



LATIN AMERICAN WOMEN'S RIGHTS SERVICE
Servicio por los Derechos de la Mujer Latinoamericana
Serviço pelos Direitos da Mulher Latino-americana

BRIEFING

Immigration and Social Security Coordination (EU Withdrawal) Bill 2020

[April 2020]

SUMMARY

This briefing presents evidence and recommendations for the upcoming Immigration and Social Security Coordination (EU Withdrawal) Bill. The bill is set to introduce changes which will directly affect migrant's conditions of living and working in the UK. The Latin American Women's Rights Service (LAWRS) supports Latin American migrant women facing physical, financial, emotional or psychological abuse; exploitation and trafficking in low-paid jobs in highly unregulated sectors (outsourced); enduring difficult living and working conditions; and facing barriers to social protection. We are particularly concerned about the way in which the new Bill might increase labour exploitation, trafficking and modern slavery, while failing to address existing problems created by previous immigration law and practice. In particular, the lack of safe reporting mechanisms and the sharing of victims' data for immigration enforcement purposes, which undermines trust in police and statutory services, deters reporting, and increases risk of further abuse.

EVIDENCE AND RECOMMENDATIONS

I. Henry VIII clause and complexity of the existing immigration law

The Bill introduces a "Henry VIII" clause, allowing the Secretary of State to introduce secondary legislation to repeal or amend the Bill at any time after it has been approved as an Act of Parliament.

Existing immigration law is complex and virtually inaccessible, and continuous additions by the Home Office through secondary legislation has been pointed at as the cause of the most significant problems.¹

LAWRS has seen through the years increasing numbers of women in need of immigration advice, often recurring to unscrupulous and unqualified persons who charge high amounts of money, while providing

¹ <https://www.freemovement.org.uk/how-complex-are-the-uk-immigration-rules-and-is-this-a-problem/>

the wrong information. It is vital that law is, as far as possible, clear, intelligible and accessible, to allow migrants to understand their options, their obligations and their entitlements.

Furthermore, secondary legislation is not afforded the same levels of scrutiny as primary legislation. Immigration policy requires the highest possible level of scrutiny and oversight, particularly in light of events such as the Windrush scandal.

Recommendation:

- **Parliament should seize the opportunity to reform the immigration system by creating a new, comprehensive Act of Parliament that addresses the complexities resulting from previous ones, rather than providing the government with a “blank cheque”.**

2. Point based system and “low-skilled” workers

The UK’s dependence on migrant workers has a long history. With migrants playing essential roles as part of the healthcare workforce, the NHS has long relied on nurses and doctors bringing their knowledge and expertise to care for people in the UK². It was two of these migrant nurses whom the Prime Minister himself singled out in gratitude in his message after being discharged from intensive care for COVID-19.

However, the COVID-19 pandemic has made clear that we owe our gratitude, respect and protection not just to medical professionals, but also to those described by the government as *low-skilled workers*, who are vital not just for the country’s economy, but for all services to function properly. For organisations working with migrants, this is a well-known reality: migrants are overrepresented in low-paid sectors³. Cleaning, hospitality and domestic work, areas in which LAWRS’ service users - Latin American migrant women - are mainly employed, are examples of this.

Further evidence of this is the information known in the past weeks: one in three people critically ill with COVID-19 are of BME background⁴, and the first 10 doctors to die in the UK after contracting COVID-19 were also BME⁵, meaning migrants are still working actively in key sectors, and thus greatly exposed.

It was revealed last week that 180 fruit and vegetable pickers were brought from Romania to the UK due to a demand not met within the UK’s workforce, this being the first convoy with others to follow⁶. In contrast with this reality, under the proposed legislation, most migrants earning below £25,600 may not be able to legally find employment in the UK unless it is proven that their occupation is in high demand and they have a job offer from an approved sponsor.

² https://www.health.org.uk/news-and-comment/blogs/immigration-and-the-nhs-the-evidence?gclid=EAlalQobChMI_fzg2Nf06AIVpoBQBh3O2wDxEAAAYASAAEgKZP_D_BwE

³ <http://www.lawrs.org.uk/wp-content/uploads/2018/12/unheard-workforce-research.pdf>

⁴ <https://www.aljazeera.com/news/2020/04/critically-ill-covid-19-uk-patients-bme-backgrounds-200407143303604.html>

⁵ <https://www.theguardian.com/society/2020/apr/10/uk-coronavirus-deaths-bame-doctors-bma>

⁶ <https://www.theguardian.com/environment/2020/apr/17/british-workers-reject-fruit-picking-jobs-as-romanians-flown-in-coronavirus>

The new proposed points-based system provides a route for highly skilled migrants looking to settle and work in the UK. However, this does not contemplate the real needs of the British economy, or the current composition of its migrant communities in the country. If the current demand for migrant labour is sustained, by not providing a safe route for migration, the UK risks increasing the number of migrants working with insecure status, thus increasing the risk of exploitation, trafficking and modern slavery.

Recommendation:

- **Ensure the Bill provides a safe route for “low-skilled” workers in order to avoid increasing the risk of severe exploitation and modern slavery.**

3. The “illegal working” offence

Following the Immigration Act 2016, migrants working without the appropriate documentation may face a maximum custodial sentence of six months, fines, and having their wages and savings seized as proceeds of crime. This, coupled with the lack of secure reporting mechanisms, has created an important barrier in the UK’s work against exploitation and modern slavery.

LAWRS and other organisations which support migrants have seen time and again that employers exploit migrant workers with impunity, as those subject to severe exploitation, trafficking and modern slavery choose not to report their employers or traffickers to the relevant authorities for fear of the consequences, which can amount not only to those described above, but also to detention and deportation. Employers, at the same time, have found immigration enforcement to be a useful tool to coerce workers into submission, therefore increasing migrant’s vulnerability to exploitation.

Our experience has shown that the hostile environment policies have led to this being the case not only for undocumented migrants, but also for BME and vulnerable migrants with EU citizenship who are unsure of their rights and entitlements. This reality has been worsened since the 2016 United Kingdom European Union membership Referendum. In the context of this hostile environment, by underfunding labour inspectorates while giving them immigration enforcement duties, protection of workers has been undermined.

This Bill presents an opportunity to repeal the illegal working offence, which puts migrant workers at higher risk, and at the same time hinders the government’s ability to fight exploitation, trafficking and modern slavery by discouraging its victims to come forward.

Case study: Immigration status as a barrier to reporting sexual harassment

F is an undocumented migrant worker who experienced an attempted rape from a hotel guest when she went to clean his room. She reported the attack to her supervisor, but he accused her of lying and reprimanded her for not finishing the room. She was scared of taking the complaint further and reporting the crime to the authorities because of her immigration status.

Recommendations:

- **Repeal the illegal working offence.**
- **Provide all migrant workers the same employment rights as every worker in the UK.**
- **Improve regulation of low-paid sectors by ensuring labour inspectorates have the appropriate resources and can carry out inspections without performing immigration enforcement duties.**

4. Data-sharing agreements

As stated above, immigration enforcement has long acted as a deterrent for migrants who are victims or witnesses of crimes and exploitation to report⁷. Although statutory services such as the police are under no legal obligation to carry out immigration enforcement duties, agencies do not have clear guidance on this issue. For instance, in 2018, Freedom of Information requests revealed that 27 out of 45 police forces (60%) in England and Wales share victims' details with the Home Office⁸.

Evidence from migrant and BME organisations has shown that migrants with insecure immigration status often refuse to report crimes such as domestic violence and/or exploitation for fear of detention and deportation. According to our report "The Right to be Believed"⁹, one in two migrant women are afraid to report their abusers to the police because the police share their personal information with the Home Office for immigration control. This is evidence that the lack of secure reporting mechanisms has led to a lack of trust from the community in the police and other statutory services. At the same time, data-sharing enables abusive employers to continue to exploit migrant workers, and perpetrators to keep weaponizing women's immigration status increasing the risk of further abuse.

Case study: Immigration status as a barrier to reporting domestic abuse

KR is an Ecuadorian woman who came to the UK in 2014. She met her partner at work. Since the beginning of the relationship, he was extremely controlling and continuously misinforming KR regarding her immigration status by telling her that she is his dependent despite having been granted Leave to Remain prior to the start of this relationship. In 2019, violence escalated when KR got pregnant. During this time, isolation, emotional abuse and manipulation were exerted. Furthermore, the perpetrator increased threats of deportation and separation from her child if she reported the abuse to the police. KR came to LAWRS asking for advice in early February of 2020. However, when the caseworker informed her that due to her case being a high risk one (14 on DASH risk checklist), and following safeguarding procedures she would need to report the case to social services, KR demanded that her file was destroyed. Currently, KR is being supported by LAWRS and social services. However, she has not yet reported the abuse to the police, since she is too fearful of deportation and possible separation

⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767396/Super-complaint_181218.pdf

⁸ <https://www.bbc.co.uk/news/uk-44074572>

⁹ <https://stepupmigrantwomen.org/research-righttobebelieved/>

from her child. KR is currently still living with her perpetrator. LAWRS considers that the lack of safe reporting mechanisms have put her and her child at risk of enduring domestic abuse¹⁰

Safe reporting mechanisms are needed to ensure that everyone on British soil can live a life free of crime, exploitation and abuse. They are also vital to ensure the police and inspectorates are trusted by the community and are thus able to carry out their duties to prevent, detect and punish serious crime effectively.

Recommendations:

- **Include in the Bill a provision to stop data-sharing for immigration purposes.**
- **Establish safe reporting mechanisms within the police and other statutory agencies to ensure that all victims of crime are protected and supported regardless of immigration status.**
- **Ensure the Bill has a gender-informed approach that considers safety implications for migrant women both at work and at risk of domestic abuse.**

5. EU Settlement Scheme and No Recourse to Public Funds condition

With plans underway for the UK to exit the EU, all EEA nationals wishing to stay in the UK must apply for settled or pre-settled status under the EU Settlement Scheme. However, it has not been made clear how this will affect their rights and entitlements in the UK, in particular for those who have already been provided pre-settled status.

Among the concerns that a number of organisations have voiced^{11 12}, there is a risk that those who were not aware of the scheme or were not able to apply -evidence of EU nationals who were not aware of the scheme has been documented¹³-, will become undocumented overnight, facing many of the problems already discussed above. Thus, European nationals who may have been living in the UK for years, will suddenly be unable to work and access social protection.

From LAWRS' casework, we are aware of the damaging effects of the NRPF policy for migrants with insecure immigration status. Particularly for the most vulnerable, such as victims of domestic abuse and modern slavery. This is because the NRPF condition prevents them from accessing safety, adequate accommodation or have their essential needs met. Furthermore, evidence suggests that the NRPF policy represents a high risk for migrants to become destitute or homeless¹⁴.

¹⁰ For further information visit: <https://stepupmigrantwomen.org>

¹¹ <https://ukandeu.ac.uk/eu-settled-status-whats-occurring/>

¹² <https://www.jcwi.org.uk/faqs/1-what-is-the-problem-with-the-eu-settlement-scheme>

¹³ *Ibidem*.

¹⁴ <https://commonslibrary.parliament.uk/research-briefings/cbp-8888/>

Recommendations:

- **Provide equal rights and entitlements to *all* European citizens living in the UK before June 30th 2020, ensuring their access to public funds is not restricted.**
- **Abolish the ‘No Recourse to Public Funds’ condition, which prevents many migrant migrants with insecure immigration status from accessing vital, often life-saving support and routes to safety.**

CONCLUSION

A new Immigration Bill provides an opportunity to ensure all migrants living in the UK can live a dignified life, in full exercise of their human rights, while contributing to the nation’s economy and culture. It may also be a tool for improving the fight against crime, including modern slavery, trafficking and domestic abuse. But it can only do this by providing migrants safe routes for migration, while ensuring they are protected from abusive employers and perpetrators by allowing statutory services -including the police- to correctly perform their duties without acting as immigration officers.

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