

Focus on Labour Exploitation (FLEX), written submission to the Migration Advisory Committee's exploration of views on and usage of the Seasonal Worker visa.

Southeast and East Asian Centre (SEEAC) have added cited contributions to this submission.¹

September 2023

Summary

The UK introduced the agricultural Seasonal Worker visa as a pilot in 2019. Since then, the scheme has expanded from under 3,000 visas in 2019 to up to possible 57,000 available in 2023 (10,000 of these could be released subject to unpublished criteria and 2,000 are shorter visas for the poultry sector). This rapid scheme growth has been despite concerns that the scheme can create risks of exploitation for workers, including reports of workers being left without work after only a few months in the UK, so unable to repay migration debts.

The visa allows Scheme Operators to recruit workers from anywhere in the world to come to the UK to work in horticulture for up to 6 months and poultry production for 3 months. Workers generally pay their own migration costs with many reporting arriving in the UK with significant debts.

Short term work visas risk workers being unable to access information about their rights, or to exercise these in practice. The structure of the agricultural seasonal worker visa scheme means that workers are dependent on their visa sponsor (Scheme Operator) for information about the UK, for work, for accommodation and for their visa, as well as for managing any concerns about their employment and any other needs (eg health).

There is a lack of proactive labour market enforcement within the scheme. As the scheme is short term, many workers do not speak English and are dependent on their earnings in the UK many will not complain. For those who do, it is unclear what options are available in practice making it likely that some will decide that this is too risky and that it is better to concentrate on earning what they can.

If workers on the scheme are not able to access the protections of UK employment law the impact of this is wider than to the individual workers. The implications are that employment standards in horticulture and poultry will suffer as well as there being wider reputational risks for the industry.

As the UK's understanding of the issues within the scheme build, there is an opportunity for collaborative work to address these issues. Structural adjustments to the scheme must be centred on the needs of workers, addressing the risks taken by workers to work on the scheme, and increasing their ability to access options and redress in practice.

¹ For background on SEEAC see <https://www.seeac.org.uk>

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

This evidence has been prepared by FLEX's Head of Policy, Kate Roberts.
(kate.roberts@labourexploitation.org)

FLEX's work builds on the understanding that labour exploitation is situated at the extreme end of a spectrum ranging from labour compliance through to labour law violations, culminating at extreme exploitation in the form of offences such as forced labour and human trafficking for labour exploitation. These are at once serious crimes, human rights breaches, and violations of labour law.

In the UK, FLEX has conducted research on issues relevant to the call, specifically on challenges, risks, and opportunities facing the sector in the form of risks of exploitation to workers entering the UK on the agricultural Seasonal Worker visa to support the UK's horticulture industry. This includes a 2017 report on temporary migration programmes which examines the impact of migration status, labour market structures, and immigration control measures on vulnerability to exploitation,² a 2018 briefing highlighting the risks of temporary migration schemes for the agricultural and horticultural sectors,³ and a 2021 Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot, which followed the ILO framework of forced labour indicators and provided the first independent evidence of worker experiences of seasonal programmes in UK agriculture.⁴ We analysed the government's evaluation of the 2019 Seasonal Workers Pilot,⁵ which was only published in December 2021, and coordinated a joint NGO response to the publication of the DEFRA Commissioned review into labour shortages, including evidence from front line, advisory organisations.⁶ In July 2023 we published a Chapter giving an overview of the scheme.⁷ We have also examined several concerning developments within the scheme (blogs available on our website).⁸ We are currently working with three partner organisations

² FLEX. 2017. Risky business: Tackling exploitation in the UK labour market. Available at <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>

³ Preventing exploitation in the shadow of Brexit: The risks of temporary migration programmes September 2018 <https://www.labourexploitation.org/publications/preventing-exploitation-shadow-brexit-risks-temporary-migration-programmes>

⁴ <https://www.labourexploitation.org/publications/assessment-risks-human-trafficking-forced-labour-uk-seasonal-workers-pilot>

⁵ <https://www.labourexploitation.org/publications/flex-response-government's-review-first-year-seasonal-workers-pilot>

⁶ FLEX et al 2023. Addressing risks of exploitation is key to addressing the labour shortage in agriculture. Available at <https://labourexploitation.org/app/uploads/2023/07/NGO-response-to-the-DEFRA-independent-review-into-labour-shortages-in-the-food-supply-chain.pdf>

⁷ Landworkers' Alliance et al (2023) Debt, Migration and Exploitation: The Seasonal Worker Visa and the Degradation of Working Conditions in UK Horticulture. Available at <https://labourexploitation.org/app/uploads/2023/07/Debt-Migration-and-Exploitation-2023-.pdf>

⁸ Government must act to prevent exploitation on the UK's Seasonal Workers' Scheme <https://labourexploitation.org/news/government-must-act-to-prevent-exploitation-on-the-uks-seasonal-workers-scheme/>

in carrying out further research into the scheme and conditions of work in the horticultural sector, documenting the experiences of a larger sample of workers across in England.⁹

To what extent is automated or labour augmentation technology that reduces the need for labour or makes it easier, available and/or accessible to businesses like those you represent?

And thinking about the next five years, how far (if at all) do you expect such technology to become more available and/or accessible to businesses like those you represent?

Automation is likely to continue to impact the way the horticulture industry operates. This is not necessarily a net positive for workers in the sector. While it may be that automation can make some work more safe or comfortable it can also have other impacts, for example, increased surveillance of workers, or increased productivity targets, which could be more difficult to question having been decided by an algorithm rather than a supervisor.

It is important to ensure that standards of work in the industry are attractive to workers now, rather than assuming issues will be resolved by technology, and that maintaining attractive conditions of work informs the use of technology in the sector. This includes hearing from workers on the Seasonal Worker visa about its use and impact.

How efficiently do you think the scheme is organised by the government, which sets the overall rules and numbers for the Seasonal Worker visa route? Please select one.

Very inefficiently

Why do you say that? Please be specific about any improvements you would like to see.

Rather than being designed around efficiency, the Seasonal Worker scheme results from efforts to balance the UK's need for migrant workers in agriculture with the stated desire to reduce net migration particularly for 'low skilled' workers. While agricultural work is seasonal as in the work and demand varies with the seasons, there is also variation within a season, due to fluctuations in weather, demand, energy prices or other factors and workers are needed all year round. The Seasonal Workers Visa is a short-term visa scheme which restricts visa holders to work in a specific sector for a maximum duration of six months for horticulture and 3 months for poultry¹⁰ and prohibits access to public funds. Workers on the visa can be recruited to the UK from potentially anywhere in the world by a Scheme Operator (sponsor)¹¹ to work in the UK's agricultural sector. As well as paying migration

The UK needs migrant workers. This means it also needs to offer visa options which offer workers a fair deal <https://labourexploitation.org/news/the-uk-needs-migrant-workers-this-means-it-also-needs-visa-options-which-offer-workers-a-fair-deal/>

Migrant workers shouldn't be paying to harvest UK crops <https://labourexploitation.org/news/migrant-workers-shouldnt-be-paying-to-harvest-uk-crops/>

Filling the gaps: preventing increased risks of exploitation for workers on the Seasonal Worker visa <https://labourexploitation.org/news/filling-the-gaps-preventing-increased-risks-of-exploitation-for-ukrainian-workers-on-the-seasonal-worker-visa/>

⁹ See for example <https://labourexploitation.org/news/new-research-project-making-current-and-future-short-term-work-visas-fairer-and-safer-for-migrants/>

¹⁰ Recently increased from 2.5 months (9 March 2023)

¹¹ <https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker-accessible-version>

costs (eg. flights and visa costs), workers have also reported paying recruitment and other fees and arriving in the UK thousands of pounds in debt.¹² There are no clear options for compensation for workers who have paid these fees which, although illegal in the UK, may not be illegal in the country workers were recruited from.

It is not efficient for workers to be travelling, often long distances, to the UK for a maximum of only 6 months' work. The short duration of the visa makes it more of a challenge to ensure that migrating to the UK is financially profitable for the worker when possible earnings are balanced against the costs of migration. In practice many workers do not even get 6 months of work due to delays in travel after visas are issued and periods without work in the UK. Nor is this system efficient for employers who cannot apply to extend workers' time in the UK when there is ongoing employment. Instead, employers need to constantly hire and induct new workers who may not be familiar with their work systems.

Nor is UK government taking adequate responsibility for the route, instead attempting to outsource this to Scheme Operators. It is not always clear which department is responsible for different elements of the scheme which sits under both DEFRA and the Home Office. This results in gaps in accountability and decision making.

For example, the ICIBI's 2022 inspection report¹³ found that while the Home Office undertook 25 farm visits between February 2021 and February 2022 only 19 reports were drafted and shared with the Home Office's wider compliance unit. Eight of these identified "significant [welfare] issues" yet according to the inspection report follow up was inadequate:

*At best, reports were fed back to scheme operators months later. At worst, they were not fed back at all. The Home Office stated that no further action could be taken because it did not seek evidence to corroborate the allegations made, and that all allegations had to be investigated thoroughly before action could be taken. No allegations were investigated by the Home Office, by scheme operators, or by other government organisations. Often, by the time the scheme operators received the reports, the workers who had raised the allegations had already left the UK, meaning it was difficult for scheme operators to investigate, or give farms or growers the opportunity to respond.*¹⁴

There is a lack of clearly set out, accessible information on the scheme, responsibilities or accountability mechanisms. This was highlighted in the recommendations from Independent Chief Inspector for Borders and Immigration's Inspection of the immigration system as it

¹² <https://www.theguardian.com/uk-news/2022/nov/13/seasonal-fruit-pickers-left-thousands-in-debt-after-being-sent-home-early-from-uk-farms>

¹³

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

¹⁴

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 para 1.22

relates to agriculture with the following recommendation:

Recommendation 3 - Clarity of roles and responsibilities

*Within 3 months, for the Seasonal Worker route, produce and publish a reference document clarifying who is responsible for what across the Home Office, other government departments, devolved administrations, and local authorities. This reference document should be underpinned by a memorandum of understanding between all the relevant parties.*¹⁵

The government response committed to preparing a 'document setting out the roles and responsibilities of various Home Office units involved with the Seasonal Worker route'.¹⁶ This remains unpublished at the time of writing (4 September 2023).

Delivery of the scheme is through Scheme Operators who recruit and place workers and who are required to be licenced by both the Gangmasters and Labour Abuse Authority (GLAA) and the Home Office. [A parliamentary answer states that GLAA checks are 'intelligence led' rather than regular or proactive.](#)¹⁷ Another explains that the [GLAA does not routinely inspect farms employing people with Seasonal Workers Scheme visas, as the workers are employed directly by the farms or growers.](#)¹⁸

How efficiently do you think the scheme is administrated by the scheme providers who allocate workers to employers? Please select one.

Do not know

Why do you say that? Please be specific about any improvements you would like to see.

There is an urgent need for increased transparency and data on the scheme with regular monitoring of conditions for workers on the scheme and enforcement of standards with options available for redress for workers. Concerningly issues with the scheme have not primarily been raised through internal processes. This has been left to NGOs, academics and investigators. For example, data published by DEFRA in August 2023 detailing surveys with workers on the scheme in 2021 shows that 40% of workers mentioned it not being easy to lodge a complaint.¹⁹ As these survey questions were asked via Scheme Operators (on behalf of DEFRA) of workers who may be keen to secure further work on the scheme it may be that

¹⁵ <https://www.gov.uk/government/publications/response-to-an-inspection-of-the-immigration-system-in-the-agricultural-sector/a-response-to-an-inspection-of-the-immigration-system-as-it-relates-to-the-agricultural-sector>

¹⁶ <https://www.gov.uk/government/publications/response-to-an-inspection-of-the-immigration-system-in-the-agricultural-sector/a-response-to-an-inspection-of-the-immigration-system-as-it-relates-to-the-agricultural-sector>

¹⁷ <https://questions-statements.parliament.uk/written-questions/detail/2022-10-10/59819/>

¹⁸ <https://questions-statements.parliament.uk/written-questions/detail/2022-09-20/51713/>

¹⁹ <https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-survey-results-2021#nature-of-complaints-and-handling-experience>

some who found it hard to complain did not want to state this on the survey. These and other limitations are recognised and set out by DEFRA.²⁰

The Government's review of the 2019 Pilot scheme²¹ states that:

Data from the quarterly reporting by the operators shows a complaint rate from all workers of 1% was recorded by operators across the first year of the Pilot, with a follow-up rate of 80% by the operators to address any issues formally.

Given that 2,481 workers were recruited during the scheme pilot a complaint rate of 1% for a new scheme where workers have travelled far to work in an unfamiliar context seems concerningly low. However, there is no indication that this low reporting figure indicated the need to improve reporting systems or address issues which might be preventing workers from reporting issues. Nor is there any indication why 20% of the small number of complaints made were not followed up or what would now be done about this.

There needs to be increased independent monitoring and transparency around the working of the scheme, particularly the experiences of workers in practice. This should include data around availability of work, rates of pay, earning and deductions plus access to healthcare, information, complaints systems and redress.

SEEAC report accounts of confusion around accountability and decision making. SEEAC have explained that they interviewed workers from Indonesia who reported that when they faced issues, such as having their employment terminated and needing a rescheduled return flight ticket, they would be directed to the Indonesian recruitment agent or the scheme operator's contact in Indonesia as their primary contact for a report or complaint. However, these local agents needed to coordinate and get a solution from the scheme operator in the UK. This caused delays and uncertainty with workers who became unemployed and wanted to leave the UK immediately being stuck in the UK for weeks or months without any jobs or earnings in the UK while waiting for a decision on their flight ticket home.

How well do you think the Seasonal Worker Scheme in its current form safeguards the welfare of workers?

Very badly

Why do you say that? Please be specific about any improvements you would like to see, for example new rules/requirements or improving the enforcement of existing rules.

The Seasonal Workers Visa is a short-term visa scheme which restricts visa holders to work in a specific sector for a maximum duration of six months for horticulture and 3 months for

²⁰ <https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-survey-results-2021#methodology-and-analysis>

²¹ <https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-pilot-review-2019>

poultry²² and prohibits access to public funds. Workers on the visa can be recruited to the UK from potentially anywhere in the world by a Scheme Operator (sponsor)²³ to work in the UK's agricultural sector. As well as paying migration costs workers have also reported paying recruitment and other fees and arriving in the UK thousands of pounds in debt.²⁴ There are no guarantees of work during the duration of the visa meaning that workers are incurring significant financial risk. Nor are there clear options for compensation for workers who have paid these fees which, although illegal in the UK, may not be illegal in the country workers were recruited from.

SEEAC report that workers often do not know the risks they are taking when they migrate on the Seasonal Worker visa and are often led to believe during the recruitment process that there will be enough work hours to earn and save money.

FLEX is clear that risks of exploitation are inherent in short term work visas²⁵ and that short term measures of this type do not address the structural issues in the UK labour market.

While well-designed visa routes can enable safe travel and legal work, badly designed schemes can create significant risks by restricting workers' bargaining power. The UK needs to ensure it is not facilitating exploitation by treating workers as commodities who cannot access legal rights or safeguards. Otherwise, it is creating a two-tier workforce, with those entering on short term visa routes cut off from basic rights or access to employment law – both of which are key to preventing exploitation.

The UK has two existing short term visa routes for low paid work. These are the Overseas Domestic Worker (ODW) visa and the Seasonal Workers Pilot (SWP) for work in agriculture. Reports of exploitation on the Overseas Domestic Worker visa increased dramatically in 2012 when the route was further restricted²⁶, preventing workers from changing employer or renewing their visas. This meant that exploitative employers knew that workers could not leave and look for a better job and even complaining carried the risk of being sacked and left destitute and unable to work.

Research by FLEX has highlighted significant risks of exploitation on the horticultural Seasonal Worker visa scheme. This includes a 2021 Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot.²⁷ FLEX's assessment of the pilot scheme found significant risks of exploitation on this visa, with nine ILO indicators of forced labour being met by workers on the scheme. This included a strong risk of being deceived about the terms and conditions of employment at the instance of recruitment,

²² Recently increased from 2.5 months (9 March 2023)

²³ <https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker-accessible-version>

²⁴ <https://www.theguardian.com/uk-news/2022/nov/13/seasonal-fruit-pickers-left-thousands-in-debt-after-being-sent-home-early-from-uk-farms>

²⁵ <https://labourexploitation.org/publications/the-risks-of-exploitation-in-temporary-migration-programmes-a-flex-response-to-the-2018-immigration-white-paper/>

²⁶ <http://www.kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf>

²⁷ <https://www.labourexploitation.org/publications/assessment-risks-human-trafficking-forced-labour-uk-seasonal-workers-pilot>

facing penalties and threats at work, and being unable to leave the employer due to risk of destitution and visa restrictions. The study found that workers had to incur significant debt to come to the UK and once here, struggled to earn enough while paying high accommodation costs. Subsequent research and reports by investigative journalists have highlighted issues around conditions of and availability of work, and accommodation standards. There remains a lack of clarity around access to healthcare for workers on the scheme in practice.

There are a number of improvements we would like to see to the scheme, to reduce the risks of exploitation for visa holders and to ensure it works better for all stakeholders:

Independent monitoring, sharing of information and proactive enforcement of scheme rules and UK employment law.

1. **Data should be available on a timely basis:** the official review of the first year of the SWP (2019) was published at the end of its third year of operation, when the scheme had already gone through a significant expansion in workers numbers, sourcing countries, labour sectors and pilot operators. The DEFRA surveys or reviews for 2020 and 2021 were only produced in August 2023. A Home Office review of the scheme has not been published since 2021. In order to provide useful and timely data to effectively monitor this scheme, the monitoring and evaluation should be more effective.
2. **Gaps in data must be addressed:** Recruitment practices, illegal charging and incidence and level of debt should be actively monitored closely, as well as availability of work and evidence to support assertions of a labour shortage, particularly in light of recent expansions of this route and the requirement to provide 32 hours/ week of work to all workers on the scheme. In the UK there should be active monitoring of average hours of work and wages received by workers. The UK government should clarify arrangements around payment for time between jobs and transfer costs and well as the relationship between the hourly wage on the scheme and productivity targets. It should also be made clear what avenues are available for workers to report concerns, particularly if they do not want to report to their sponsor or scheme operator, what actions are taken in response to any structural issues identified, what mechanisms there are for reporting issues, or whistle blowing, and how individual workers have been supported to access redress.
3. **Existing risks should be assessed prior to expansions being introduced:** data should be used for the purpose of informing the future of the scheme, with particular consideration given to any additional sector-specific risks prior to the route being expanded to greater numbers of workers, and new, more distant sourcing countries.

Access to rights

4. **Effective monitoring of employer transfer pathways**, this should include transparent criteria for making a transfer request and a process for considering such requests. This should be communicated to workers at point of recruitment. Workers should not be responsible for paying the costs of a transfer and should be financially supported during gaps between jobs (eg transport costs).
5. **Short term work visas should be less restrictive**. Workers should have options to work more widely within or outside of the sector if there is no work available via their Scheme Operator. If an Operator loses their license for any reason workers who they have sponsored should be transferred to a different Scheme Operator.
6. **The visa should be renewable subject to ongoing employment**. There should be a route to settlement.
7. **Ensuring that terms and conditions of employment contracts are shared with SWV workers in their country of origin**, translated into workers' native languages, with relevant information provided (e.g. employers' details, working hours, remuneration, accommodation costs and other deductions, etc.) and signed by employers and workers prior to travel.
8. **Run mandatory information sessions in the UK** for workers prior to them starting their employment. These sessions should be run independently of Scheme Operators or sponsors and focus on the rights available to workers in the UK, what support is available, and practical steps workers can take when their rights are not being upheld.
9. **Provide an independently managed emergency 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. This should be costed into the scheme.
10. **Set minimum standards for accommodation with a monitoring mechanism** for seasonal agricultural workers and prohibit employers from charging workers for accommodation or utilities/other associated costs if for any reason their wages drop below the real living wage.
11. **Improve the guidance for access to healthcare** (including the NHS) for workers on the scheme. Independently monitor access to GPs and other healthcare services and intervene if access is lower than expected.

12. **Ensure a guaranteed income for workers who have travelled to the UK on the promise of work. Compliance with the National Living Wage and the provision of a minimum of 32 paid hours a week needs to be independently monitored** with compensation mechanisms in place if work is not available at any point during the 6 months of the visa.

Enforcement and redress

1. **The scheme should apply the Employer Pays Principle (EPP) with consideration given as to who should pay for a migrant worker's journey to participate in UK agriculture.** The ILO General principles and operational guidelines for fair recruitment state that '[n]o recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers'. UK Seasonal Worker Visa should personally not face any up-front costs. In the UK context, with profit margins squeezed in certain parts of the agriculture supply chain, it may be necessary to establish a wider definition of who should cover these costs. For example, the highly price-competitive supermarket sector may need to cooperate with farms and Labour Providers to meet the cost of bringing in workers.
2. **Ensure secure reporting mechanisms and a separation between the enforcement and monitoring of working conditions and immigration enforcement,** recognising that people on insecure and temporary immigration statuses are often reluctant to report abuse due to fear of facing immigration consequences.
3. **Increase the resources for labour market enforcement** to ensure there is capacity to conduct regular proactive inspections of SWV participating workplaces with a focus on compliance with standards and UK laws, rather than only on breaches which reach the threshold of Modern Slavery.
4. Strengthen the GLAA licensing scheme by **actively monitoring overseas labour providers and** help prevent and address non-compliance by having **clear and accessible enforcement processes.**
5. Establish clear **independently run complaints mechanisms** which are informed by the needs of workers to make sure they are accessible and enforceable in practice.
6. **Remove the visa fee and Immigration Health Surcharge** to reflect the limited timeframe and wages available on the SWV and contribution by workers on the scheme to the UK economy.

7. Introduce a **scheme specific tax code** so workers are not charged income tax, which they might later struggle to reclaim, on earnings below the income threshold.

Do you have any views on how well/not well the current complaints process for employees works? Please be specific about any changes that could be made (for example to make employees who have complaints more likely to come forward, or to enable problems to be resolved more quickly).

The current complaints processes, and the powers (if any) which these have to provide redress, are unclear. Workers are encouraged to complain to their supervisors or scheme operators, and we hear anecdotally that they may be referred to their recruiters. There are a number of helplines and apps through which complaints can be made. These are usually funded by industry and workers may not feel sure they are independent and may consider that the risks of making a complaint (including loss of work) outweighs any likely redress.

Even where officials discover issues these may not necessarily be acted on; The ICIBI's 2022 inspection report²⁸ found that while the Home Office undertook 25 farm visits between February 2021 and February 2022 only 19 reports were drafted and shared with the Home Office's wider compliance unit. Eight of these identified "significant [welfare] issues" yet according to the inspection report follow up was inadequate:

*At best, reports were fed back to scheme operators months later. At worst, they were not fed back at all. The Home Office stated that no further action could be taken because it did not seek evidence to corroborate the allegations made, and that all allegations had to be investigated thoroughly before action could be taken. No allegations were investigated by the Home Office, by scheme operators, or by other government organisations. Often, by the time the scheme operators received the reports, the workers who had raised the allegations had already left the UK, meaning it was difficult for scheme operators to investigate, or give farms or growers the opportunity to respond.*²⁹

It is important to note that welfare issues are likely to be underreported during visits by the Home Office who are not necessarily experienced in Labour Market Enforcement or identifying labour exploitation. Migrant workers, particularly those on a restricted short-term visas, are likely to be hesitant to disclose to immigration enforcement, particularly when their employment is so closely linked to their immigration status. Nor would workers be likely to see any positive outcome in reporting given the lack of redress or compensation

²⁸

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

²⁹

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 para 1.22

options which are accessible to them given the short timeframe for and restrictions of their visas.

Improvements should include independently provided information about rights and options for workers in the UK as well as access to independent advice and casework support in a language the workers understand. There should be a clear pathway to complain to a complaints body which can offer support to workers so they are not left without work or accommodation while a complaint progresses. The complaints body needs to have powers to offer practical support to workers when necessary so they are not left without work or left worse off due to raising a complaint.

The scheme is currently guaranteed until 2024. What (if any) are your views on this?

It is important to ensure that any visas designed to supply labour for the horticultural sector beyond 2024 work well for workers as well as industry. The planning for this needs to happen now and should include examining and addressing risks in the recruitment supply chain as well as working conditions in the UK horticultural sector and how the work can be made more attractive to, and guarantee standards for, both domestic and migrant workers. This should include examining factors including hours of work, pay and productivity targets, security of work, accommodation and other facilities. The sector needs to ensure that workers are not shouldering all the risk to come and work on UK farms but rather that there is guaranteed income and options to continue working (including to renew visas) if work is ongoing as well as safety nets for workers to ensure they are not left at risk of destitution and debt if things go wrong.

The rules of the scheme are that you must be over 18 to use the route, and you cannot bring dependants. You must have enough money to support yourself in the UK (usually at least £1,270) and there is no English language requirement. Once Seasonal Worker visa employees return to their home country, they must spend at least 6 months there before they are able to return to the UK. Do you or the organisations/members you represent have any views about these rules?

As stated earlier, FLEX is clear that risks of exploitation are inherent in short term work visas and that short term measures of this type do not address the structural issues in the UK labour market. While well-designed visa routes can enable safe travel and legal work, badly designed schemes can create significant risks by restricting workers' bargaining power. The UK needs to ensure it is not facilitating exploitation by treating workers as commodities who cannot access legal rights or safeguards. Otherwise, it will create a two-tier workforce, with those entering on short term visa routes cut off from basic rights or access to employment law – both of which are key to preventing exploitation.

When the UK invites workers to come and support our industry, we need to accept that we are asking people to relocate themselves and in doing so they are making financial and emotional sacrifices. We need to offer all workers who we ask to relocate to the UK a safety net in the event that the work is cancelled, or they become sick. The requirement that workers have £1,270 increases risk of debts and makes no sense if work is available. It would

be more practical for the employer or recruiter who is requesting their presence in the UK to support them until they are first paid.

The lack of any English requirement makes it particularly important that independent advice and information about rights and entitlements is provided in appropriate languages.

As set out above it would work better for workers and employers if workers could apply to extend their visas beyond six months if employment is ongoing.

The scheme currently allows employees to change employer over the course of their stay in the UK. Do you have any views on this?

This is an important provision and should be scrutinised to make sure that workers can access it in practice and to see how and when it could be expanded to ensure that workers are not left without work. Workers on the scheme can change jobs within the sector but can only work where they are placed by the same Scheme Operator who sponsors their visa. Rules around job transfers are unclear, stating that they should not ‘normally be refused:

“You must not normally refuse requests from participating workers to change employers. Participating workers can change employers if they wish and must normally be allowed to do so, unless there are significant reasons not to permit this (for example, their visa will imminently expire and the duration of the necessary training requirements would make such a move impractical).”³⁰

Previous guidance stated that transfers should be arranged ‘where possible’. There is ongoing confusion over the ability to transfer as highlighted by a grower in recent media coverage.³¹ Workers may be expected to pay the costs of a transfer which may include travel across the UK and a period without work between jobs. It is not explained what, if any, effective complaints mechanisms are in place if workers are denied a transfer, or left without work, or sufficient work. Workers who often incur high debt to migrate to the UK on the scheme need to know that they will be able to access decent work at expected pay for the duration of their visa and to be able to report issues and access compensation if things go wrong. Workers should not pay the costs of their transfers (which can be for transport across the UK) and could prevent workers from being able to access a transfer and so left without work.

Anecdotally, the most common complaint from workers is that they do not have enough work, or they fear not getting work if they complain. They themselves however are not in a position to withdraw their work due to the debts they have incurred to get to the UK, the short duration of their visa and lack of access to public funds meaning they cannot risk periods of time without work and the restrictions on access to work due to their visa- while the workers can change employer they can only work in horticulture where they are placed

³⁰ See ‘Workers and Temporary Workers: guidance for sponsors’ (2022) SE3.8. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1149235/Sponsor-a-Seasonal-Worker-04-23_1.0.pdf

³¹ See Le Monde 7.9.2023 https://www.lemonde.fr/economie/article/2023/09/07/depuis-le-brexit-une-immigration-remplace-l-autre-dans-l-agriculture-britannique_6188199_3234.html

by the scheme operator who is their visa sponsor. They are therefore entirely dependent on the scheme operator placing them in work. At minimum, workers who are left without work, or whose work drops below a certain number of hours over a couple of weeks, should have fewer restrictions, for example allowing them to work anywhere in the horticulture sector, or to switch into broader farming work for which they have the skills (for example poultry).

21. To what extent (if at all) do you think it will be possible to fill the jobs currently being done by seasonal workers from the UK workforce in future?

The prevailing view is that the UK will always need a migration route for the horticultural sector. However, it is important to examine in more depth why it is that the UK workforce is not filling the vacancies in the sector and ensure that the conditions of work are decent. This must include workers having options for alternative work, compelling employers to ensure that their offer to workers is competitive.

22. How well/not well do you think the Seasonal Worker visa route currently works for **employers**? Please give us as much information about your views as you wish.

In its present form the scheme does not appear to be working very well for employers or workers. There have been complaints from employers around late announcements of visa numbers on the scheme, giving little time to plan planting of crops.

The inability to apply to renew workers' visas where there is ongoing work means a constant turnover for a significant part of the workforce, with a constant need for training, interpretation, administration and support required to induct new workers rather than employers being able to benefit from workers who are experienced, have developed skills and familiar with systems on the farm and in the UK.

23. How well/not well do you think the Seasonal Worker visa route currently works **for those who come to the UK as a seasonal worker**? Please give us as much information about your views as you wish.

FLEX is in the process of collecting data on working conditions in the horticulture sector. The planned publication date is March 2024. Interim findings based on 309 surveys collected with workers on the horticultural seasonal worker visa only, provided during August 2022 to September 2023 indicate that for some workers the route is not working well. Please note that N refers to the total valid sample for the question/variable.

Surveys were primarily carried out by caseworkers/researchers from our partner organisations, Rosmini Centre Wisbech, Citizen Advice South Lincolnshire, and the South-East and East Asian Centre (SEEAC) in England. Additionally, a small number of surveys were completed via online dissemination from FLEX. The caseworkers/researchers together speak Russian, Ukrainian, Bulgarian, Romanian, Bahasa Indonesia and English, with surveys translated and carried out in these languages. This sample cannot be said to be representative.

of all seasonal worker visa holders in the UK; however, in order to overcome possible sampling bias, the researchers sought workers from a range of farm settings and spanning a range of different nationalities and gender identities. Data collection is planned to continue until the end of October 2023. While only worker survey data is included in figures below, FLEX is also carrying out qualitative interviews with workers and key stakeholders on the route, which will be included in the published report.

More than a third of workers who responded said they were provided with inaccurate information before they travelled to the UK on all the costs they would have to pay (36.7%; N=297), and a quarter on job role and tasks (25.9%; N=297).

More than half of workers who responded said they were provided with inaccurate information prior to departure on how much they would earn (53.7%; N=297) and half said they received inaccurate information on working hours (49.5%; N=297).

7 out of 10 workers reported borrowing money to move to the UK (70.5%; N= 308).

Around a third of workers reported that they requested to move to another farm (33%; N=300). Of those that made a request, more than half had their request refused (58%; N=99).

Of those that were paid on a piece rate system, only 2 in 5 said they always understood how piece rates were calculated (38.7%; N=119) and only 1 in 4 said that it was always possible for them to meet the piece rate target (26.4%; N=125). Around half of workers reported that they were not always paid for all the pieces they had picked (57.4%; N=115).

More than half of the workers who responded said that they did not know if they would be paid if they took time off when they were sick (58.1%; N=303) and around 1 in 3 said they did not get any paid sick days (30.4%; N=303). More than half did not know if they could take paid days off for holidays or annual leave (54.0%; N=298).

In its current form workers who enter the UK on the Seasonal Worker visa route have few options to leave exploitative work or access redress in practice. As well as the direct detriment to these workers this also risks undermine decent employers and driving down labour standards thereby increasing the challenges of recruitment.

The visa has a duration of 6 months,³² restricts visa holders to work in a specific sector and prohibits access to public funds. Although workers on both routes are theoretically free to change employer this is not necessarily straightforward in practice. Given that the process of accessing employment law would take longer than the duration of the visa, it is hard to see how the route offers clear or practical options for redress for workers on the visa whose exploitation does not meet the threshold of slavery.

³² With the exception of the poultry visas, also issued under the agricultural Seasonal Worker visa. The 2,000 poultry visas available in both 2022 and 2023 are from 18 October to 31 December.

Workers can be recruited from potentially anywhere in the world by a Scheme Operator,³³ to work in the UK's agricultural sector. Recruitment does not need to comply with the Employer Pays Principle and workers pay their own migration costs. Workers have reported paying recruitment fees and other costs in addition to this.³⁴ Compensation options for this are unclear. Although illegal in the UK, such fees may not be illegal in the country workers were recruited from. This means that workers arrive in the UK having incurred what may be very significant costs to get here workers. Since April 2023 workers have been guaranteed 32 hours of work a week. However it is not clear how this intersects with productivity targets, how it is monitored and the duration of work, or income of workers is not guaranteed. Issues are already being anecdotally reported including workers being delayed starting work as employers don't have enough work for 32 hours a week,³⁵ or workers being 'transferred' (or dismissed) due to not meeting productivity targets. Workers can change jobs but must remain placed by the same Scheme Operator who sponsors their visa. Rules around transfers are unclear, stating that they should be arranged where possible. It is not clear what, if any, complaints mechanisms are in place if workers are denied a transfer, or left without work, or sufficient work.

Additionally, serious issues exist in relation to scrutiny. The Gangmasters and Labour Abuse Authority (GLAA) have confirmed that their licensing process for Scheme Operators is a remote exercise, with no regular or mandated checks on the practices of license holders. The scheme is reliant on self-reporting by Scheme Operators and suffers from a lack of independent monitoring. The lack of resources has also impeded the GLAA's ability to conduct inspections, having conducted just 12 inspections of its more than 1,000 license holders to check for compliance by August 2022.³⁶ Nor is it clear how accommodation standards and access to healthcare are independently monitored and enforced.

24. Is there anything else you would like to tell us about your views, or the views/experiences of the organisations/members you represent on the Seasonal Worker visa? For example, if there is anything that could be improved about the scheme.

The UK needs a safe and fair route for migrant workers to travel to the UK to support sectors such as horticulture. As set out above, FLEX has warned for many years of the risks

³³ <https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker-accessible-version>

³⁴ <https://www.theguardian.com/uk-news/2022/nov/13/seasonal-fruit-pickers-left-thousands-in-debt-after-being-sent-home-early-from-uk-farms>

³⁵ See for example <https://www.gla.gov.uk/publications/resources/glaa-webinars/labour-user-labour-provider-webinar-8-june-2023/>

³⁶ <https://www.theguardian.com/global-development/2022/sep/29/review-of-uk-seasonal-worker-visas-to-increase-risk-of-slavery-experts-warn>

which are created where immigration routes are too restricted and create multiple dependencies on employers which few options for workers to challenge poor conditions of work or to access rights or options in practice. In planning migration routes the UK needs to plan carefully to ensure workers are able to negotiate and ultimately withdraw their labour without jeopardising their options to work in the UK. At minimum this means that workers should be able to change employers in practice and that visas should be renewable where there is ongoing employment. There should be a route to settlement for all work visas and clear independent pathways for workers to access independent advice, raise complaints and access redress.

Specific improvements which FLEX recommends for the Seasonal Worker visa scheme are listed above.

SEEAC highlight how, in their present form, seasonal worker visas commodify workers. They explain how workers on the scheme are perceived as a replaceable commodity and tend not to complain in order to try and ensure they can return to work the following year. In such a situation, the visa creates spaces with a high risk of exploitation.

25. If you have any other documents or information you would like to send us, please attach any files you wish to here, or email these to mac@homeoffice.gov.uk