

## **Make Work Pay: Employment Rights Bill – Inquiry**

**Written response submitted to the Business and Trade Committee on behalf of the Rights Lab, University of Nottingham, December 2024.**

This submission, focusing on Part 5 of the Bill (Enforcement of Labour Market Legislation), was prepared by Vicky Brotherton (Head of Policy Engagement and Impact) with expert input from members of the Rights Lab team, including Professor Dame Sara Thornton (Professor of Practice in Modern Slavery Policy), Lois Bosatta (Head of Business Engagement and Impact), Nidhi Sharma (UoN Co(l)laboratory Programme PhD Student), Dr Caroline Emberson (Assistant Professor in Operations Management) and Freya Moody (Rights Lab Intern in Human Rights for Business & Policy).

### **About the Rights Lab**

The Rights Lab delivers research to help end modern slavery and human trafficking. We are the world's largest group of modern slavery and trafficking researchers, and home to many leading experts. More information about the Rights Lab is available at: [www.nottingham.ac.uk/rights-lab](http://www.nottingham.ac.uk/rights-lab).

*The Rights Lab is currently working with colleagues from Nottingham Trent University to develop a joint position paper on the Fair Work Agency, which will be published and shared with the Committee in due course.*

## **Protecting workers**

### **Q1. Does the Employment Rights Bill adequately safeguard the workers it seeks to protect?**

1. **The Bill will not safeguard all workers in the UK.** The Bill updates and enhances existing employment rights and make provision for new rights for qualifying workers in registered, legitimate employment. Undocumented workers, i.e. those who do not currently have a valid visa or other form of documentation demonstrating their status or their right to live in the UK, will continue to form a part of the UK workforce but will not be afforded these enhanced protections. The Bill will therefore serve to widen the chasm between the level of rights afforded to certain workers in the UK.
2. **The Fair Work Agency (FWA) should ensure that undocumented workers have the confidence to report exploitation.** Whilst undocumented workers may not benefit from the additional rights provided through the legislation, it must be acknowledged that workers who are undocumented, by their very nature, are most at risk of being exploited in their places of work, and most at risk of modern slavery. As such, it is crucial that undocumented workers who experience exploitation fall under the purview of the new FWA provided by the Bill and are able to report instances of exploitative practice, anonymously if needed. Protecting anonymity arguably encourages reporting, and this reporting is crucial in supporting the FWA to identify and tackle the source of exploitation. Workers with insecure immigration status need to have the confidence to report exploitation without fear that their information will be passed on to immigration authorities. As noted in the House of Lords Horticultural Sector Committee 2022-23 report, *'the effectiveness of enforcement is curtailed by the coupling of labour market with immigration enforcement'*.<sup>1</sup>
3. **The FWA should have overall responsibility for oversight of the Seasonal Worker Scheme (SWS).** The exploitation risks for workers in the agricultural sector on SWS visas are well known.

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<sup>1</sup> House of Lords, Horticultural Sector Committee report. (November, 2023). Sowing the seeds: A blooming English horticultural sector, p. 152, para. 75.

Since its inception in 2019, there have been multiple reports detailing these risks, including those associated with the scheme's short-term nature, the visa sponsorship tie to a single labour provider, and the limited rights afforded to migrant workers. Reports detailing these risks have been published by civil society groups<sup>2</sup> as well as by government and independent reviewers.<sup>3</sup>

4. For example, in its 2024 report, the Migration Advisory Committee (MAC) noted, '*Seasonal Workers are vulnerable as agriculture is a high-risk sector for non-compliance, health and safety issues, and exploitation. In addition, their migration status can put them at additional risk, in particular because of the Seasonal Worker Scheme (SWS) being a temporary, short-term visa scheme in rural areas which usually relies on the employer for accommodation*'.<sup>4</sup> The report goes on to state that '*the current enforcement landscape for Seasonal Workers is fragmented and does not offer an adequate safeguard of seasonal worker rights*'; at present inspection of conditions for workers is led by UK Visas and Immigration (UKVI) rather than the Gangmasters and Labour Abuse Authority (GLAA) – GLAA does not have its own inspection powers over sites, although they may accompany UKVI staff on their inspection visits. Moreover, the GLAA only retains the power to check licences of SWS operators, regulating labour providers, but not the hundreds of farms that directly employ workers. The MAC report goes on to recommend that '*if a fully resourced economy-wide single enforcement body was to be created in future*' then it could be used as a vehicle to safeguard seasonal worker welfare in a more efficient and effective way.
5. **The FWA should have the powers to impose financial penalties on companies who do not comply with Section 54 of the Modern Slavery Act.** In June 2021, in its response to the 'Good Work Plan: establishing a new single enforcement body for employment rights' consultation, the Conservative Government committed to introducing financial penalties for organisations which fail to meet their statutory obligations under Section 54 of the Modern Slavery Act 2015, a commitment which hasn't yet been met.<sup>5</sup> It further stated that, '*while the Home Office will maintain and monitor the government-run register of modern slavery statements, and use this to identify organisations who have not met the reporting requirements, the single enforcement body will have powers to impose financial penalties against non-compliant organisations*'.<sup>6</sup> By enforcing transparency in supply chains statements, the FWA will have an overview of the operation of larger companies in the UK and their efforts to address modern slavery in their supply chains, and help ensure that those who fall short of the law are held to account.
6. **The Employment Rights Bill should ensure that legal provision with regard to modern slavery is consistent across the UK.** The Explanatory Notes to the Employment Rights Bill state, '*Part 5 of the Bill [Enforcement of Labour Market Legislation] extends to England and Wales, Scotland and Northern Ireland. Amendments to legislation made by Part 5 are within the legislative competence of the Northern Ireland Assembly*'.<sup>7</sup> However, Part 1 of Schedule 4, which sets out the relevant labour market legislation that the Secretary of State has overarching responsibility to enforce, only currently mentions the Modern Slavery Act 2015 and does not include mention of the respective 2015 Human Trafficking and Exploitation Acts in Scotland<sup>8</sup> and Northern Ireland.<sup>9</sup> This potential oversight needs to be addressed to ensure consistency of FWA enforcement powers across the UK.

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<sup>2</sup> For example, see FLEX. (2021). [Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot](#).

<sup>3</sup> Independent Chief Inspector of Borders and Immigration. (May – August 2022). An inspection of the immigration system as it relates to the agricultural sector.

<sup>4</sup> Migration Advisory Committee. (July, 2024). Review of the Seasonal Worker Visa. See Chapter 5: Migrant Welfare.

<sup>5</sup> BEIS. (2021). Establishing a new single enforcement body for employment rights: Government response.

<sup>6</sup> *Ibid*, p.14.

<sup>7</sup> House of Commons. (2024). Employment Rights Bill: Explanatory Notes. P.17, para. 58.

<sup>8</sup> Human Trafficking and Exploitation (Scotland) Act 2015. <https://www.legislation.gov.uk/asp/2015/12/contents>

<sup>9</sup> Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. <https://www.legislation.gov.uk/nia/2015/2/contents>

7. The GLAA currently can only investigate forced labour offences in England and Wales, as detailed in section 11A of the Modern Slavery Act 2015. To enable the GLAA to investigate forced labour offences in England and Wales, the Police and Criminal Evidence Act (PACE) 1984 was amended for this purpose by Section 12 of the Immigration Act 2016. To investigate forced labour offences in other UK jurisdictions, enforcement officers would need to be able to exercise comparable PACE powers in Scotland and Northern Ireland. As noted by Elysia McCaffrey, Chief Executive of the GLAA, in written parliamentary evidence to the House of Lords Modern Slavery Act 2015 Committee, *'Consistency across the UK would be improved by expanding the GLAA's remit as enforcers to include Scotland and Northern Ireland. One single and consistent enforcement approach across the UK will provide a single point of contact for modern slavery victims which is the key component to improving the operational effectiveness of all enforcement bodies that support victims of modern slavery including the GLAA.'*<sup>10</sup>
8. **The offences investigated by the FWA should include the Theft Act 1968 and Fraud Act 2006.** Recent Rights Lab research<sup>11</sup> and news articles<sup>12</sup> have shed light on cases in the social care sector in which migrant care workers have been charged exorbitant and illegal fees, in some cases thousands of pounds, to secure jobs in UK care homes or residential care. However, upon arrival, these workers have found that either the job doesn't exist or is very different from the one promised. Recruiters who charge these illegal fees may be committing offences under the Theft Act 1968 and Fraud Act 2006, however this legislation is not currently within the remit of the GLAA i.e. is not listed within Section 3 of the Immigration Act 2016. To ensure the new FWA can hold those who financially exploit migrant workers in the care sector, and other risky sectors, to account, the list of offences in Part 1 of Schedule 4 should be expanded to include this legislation.

**Q2. Are there weaknesses or loopholes in the Bill that could be exploited or have unintended consequences?**

9. **Modern Slavery Act offences should not be subject to Labour Market Enforcement Undertakings (LMEUs).** Whilst it is positive that Modern Slavery Act (MSA) 2015 offences are included within Part 1 of Schedule 4 and therefore under the FWA's purview, we are concerned that these offences would potentially be subject to LMEUs i.e. we are concerned that the offences found in the MSA could be dealt with through LMEUs rather than through criminal prosecution, which would be inappropriate given their serious nature. Currently Section 14 of the Immigration Act 2016 defines all of the labour market offences listed in Section 3 (3) of the Act as "trigger offences" for LMEUs, **except** for the Modern Slavery Act 2015 offences (in recognition of their serious nature). The current draft of this Bill has removed the use of "trigger offence", which means MSA offences are simply considered as labour market offences. This is an area where the Bill requires clarification and amendment.
10. **The Bill does not provide enforcement officers powers of entry for domestic dwellings, which are known sites of labour exploitation, nor provide protections to employees (such as domestic workers and care workers) who are employed in a private setting.** As noted in the European Convention on Human Rights Memorandum for the Bill<sup>13</sup>, Clause 79 provides a power of entry for an

<sup>10</sup> House of Lords Modern Slavery Act 2015 Committee. Written evidence by Elysia McCaffrey, Gangmasters and Labour Abuse Authority (MSA0082). <https://committees.parliament.uk/writtenevidence/129355/pdf/>

<sup>11</sup> Rights Lab. (2022). The vulnerability of paid migrant live-in care workers in London to modern slavery. <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2022/july/the-vulnerability-of-paid-migrant-live-in-care-workers-in-london-to-modern-slavery.pdf>

<sup>12</sup> See, for instance, The Guardian. (2 June 2024). UK care agencies accused of exploiting foreign workers caught in debt traps. <https://www.theguardian.com/society/article/2024/jun/02/uk-care-agencies-accused-of-exploiting-foreign-workers-caught-in-debt-traps>. And BBC News. (21 January 2024). Migrant carer 'drowning' in debt after £15k visa scam. <https://www.bbc.co.uk/news/uk-england-cornwall-68337205>

enforcement officer, for any enforcement purpose (as defined in clause 78), to enter any business premises (being premises or any part of premises **not used as a dwelling**). Furthermore, Clause 22 ('Dismissal for failing to agree to variation of contract, etc.') does not extend to employees who are employed in a private setting. Domestic care is an important and growing segment of an already sizeable social care workforce. As highlighted in recent Rights Lab research<sup>14</sup>, live-in care workers, who stay in their client's home and provide around-the-clock personal assistance are typically either employed under a zero-hour contract via a placement agency or are self-employed, often moving from the former status to the latter to enable greater freedom and control over their working conditions. These workers who undertake physically and emotionally challenging work, and who are often isolated in private households with limited community connections, will not be protected against changes to their working conditions or contracts, thereby potentially strengthening the sense of impunity amongst unscrupulous agencies or individuals who may employ them.

11. **The Bill's new protections are not extended to migrant fishers on the Seafarer Transit Stamp, a type of visa offered to workers on UK fishing vessels that operate outside of UK territorial waters.** As highlighted in recent Rights Lab research<sup>15</sup>, as well as cases publicised in the media<sup>16</sup>, labour exploitation and modern slavery is occurring aboard fishing vessels operating around the UK. It is encouraging to note that in the Department for Business and Trade Policy Paper - 'Next steps to make work pay'<sup>17</sup> - it is suggested that the Bill's focus will be expanded to address this issue<sup>18</sup>, however concrete legislative changes have not yet been made to secure protections for these migrant workers.

#### **Q.4 Can the measures in the Bill be adequately enforced? What are the barriers to setting up a Single Enforcement Body (Fair Work Agency) and how can these challenges be overcome?**

12. **The FWA needs to be adequately funded and resourced to be effective.** As noted by the Resolution Foundation, '*The UK has just 0.29 labour market inspectors per 10,000 workers, meaning we are less than one-third of the way to meeting the International Labour Organisation (ILO) minimum standard benchmark of one labour inspector per 10,000 workers. This leaves us ranking 27 out of 33 comparable OECD countries, a long way from being the global leader the Government espouses Britain to be.*'<sup>19</sup> As highlighted in our 2023 Rights Lab report<sup>20</sup>, the negative consequences from establishing an under-resourced FWA include:
- A failure to address all market violations and abuses; some will be prioritised, while others will be marginalised, recreating today's problems.

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<sup>13</sup> [https://publications.parliament.uk/pa/bills/cbill/59-01/0011/HCB11\\_ECHR\\_Memorandum\\_10-10-24.pdf](https://publications.parliament.uk/pa/bills/cbill/59-01/0011/HCB11_ECHR_Memorandum_10-10-24.pdf)

<sup>14</sup> Rights Lab. (2022). The vulnerability of paid migrant live-in care workers in London to modern slavery. <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2022/july/the-vulnerability-of-paid-migrant-live-in-care-workers-in-london-to-modern-slavery.pdf>

<sup>15</sup> Decker Sparks, J.L. (2022). Letting exploitation off the hook? Evidencing labour abuses in UK fishing <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2022/may/letting-exploitation-off-the-hook.pdf>

<sup>16</sup> For example, BBC News. (24 October 2024). Fishermen on Scots trawler win £20,000 modern slavery claim. <https://www.bbc.co.uk/news/articles/cqj0ln81yyjo>

<sup>17</sup> Department for Business and Trade. (8 November 2024). Policy Paper – Next steps to make work pay. <https://www.gov.uk/government/publications/next-steps-to-make-work-pay/next-steps-to-make-work-pay-web-accessible-version#section-3>, see paragraph 34.

<sup>18</sup> *Ibid*, para. 34 - '*As part of this government's pledge to ensure that we never see a scandal like that of P&O Ferries ever again, measures to introduce powers to allow the UK to strengthen workers' rights at sea and implement international conventions relating to seafarer employment will be added to the bill via amendment during bill passage*'.

<sup>19</sup> Resolution Foundation. (2023). Enforce for good: Effectively enforcing labour market rights in the 2020s and beyond, see p. 8. <https://www.resolutionfoundation.org/app/uploads/2023/04/Enforce-for-good.pdf>

<sup>20</sup> Rights Lab. (2023). Restating the case for a Single Enforcement Body. <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2023/february/restating-the-case-for-a-single-enforcement-body.pdf>

- The FWA not being practically able to carry out monitoring and enforcement of holiday pay, minimum wage pay, and statutory sick pay abuses because of the prevalence of these infringements on the labour market and the complexity of the cases they can present.
- The FWA being reactive rather than proactive, therefore continuing the pattern of the current labour enforcement agencies, and achieving limited success in adequately supporting workers.
- Sending a weak and unrealistic signal to businesses which fail to comply with the law, providing them no incentive to permanently improve their compliance.

13. **The FWA must be empowered to hold government to account.** The creation of the FWA will involve the abolition of the GLAA, an existing non-departmental public body (NDPB). The GLAA is governed by an independent Board, consisting of a chair and six expert members. As an NDPB, the GLAA is structurally more independent from the government than the proposed FWA, which will be an Executive Agency of the Department for Business and Trade, with the Secretary of State having the responsibility for enforcement of relevant labour market legislation. The independence afforded to the GLAA through its NDPB status has enabled it to publicly challenge government when deemed necessary.<sup>21</sup> The change of status to an Executive Agency may limit this ability of the FWA to ‘speak truth to power’. The role of the Advisory Board and its members, as provided by Clause 75, and their ability to undertake their work without fear or favour, is therefore critical for the effectiveness of the FWA.
14. **The GLAA’s current victim-focus and modern slavery expertise must be retained.** Unlike HMRC and the Employment Agency Standards Inspectorate, the GLAA has an explicit focus on protecting vulnerable and exploited workers and investigating reports of worker exploitation and illegal activity such as human trafficking, forced labour and illegal labour provision. The risk of merging organisations under one roof is that organisational specialisms and related staff expertise may be lost, especially if the FWA is under-funded compared to its expanded mandate. A further risk of under-funding is that the FWA’s focus will be on compliance rather than enforcement, which for the most serious breaches is inappropriate.
15. **The FWA should embody a truly functional partnership between relevant partners (enforcement agencies, civil society, businesses domestically and internationally) whereby contributions are recognised and compensated.** Building robust partnerships and regular meetings with organisations representing employers and employees are crucial to help the future FWA stay connected with on-the-ground developments, and with the concerns of marginalised workers. Practitioners interviewed as part of our 2022 research<sup>22</sup> noted as important the GLAA’s approach of being open and engaging with stakeholders. Specific stakeholder groups were mentioned by practitioners as being important ones for the FWA to establish partnerships with, including trade unions that specialise in representing lower paid vulnerable migrant workers (such as the United Voices of the World), national and international law enforcement bodies, as well as source countries for migrant workers, particularly those outside the EU from which seasonal workers are recruited.

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<sup>21</sup> The Guardian. (9 October 2022). Watchdog disputes Braverman’s claim modern slavery laws being ‘gamed’. <https://www.theguardian.com/uk-news/2022/oct/09/watchdog-disputes-bravermans-claim-migrants-gaming-slavery-laws>

<sup>22</sup> Rights Lab. (2023). Restating the case for a Single Enforcement Body. P. 21. <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2023/february/restating-the-case-for-a-single-enforcement-body.pdf>