

Joint Committee on Human Rights - Human Rights at Work

April 2023

The **Labour Exploitation Advisory Group (LEAG)** is a group of experts from nine organisations¹ supporting people in, or at risk of, severe forms of labour exploitation, such as human trafficking, forced labour and slavery. Members work together to assess the impact of formal and informal responses to tackling labour exploitation by both government and non-governmental actors; and to identify barriers and develop joint strategies for improving the relevance and effectiveness of local and national measures to tackle labour abuse and exploitation.

This submission responds to the inquiry questions pertaining to labour market exploitation and the Retained EU Law Bill.

Labour market exploitation

What is the current legal and policy framework for tackling labour exploitation in the UK? Is that framework effective to protect workers' rights under Article 4 ECHR, which prohibits slavery, servitude and forced or compulsory labour?

1. At present the primary responses to labour exploitation in the UK are dealt with through law enforcement and the Gangmasters and Labour Abuse Authority (GLAA). However, this often requires a situation to reach the threshold for the level of human trafficking or other criminality prior to action being taken. The lack of proactive monitoring combined with a lack of options in practice for workers to speak out and access redress means that a considerable number of workers are excluded from active labour market enforcement and protection of workers' rights may be limited until they have escalated to their severest form (as outlined in para 6-8 below).²
2. LEAG, however, adopts a Continuum of Exploitation approach to human trafficking, recognising that human trafficking must be seen as an extreme form of other, lower level, labour abuses.

¹ Member Organisations: Latin American Women's Rights Service (LEAG Chair); Focus on Labour Exploitation (Founder & Secretariat); British Red Cross; East European Resource Centre; Kalayaan, Glass Door Homeless Charity; Work Rights Centre; Unite the Union; Kanlungan.

² For more information please see:

<https://labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>.

What is the Continuum of Exploitation?

Labour exploitation has been recognised as part of a continuum of experiences that ranges from decent work through minor and major labour law violations to extreme exploitation. This approach has been referred to as the 'Continuum of Exploitation'. A thread runs between low-level labour abuse and the more severe labour exploitation. The factors that produce vulnerabilities at one end of this continuum produce vulnerabilities across the continuum as a whole. At one end there is decent and well-paid work, with poorer treatment such as breaches of employment rights (such as unpaid wages, discrimination etc.) situated along the continuum, culminating at the opposite end of the continuum in serious exploitation, such as human trafficking and forced labour.

On this understanding, real and enforceable employment rights are crucial safeguards and preventative measures against serious labour exploitation taking root. In a labour market where all workers enjoy decent wages, paid time off and a safe working environment, workers are less vulnerable to labour exploitation because they can access decent work opportunities. Where workers are denied the protection of basic rights and labour standards are poor, workers become more vulnerable to labour exploitation.

*Secure reporting*³

3. The criminalisation of irregular work and the failure to separate labour market enforcement from immigration enforcement creates conditions in which migrant workers are made more vulnerable to forced labour and human trafficking. These policies have been shown to negatively impact not only irregular migrants, but also those with regular status. As a result of the Illegal Working Offence, for instance, a much larger number of migrant workers in the UK are reluctant to report abuse when investigations could result in the loss of their right to work.⁴
4. The lack of separation between law enforcement (as well as other public bodies such as the Gangmasters and Labour Abuse Authority) and immigration enforcement dissuades

³ Organisations working in the immigration, women and labour rights sectors use both safe reporting and secure reporting to describe a mechanism to ensure that victims and workers with insecure immigration status can report crime without facing negative consequences in regards to their legal status. This is relevant for all parties involved in the protection of vulnerable victims and workers, such as police and labour inspectorates. For more information on secure reporting, please see: <https://labourexploitation.org/publications/opportunity-knocks-improving-responses-to-labour-exploitation-with-secure-reporting/>; <https://labourexploitation.org/publications/joint-response-to-the-home-office-and-police-data-sharing-arrangements-on-migrant-victims-and-witnesses-of-crime-with-insecure-immigration-status/>; <https://labourexploitation.org/publications/preventing-and-addressing-abuse-and-exploitation-a-guide-for-police-and-labour-inspectors-working-with-migrants/>

⁴ <https://labourexploitation.org/publications/risky-business-tackling-exploitation-in-the-uk-labour-market/>; <https://labourexploitation.org/publications/opportunity-knocks-improving-responses-to-labour-exploitation-with-secure-reporting/>

the public from reporting potential cases of modern slavery out of concern that it will result in negative immigration consequences for victims.⁵ It is well recognised, including in statutory guidance,⁶ that survivors can be highly traumatised, afraid of disclosing their situation of exploitation due to shame and fear as well as the control methods used by exploiters and may be anyway fearful of authorities due to previous experiences and threats including around immigration detention and removal.⁷

“I would raise a complaint if I was protected in some way against deportation.”
Renata, (Brazilian survivor of labour exploitation in the UK)⁸

5. The hidden nature of modern slavery and trafficking makes it difficult to gain an accurate picture of its true scale and nature. As a result, anti-trafficking responses are dependent on victims coming forward about their experiences. The continued absence of secure reporting options that enable people with insecure status to come forward as victims of crime undermines our ability to address trafficking and runs counter to the UK’s stated ambition to ‘lead the way in defeating modern slavery.’ This is particularly concerning considering that immigration status is one of the key risk factors for becoming a victim of modern slavery. If the ‘Illegal Migration’ Bill comes into force in its current form victims and survivors of modern slavery will be further driven underground. Under the proposed bill anyone who entered the UK irregularly will never be identified as a victim in the UK or able to access consequent entitlements to legal advice or support, Nor will they ever be able to regularise their status in the UK. The effect will be to deter people from coming forward, those who do come into contact with authorities will not be identified anyway. This plays into the hands of exploiters.

Are there any improvements that could be made to better tackle exploitative labour practices which are contrary to Article 4 in the UK?

Prevention-based approach

6. The continuum of exploitation model also helps us to avoid the problematic discourse that siloes trafficking into a distinct and exceptionalised harm that is entirely separate from less severe forms of harm such as labour law violations.⁹ Such exceptionalisation does little to help our understanding of forced labour. Prioritising only the most egregious violations of workers’ rights and dignity to the exclusion of their lower-level workplace

⁵ *Id.*

⁶ The Modern Slavery Act 2015 section 49 Statutory Guidance on Identification and Care recognises the impact of trauma lists the reasons why a person may not self-identify and/or be reluctant to disclose their situation of exploitation.

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<https://labourexploitation.org/publications/opportunity-knocks-improving-responses-to-labour-exploitation-with-secure-reporting/>

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<https://labourexploitation.org/publications/preventing-and-addressing-abuse-and-exploitation-a-guide-for-police-and-labour-inspectors-working-with-migrants/>, p.11.

⁹ <https://www.jrf.org.uk/report/between-decent-work-and-forced-labour-examining-continuum-exploitation>, pp.17-18.

rights will inevitably result in a reactive system, that requires a situation to reach a certain level of severity before the worker is able to receive support and protection.

7. As such, the UK must tackle the factors that allow labour exploitation to thrive, and ensure that labour market enforcement is resourced so that it can properly address labour abuse and exploitation. The GLAA is considerably underfunded, with well-under the ILO recommended target of one inspector per 10,000 workers (currently 0.4 inspectors per 10,000 workers).¹⁰ The UK has one of the poorest resourced labour inspectorates in Europe, meaning that the GLAA only carries out 'intelligence-led' inspections and is therefore reliant on workers reporting their exploitation. Working conditions must be improved generally to avoid situations degrading to the stage where they amount to human trafficking. Strengthening the labour market enforcement can help to embed a model based on proactive protection rather than simply redress once a situation has degraded to a sufficient level of severity.
8. We endorse the submissions made by the Employment Lawyers Association (ELA) in relation to the difficulties in accessing legal redress.

Do workers from particular groups or in precarious employment disproportionately experience labour market exploitation? Does this raise concerns under Article 14 ECHR (freedom from discrimination)?

9. All individuals within the UK immigration system, whether they have regular status or not, have varying degrees of access to residency, work, and welfare rights and entitlements. This creates what has been called a 'hierarchy of vulnerability'¹¹ a stratified system where some people will have greater access to rights and protections, while others will face more restrictive conditions that limit their power to refuse exploitative working conditions. Within the complex UK immigration system, there is a broad range of restrictive categories that put people at higher risk. Restrictions placed on people's time in the UK, for example, can push individuals into increasingly exploitative forms of work, as employers may take advantage of the fact that it would be extremely difficult for a temporary worker to switch sponsors.¹²
10. When tight immigration restrictions are applied to workers in already high-risk sectors – such as domestic work or agriculture - their effects are compounded. The layering of vulnerabilities produced by labour market and immigration systems can restrict people's options to the point of creating 'unfreedom', compelling them into coercive working relationships and eroding their ability to negotiate decent work.¹³

¹⁰ <https://unchecked.uk/wp-content/uploads/2021/11/Labour-Market-Enforcement-Gap.pdf>, p.6.

¹¹ <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/forced-labour-immigration-status-full.pdf>

¹² <https://labourexploitation.org/publications/briefing-creating-safe-and-fair-uk-immigration-policy-workers>

¹³ For more information on how immigration policy produces vulnerability, please see:

<https://labourexploitation.org/publications/briefing-creating-a-safe-and-fair-uk-immigration-policy-for-workers-2/>

11. The UK's increased reliance on temporary worker visas, such as through the seasonal agricultural worker scheme, has created an environment in which labour exploitation can proliferate. Agriculture is a high-risk sector for human trafficking for forced labour due to the nature of its supply chain, remote working and isolation, and high prevalence of migrant workers who often face barriers accessing information and support due to factors such as the language barrier, limited access to information, and low unionisation rates, among others.¹⁴ The scheme operators can source workers for the agricultural seasonal worker visa from anywhere in the world and the UK has not put in place sufficient safeguards against illegal recruitment practices in source countries. This means that many workers, especially from Nepal and Indonesia, have reported having been charged high fees by recruiters in addition to high migration costs which are permitted under the scheme. The result is workers are often in debt when they arrive in the UK. Additionally, workers have been left without sufficient work leaving them at risk of destitution and vulnerable to exploitation.¹⁵
12. While an individual's gender does not indicate a vulnerability in and of itself, factors such as gender and racial inequalities, experienced at the individual and institutional levels, produce intersectional discrimination compounding the risk of exploitation and impeding the ability to exit it.¹⁶

Retained EU Law and workers' rights

To what extent is the UK's compliance with its human rights obligations, in relation to the protection of workers, currently dependent on retained EU law?

13. This Bill poses a very real risk that employment rights are scrapped or disastrously weakened without full and proper consideration of the impact on precarious workers at risk of exploitation. Besides the risk of weakening employment rights, the Bill also threatens to undermine the UK's ability to counter modern slavery, including human trafficking.¹⁷

¹⁴ See:

<https://labourexploitation.org/publications/assessment-of-the-risks-of-human-trafficking-for-forced-labour-on-the-uk-seasonal-workers-pilot/>

¹⁵ See for example:

<https://www.thebureauinvestigates.com/stories/2022-05-27/migrant-fruit-pickers-charged-thousands-in-illegal-fees-to-work-on-uk-farms>; <https://www.theguardian.com/uk-news/2022/aug/14/how-indonesians-came-work-kent-farm-debt>; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125411/An_inspection_of_the_immigration_system_as_it_relates_to_the_agricultural_sector_May_to_August_2022.pdf, p.51

¹⁶ For more information on how gender interacts with vulnerability to labour exploitation, please see:

<https://labourexploitation.org/publications/women-in-the-workplace-flexs-five-point-plan-to-combat-exploitation/>

¹⁷ For more information on our concerns regarding the Retained EU Law Bill, please see:

<https://labourexploitation.org/publications/retained-eu-law-revocation-and-reform-bill-response-to-public-bill-committee-call-for-evidence-2/>