

**EXECUTIVE
SUMMARY**
MARCH 2021

ASSESSMENT OF THE RISKS OF HUMAN TRAFFICKING FOR FORCED LABOUR ON THE UK SEASONAL WORKERS PILOT



**FOCUS ON
LABOUR
EXPLOITATION**



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Focus on Labour Exploitation (FLEX) is a research and policy organisation working towards an end to labour exploitation. FLEX seeks to achieve this vision through the prevention of labour abuses, protection of the rights of those affected or at risk of exploitation and by promoting best practice responses to labour exploitation through research and evidence-based advocacy.

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EXECUTIVE SUMMARY

This report presents the findings of research conducted by Focus on Labour Exploitation (FLEX) and Fife Migrants Forum (FMF) between March 2020 and February 2021. This research was initiated in order to seek to understand the risk of human trafficking for forced labour for people coming to Scotland on the Seasonal Workers Pilot (SWP) in the horticultural sector. A two-year SWP was announced by the UK government in 2018 in response to concerns raised by farmers about possible labour shortages in advance of and after the UK had left the European Union (EU). During the development and launch of the SWP the UK government did not engage in meaningful discussion with worker representatives on the scheme, despite serious concerns raised by experts on human trafficking and modern slavery. This report responds directly to these concerns, seeking to document the voices and experiences of the people who have come to Scotland on the SWP. In so doing it seeks to develop strategies that can be taken by the UK and Scottish governments to tackle the risks of human trafficking for forced labour on the SWP and to protect current and future workers.

The introduction of the SWP involved establishing a new Tier 5 sponsored visa, the Seasonal Workers Visa (SWV) and appointing two licensed scheme operators (Pilot Operators) as visa sponsors. The scheme was launched in April 2019 with an annual quota of 2,500 workers. This quota was increased to 10,000 in 2020; the SWP was extended for a further year and expanded to 30,000 workers in 2021. The SWP builds on learning from its predecessor, the Seasonal Agricultural Workers Scheme (SAWS), yet has a reduced number of scheme operators, and unlike SAWS, Pilot Operators are not permitted to source labour for their own needs.

Despite its 71-year period of operation there is no independent evidence of worker experiences on SAWS. This research addresses this lack of data and foregrounds the impact of the SWP on workers.

Temporary and tied migration programmes such as the SWP have a range of risks associated with their short-term nature and the limited rights afforded to workers participating in them. In addition, horticulture is a high-risk labour sector due to factors including: the nature of its product and labour supply chain, isolated workplaces and a large migrant workforce. In order to assess the risks of human trafficking for forced labour for workers on the SWV, quantitative and qualitative data was collected on the experiences of seasonal horticultural workers in Scotland. This data collection took place during the ongoing COVID-19 pandemic and so this report also documents the impact of the pandemic on workers. A framework for analysis based on the International Labour Organization (ILO) ¹ indicators of forced labour in adults was used to interpret the data.

¹ A specialised agency of the United Nations.

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*The Seasonal Agricultural Workers Scheme (SAWS)
operated between 1943 and early 2014.

RESEARCH FINDINGS

The objective of this research was to establish **the risk** of human trafficking for forced labour on the SWV, rather than to identify actual cases of human trafficking for forced labour. The core guiding research question asked was: “To what extent are SWV workers in Scotland experiencing labour abuses and an increased risk of human trafficking for forced labour as compared to non SWV workers?”. Findings spanned the three dimensions of forced labour: :

1. unfree recruitment;
2. work and life under duress;
3. and impossibility of leaving an employer.

A case will constitute human trafficking and forced labour where there is one of the five “actions” for trafficking set out in Scottish law present (recruitment; transportation; harbouring or receiving; exchange or transfer of control; and arrangement or facilitation of any of the previous four actions) AND either work or life under duress OR impossibility of leaving the employer. Through the research, risks of the forced labour indicators being met were identified for each of the three dimensions, presenting a serious risk that forced labour could take place on the SWP if action is not taken. For each dimension, the risk of forced labour is articulated and used to inform recommendations to the UK and Scottish governments. A summary of findings follows:

1. RISK OF FORCED LABOUR: UNFREE RECRUITMENT

The research identified one strong indicator of involuntariness at point of recruitment relating to deception about the nature of work. The risks of this indicator being met for workers on the SWP is considered to be high due to the high levels of inaccuracy reported by workers - incoherence between information received in workers’ country of origin about work in Scotland and the reality upon arrival. Two further working conditions compound this risk: debts incurred by 62 per cent of SWV workers to travel to the UK and the lack of translation and pressure to sign contracts that workers reported upon arrival at their place of work.

2. RISK OF FORCED LABOUR: WORK AND LIFE UNDER DURESS

SWV workers reported unsafe housing in caravan accommodation, posing a risk of meeting the strong ILO indicator, “degrading living conditions”. For 98 per cent of workers this housing is provided by their employer, creating a dependency on the employer which constitutes a medium indicator. For many workers, therefore dismissal or seeking to change employment poses a risk of homelessness. The productivity payment system (piece rate), applied to 62 per cent of SWV workers, presents a risk to workers when coupled with zero hours contracts and the reported withdrawal of promised work as a penalty for not meeting piece rate targets. 66 per cent of SWV workers reported receiving threats of loss of work and 17 percent reported threats of deportation from their employer. In addition, accommodation costs, services, equipment and clothing deductions were found to contribute to workers’ economic vulnerability.

3. RISK OF FORCED LABOUR: IMPOSSIBILITY OF LEAVING EMPLOYER

A strong risk evident in the research findings relates to the large numbers of workers, 62 per cent of those interviewed, who reported being refused transfers to alternative employment. Refused employment transfers, coupled with the high debts workers reported having to repay as well as risks of homelessness or deportation, resulted in workers having reduced freedom to terminate their employment contract, a strong indicator for this dimension

These risks are compounded by limited public, private and social governance of the SWP. Public governance through labour market enforcement is hampered by the way in which the SWP has been designed. United Kingdom Visas and Immigration (UKVI) is leading inspections and governance of the SWP and yet is unable to meaningfully engage with workers. Along with its general licensing scheme in horticulture, the Gangmasters and Labour Abuse Authority (GLAA) is operating in a supporting role to UKVI in the SWP's governance, yet has just one staff member in Scotland. In addition, low numbers of seasonal horticultural workers are unionised, with virtually no union representation amongst SWV workers. Whilst private auditing is common in the horticultural sector, worker interviews and representation were not found to be a major focus of these audits.

Scotland currently has a high need for migrant workers to fill roles in agriculture, particularly in the labour-intensive horticultural sector, however the risks of the SWP have to date been unknown. This research identifies a high-risk of a range of indicators of human trafficking for forced labour being met on the SWP. It also finds that very few worker voice mechanisms exist for SWV workers along with gaps in labour market enforcement capacity. Across all three dimensions of forced labour, much greater efforts are required to protect workers on the SWP.

RECOMMENDATIONS

These recommendations for the UK and Scottish Governments relate to their State responsibilities to prevent human trafficking for forced labour and to protect victims. As such they directly respond to the key risks identified during the course of this research and propose measures that could be adopted by government to fulfil their positive obligations.

FORCED LABOUR INDICATOR: DECEPTION ABOUT THE NATURE OF WORK

The information that many SWV workers received at point of recruitment did not match that received once they reached their employment. For example, the majority of SWV workers (60 per cent) reported information received about how much money they would earn in the UK to be inaccurate compared to the reality. Employers have also raised concerns about unmet expectations. Some SWV workers are provided with terms and conditions at recruitment that do not match their contract terms and conditions upon arrival (a practice also called 'contract substitution'). This poses a risk of future workers being deceived about the nature of the work in the UK. The GLAA does not conduct in country license or compliance inspections of overseas labour providers. This limited oversight of overseas labour providers and their activities in workers' country of origin poses a range of risks of workers facing deceptive recruitment, threats at point of recruitment and recruitment linked to debt.

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The information that many SWV workers received at point of recruitment did not match that received once they reached their employment.”

To the UK Government

- **Ensure that employment contracts, enforceable in UK law, are shared with SWV workers in their country of origin, translated into workers' native languages and signed by employers and workers prior to travel.**
- **Ensure that Pilot Operators provide workers with a choice of employment at point of recruitment and that SWV workers are then allocated the role, farm and terms they have chosen upon arrival.**
- **Regulate SWV employment contracts to ensure they include: the name and address of the employer and the worker; the start and end date of the contract; the type of work to be performed; minimum remuneration to be expected; core working hours and days; leave arrangements and terms and conditions related to dismissal.**
- **Make new resources available to the GLAA, and future Single Enforcement Body, to conduct overseas licence and compliance inspections.**

To the Scottish Government

- **Ensure labour market enforcement authorities establish strong links with workers and worker representatives in order to gather ongoing intelligence about worker treatment at point of recruitment.**

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The majority of SWV workers reported entering into debt to come to the UK.”

GENERAL WORKING CONDITIONS: DEBT AT RECRUITMENT

The majority of SWV workers reported entering into debt to come to the UK. Given the relatively high cost of the visa, £244, travel and clothing expenses many workers said this debt reached €1000 (approximately £869). Many workers said they had had to obtain this money from black market sources. This debt poses a risk to workers when coupled with lack of guaranteed working hours for many workers and the inability to change employers where work is limited. The visa cost presents a significant expense for workers that some research participants felt was too high. The debt that many SWV workers incur at point of recruitment places them under particular pressure to work due to the absence of alternative work options for SWV workers:

To the UK Government

- **Remove the visa fee (£244 at time of writing) to reflect the limited timeframe and wages available on the SWV.**

To the Scottish Government

- **Provide a destitution fund for workers who have not received adequate work, or for whom the work has not been as described, who need to be able to return home and repay expenses.**

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A significant minority of SWV workers (27 per cent) said they had not received information on their work in writing.”

GENERAL WORKING CONDITIONS: EXISTENCE OF ABSENCE OF A CONTRACT

A significant minority of SWV workers (27 per cent) said they had not received information on their work in writing. In addition, many SWV workers interviewed stated that they did not understand their employment contracts for reasons including lack of translation into their native language and lack of support to understand contract terms. This issue can be more effectively addressed by ensuring that employment contracts are provided in workers' country of origin, however, in the absence of this the following recommendations are made:

To the UK Government

- **Guarantee SWV workers a written statement of employment particulars translated into their native language.**

To the Scottish Government

- **Issue guidance to employers on how best to introduce the written statement of employment particulars to workers, including time required for workers to digest information, employer support and information required and formal processes for raising questions and asking to amend the details.**

FORCED LABOUR INDICATOR: THREATS OF DENUNCIATION TO AUTHORITIES AND OF FURTHER DETERIORATION IN WORKING CONDITIONS

There is a high risk that the strong forced labour indicators of “denunciation to authorities” and “further deterioration in working conditions” could be met for future workers on the SWP. In addition workers' debts have an impact on the significance of these threats to workers. Worker interviews demonstrate the impact of worker economic vulnerability on their coercion into work they might not otherwise have accepted. In Canada, the risks of labour abuse for workers on tied visas have been addressed by offering workers an open work permit in order that they can find alternative employment. The option of transferring from a tied to an open visa in situations of abuse provides workers and the State with a mechanism through which workers can signal where there is a problem and get immediate remedy, possibly preventing more severe exploitation from taking place.

To the UK Government

- **Establish a visa without sponsorship for vulnerable workers as a safeguard for migrant workers who have suffered labour abuse.**
- **Establish an independent annual evaluation of the treatment of low wage temporary workers in the UK, including in-depth worker evidence, in order to inform labour market enforcement allocation and direction of resources.**

To the Scottish Government

- **Appoint a Commissioner to oversee and coordinate the treatment of and engagement with temporary migrant workers in recognition of the high-risk of labour abuse and exploitation posed to this group.**

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SWV workers described their accommodation as unsafe.”

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Many SWV workers report receiving zero hours contracts.”

- **Conduct ongoing survey data collection with seasonal agricultural workers in order to understand their experiences and treatment at work and use this data to inform the work of the Scottish Agricultural Wages Board (SAWB) and updates to the Fair Work Action Plan.**

FORCED LABOUR INDICATOR: DEGRADING LIVING CONDITIONS AND DEPENDENCY ON EMPLOYER FOR HOUSING

Almost all SWV workers surveyed were accommodated by their employer, many in caravans on agricultural sites. SWV workers described their accommodation as unsafe, with six of the 18 category one Housing Health and Safety hazards identified including: damp and mould growth; excess cold; and crowding and space. Despite this, many workers said they paid the maximum rate set in the Agricultural Wages Order (AWO) in rental charges. Accommodation is included in the GLAA licensing standards and as such included in compliance inspections. Agricultural land and farm worker accommodation is currently exempt from the Scottish Local Authority licensing system designed for the governance of caravan sites. There is a risk that caravans in a very poor state of repair could meet the Strong ILO indicator of “degrading living conditions”.

To the UK Government

- **Set minimum standards for accommodation to be upheld for seasonal agricultural workers.**
- **Prohibit employers from charging workers for accommodation if for any reason their wages drop below £332.50² per week.**

To the Scottish Government

- **Amend the Caravan Sites and Control of Development Act 1960 so that agricultural caravan dwellings are no longer exempt from local authority licensing.**
- **Engage COSLA to develop minimum standards for agricultural caravan dwellings that can be used by local authorities to monitor and inspect sites.**

FORCED LABOUR INDICATOR: LIMITED HOURS AND PIECE RATES CREATING EXCESSIVE DEPENDENCY ON EMPLOYERS

Many SWV workers report receiving zero hours contracts, despite the government stating this would not be the case on the SWP in May 2019. The majority of SWV workers reported being paid a piece rate for their work. The Scottish Government does not regulate the calculation of piece rates, rather sets a minimum floor for wages through the AWO. Many workers stated that they were penalised through the withdrawal of work for not meeting piece rate targets. This greatly increases the vulnerability of workers leaving them at risk of coercion into extreme working conditions.

To the UK Government

- **Ensure SWV workers are guaranteed a minimum income of at least £332.50³ per week, for 35 hours work written into their contract of employment.**

² Calculated according to the Living Wage Foundation, living wage £9.50 hourly rate for 35 hours work, see <https://www.livingwage.org.uk/what-real-living-wage>

³ Ibid.

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OUR CARAVAN IS REALLY COLD AND WET. I HAVE TO PUT A HAT ON WHEN I SLEEP. OUR CARAVAN IS FULL OF MOULD, THE WALLS ARE MOULDY, OUR MATTRESS IS MOULDY. WE SLEEP ON MOULD.

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Nastia,
SWV worker from Moldova



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**I SPOKE ABOUT
MOULD ON THE
WALLS THAT
THEY DO NOTHING
ABOUT. I SAID, MY
WINDOW IN MY
ROOM DOES NOT
CLOSE PROPERLY.**

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Akim,
SWV worker from Ukraine

- **Adopt an evidence-based formula to calculate piece rates. This could be overseen by the office of the Director of Labour Market Enforcement.**

To the Scottish Government

- **Introduce regulations relating to the calculation of piece rates, including the formula used to reach a fair piece rate and means of communicating this to workers.**

GENERAL WORKING CONDITIONS: RISKS TO HEALTH AND SAFETY FACED BY WORKERS

Some SWV workers reported general health and safety risks posed by inadequate protections provided by employers and some have reported an inattentiveness to illness and accidents in workplaces, including lack of first aid. Poor occupational health and safety can heighten the risk to workers of exploitation particularly when workers are forced to carry out hazardous tasks with inadequate protection. SWV workers reported being asked to buy their own protective clothing for work, including gloves, waterproofs and wellington boots. The Health and Safety Executive (HSE) and the GLAA both regulate and inspect workplaces for compliance with health and safety legislation.

To the UK Government

- **Provide details of SWP participating farms to the HSE in order that they can conduct an individual inspection campaign targeted at participating farms.**
- **Seek an annual report from the GLAA on health and safety risks identified and tackled as part of license compliance inspections for SWP participating farms.**

To the Scottish Government

- **Clarify the requirements with respect to providing weather protective clothing for seasonal agricultural workers in guidance for the agricultural sector.**
- **Ensure the Health and Safety Law poster prepared by the HSE, first aid arrangements, details of designated first aiders and information about Statutory Sick Pay are translated into SWV worker languages and clearly displayed in workplaces.**

FORCED LABOUR INDICATOR: REDUCED FREEDOM TO TERMINATE LABOUR CONTRACT

The majority of SWV workers interviewed reported making unsuccessful attempts to transfer to alternative employment. Many workers stated that their request had been unsuccessful because their employer had refused to let them leave. Home Office sponsor guidance requires SWV sponsors to enable workers to move to another employer “where possible”. Workers reported confusion about their ability to transfer, with some workers even saying they had been told employment transfer was not possible at point of recruitment. Without access to alternative employment options, some workers facing high debts have no choice but to continue work. There is a high risk that unscrupulous employers could use workers’ lack of alternative options to impose more extreme working conditions than would otherwise have been possible.

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The majority of workers interviewed reported making unsuccessful attempts to transfer to alternative employment.”

To the UK Government

- **Establish a clear employer transfer pathway, including transparent criteria for making a transfer request and a process for considering such requests. This should be communicated to workers at point of recruitment.**
- **An independent body, separate to the visa sponsor or the employer should receive representations and make decisions on transfer requests, including a facility for workers to change Pilot Operators where desired.**

PUBLIC GOVERNANCE: LABOUR MARKET ENFORCEMENT

This research and outreach work, through which the GLAA was engaged, demonstrated that there is low labour market enforcement capacity to provide adequate governance of working conditions to workers on the SWV. This low capacity means workers, who are already isolated on farms with limited community ties in the UK or access to independent advice, have limited reporting channels easily available in case of labour abuses or exploitation.

To the UK Government

- **Increase the resources to the GLAA and future Single Enforcement Body to ensure there is capacity to conduct regular proactive inspections of SWP participating workplaces.**
- **Provide resources in order to increase personnel and numbers of inspections by the GLAA in Scotland.**

To the Scottish Government

- **Review the role and responsibilities of the SAWB Agricultural Wages Inspectors (AWI) to introduce targeted inspections of SWP participating workplaces to ensure ongoing compliance with the AWO.**

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Pilot Operator helplines seem to have quite specific and bounded functions meaning workers might not gain resolutions to workplace problems through this route.”

PUBLIC AND SOCIAL GOVERNANCE: INFORMATION AND REPORTING

Home Office Sponsor Guidance requires procedures to be put in place to enable workers to report concerns to their visa sponsor. Workers struggled to make contact with the helpline provided by one Pilot Operator because of its limited availability and no translation. When they instead tried to contact their home recruitment agent, some workers found they could not reach them by phone. In addition, both Pilot Operator helplines seem to have quite specific and bounded functions meaning workers might not gain resolutions to workplace problems through this route. Given the short time SWV workers remain in the UK and the time required to take a case to an employment tribunal, there is a risk that grievances may not be aired and resolved posing a risk to all present and future SWV workers.

To the UK Government

- **Guarantee SWV workers a complaints mechanism through which workplace grievances may be aired and remedied during their time in the UK.**

To the Scottish Government

- **Establish an independent helpline, open 24 hrs, 7 days a week with translation into workers' languages, for SWV workers through which concerns can be raised about potential labour abuse and labour exploitation.**
- **Use this helpline to collate intelligence which can be acted on by labour market enforcement authorities and to channel transfer requests to an independent transfer body.**

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SWV workers are isolated, with limited community ties in Scotland and often without English language skills.”

SOCIAL GOVERNANCE: TRADE UNIONS AND WORKER SUPPORT

SWV workers are isolated, with limited community ties in Scotland and often without English language skills. This research found very little evidence of SWV worker unionisation. The leading trade union in the agricultural sector, Unite, confirmed that there are low rates of unionisation amongst seasonal migrant workers. One obstacle to union membership for SWV workers is thought to be cost of membership. In addition few migrant community organisations exist in Scotland that represent workers from the current countries of origin of SWV workers. Risks of human trafficking for forced labour detailed in this research are compounded where there is poor unionisation as workers have limited reporting channels in cases of abuse or exploitation nor representation in the workplace.

To the UK Government

- **Dedicate SWV funds accrued through the farm recruitment fee, to a worker support fund to which workers can apply for to join a trade union or in cases of destitution where funds are required.**

To the Scottish Government

- **Support migrant community engagement with SWV workers, by commissioning information, advice and wellbeing support programmes through relevant migrant community organisations.**
- **Offer financial support to trade unions to organise and provide advice to SWV workers.**

The full report and further details about the work are available from:
<https://labourexploitation.org/publications>

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**YOU CONSTANTLY
FEEL THIS
PSYCHOLOGICAL
PRESSURE AND
IT'S MENTAL.
THAT'S HOW I
FEEL, I FEEL
DOWN HERE IN
SCOTLAND.**


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Taras,
SWV worker from Ukraine

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