



THE GOVERNMENT RESPONSE TO THE REPORT FROM THE
JOINT COMMITTEE ON THE DRAFT MODERN SLAVERY BILL
SESSION 2013-14 HL PAPER 166 / HC 1019:

Draft Modern Slavery Bill

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

June 2014



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Modern slavery is an appalling crime. Traffickers and slave masters use whatever means they have at their disposal to coerce, deceive and force individuals into a life of abuse, servitude and inhumane treatment. Organised crime groups systematically exploit large numbers of individuals by forcing and coercing them into a life of abuse and degradation. It has no place in this country today.

The Government is determined to give law enforcement the tools to stamp out modern slavery, while enhancing support for, and protection of, victims. This will be taken forward through the Modern Slavery Bill. This will be amongst the first Acts specifically tackling modern slavery in the world and reflects the Government's determination that the UK lead the global fight against modern slavery. The Bill is one element in a comprehensive programme to tackle modern slavery, which also includes an enhanced operational focus on modern slavery, and non-legislative policy changes (including trialling child advocates to better support trafficked children and introducing specialist teams at the border to identify cases of trafficking).

The Government wants to ensure that its approach is as effective as possible, and warmly welcomes engagement with its plans for a Modern Slavery Bill from Parliament, operational law enforcement and civil society. We have sought to encourage as wide participation in the development of the Bill as possible. That is why the Home Secretary commissioned evidence sessions chaired by the right honourable Frank Field MP, working alongside Baroness Butler-Sloss and Sir John Randall MP. The Government then published a draft Bill alongside Frank Field's report, to enable thorough pre-legislative scrutiny to take place.

The Government is very grateful to the Joint Committee on the draft Modern Slavery Bill ("the Committee") for taking forward pre-legislative scrutiny of the Bill in an exceptionally short timeframe, to enable legislation to be brought forward this Parliament. The Committee took evidence from a wide cross-section of interested parties, holding thirteen days of oral evidence hearings. The Home Secretary pays tribute to the dedication of the Committee members, and their commitment to tackling modern slavery and supporting victims. The Government also wishes to thank the organisations and individuals who submitted written evidence, or gave oral evidence, to the Committee.

The Government welcomes the Committee's report and the Committee's commitment to making life as difficult as possible for slave masters and traffickers and to transforming the position of victims of slavery.

We have considered all the Committee's recommendations carefully. We have accepted many of the recommendations, in part or in full, for example to enhance the protection of victims through a statutory defence. Where we have not accepted recommendations in full, the Committee's work has caused us to scrutinise our arguments carefully, and has proved important to the development of policy.

The Government is also grateful to the Committee for including in their report a revised Bill, to illustrate how the Committee's recommendations might be translated into legislation. This has helped the Government to understand and assess the Committee's recommendations, and has informed the drafting process for the Modern Slavery Bill for introduction.

The Committee's report has caused us to amend the draft Modern Slavery Bill to achieve the outcomes the Committee was aiming at. The Committee's work has improved the Bill and we welcome further scrutiny of the Bill in Parliament.

OFFENCES

(Part 1 of both the draft Modern Slavery Bill and the Modern Slavery Bill on introduction)

The Committee, in its scrutiny of the Bill, emphasised the importance of simplifying and clarifying the criminal offences so as to ensure more convictions.

The Committee recommends replacing the two slavery and trafficking offences in the draft Modern Slavery Bill with a suite of six cascading and overlapping offences. The proposed offences suggested by the Committee cover slavery, exploitation and trafficking, with separate offences for child exploitation, child trafficking, and facilitating the commission of an offence of slavery, exploitation or trafficking.

The Committee raised concerns about gaps in coverage of the offences set out in the draft Modern Slavery Bill and, in particular, how the offences relate to crimes committed against children. The Committee highlights that children should not be able to consent to their exploitation.

The Committee's view is that the existing offences in clause 1 and clause 2 of the draft Modern Slavery Bill do not cover behaviour, such as receipt or harbouring of a victim, which is included in the Palermo Protocol definition of trafficking, which forms part of our international obligations.

The Government shares the Committee's view that it is crucial to have offences which can be readily understood by law enforcement agencies and the judiciary and that can result in effective prosecutions and convictions. The draft Modern Slavery Bill consolidates and clarifies existing legislation from a number of Acts of Parliament to help ensure this is the case.

The proposal for a suite of six offences

We have looked very carefully at the alternative model for a suite of offences set out by the Committee in order to assess the most effective possible approach for achieving our shared objective: successfully prosecuting the perpetrators of these appalling crimes.

Having done so, we believe that there are significant risks involved in the Committee's preferred approach of a suite of offences. In particular:

- the proposed offences, particularly those relating specifically to children, are too broad in scope and uncertain, and they could criminalise behaviour that clearly should not be criminalised. For example, there is a risk that the

proposed child exploitation offence could cover a parent who expects their child to help with household chores;

- by their very nature, slavery and human trafficking are two of the most serious offences available to prosecutors, both of which will now carry a life sentence. Diluting the offences by allowing a much lower level of exploitation to be captured, rather than relying on other existing offences, would weaken the framework and divert attention from serious abuse;
- creating a suite of offences that could result in six different offences relating to each victim being considered at trial risks causing confusion for juries. The jury would have to both understand each of six offences, and the inter-relationship between them. Rather than making successful prosecution easier, the proposed scheme would create a real risk of making convictions more difficult. The current scheme of offences (relying on two offences; trafficking and slavery, servitude and forced or compulsory labour) is simpler and more familiar to the judges, whose responsibility it is to direct juries on the law, and who know where to look for the previous case-law on the meaning of the offences (including the case-law of the European Court of Human Rights). They are accordingly more workable in practice; and
- the offences, as drafted by the Committee, also appear to lack the requirement for any mental element (*mens rea*), which is an integral part of almost all serious criminal offences, and certainly those attracting a maximum sentence of life imprisonment.

We want the Modern Slavery Bill to have an immediate impact on the ground. Using an entirely new set of offences made up of new elements and concepts would create uncertainty for the entire criminal justice system from law enforcement, to prosecutors, to juries.

In addition, including broadly defined exploitation offences in the Bill, which capture any form of exploitation in our society, would significantly widen the scope of the Bill and could potentially hinder its progress.

Given this, the Government has concluded that the best approach would be to build on, and improve, the existing offences, using concepts which are well understood by law enforcement agencies, rather than starting again from scratch. However, the Government has adopted a number of suggestions of the Committee on the way the current offences can be improved, as set out below.

The proposal for a new child exploitation offence

The Government fully agrees with the Committee's objective to protect child victims of slavery, servitude, and forced labour, and trafficking, and to ensure that those who commit slavery or trafficking offences against children can be effectively brought to justice.

The Government has considered carefully the Committee's analysis around a potential gap in the law, where a child might be placed into servitude or forced labour, but there may be very limited evidence of force or coercion, for example where there are cultural reasons why a child would typically obey an adult. We have also looked carefully at the Committee recommended approach of a child specific exploitation offence.

We believe that the offences included within the Bill would cover the conduct which the Committee is concerned about and that existing offences are already being used effectively to prosecute and convict those who are involved in child slavery or child trafficking. We also consider that creating child specific offences carry major risks, as expert witnesses to the Committee also highlighted.¹ The most difficult issue in many trials involving serious crimes, where there is a child specific offence, is determining the age of the child. Creating age-specific offences would inevitably run into the same problem and accordingly make the task of the prosecution more difficult in the case of child victims. In addition, we do not wish to cause additional distress to vulnerable children by adding to the length and complexity of their involvement in trials.

In some instances child specific offences may be valuable where they allow the court to give a higher sentence, as the court will treat victimising a child as an aggravating feature at sentencing. As the Modern Slavery Bill will now allow the courts to give a maximum life sentence to offenders for victimising a child, a separate offence is not necessary.

The Government shares the absolute determination of the Committee to protect children from modern slavery and wants law enforcement agencies to focus on tackling modern slavery as one of the most serious abuses in our society. That is why we have included provision for the courts to hand down a life sentence to perpetrators of these very serious crimes, where that is appropriate.

¹ For example see evidence from Riel Karmy-Jones, oral evidence to the Committee on 30 January 2014, Q162-163

Changes to draft Bill

Although the Government does not believe that a complete re-write of the offences is needed, we agree with the Committee that they could benefit from further clarity and simplicity.

The Government is determined that there should be absolutely no doubt amongst the public, Parliament, law enforcement and the legal system, that those who place children in modern slavery will be caught, convicted and punished. Therefore, while we believe the existing slavery, servitude and forced labour offence in clause 1 remains fit for purpose, the Committee's Report has caused us to want to take this opportunity to provide further clarity.

Clause 1 of the Bill has, therefore, been amended to ensure that, in assessing whether a person has been the victim of slavery, servitude or forced or compulsory labour, the court can have regard to any of the alleged victim's characteristics that make them more vulnerable than other people, such as:

- age;
- any physical or mental illnesses or disability; and
- where relevant, family relationships.

This will ensure that when prosecutors and the courts look at whether a vulnerable person (such as a child) has been subject to an offence, they will be absolutely clear that they can consider the vulnerability of that child, in looking at the type or level of coercion they have been subject to. In addition, where a child has been trafficked for the purpose of domestic servitude, the clause 2 offence will apply.

The Committee raised a concern that the draft Bill's definition of trafficking may be less wide than that set out in international definitions such as the Palermo Protocol, and in particular might not cover harbouring or receiving a victim. The Government disagrees with the Committee's suggestion that there may be a gap in existing law and considers that current law fully covers all forms of trafficking conduct required to be criminalised by our international obligations. However, the Government does think that it would be helpful to take the opportunity of the Modern Slavery Bill to more explicitly reference the concepts in international definitions on the face of the legislation and specific provision is included in the Bill to that effect.

The Committee offered further helpful analysis of the offences in the draft Bill, and suggested a number of possible improvements. The Home Office has looked carefully at these, and altered the draft Bill in a number of ways in response.

One particular suggestion of the Committee was to remove the reference to Article 4 of the European Convention on Human Rights from clause 1. However, the introduction of the specific offence of slavery, servitude and forced or compulsory labour, in section 71 of the Coroners and Justice Act 2010, was as a result of concerns that the UK was not compliant with its obligations under Article 4. It is therefore an important and necessary reference that recognises and provides effective protection for individuals against treatment, which is contrary to Article 4 (prohibition of slavery and forced labour). In addition, any developments in the case-law on article 4 (both in the UK and in Strasbourg) will be reflected in the way our courts interpret the offences in the Bill, which would not be the case if we followed the approach recommended by the Committee. This seems to us to have obvious advantages in ensuring the offences can be applied to future offending behaviour.

The Committee highlighted evidence from Lord Judge that the mental element (*mens rea*) in the offences should be made more consistent. The Government has accepted this and clause 2 of the Bill has been amended to ensure that the required mental element in the clause 1 slavery offence and the clause 2 human trafficking offence is consistent. Clause 2 has therefore been amended to ensure that, where a perpetrator has arranged or facilitated exploitation, it is where they know *or ought to know* that another person is likely to exploit the individual, rather than *believes*. Clause 2 has also been amended to remove the word *intentionally* as it an unnecessary requirement.

PREVENTION ORDERS

(Part 2 of both the draft Modern Slavery Bill and the Modern Slavery Bill on introduction)

The Committee recognised that the prevention orders were aimed at preventing modern slavery offences, but raised significant concerns about whether they would be an effective preventative measure in practice. The Committee recommended retaining Slavery and Trafficking Prevention Orders (which require a prior conviction for a modern slavery offence) but making changes to enhance legal certainty and provide additional safeguards. The Committee recommended that the Slavery and Trafficking Risk Orders (which do not require a conviction for a modern slavery offence) be removed.

The Committee recommended that criminal legal aid to be available to defendants for Slavery and Trafficking Prevention Orders or Risk Orders as with other civil prevention orders.

The need for Prevention Orders

The Committee recognises that the Government's intention, in proposing Slavery and Trafficking Prevention Orders (STPOs) and Slavery and Trafficking Risk Orders (STROs), is to prevent modern slavery offences. The Committee also highlights that prevention is one of four critical aspects of an effective strategy to target modern slavery.

The Committee, however, questions whether the Orders would be effective in practice. The Committee appears to conclude that in relation to STROs (which do not require a prior conviction) that these should be removed from the Bill because they are not likely to be effective in preventing modern slavery offences, so the infringement on individual liberty for individuals who have not been convicted of modern slavery offences is not justified.

The Government proposed STPOs and STROs to give law enforcement authorities the necessary tools to protect the public by preventing the harm caused by the commission of modern slavery offences. At the same time, the proposed Orders have substantial safeguards to ensure they are only used when necessary to stop the harm caused by these very serious offences.

The Committee's report has led the Government to carefully consider whether the different Orders would all, in practice, enhance law enforcement's ability to prevent modern slavery. After careful consideration, and further consultation with law enforcement bodies, we have concluded that STPOs and STROs are necessary to prevent modern slavery. This is because:

- STPOs on conviction enhance the court's ability to place restrictions on individuals who have been convicted of a modern slavery offence, ensuring that even after they have served their sentence any future risk of similar criminality is effectively managed.
- STPOs on application are particularly important. They enable the courts to place restrictions on individuals convicted of modern slavery type offences before, as well as after, the Modern Slavery Bill and also covers individuals convicted abroad. Given that modern slavery is often conducted by organised crime groups who operate across borders, this flexibility is important.
- STROs mirror similar non-conviction orders for other harmful activity (for example – sexual harm), and they enable action to be taken where this is necessary to prevent serious harm to the public notwithstanding the absence of a conviction.

The existing equivalent order relating to sexual harm, the risk of sexual harm order (RoSHO), has been used in a number of situations. RoSHOs are being repealed and replaced with a new order in England and Wales, the sexual risk order, which is more flexible and has a broader scope. This follows feedback from the police and others, including an independent report by Hugh Davies QC, which highlighted the need for such orders and how they could be more effective (e.g. by allowing foreign travel restrictions to be imposed). We want to act to prevent modern slavery offences in the same way that we target the activity of sex offenders on vulnerable people.

When giving evidence to the Committee, law enforcement bodies indicated that STROs could be particularly effective in scenarios where law enforcement would seek to restrict the behaviour of individuals who are at the periphery of modern slavery investigations, where there may be insufficient evidence to convict an individual, but the risk is still clear. They also suggested that they could be useful to control the behaviour of others who posed a risk but where it was difficult to prosecute, such as brothel keepers who advertise internationally for women, and move victims backwards and forwards across borders.

Safeguards

The Government has reviewed the Committee's arguments about legal certainty and safeguards with care. The Government will be writing to the Joint Committee on Human Rights to set out in detail why we believe our approach is fully compliant with our human rights obligations. We believe we have set substantial and appropriate safeguards to ensure that the Orders will only be used in appropriate circumstances:

- the court may only make an STPO or STRO (save for interim orders) if it is satisfied that this is necessary for the purpose of protecting persons from physical or psychological harm caused by an individual committing one of the offences in Part 1 of the Bill);
- The court can only make an interim order where it considers it just to do so; this will similarly require an assessment of necessity;
- a high burden of proof applies to these orders;
- the test the court must be satisfied is met is a relatively tightly drawn one (for example, in respect of the category of persons at risk and type of harm to be prevented);
- statutory guidance will be issued which will describe risk factors and categories of restriction which may be contained in an order; and
- the Government agrees that it is important that individuals have access to fair hearings and so the Government will ensure that individuals, for whom a Slavery and Trafficking Prevention or Risk order is enforced, will have the same access to legal aid as applicable to other civil order regimes. We will, therefore, amend regulation 9 of the Criminal Legal Aid (General) Regulations 2013 to prescribe STPOs/STROs as criminal for the purposes of legal aid.

Given these extensive safeguards, we do not want to undermine the potential effectiveness of these provisions by specifying the type of restrictions imposed by the order on sentencing (clause 15) or on application (clause 16), or in respect of a STRO. These Orders are designed so that law enforcement bodies and the courts can respond flexibly to the risks posed by an individual of committing future slavery or trafficking offences. This flexibility will enable law enforcement and the courts to respond and take action in relation to changing slavery and trafficking practices, and to tailoring prohibitions to the specific risk posed by an individual. This approach, as the Committee has noted, is in line with existing orders relating to the prevention of sexual harm. We will work with the police, Immigration Enforcement, the NCA and the courts to provide support and guidance in respect of implementation of all measures in the Bill.

Time limit

The Committee suggests that an STPO on application should only be available where a conviction was within a specific time limit. The Government believes that the Bill contains sufficient safeguards because the court will have to be convinced that an Order is necessary to prevent harm caused by modern slavery offences. The court is only likely to be convinced of this in relation to an offender whose conviction was some time ago, if the individual displays behaviours indicating they continue to pose a risk.

Imposing Orders on children

The Committee suggested a minimum age below which Orders would not be granted. The Government is not convinced that a minimum age would be appropriate.

STPOs would only be available if a child had already been convicted of a very serious modern slavery offence. It is not clear why the courts should not seek to prevent further harm, when necessary, by restricting the behaviour of serious criminals, who pose a major risk.

The application of STROs to children may be necessary to prevent serious harm to other (possibly younger) children. In some cases, it may be more appropriate to place a STRO on a young person rather than criminalise them through a conviction. The orders are designed to respond flexibly to such circumstances, and this reflects the approach taken in the Sexual Offences Act 2003.

The Government is, however, concerned that children receive appropriate protection through the Criminal Justice System and has amended the Bill to ensure that the Youth Court will always deal with cases where an Order may be made against a child.

THE ANTI-SLAVERY COMMISSIONER

(Part 3 of both the draft Modern Slavery Bill and the Modern Slavery Bill on introduction)

In their report, the PLS Committee welcomes the proposal to establish an Anti-slavery Commissioner, which the Home Office included in the draft Modern Slavery Bill, published in December 2013. However, the Committee recommends that the role should have greater statutory guarantees for its independence by allowing the Commissioner to appoint his or her own staff, to publish annual and ad hoc reports without the approval of the Home Secretary, to prepare a business plan covering more than one year, to only redact information from a report on the grounds of national security where that is necessary and for reports to be laid before Parliament within four weeks of receipt.

The Committee also want the role of the Commissioner to be widened to have an overarching remit, and so that his or her functions clearly include victim protection, the collection, compilation, analysis and dissemination of information and statistics and a role in building partnerships nationally and internationally.

The establishment of the role of Anti-slavery Commissioner (the “Commissioner”) is a fundamental aspect of the Home Office’s overall strategy to stamp out modern slavery. The Commissioner will ensure that law enforcement agencies are doing all they can to protect individuals and deter, disrupt and bring to justice those who prey on others for profit.

The proposal for the Commissioner reflects that modern slavery is a particularly complex crime. Some cases will involve large criminal networks moving people from country to country and benefitting financially from their victims’ exploitation. Other cases will not involve organised crime networks, but will involve very serious and hidden physical and sexual abuse – either for profit, or as an end in itself. The law enforcement landscape is also complex, reflecting the range of criminal behaviours modern slavery can involve.

There are a number of responsible agencies who directly deal with different aspects of modern slavery: local police forces; the National Crime Agency; the Gangmasters Licensing Authority; Border Force; UK Visas and Immigration; Immigration Enforcement; and HM Revenue and Customs. There are also a number of agencies that encounter victims of modern slavery in the course of their work – local authorities, Jobcentre Plus, safeguarding teams and health and education establishments.

Historically, both Governments and law enforcement were not as tightly focused on modern slavery as some other serious crime types (for example sexual violence and gang crime) because of a lack of knowledge and understanding. We are determined that this changes and that all of these agencies bring their expertise to bear in a coordinated and concerted effort to strengthen the operational response to modern slavery.

However, given the range of agencies involved, and the often hidden and complex nature of the crime, this is a challenging ambition. We believe the Anti-slavery Commissioner we are legislating for in the Modern Slavery Bill will be critical to leading, galvanising and helping coordinate law enforcement efforts.

The Government welcomes the careful scrutiny the Committee has given to the proposals for the establishment of an Anti-slavery Commissioner.

The Commissioner's role

The Committee suggested an overarching remit for the Commissioner covering prevention of modern slavery, protecting victims, prosecutions, encouraging partnerships nationally and internationally, and acting as a central point for the collation of data.

The Government carefully considered the option of such a holistic role. On balance, the Government believes that a more tightly focused role is more likely to make a major, and speedy, operational difference to the fight against modern slavery. The Commissioner will act strongly in the interests of victims (and potential victims) by making sure that the law enforcement response to modern slavery is coordinated and effective.

The Government would be concerned if either:

- the Commissioner focused on a general advocacy role rather than identifying key practical improvements; or
- the Commissioner's role cut across other strategic roles, such as that of the Victims' Commissioner.

However, the Committee's recommendations have caused the Government to rethink and improve the role. The Modern Slavery Bill includes two significant changes compared to the proposal set out in the draft Bill:

- firstly, the Commissioner's role is extended to include a focus on the effective and prompt identification of victims. This is essential to both the protection of victims and effective prosecution. Therefore, the change will both help ensure that victims are identified quickly by front-line professionals, and will support the Commissioner's overarching remit to encourage good practice in the

prevention, detection, investigation and prosecution of modern slavery offences.

- the Government agrees with the Committee that building partnerships and working effectively with partners nationally and internationally is critical to tackling modern slavery effectively. The Commissioner's functions will therefore include specific reference to cooperating and working closely with national and international partners. This will allow the Commissioner to better understand, support and improve the totality of law enforcement efforts from a domestic and international perspective.

The Commissioner's independence

The Government proposes to establish a Commissioner, who will have the freedom and independence to look at the law enforcement response to modern slavery without fear or favour, and make reports which will highlight where improvements can be made. The Committee is right to identify the importance of the independence of the role.

The Government has looked very carefully at the detailed proposals made by the Committee to enhance the Commissioner's independence. While the provisions in the draft Bill were based on existing legislative provisions for independent commissioners, the Government accepts that the Committee has identified several helpful ways to both demonstrate the Commissioner's independence, and improve its effectiveness:

- in line with the Committee's specific recommendation on the period of any plan the Commissioner produces, the Modern Slavery Bill now allows for a strategic plan to be produced which spans more than one calendar year. This will allow the Commissioner to plan on a longer-term basis to ensure a coherent and effective programme of activities to strengthen law enforcement efforts;
- the Committee raised concerns that the Government's powers to redact material from reports were drawn too widely, specifically in relation to redaction of material from any reports prepared by the Commissioner where its inclusion is "undesirable" for reasons of national security. The provisions in the Bill have now been amended to reflect the concerns of the Committee so that redaction would only apply where it would be against the interests of national security, might jeopardise an individual's safety or might prejudice the investigation or prosecution of an offence; and
- the Modern Slavery Bill for introduction contains a provision requiring the Secretary of State to lay any report received from the Commissioner, in Parliament, as soon as is reasonably practicable.

The Government has not altered the draft Bill in two areas suggested by the Committee:

- the Government does not believe that the Commissioner should have a statutory power to appoint his or her own staff. The Commissioner role will be supported by a small team of analytical and support staff. It would not be effective or efficient for such a role to be supported by an independent human resources function. Following normal Government practice for roles of this nature, we would expect that staff would be recruited from the Civil Service using Home Office human resources. In line with typical practice, we would expect the Commissioner to take part in the selection process, to ensure he or she has confidence in their team; and
- the Government does not accept that the requirement for the Secretary of State's approval for the priorities in the strategic plan should be removed. It is normal for independent Commissioners to agree their programme with the Secretary of State. It is also in the interests of the fight against modern slavery. It is critical that the Commissioner and the Secretary of State build a partnership, where the Commissioner's work helps the Secretary of State to push through real change to stamp out modern slavery. The requirement for approval helps ensure this coherence. Once the plan is agreed, the Commissioner will be entirely independent and able to report freely on his or her findings.

The Government is committed to an effective and independent Anti-slavery Commissioner, and the Modern Slavery Bill provides for this.

PROTECTION OF VICTIMS

(new Part 4 of the Modern Slavery Bill on introduction)

The PLS Committee highlighted the importance of support and protection for victims and made a number of specific recommendations.

- *Introducing a statutory defence to provide protection to victims who have been forced or coerced to commit a crime as part of their exploitation.*
- *Introducing an order-making power for the Secretary of State, in consultation with the Anti-slavery Commissioner, to publish and maintain guidance on the provision of assistance and support to victims of modern slavery.*
- *Placing the National Referral Mechanism on a statutory footing to improve its consistency, extending its scope to cover all victims of modern slavery, and providing a right to appeal negative decisions.*
- *That immigration officials cease making decisions on assessing cases of potential trafficking (as part of the NRM) and that 'competent authority' status be removed from UK Visas and Immigration (UKVI).*
- *Measures to support child victims notably statutory provision for child advocates and a statutory presumption of age in the Bill.*
- *Expanding access to special measures for victims.*
- *Providing victims with enhanced access to legal assistance and compensation.*
- *Removing the provision in the draft Bill on the duty to notify the National Crime Agency about potential victims of human trafficking.*
- *In relation to legal assistance: the establishment of a fund for provision of legal services to victims of modern slavery; that the definition of victims in paragraph 32 of Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is expanded to cover victims of all modern slavery offences; and that funding is retained for judicial review challenges to negative National Referral Mechanism (NRM) decisions.*

The Government is committed to providing protection and support to victims of modern slavery, who have been subjected to horrendous exploitation and abuse.

The draft Modern Slavery Bill published in December 2013 focused on strengthening the law enforcement response. This is also critical to preventing victims being subjected to horrific abuse in the first place.

The Government has reflected on the Committee's detailed assessment of victims' issues and agrees that there are a number of areas where further legislation would help to better protect and support victims of this terrible crime.

A statutory defence for victims

Prosecuting and convicting victims who have been forced or coerced into committing crimes such as entering the country on false documents, or cannabis farming, as a result of their exploitative situation is unacceptable and unjust. Even a perception that victims are likely to be prosecuted is a strong disincentive for extremely vulnerable victims to take the brave decision to come forward and give evidence against their abusers.

There are existing safeguards against prosecution and conviction including Director of Public Prosecution's guidance to the Crown Prosecution Service, and the court's ability to stop a prosecution on the ground of abuse of process or quash a conviction on appeal. However, given the importance the Government places on the protection of victims, we agree with the Committee that there should be a further important safeguard.

The Government is therefore introducing a statutory defence for victims, which can be invoked where the victim has been compelled to commit a crime as a direct result of their slavery or trafficking experience.

The Government also considered carefully the Committee's assessment of the arguments against a statutory defence, and our proposal for a statutory defence is carefully drafted to avoid creating a legal loophole for serious criminals to escape justice. The defence includes substantial safeguards against such abuse:

- it will not apply to certain offences (mainly serious sexual or violent offences);
- the individual seeking to use the defence must be a victim of the trafficking or slavery offences; and
- the individual must have been compelled to commit the offence as a direct result of their trafficking/slavery situation, and a reasonable person in the same situation would have no realistic alternative but to commit the offence.

Where the defence does not apply because the offence is too serious, the Crown Prosecution Service will still be able to decide not to prosecute if it would not be in the public interest to do so.

Special measures

The Government shares the Committee's concern that we give victims the confidence to come forward and give evidence. In addition to the defence, the Modern Slavery Bill ensures that the existing specific provisions on special measures for human trafficking victims (including automatic eligibility for special measures) are extended to all modern slavery victims.

Support for victims

Although access to assistance and support for victims of trafficking is clearly set out in the Council of Europe Convention on Action against Trafficking in Human Beings and the EU Directive on preventing and combating trafficking in human beings and protecting its victims and these instruments are currently implemented administratively and in guidance, the Home Office accepts the Committee's recommendation to include a provision in the Modern Slavery Bill in this area. The Modern Slavery Bill now contains a provision for the Secretary of State to issue guidance to front-line professionals and first responders, to help in identification of victims and to set out the provision of support and assistance available to victims, in line with our international obligations.

The National Referral Mechanism

The National Referral Mechanism (NRM) was set up in 2009 to meet the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings. It marked a significant step forward in the UK's response to trafficking and the NRM model adopted reflected widespread consultation with partners and learning from an operational pilot. It also took into account the need for consistency with other Government objectives in areas such as immigration control, labour market regulation, victim care and criminal justice.

The NRM is intended to be a multi-agency victim identification and support process, designed to facilitate cooperation between statutory and non-statutory partners, share information about potential victims and to provide them with advice, accommodation and support. It is also intended to increase the likelihood that victims are willing to work with law enforcement officers to improve our understanding of the crime and so increase our ability to prevent or disrupt it, and where possible conduct criminal investigations leading to the prosecution and conviction of traffickers.

The Committee has looked carefully at the current functioning of the NRM, and recommended substantial changes, to place the NRM on a statutory footing, creating a statutory right of appeal, removing case-working functions from UK Visas & Immigration, and extending the NRM to cover all victims of modern slavery.

The Government shares the Committee's commitment to high quality support for victims. That is why the Home Secretary commissioned a thorough evidence-based review of the NRM.

The aim of the review is to establish whether five years after it was set up the NRM still provides the best framework to achieve these aims and whether it can, or should, cover all victims of modern slavery. The review of the NRM is now underway

and is due to report in October. It will give careful, evidence based consideration to all the issues raised by the Committee and in particular will examine:

- the process of victim identification and options to improve it to encourage more victims to come forward;
- access to and provision of victim support and rehabilitation, including following a conclusive decision that someone is a victim of trafficking, and the level and consistency of support provided;
- improving the collection and analysis of data;
- the way decisions are made and whether the right structures and right agencies are in place to make the best decisions; and
- how best to administer the system and under what governance arrangements.

The review will consult a wide range of statutory and non-statutory partners to ensure the widest range of evidence and opinion can be taken into account. It will also consider the findings of the evidence sessions led by Frank Field and any relevant experience from other countries.

The Government is committed to ensuring an accessible, effective and victim centred response to trafficking and modern slavery. By introducing a Modern Slavery Bill we are acting decisively to protect victims and establish the most effective response to these crimes in the world. But any process of identifying and supporting victims must be affordable and consistent with other Government objectives. That is why in conducting the review consideration will also be given to the practical, cost and resource implications of any proposals or recommendations and how the NRM interacts with wider government policies including: labour market regulation; immigration control; and criminal justice/victim care.

Support for child victims

The Government strongly shares the Committee's intention to ensure that every child trafficking victim receives the most appropriate care and support. It is for this reason that we have announced a trial of child trafficking advocates across 23 local authority areas this summer.

We have included a power in the Bill for the Home Secretary to make arrangements in relation to child advocates. This statutory power is expected to be used to ensure that advocates receive the respect and the cooperation of all the various agencies they will need to work with when supporting the child.

In the trials we intend for these advocates to be appointed as soon as the child is identified as a potential victim of trafficking and ensure sufficient transition arrangements for the support, which could involve the extension of their support beyond 18 in appropriate cases.

We are also very clear that where the age of a trafficked person is uncertain and there are reasons to believe that the person is a child they are presumed to be so. Our policy and guidance is clear on this point already, but to further assure partners that this is the case (and in line with the recommendation of the Committee), we have reflected this presumption on the face of the Bill.

We have also been asked by the Committee to ensure we have given due consideration to the articles of the UN Convention on the Rights of the Child. We will set out our considerations on this matter in the ECHR memorandum, which we will provide to the Joint Committee on Human Rights.

Reparation for victims

The Government recognises the importance of compensation for victims of modern slavery, which was an area highlighted by the Committee. Those who engage in horrendous crimes must have their criminal profits seized, and it is right that these should be used to provide reparation directly to their victim.

There are existing powers for the courts to provide compensation to victims. However, these are rarely used. This is not acceptable. Therefore, the Government proposes in the Modern Slavery Bill to introduce a bespoke order providing for reparation for victims of modern slavery. This will ensure that where the perpetrator has assets available (as evidenced by a confiscation order under existing Proceeds of Crime Act 2002 powers), the court would have to consider making an Order to provide reparation to the victim (and give reasons if it does not).

Duty to Notify

The duty to notify provision contained in the draft Modern Slavery Bill is designed to enable the National Crime Agency (NCA) to develop an improved picture of the extent of these terrible crimes, which should in turn improve the operational response. Modern slavery is often a hidden crime, and better data is an essential part of tackling this problem, as the recent report of the All Party Parliamentary Group on Human Trafficking and Modern Day Slavery highlighted.²

The Government recognises the concerns raised by the Committee and Non-Governmental Organisations about imposing this measure on Non-Governmental Organisations, who may be approached by victims who are concerned about any interaction with state authorities.

² All-Party Parliamentary Group on Human Trafficking and Modern Day Slavery, Inquiry into the collection, exchange and use of data about human trafficking and modern slavery, January 2014

The measure in the Modern Slavery Bill will only apply to public bodies. NGOs will not be affected by the statutory duty. We will work with NGO First Responders to explain the rationale for this measure and encourage notification of cases where it would be appropriate to do so.

The Government always intended that adult victims should be able to opt to have their cases notified by public bodies anonymously. The final duty to notify provision in the Modern Slavery Bill makes clear on the face of the Bill that adult victim notifications will be made anonymously unless the individual concerned has given their consent to being identified.

The NRM review will consider the views of the Committee when looking at the options to improve the collection and analysis of data.

Legal aid

We recognise the importance of providing victims of modern slavery appropriate protections and support. Currently, victims of trafficking are able to apply for civil legal aid for advice and representation in relation to immigration matters and damages claims in relation to their trafficking exploitation under paragraph 32 of Part 1 of Schedule 1 to Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). They are also able to apply for civil legal aid in relation to employment law claims arising from their exploitation. In line with the Committee's approach, we intend to amend LASPO to ensure that victims of slavery are also able to apply for the same civil legal aid services currently available to victims of human trafficking. These services under paragraph 32 are exempt from the proposed residence test.

A review of the NRM process is on-going. We will consider the availability of legal aid funding for judicial review of negative NRM decisions in the light of the conclusions of that review.

SUPPLY CHAINS

The PLS Committee highlights the global nature of modern slavery and suggests that proportionate legislation would assist large companies in tackling modern slavery in their supply chains.

The Committee suggests that an initial step could be to require quoted companies to include modern slavery in their annual strategic plan by amending the Companies Act 2006. They also felt that the Government should consider requiring companies to identify an individual with responsibility at board level.

The Committee also suggests the Government conducts a review of the Gangmasters Licensing Authority's remit, powers, funding model and levels, sponsoring department and collaboration with other agencies.

The Government fully agrees with the Committee's assertion that modern slavery is a global issue and one which requires an effective response from all parties, including business. The private sector plays a vital role in ensuring that their supply chains are free from exploitation and that action is taken to mitigate the risk of individuals being abused.

A number of steps have already been taken to raise awareness among the private sector. Since October 2013, UK quoted companies have had to report on human rights, "where relevant for an understanding of the business". This is a new reporting requirement and so it is too early to say whether human rights reporting is effective and sufficient when it comes to the inclusion of disclosures on slavery.

In addition, work is also underway at EU level in respect of human rights reporting. Likely to be enacted in 2016, the EU arrangements go further than the current Companies Act requirements in that they extend to "business relationships" which include subcontracting and supply chains – there is no specific requirement, rather an expectation, that companies report on supply chains (where necessary for an understanding of the business) under the current rules.

In taking any further action in this area the Government is, therefore, mindful of existing requirements on business and possible future changes to the business reporting regime.

The Government wants to work collaboratively with businesses to support them to eliminate forced labour in supply chains, in a way which does not place additional burdens on them.

We intend to build on the existing legislative framework, and work with business to establish what more can be done to raise awareness among their workforce and their sub-contractors, and develop an evidence base on best practice. The Home Secretary is meeting with business leaders in June to help assess the most effective way forward.

In doing so, we recognise the complexity of supply chain issues, particularly where they involve links with business overseas and where the influence of UK-based companies is diminished. Cross-Government action is being taken to bring businesses together to discuss the challenges and opportunities in tackling modern slavery in supply chains.

Gangmasters Licensing Authority

The Government is pleased that the report recognises the success of the GLA and agrees that there is scope to review some of its powers, remit and structures. We are also pleased that the report recognises that any extension to the remit of the GLA would have an impact on its limited resources.

On 9 April the Prime Minister announced the transfer of GLA sponsorship from DEFRA to the Home Office to improve collaboration with policing agencies for its enforcement activities. The Home Office is considering the other issues for review raised by the report, bearing in mind that there may be more effective ways to achieve improvements without regulating to increase the GLA's licensing remit into other sectors.

ASSET RECOVERY

The Committee highlighted the importance of effective asset recovery, and recommended changes to the general legislative framework for asset recovery to make it easier for the authorities to act quickly to seize assets, and made detailed recommendations aimed at ensuring effective asset recovery specifically in modern slavery cases.

The Government welcomes the Committee's focus on asset recovery, and its scrutiny of the provisions in the draft Modern Slavery Bill, as well as the wider statutory regime around asset recovery. The Government strongly agrees that effective asset recovery is a critical tool in tackling modern slavery and wider organised crime, given that many perpetrators are motivated by financial gain.

The Serious and Organised Crime Strategy sets out the Government's approach to tackling criminal finances. Working with our partners, we will make it more difficult for criminals to move, hide and use the proceeds of crime. The regime in the Proceeds of Crime Act 2002 (POCA) will be strengthened through the Serious Crime Bill. In addition, we are using a range of non legislative proposals to improve performance.

The Government propose to implement most of the Committee's legislative recommendations through a combination of the Serious Crime Bill and the Modern Slavery Bill.

The Committee recommended amending Schedule 2 of POCA to include the offences set out in Part 1 of the Government's draft Bill as "lifestyle offences" for the purposes of obtaining confiscation orders.

The Government agrees that perpetrators in modern slavery cases should be subject to the toughest asset recovery regime. The Modern Slavery Bill would, therefore, implement this recommendation by ensuring that both the slavery and trafficking offences would be lifestyle offences for the purposes of obtaining confiscation orders under POCA.

In relation to the test for the restraint of assets under POCA, the PLS Committee recommended that the test for obtaining a restraint order be amended to make it less stringent by reducing the test from "reasonable cause to believe" to "reasonable suspicion", and also recommended that the existing requirement to demonstrate risk of dissipation be explicitly removed.

The current legislative test for a restraint order to be made is that there must be a criminal investigation that has started, and there is reasonable cause to believe that the alleged offender has benefitted from their criminal conduct.

The Government agrees with the Committee that it should be made quicker and easier to secure a restraint order early in an investigation. The Serious Crime Bill would reduce the test for restraint, so that the legislative requirement of “reasonable cause to believe” is reduced to “reasonable suspicion”.

The Government has also carefully considered the Committee’s recommendation to remove the test that there must be a risk of dissipation. This test is not included in POCA, but has grown up through case-law over time. We have sought views from prosecution partners as to whether the proposal to remove the case law test of risk of dissipation would enable restraint orders to be made more quickly or easily. Prosecution agencies do not think this test should be removed and believe that the test is an important safeguard to ensure that restraint orders are made in cases where they are necessary and appropriate. We will continue to keep this under review.

The PLS Committee recommended that the Association of Chief Police Officers sets out in guidance essential considerations for the use of early restraint powers in the context of modern slavery offences, giving due consideration to the vulnerability of victims. Law enforcement agencies should be encouraged to seek restraint of all assets, including those of low value, which may be used in the exploitation of victims with a view to causing maximum disruption of victims.

The Crown Prosecution Service is leading work with operational partners, including the National Crime Agency and Serious Fraud Office, to develop guidance for investigators and prosecutors to help them make consistent decisions on the cases in which restraint should be sought. As restraint orders will need to be sought by a prosecutor, the operational agencies must work closely with the Crown Prosecution Service to identify cases that are suitable for early restraint. There may be some cases where it is neither operationally desirable, nor cost effective, for a restraint order to be sought.

The PLS Committee recommends that the Government places modern slavery at the top of its list of priority areas for the pursuit and enforcement of confiscation orders.

The National Crime Agency is leading a project to prioritise the pursuit and enforcement of outstanding uncollected confiscation orders. The NCA are using a variety of criteria to prioritise orders, including the collectability of the order, the offence in question, and the links to serious and organised crime.

The PLS Committee indicated that they would welcome stronger sanctions for non-payment of confiscation orders which are designed to make modern slavery offenders highly unlikely to opt for a longer prison sentence in order to protect the proceeds of their crimes.

The Government agrees with the Committee's concern that penalties for failing to pay confiscation orders should be robust and act as a disincentive to criminals. The Serious Crime Bill makes three changes to default sentences:

- the maximum default sentence for unpaid orders between £500,000 and £1 million would be increased from five to seven years;
- the maximum default sentence for unpaid orders over £1 million would be increased from 10 to 14 years; and
- we would end automatic early release for default sentences for unpaid confiscation orders of £10 million or more.

These changes would strengthen the default sentencing regime and will provide added incentive for offenders to pay their confiscation orders.

OVERSEAS DOMESTIC WORKERS

The PLS Committee recommended that the Home Office reverse changes to the Overseas Domestic Worker Visa. The Committee argued that this would encourage Overseas Domestic Workers to come forward, including in situations where their abuse would not meet the threshold of the current modern slavery offences.

The Government is determined to stamp out all forms of modern slavery, including slavery, servitude and forced labour faced by domestic workers. The Modern Slavery Bill takes action to strengthen our ability to prosecute offenders and support victims. The Government also shares the Committee's concern that Overseas Domestic Workers should not face less severe abuse.

The Overseas Domestic Worker route is designed specifically as a short term means by which a visitor to the UK can bring their domestic staff with them. The route is designed to ensure that abusive relationships are not brought to the UK and the application process involves substantial safeguards:

- we require employers who wish to bring their staff to the UK to prove that an employment relationship with the domestic worker has existed for a minimum period of 12 months;
- the employer is required to provide the Overseas Domestic Worker with a written contract detailing the terms and conditions of their service once in the UK. This includes salary details which must be compliant with the National Minimum Wage Regulations; details of sleeping arrangements; hours of work; and days off; and
- Overseas Domestic Workers are informed of their rights in the UK when they apply for a visa. The Government provides them with a letter that details their rights and responsibilities in the UK and information about avenues of assistance, should it be required.

Once a domestic worker arrives in the UK, the Government is committed to preventing abuse:

- on entry to the UK, they are seen individually by Border Force Officers. Border Force is committed to ensuring all frontline officers are aware that they could be the first authority figure to have contact with a potential victim of trafficking in the UK and makes sure that their officers have the right skills, and training, to fulfil this role and its responsibilities;
- Overseas Domestic Workers benefit from the same protections enjoyed by all workers including the right to be paid in accordance with the National Minimum Wage regulations and access to a number of organisations who can help including the police, the Pay and Work Rights Helpline and Employment Tribunals; and

- those who have been trafficked are able to access the National Referral Mechanism, which provides specialist support and assistance, and provides for discretionary leave to remain in the UK to be granted to assist with the prosecution of abusers.

The Government does not agree that a return to the previous arrangements for Overseas Domestic Workers would provide greater protection for domestic workers from modern slavery. It would allow employers, including UK citizens, to bring domestic workers for longer periods. This potentially encouraged abuse when it was previously in force.

Permitting a change of employer once in the UK would not be compatible with the purpose of the route, which is to allow a short visit with an existing employer. It is not the government's policy to facilitate low skilled migration to the UK.

Therefore the Government do not plan to change the Immigration Rules. The Government is instead focused on improving protection for vulnerable domestic workers through ensuring that staff are trained to recognise potential victims of abuse; that Overseas Domestic Workers are provided with guidance on their rights and how to obtain help; and that employers know their responsibilities.

In relation to diplomatic domestic workers, the PLS Committee recommended that the Home Office consider the merits of granting visas only where they have contractual arrangements directly with the Embassy or other diplomatic mission.

The UK abides by the provisions of the Vienna Convention on Diplomatic Relations. All foreign diplomats in the UK are required to respect our laws, including employment regulations. The FCO treats any allegation of mistreatment of staff in diplomatic households very seriously. Any allegations that the law has been broken are investigated by the police and the FCO will take appropriate steps to assist the investigation which may include requesting the withdrawal of diplomatic immunity.

We will consider whether visas should only be issued to those who have a direct contractual relationship with an embassy. However, we are not convinced that this would provide additional safeguards as embassies also benefit from diplomatic immunity. Whilst an Employment Tribunal may rule in favour of a worker, the ruling cannot be enforced against the embassy if the embassy asserts their immunity.

DEVOLVED MATTERS

The Committee highlighted that modern slavery straddles borders without respect for jurisdiction, so the UK government must work closely with the devolved administrations as each administration develops its legislative response to modern slavery. The Committee particularly highlighted the need for discussions between the Northern Ireland Executive and the UK government on any extension of the UK-wide role of the National Crime Agency (NCA). The Committee also recommended that the Anti-slavery Commissioner should be a UK-wide role.

The Government agrees with the Committee that Modern Slavery is a cross-border issue, which requires the UK Government and the devolved administrations to work together. That is why the Government's White Paper on modern slavery in December committed to work closely with the Devolved Administrations.

The Government has worked closely with the Devolved Administrations on the development of the Modern Slavery Bill. Since the White Paper in December, the Scottish Government has decided to bring forward its own legislation in this area. The Government welcomes the Devolved Administrations' commitment to tackle modern slavery, both through their own legislation and close working with the UK government.

The Government has engaged with Northern Ireland on all aspects of the Bill, and would also (if it became relevant) discuss the implications of any extension of the NCA's role with Northern Ireland.

On introduction, the Bill will extend to England and Wales. However, we continue to work closely with the devolved administrations (including in relation to the Anti-slavery Commissioner) to assess whether the extent of any of the provisions within the Bill should be extended during the Bill's passage.

REVIEW

The Committee recommended a statutory provision requiring a review of the effectiveness of the Modern Slavery Bill within three years of Royal Assent, with further reviews at least at five yearly intervals.

The Government agrees with the Committee that the effectiveness of legislation on modern slavery should be carefully reviewed. The Modern Slavery Bill would represent a critical step in stamping out modern slavery. However, the Committee is right to identify that new forms of exploitation could emerge, and that future legislation must adapt to reflect these.

The Government is committed to Post-Legislative Scrutiny of legislation, under the existing arrangements agreed with Select Committees. Post-Legislative Scrutiny will apply to this Bill. The Government believes that Post-Legislative Scrutiny is generally preferable to ad hoc and potentially inconsistent specific statutory requirements in individual Bills.

The Government commits to providing a Post-Legislative Scrutiny memorandum on the Bill within three to five years of Royal Assent. The Government will consult the Home Affairs Committee on the timing of publication of the memorandum.

In the longer term, the Anti-slavery Commissioner will continue to assess whether the law enforcement response is proving effective. If new forms of abuse emerge, which are not effectively covered by the existing statutory framework, the Government would expect that this will be highlighted in the Commissioner's annual report, which will be laid before Parliament.

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