Library, Briefing paper no. CBP 7732 *Brexit: employment law*, November 2016, p.3. Available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7732>

12 CORE Coalition, *Briefing paper on the legal implications of the UK Referendum on EU membership for corporate accountability work in the UK*, January 2017, p.23. Available at http://corporate-responsibility.org/wp-content/uploads/2017/02/170131_FINAL_Legal-implications-of-Brexit_CORE-coalition.pdf

13 According to the Resolution Foundation, in 2016 EU migrant workers made up 7% of the UK workforce, while 22% of agency workers were EU migrants. See report *Secret Agents: Agency workers in the new world of work*, 2016. Available at <http://www.resolutionfoundation.org/app/uploads/2016/12/Secret-Agents.pdf>

14 Julia Kollwe, 'Britain's agency workers underpaid and exploited, thinktank says', *The Guardian*, 05.12.16, <https://www.theguardian.com/business/2016/dec/05/britains-agency-workers-underpaid-and-exploited-thinktank-says>

15 London Assembly Economy Committee, *EU exit: workers' rights and the London labour market*, 2017, p.3. Available at https://www.london.gov.uk/sites/default/files/eu_exit_and_workers_rights_final.pdf

16 Trades Union Congress, *UK employment rights and the EU: assessment of the impact of membership of the European Union on employment rights in the UK*, [no date]. Available at <https://www.tuc.org.uk/sites/default/files/UK%20employment%20rights%20and%20the%20EU.pdf>

17 House of Commons Library, Briefing paper no. CBP 7732 *Brexit: employment law*, November 2016, p.4. Available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7732>

18 FLEX and LEAG, *Labour compliance to exploitation and the abuses in-between*, 2016. Available at <http://www.labourexploitation.org/sites/default/files/publications/LEAG%20position%20paper%2001.pdf>

CONTINUED DEMAND FOR MIGRANT LABOUR POST-BREXIT

EU workers make up 7% of the UK workforce.¹⁹ As the majority of EU migrants to the UK come to work (72% in 2016),²⁰ future policy governing labour migration and systems put in place to manage it will not only determine the shape of EU migration to the UK but also position labour as a focal point of migration control.²¹ As research participants unanimously stressed, increased immigration control focussing on workers would have a significant negative impact on efforts to tackle labour exploitation, as the prioritisation of immigration enforcement as the primary concern could lead to many victims of labour exploitation being treated as ‘illegal workers’ rather than victims of crime. It would also mean that many victims who are afraid of immigration enforcement will not come forward, as is already too often the case.

In the lead up to the referendum and since, businesses have been warning of potential labour shortages as a result of a reliance on migrant labour to fill gaps in certain sectors, for example construction and agriculture.^{22 23} According to the Migration Observatory, ‘Low and middle-skilled work is most likely to be the main target of any policies to reduce EU labour migration.’²⁴ This presents a key risk as, in low-skilled sections of the labour market where demand for cheap and temporary labour is greatest, migrant workers are already highly vulnerable to abuse. Demand for labour in these sectors is unlikely to decrease, meaning that positions may be filled by undocumented workers or those working in breach of visa conditions, who are at even greater risk of severe exploitation due to insecure status.

The nature of the work that many migrant workers do in the UK is often insecure and low-paid, requiring workers to have multiple jobs and work long hours in order to live. Research participants highlighted the fact that restrictions on working hours, ties to one employer, or high earning thresholds, such as have been the conditions for some working permits for non-EU nationals, would be untenable for many in the communities with which they work. In this case, they warned, many could fall into illegal employment where they would be at even higher risk of exploitation.

“We’re talking about a lot of people who were able to be here, to work, move between jobs, work for different employers, with that kind of freedom. If that is changed it will have a big impact because a lot of people in cleaning, catering, and hospitality have more than one job, more than two even”

Lucila Granada, Latin American Women’s Rights Service

If freedom of movement is ended, there will be a need for schemes to facilitate and control labour migration from the EU post-Brexit, to ensure the continued supply of labour to those sectors which most greatly rely on migrant workers. This could mean the creation of new categories of tied or seasonal working visas, which have been demonstrated in the UK and other countries such as the US and Australia to create dependency on one employer and increase vulnerability to exploitation.²⁵

19 Office for National Statistics, *International immigration and the UK labour market, UK: 2016*. Available at <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/migrationandthelabourmarketuk/2016>

20 See Office for National Statistics written evidence to the House of Lords Committee on the European Union inquiry, ‘Brexit: UK-EU movement of people’. Available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-home-affairssubcommittee/brexit-ukey-movement-of-people/written/44746.html>

21 Migration Observatory, *Labour Immigration after Brexit: Trade Offs and Questions about Policy Design*, 2016. Available at https://www.barrowcadbury.org.uk/wp-content/uploads/2017/01/Labour_Immigration_Policy_Brexit_Migration_Observatory.pdf

22 “Construction needs immigrants” – industry reacts to Brexit’, *Construction Manager Magazine*, 28.06.16. <http://www.constructionmanagermagazine.com/news/keep-po9les-co6m-ing-con5truction-reacts-brexit/>

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25 Parliament of Australia, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, 2016. Available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Report

CASE STUDIES: TEMPORARY WORKING VISAS LEAVE WORKERS VULNERABLE TO EXPLOITATION

CASE STUDY: UK

Overseas Domestic Workers Visa

In 2012, the terms Overseas Domestic Workers (ODWs) Visa allowing domestic workers to enter the UK with their employer were amended so that workers were only allowed to work in the UK for six months and were not allowed to change employer during that time. As a result of these restrictions, Kalayaan, an NGO supporting ODWs in the UK, reported a significant increase in levels of abuse of these workers.²⁶ In their experience, the tie meant that ODWs could not ‘challenge any aspect of their employment, as ultimately both they and the employer know they cannot leave without becoming undocumented and destitute.’ They were therefore ‘unable in practise to access any kind of justice or legal remedy’.²⁷ An Independent Review of the Overseas Domestic Workers Visa in 2015 concluded that:

“the existence of a tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK”²⁸

CASE STUDY: AUSTRALIA

Seasonal Worker Programme

The Australian Seasonal Worker Programme was designed to alleviate labour shortages in the horticulture industry by providing migrant workers from Pacific island countries to undertake low or unskilled seasonal work. The National Union of Workers and others reported that the Programme’s rule tying a worker to one Approved Employer, who acts as visa sponsor and in most cases provides accommodation and transport, created dependency which ‘makes workers vulnerable to abuse and reluctant to raise concerns’.²⁹ This system, allowing employers to provide and make deductions for accommodation and transport from workers’ pay, was found to be open to abuses such as unclear and unfair deductions, above-market charges, and overcrowded, inadequate accommodation. Without a clear, formal process for redeployment of participants in cases of abuse, workers were too afraid of losing their job, or not being allowed to participate in future, to challenge abusive and exploitative practices.

26 Kalayaan, *Britain’s forgotten slaves; Migrant domestic workers in the UK three years after the introduction of the tied Overseas Domestic Worker visa*, 2015. <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-3-year-briefing.pdf>

27 Ibid.

28 James Ewins, *Independent Review of the Overseas Domestic Workers Visa*, 2015, p.5. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf

29 National Union of Workers, *Joint Standing Committee on Migration Inquiry into the Seasonal Worker Programme: Submission of the National Union of Workers*, p.2. Available at http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/Seasonal_Worker_Programme/Submissions

CASE STUDY: USA**H-2 Guestworker Program**

The H-2 Guestworker Program provides temporary farmworkers and labourers to industries such as agriculture, forestry, and construction, for a maximum stay of 3 years.³⁰ Workers are tied to the employer who petitions the Department of Labour for their services, and critics have reported that this restriction combined with a lack of labour protections and lack of eligibility for federally funded legal services, has led to workers being 'systematically exploited and abused.'³¹ 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.³²

There was a clear concern among research participants that implementation of schemes similar to those above would also place workers using legal channels to enter and work in the UK in positions of vulnerability to exploitation. LEAG members stressed the need for consultation on proposed visa or permit schemes to ensure that lessons from previous models such as the tied ODW visa are taken into account, and that workers' rights or ability to enforce their rights are not undermined in practice by the terms of their visas or work permits.

"We've had lots of debate about how the tie to employers facilitates abuse, and Kalayaan's own data shows how the imposition of the visa tie has escalated forms of abuse which can actually lead to slavery. So it would be extremely worrying if the government was looking to introduce a work permit system which tied workers to a specific employer, with all the restrictions that that places, if it means that workers can't challenge any treatment or enforce their rights which we have seen is what happened with domestic workers."

Avril Sharp, Kalayaan

In all of the case studies above, reports highlighting abuse and exploitation concluded that the few rights workers were afforded under the schemes were rendered virtually meaningless by lack of enforcement. Research participants also stressed the need for effective monitoring of workers in schemes facilitating access to UK labour market for overseas workers, as well as robust enforcement measures, to ensure that their rights are upheld.

RECOMMENDATIONS**To the UK government:**

- Enable workers on temporary and seasonal worker schemes to change employers without losing their status or entitlements.
- Ensure that workers on temporary and seasonal worker schemes are informed of their rights in their native language, and have an assigned point of contact to provide advice and assistance in cases of abuse.
- Establish a universal helpline providing information, advice and assistance for workers in their native language.

³⁰ <https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers>

³¹ Southern Poverty Law Centre, *Close to Slavery: Guestworker Programs in the United States*, 2013, p.1. Available at https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf

³² *ibid.*

IMPACT ON ANTI-TRAFFICKING EFFORTS IN THE UK AND INTERNATIONALLY

With the passage of the Modern Slavery Act in 2015 and Prime Minister Theresa May's public commitment to 'lead the way in defeating modern slavery',³³ the UK would like to see itself as world leader in its efforts to tackle human trafficking and modern slavery. However, the Anti-Trafficking Monitoring Group (ATMG) has warned that Brexit could compromise such efforts by affecting legislation protecting workers' rights and international obligations on victim protections, impacting on cross-border cooperation and access to European criminal justice measures, and implementing restrictive immigration policies which, as discussed, increase the vulnerability of migrant workers to exploitation.³⁴

Identification and support of victims of modern slavery

Under the National Referral Mechanism framework for identifying victims of human trafficking and modern slavery, decisions as to who is a victim of human trafficking are made by two bodies: for UK and EEA nationals, cases are decided by the National Crime Agency's Modern Slavery and Human Trafficking Unit (MSHTU), whereas for non-EU nationals, cases are referred to the Home Office. There has been criticism of this system due to stark differences in the rate of positive decisions – in 2015, 67% of UK & EEA nationals referred into the NRM received a positive conclusive grounds decision, in contrast to only 14% of non-EEA nationals³⁵ – with critics arguing that decisions as to a potential victim's status should not be made by a body whose central focus is immigration control. The 2014 Home Office review of the National Referral Mechanism responded to such criticism by recommending that decisions be made by a multi-disciplinary panel rather than solely by UK Visas and Immigration or MSHTU.³⁶

During this research, LEAG members expressed concern that if EEA nationals are placed in the same category as non-EEA nationals and their decisions are made by UK Visas and Immigration, fewer victims of human trafficking will be recognised as such. Further, fear of immigration authorities is a known barrier to entering the NRM for undocumented victims of labour exploitation. If the status of EU nationals is changed and the number of undocumented victims increases, this could mean that fewer EU victims will be identified, as many may choose not to enter the NRM.

Participants also pointed to gaps in the Modern Slavery Act on victim protection and support as key weaknesses in domestic law on modern slavery, which must be addressed in order that the loss of instruments such as the EU Trafficking Directive³⁷ does not diminish entitlements to support for victims in England and Wales following Brexit. For example, provisions established in the Directive on duration and minimum standards for support, as well as Ministers' legal duty to provide such support, are not included in the Modern Slavery Act.³⁸ LEAG members expressed concern that if these provisions are not transferred into domestic law, this will damage efforts to identify and support potential victims of human trafficking for labour exploitation, as becoming a recognised victim will mean very little.

RECOMMENDATIONS

To the UK government:

- Ensure free and easily accessible expert legal support for all victims of modern slavery before, during and after they have been through the NRM.
- Ensure that all European obligations on human trafficking and modern slavery are fully transposed into UK law.
- Ensure that decisions regarding a person's status as a victim of human trafficking are made by a panel of experts in the needs of trafficked persons rather than UK Visas and Immigration.

³³ Theresa May, 'My government will lead the way in defeating modern slavery', *The Telegraph*, 30.06.2016, <http://www.telegraph.co.uk/news/2016/07/30/we-will-lead-the-way-in-defeating-modern-slavery/>

³⁴ Anti-Trafficking Monitoring Group, *Brexit & the UK's fight against modern slavery*, 2017. Available at <https://www.antislavery.org/wp-content/uploads/2017/07/ATMG-Brexit-paper.pdf>

³⁵ National Crime Agency, *National Referral Mechanism Statistics Q1 January to March 2016*, 2016. Available at <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/711-human-trafficking-national-referral-mechanism-statistics-january-to-march-2016/file>

³⁶ Jeremy Oppenheim, *Review of the National Referral Mechanism for victims of human trafficking*, 2014, <http://webarchive.nationalarchives.gov.uk/20141202113228/https://nrm.homeoffice.gov.uk/documents/2014/11/nrm-final-report.pdf>

³⁷ Directive 2011/36/EU of The European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

³⁸ Anti-Trafficking Monitoring Group, *Class Acts? Examining Modern Slavery legislation across the UK*, 2016. Available at http://www.antislavery.org/wp-content/uploads/2017/01/atmg_class_acts_report_web_final.pdf

INCREASED NEED FOR EFFECTIVE LABOUR MARKET ENFORCEMENT

“Acknowledging that the Brexit process will probably lead to further exploitation or increased levels of exploitation, then more than ever we need to have proper enforcement of employment rights.”

Lucila Granada, Latin American Women’s Rights Service

Enforcement of labour rights was seen by LEAG members as newly critical in light of Brexit, due to the likelihood that restricted rights to movement and employment for EU nationals in the UK will create a new cohort of highly vulnerable workers. Participants raised concerns that the UK’s primary labour inspectorate, the Gangmasters and Labour Abuse Authority (GLAA), is currently underfunded to effectively enforce across its new labour-market-wide remit.

“Giving rights is obviously an important step forward. But without being able to effectively enforce those rights, workers are still at risk of being left in an abusive and exploitative working relationship”

Avril Sharp, Kalayaan

Further, in order to effectively identify cases of labour exploitation, it was seen as crucial that labour market enforcement does not become the point of enforcement of immigration policy, as this will deter many victims from coming forward. The GLAA in particular should be aware that the changed status of EU workers will increase vulnerability to exploitation while decreasing the likelihood of reporting abuse. In order to enable the most vulnerable workers to come forward and be identified as victims in cases of labour exploitation, a strict firewall should be maintained between labour inspection and immigration enforcement.

LEAG members also highlighted the particular vulnerability of self-employed migrant workers whose employment status offers very few rights and protections and for whom there is little recourse in cases of abuse and exploitation. The possibility that transitional arrangements could lead to an increase in self-employment among migrant workers post-Brexit means that it is all the more urgent that employment rights be extended, and properly enforced, for all self-employed workers.

RECOMMENDATIONS

To the UK government:

- Clarify law on employment status to ensure that the full range of rights and protections are extended to all those who should legally be designated as ‘workers’.
- Ensure resourcing for labour inspection responds to the level of risk of abuse and exploitation across the UK labour market.

LIST OF RECOMMENDATIONS FOR THE UK GOVERNMENT

FOR THE HOME OFFICE

On information provision, advice and support

- Initiate an information campaign targeting EU workers and UK employers, clearly communicating EU workers' status and rights in a range of languages.
- Introduce a specific migrant support and advice funding stream available to support migrant community organisations to respond to the exponential growth in demand on their services.
- Ensure EU workers have access to affordable, regulated immigration information and advice and that potential trafficking victims have early and easy access to legal assistance on immigration matters.
- Ensure that workers on temporary and seasonal worker schemes are informed of their rights in their native language, and have an assigned point of contact to provide advice and assistance in cases of abuse.
- Establish a universal helpline providing information, advice and assistance for workers in their native language.

On immigration policy & enforcement

- Ensure routes to regularise status are clear, simple and low-cost.
- Ensure immigration officials receive mandatory in-depth training on identifying human trafficking and modern slavery.
- Require that experts in the identification and support of victims of labour exploitation are included in all immigration enforcement operations targeting workers.
- Develop a memorandum of understanding between immigration enforcement and labour inspection to ensure that immigration enforcement does not interfere with the protection of workers' rights.

On workers' rights

- Maintain existing workers' rights and protections for all UK workers by transferring and maintaining all relevant EU legislation in domestic law.
- Conduct an extensive review of UK employment law post-Brexit to identify any remaining gaps previously filled by European case law or other EU law, and requiring further domestic legislation.
- Clarify law on employment status to ensure that the full range of rights and protections are extended to all those who should legally be designated as 'workers'.
- Enable workers on temporary and seasonal worker schemes to change employers without losing their status or entitlements.

On modern slavery

- Ensure free and easily accessible expert legal support for all victims of modern slavery before, during and after they have been through the NRM.
- Ensure that all European obligations on human trafficking and modern slavery are fully transposed into UK law.
- Ensure that decisions regarding a person's status as a victim of human trafficking are made by a panel of experts in the needs of trafficked persons rather than UK Visas and Immigration.

On labour market enforcement

- Ensure resourcing for labour inspection responds to the level of risk of abuse and exploitation across the UK labour market.

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