

Human

Trafficking

Foundation

Human Trafficking Foundation Online Forum: Brexit and the Immigration Bill

20th August 2020, 2pm-4pm, via Zoom

*Chaired by Tamara Barnett, Director of Operations, and Phil Brewer, Specialist Adviser
Coordinated by Katy Parker, Administration and Communications Officer*

The recording of the meeting can be viewed [here](#).

Introductions by Human Trafficking Foundation (HTF)

These online meetings were initially started in April to address issues related to Covid. These forums will now be each month, and opened up to other topics relevant to anti-trafficking work, with updates on Covid work when relevant.

We have addressed Brexit in previous Advisory Forums, but with the Immigration Bill these discussions can be less speculative. Changes to the immigration system could now be an opportunity to address modern slavery and exploitation, but there are concerns that the current Bill lacks policy and safeguards that we need.

1. Juliette Nash, ATLEU – Background to the Bill and impact of Brexit

• **Legal implications of Brexit**

We have left the EU but are still legally bound by EU law currently. On 1st January 2021 we leave the EU in practice and lose the benefits and obligations of EU law.

EU law is supreme over domestic law and includes an irreducible minimum of rights including the Anti-Trafficking Directive. Most EU law has been implemented into domestic law, but the EU Anti-Trafficking Directive is not well implemented into UK law, making victims vulnerable when looking at removing EU law. The Modern Slavery Act doesn't provide victims with much in term of rights.

The UK is keeping the European Convention of Human Rights and Anti-trafficking Convention after Brexit.

• **EU Withdrawal Bill and Act**

Much is still unclear but the general view is that we'll take a 'screenshot' of EU law on 1st Jan, which will become part of domestic law. So we will still be able to rely on those laws after 1st January.

However, Parliament will be supreme and can pass new laws that reduce or remove the protections in that 'screenshot'. The Government has not indicated that they want to limit these rights.

- The Immigration Bill is currently going through Parliament to end freedom of movement.

Paragraph 6 of Schedule 1 – concern whether this will lead to repeal of protections that go beyond freedom of movement. Essentially, the Bill takes a bite out of the EU law that is incorporated into our law after we've left the EU – by disapplying EU law which relates to immigration. The language of the Bill is broad and there are no objective parameters, so we don't know what intended target is. Question: does this carve out include any of the Anti-trafficking Directive? If so, the Immigration Bill will dis-apply those parts of the Directive – and victims of trafficking lose rights.

The language of the 'carve out' in the Immigration Bill is very vague and uncertain – so difficult to know if Directive will be affected. But possible bad news as no-one can be clear what the law is once the Bill becomes law.

In the Anti-Trafficking Directive, there is protection against removal of victims. We won't conclusively know whether this has been adversely affected by the Immigration Bill until this is litigated in court.

So, there is concern the Immigration Bill will have collateral damage beyond its stated aim of ending free movement. We don't know if the Government intends to repeal parts of the Anti-Trafficking Directive, but it has not said that the Directive will remain either.

The Bill is currently going through Parliament and a probing amendment is being brought to find out whether the government intends to keep the Trafficking Directive.

To sum up, after 1st January victims will keep their rights under the Anti-trafficking Directive, unless the Immigration Bill changes this. We don't know if it will. Nevertheless we will still have powerful protections contained in the Human Rights and the Anti Trafficking Convention.

- NB potential elephant trap under the Pre-settled status scheme for EEA nationals who don't yet qualify for settled status.

It may be dangerous to apply for pre-settled status if a victim of trafficking has what may be a better alternative i.e. discretionary leave. If they apply for a worse form of leave after making an application for a better form of leave, they could lose the right for that better form of leave. *This is complex, and depends on individual circumstances; so EEA national clients who won't get Settled Status should see an legal aid immigration lawyer asap.* This should be by 1st January 2020, and definitely before June 2021.

2. Emily Kenway, FLEX – Impact of Brexit and the Bill on worker exploitation

Focus on Labour Exploitation (FLEX) is a research and policy organisation that seeks to end labour exploitation.

- FLEX leads the Labour Exploitation Advisory Group, which is made up of ten organisations seeking to end labour exploitation. In 2017 they published the paper [Lost in Translation](#). This explored how the leave vote was already impacting workers, with employers using the vote to impose worse work conditions, leading to confusion and fear among workers about their rights, making them more vulnerable.
- Removing freedom of movement can potentially move people into becoming undocumented if don't apply to EUSS. No one knows how many people are eligible for the Scheme and therefore how much as a proportion of the total has already applied. People may also apply for pre-settled status but not get settled status later on, becoming undocumented.
- In the new immigration system, we don't find a better story. The new Bill doesn't lay out future immigration package, this is in separate documents. They don't include a general low-paid worker pathway. Instead, it seems likely the Government will rely on sector-specific short-term visas. This is a way to bring in temporary migrant workers without leading to more long-term immigration.
- Have already announced: seasonal agriculture worker visas, health and care visa, charity volunteer (with working entitlements) visa. We can see a patchwork of work-related visas.
 - There will not be an avenue of enough legal entry to meet the supply of people who want to work here. People will still come to the UK.
 - This doesn't meet the business demand. i.e. hospitality needs 62,000 new workers a year; agriculture needs more than the allocated 10,000.
 - This mismatch creates more undocumented workers who are more vulnerable to exploitation.
- Sector-specific visas have serious exploitation risks attached i.e. we have seen this with domestic workers. This is explored in their 2019 report [The Risks of Exploitation in Temporary Migration Programmes](#), which details why these schemes are so dangerous from a modern slavery perspective.
- Being a migrant does not make you inherently more vulnerable to exploitation. Really important to make sure we are discussing visa design and policies and whether they lead to vulnerabilities.
- What do we need to do?
 - We need to expose that the current plans undermine [the national modern slavery strategy](#)
 - We need to emphasise that Brexit presents us with an opportunity to shake up our system and how we think about visas and people's rights
 - If we are going to have these short-term visas, we need to embed safeguards to protect workers and our communities from exploitation.
 - Setting wages at same level as for UK workers

- Additional resourcing for labour inspection – currently underfunded
- Ability to change jobs and sectors to prevent exploitation
- Pathway to access public funds
- We need to introduce [secure reporting](#), so that when people report exploitation this is kept separate from immigration enforcement. This is vital, and is not Brexit-specific but Brexit means it is needed more than ever.
 - FLEX have found that some employers have used undocumented workers as a recruitment strategy, because they can treat them badly as they know they won't seek help.
- Overall, Brexit will increase the population of exploitable people, and we need to make sure we have appropriate safeguarding measures and policy designs in place.

3. Dave Saffery, The NPCC International Crime Coordination Centre – modern slavery transnational investigation and the Brexit impact

- International Crime Coordination Centre was set up two years ago with the core role of looking at international tools and contingencies we could use in No-Deal Brexit. Advising the police on how to replace them and overcome the challenges from losing these tools.
- JITs – joint investigation teams – are coordinated by EuroJust in the Hague, for investigations between two or more countries. Big positive of this is sharing of evidence. It also gives jurisdictions the opportunity to pick where the best place is for trial. In people trafficking, EU partners keen to do this in England and Wales, as penalties are higher than in some EU countries. It also gives police forces access to resources of EuroJust, i.e. for coordination meetings, translation, interpretation.
- Currently have 36 live JITs with various countries, almost all EU countries. The crimes are all serious and ranges from comparatively non-complex investigations to complex people trafficking/modern slavery, that might include three or more national partners, all sharing evidence and having regular progress meetings.
- On 1st January, assuming the Government can't keep us in EuroJust, the overnight effect is that we lose access to the EU legal framework that put JITs together, and will overnight lose access to EuroJust. The UK Embassy in the Hague and UK will begin formal negotiations for a third-country agreement (i.e. Norway, Iceland), which would give almost all the same benefits as full members of EuroJust.
- Existing JITs will continue.
- Every existing JIT has been redrafted over the past year under the 1959 European Convention on Mutual Assistance on Criminal Matters. Some countries have not ratified the 1959 Convention, and a couple have chosen not to use it for JIT framework. There are alternatives (UN Conventions) if these countries can't use the 1959 Convention.
- Currently business as usual. EuroJust is behind the idea of joint investigation and JITs continue. We will not stop working with other European countries in joint investigations.

- Please contact the International Crime Coordination Centre if you have any questions.

4. Ahmed Aydeed, Duncan Lewis - Current challenge on right to work for survivors

- There is a right to work for asylum seekers in UK where their claim is outstanding for more than a year, and the delay is not the fault of the asylum seeker. If they are granted permission to work, this is often limited to shortage occupation list. There is discretion for the Home Secretary to permit outside of this list, but unclear in what circumstances and there is no clear policy on this.
- Duncan Lewis are running a challenge for survivors of trafficking who aren't asylum seekers. The Modern Slavery Act statutory guidance says adult victims are able to access the labour market, education and vocational training provided they have an immigration status that allows them to do so. If they don't have right to work, there is no procedure for them to apply while they are waiting for a decision on their trafficking status. (Note, if they do have right to work, this will not be affected by being in the NRM.)
- The challenge argues that survivors would be assisted in their recovery if they had the right to work, and not allowing them to do so is a breach of ECAT, which states that it is the responsibility of the Secretary of State to assist the survivor in their recovery.
- Evidence shows that survivors would be assisted in their recovery if they were able to work and it would reduce their vulnerability, yet there is no provision for this in the Modern Slavery Act. This is discriminatory when compared to asylum seekers.
- It often takes well over a year to get a conclusive grounds decision. This is a lengthy period without access to mainstream education or right to work (unless had prior to NRM).
- The Home Secretary has responded and said she doesn't believe there is an obligation on her to grant this right to work to potential survivors of trafficking. This also applies to confirmed survivors, as there is often a gap between decision on trafficking and decision on DLR or other immigration status that would grant right to work.

5. Sohini Tanna, British Red Cross – Impact of Brexit on Refugee Family Reunion

Current rules:

- There are currently two routes to family reunion once someone has refugee status. Either through domestic immigration rules or Dublin system.
- Immigration rules mean a refugee has the right to reunite with their spouse or children under 18 (that existed before they left their country of origin)
- Refugee rule 319x – a refugee can be reunited with relatives under 18: must pay a fee, income dependent, serious and compelling reason why they should come to UK – not a realistic option for many and rarely used.
- Dublin 3 – transfer of asylum claim from one Dublin member state to another for purpose of family reunification. Not a family reunion visa, would still be applying for

asylum. More favourable rules, and the definition of family is broader. This system has become increasingly important for family reunion over the past couple of years. It prevents people travelling across Europe to UK to be reunited, and gives a better opportunity for reunification. Red Cross has found that many who are reunited under Dublin wouldn't have been eligible under domestic immigration rules.

Impact of Brexit

- From 1 January 2021 UK will no longer be part of the Dublin process.
- The UK Government has committed to negotiate a reciprocal agreement with EU member states for unaccompanied asylum seeking children only.
- The EU has not indicated their position on this or presented an agreement from their side, which is very concerning. As current domestic rules do not provide an alternative, if there is no agreement many families will be left without a safe and legal route to be reunited.
- Recommendations:
 - The UK should seek to negotiate an agreement for all separated families, not just unaccompanied children
 - The Home Office should amend UK's immigration rules to better mirror the family reunion elements of Dublin System
 - Home Office should work to ensure outstanding family reunion transfers are submitted to the UK before the end of the transition period.
 - The Families Together Coalition has put together an amendment at the House of Lords for the domestic rules to be expanded.

6. Daniel Petriello, Home Office

- Further information on the new immigration system was published last month. Further guidance will be published later in the year.
- On 31 December, 11pm, there will be a new points-based immigration system and end of free movement, based on the skills people bring rather than the country that they're from. Anyone coming into the UK from abroad, including EU nationals, will need to demonstrate that they meet a certain set of requirements (i.e. have a job offer that meets a certain salary level, speak English to a certain standard). There are no caps on these routes.
- Some of these attributes will be tradable, apart from the mandatory ones. The salary threshold has been designed to protect the resident workforce. There is flexibility if someone doesn't meet the points threshold but the job is on the occupation shortage list.
- There is a highly skilled route, for the most highly skilled workers, who will be able to enter the UK without a job offer. Health and care visa with a job offer from NHS or social care will have a fast-track entry and can bring in their families.
- The new system does not seek to replicate free movement in any way, and there will not be a route for those who do not meet the skills or salary threshold or for temporary work. Employers will need to adjust to this.
- This system provides greater flexibility for employers. Both the seasonal workers pilot and youth mobility scheme will provide further flexibility for employers.

- They are continuing to raise awareness of the Settlement Scheme and are funding organisations to help more vulnerable applicants to make applications, and have extended funding for this, currently going through bidding process for further funds.
- Statistics on the Settlement Scheme are available on gov.uk, broken down by age, nationality, region etc.
- The Immigration Bill is now in House of Lords. The final details will be confirmed this year, along with the guidance.
- There was a call for evidence to the Migration Advisory Committee to add additional jobs to the employment shortage list, due mid-September.

7. Laura, English Collective of Prostitutes

The English Collective of Prostitutes campaign for decriminalisation and safety. They do a mixture of campaigning and casework.

- Because sex work is criminalised and not considered legitimate worker, sex workers have not been able to apply to the same schemes as other workers. This problem has impacted migrant sex workers since the Brexit referendum result announced.
- Migrant sex workers in the UK are increasingly targeted by police for raids, arrest and deportation, and this has gotten worse since the referendum called and result.
- Sex workers not able to exercise their treaty rights as this is not seen as legitimate work. Women are being targeted for arrest and deportation, there are reports of violence being dismissed, and passports confiscated until they show they have a one-way ticket out of the UK.
- EU sex workers in the UK are demanding the right to stay on the basis of the work and contribution they are making. They are massively disadvantaged and discriminated against because sex work is not seen as work, and many don't have the documentation to prove their status in the UK.
- Women are arrested for loitering and told that their presence in the UK is not for the public good, and arrests and raids have continued even throughout Covid crisis.
- Police raids are increasingly done in name of anti-trafficking, although often no trafficking. Increasingly labelled as victims, and so don't get the help that they need. Migrant women are saying they're going in to sex work as conditions in other work worse. They are often working to support families/communities back home, yet this is not valued.

Please get in touch if you'd like more information about the English Collective of Prostitutes, and read their report Sex workers are getting screwed by Brexit [here](#).