

## New Offence

Section 71 of the Coroners and Justice Act 2009 introduces a new offence of holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour. The offence will apply to anyone holding a person in such circumstances and the maximum penalty is 14 years imprisonment. The offence must be interpreted in accordance with Article 4 of the European Convention on Human Rights. It comes into force on 6 April 2010.

### What is 'servitude' or 'forced or compulsory labour'?

Forced or compulsory labour will require a level of coercion or deception between the employer and the victim, beyond that which might be expected in a normal employment arrangement. The employer must know that the arrangement was oppressive and not truly voluntary, or must have turned a blind eye to that fact.

A number of factors may point to forced or compulsory labour. The kind of behaviour that might, of itself, amount to forced labour includes (but is not limited to):

- Violence or threats of violence by the employer or the employer's representative;
- Threats against the worker's family;
- Threats to report the worker to the authorities, for example because of the worker's immigration status or offences they may have committed in the past
- The person's documents, such as a passport or other identification, being withheld by the employer;
- Being forced to live or remain in a particular area, perhaps in poor accommodation;
- Debt bondage, where the victim is unable to pay off the debt;
- Not paying agreed wages.

Other factors may be indicators that forced labour has taken place. For example:

- The worker being given false information, about the law and their employment rights;
- Excessive working hours regularly being imposed by the employer without the worker's agreement
- Hazardous working conditions being imposed by the employer;
- Unwarranted and perhaps unexplained deductions from wages;
- The employer deliberately not paying the full tax or national insurance contributions for the worker;
- Poor accommodation provided by the employer;
- Deliberately misleading information having been given about the nature of the employment;
- The person being isolated from contact with others;

'Servitude' is where a person is required to perform forced or compulsory labour and is also required to live on another person's property with the impossibility of changing his or her condition.

In line with the European Convention on Human Rights, the offence contains exceptions for labour that may be necessary to ensure public safety and the rights of others. Those exceptions are: work done in the course of lawful detention; military service; emergencies or life threatening situations; and work or service which forms part of normal civic obligations.

#### Why a new offence?

Some individuals, such as migrant workers or temporary workers may be particularly vulnerable to exploitation. This may, for example, be because they speak little English, may not be aware of their employment rights, or they may be reluctant to report offences because they do not trust the authorities. There is already a range of existing offences which could apply where a worker has been exploited and forced to work in poor conditions. These include offences such as trafficking for labour exploitation, false imprisonment, blackmail, fraud and assault. There is also employment legislation which covers, for example, working hours, minimum wages and health and safety at work. However, the new offence will add to the existing law and strengthen the options for investigating and prosecuting cases providing additional protection for such vulnerable workers.

#### Questions and Answers

##### How will the courts decide whether someone has been held in slavery or servitude or required to perform forced or compulsory labour ?

The terms are defined in accordance with Article 4 of the European Convention on Human Rights which prohibits slavery, servitude and forced or compulsory labour. The courts will be able to consider previous cases relating to Article 4. The offence of trafficking people for labour exploitation is framed in similar terms, so the courts will also be able to consider cases which have been decided under that offence.

##### The victim has not been trafficked and is not an illegal immigrant. Could the new offence apply?

Yes. The offence does not require trafficking to be proved and it is not an immigration offence. So the offence could apply where trafficking may not have taken place or cannot be proved.

##### The employer's behaviour may already be an offence under existing legislation. Could an employer be charged with the new offence in these circumstances?

Yes. Because of the nature of the new offence, it is possible that other offences may also have been committed alongside it, including those offences listed above. It will be for the police and the Crown Prosecution Service to determine the most appropriate charge or charges. One of the charges could be the new offence.

Could an employer commit the offence simply where an employee has, for example, voluntarily agreed to work overtime?

The offence is unlikely to apply in such circumstances. There are circumstances where a job might require overtime, and if this is agreed to and accepted in accordance with the employment contract, then it is unlikely that this will amount to forced or compulsory labour. For the offence to apply, the degree of force or compulsion applied by an employer is likely to be higher than would normally be expected in an employment situation.

Will employers who are currently abiding by the law need to change what they do?

Employers will need to ensure they do not commit the new offence. However, those employers who currently comply with pre-existing law are unlikely to fall foul of the new offence. The new offence ought not to affect an employer's ability to manage employees in accordance with the current law.

Where can I find out more?

There are a range of agencies who can provide advice and support. These are listed at the end of this document.

### Help and further information

The new law in full

The Coroners and Justice Act 2009 is available at:

[http://www.opsi.gov.uk/acts/acts2009/ukpga\\_20090025\\_en\\_1](http://www.opsi.gov.uk/acts/acts2009/ukpga_20090025_en_1)

### Ministry of Justice circular

The circular provides guidance for the police and courts about the offence.

It can be found at:

<http://www.justice.gov.uk/publications/coroners-justice-act-slavery-servitude-forced-compulsory-labour.htm>

### Kalayaan

Charity offering advice, advocacy and support services in the UK for migrant domestic workers.

[www.kalayaan.org.uk](http://www.kalayaan.org.uk)

Tel: 0207 243 2942

### Victim support

Free confidential support to help anyone deal with an experience of crime, whether or not they go to the police.

Victim supportline tel: 0845 30 30 900

[www.victimsupport.org.uk](http://www.victimsupport.org.uk)

### CJS Online

Website with information about the criminal justice system, including an interactive 'virtual walkthrough' to explain what happens when you proceed with a criminal case.

[www.cjsonline.gov.uk](http://www.cjsonline.gov.uk)

### The Pay and Work Rights Helpline

A single point of contact for workers and employers seeking advice about or wanting to report abuses of:

- the national minimum wage
- agricultural minimum wage
- working hour limits; and
- the special rules applying to employment agencies and gangmasters.

Tel: 0800 917 2368

or at DirectGov <http://payandworkrightscampaign.direct.gov.uk/index.html>

### The Acas national helpline

For information on employment rights and rules and for assistance in resolving issues in the workplace. Tel: 08457 474747