



House of Lords
House of Commons

Joint Committee on the Draft
Modern Slavery Bill

Draft Modern Slavery Bill

Report

Session 2013–14



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Report, together with formal minutes

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The Joint Committee on the Draft Modern Slavery Bill

The Joint Committee on the Draft Modern Slavery Bill was appointed by the House of Commons on 9 January 2014 and by the House of Lords on 15 January 2014 to examine the Draft Modern Slavery Bill and to report to both Houses by 10 April 2014.

Membership

HOUSE OF LORDS

Baroness Butler-Sloss (Crossbench)
Bishop of Derby (Bishops)
Baroness Doocey (Liberal Democrat)
Baroness Hanham (Conservative)
Baroness Kennedy of Cradley (Labour)
Lord McColl of Dulwich (Conservative)
Lord Warner (Labour)

HOUSE OF COMMONS

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Michael Connarty MP (Labour)
Mr Frank Field (Chair) MP (Labour)
Fiona Mactaggart MP (Labour)
Sir John Randall MP (Conservative)
Mrs Caroline Spelman MP (Conservative)
Sir Andrew Stunell MP (Liberal Democrat)

Powers

The Committee had the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee had power to agree with the Commons in the appointment of a Chairman.

Publications

The Report of the Committee was published by The Stationery Office by Order of both Houses. All publications of the Committee are on the Internet <http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-modern-slavery-bill/>

Committee staff

The staff of the Committee were Adam Mellows-Facer (Commons Clerk), Duncan Sagar (Lords Clerk), Helen Kinghorn (Legal Specialist), Hannah Stewart (Legal Specialist), Sarah Thatcher (Senior Clerk), Ami Cochrane (Legal Assistant), Michelle Wenham (Senior Committee Assistant) and Karen Watling (Committee Assistant).

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Introduction

1. The Government's plans to introduce a Modern Slavery Bill give Parliament an opportunity to act decisively to protect the victims of modern slavery and thereby establish the most effective regime in the world for the prosecution of slave masters and traffickers. As the United States Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, Luis CdeBaca, told us, the Bill will influence legislation across the globe.¹ It must recognise and reflect that the fight against modern slavery is not simply a matter of prosecution, nor only victim protection, but in fact an indivisible combination of the fourPs: prevention, protection, prosecution and effective partnerships.

2. We applaud the Home Secretary for coming forward with draft legislation and share her wish for a Modern Slavery Bill to be granted Royal Assent before the end of this Parliament. We have therefore concentrated our scrutiny of the draft Bill on areas where there is widespread appetite for change. First, our Report presents an amended Bill. Second, we outline the reasoning for our recommended changes to both law and policy.

3. Our Report recommends the following key steps to improve the draft Bill:

- simplifying criminal offences so as to ensure more convictions;
- putting the principles of victim care and services on a statutory footing and making it easier for victims to claim compensation; changes that are morally right, politically expedient and fundamental to effective prosecution;
- recognising the special case of children by creating separate offences of exploiting and trafficking a child; making clear that children cannot consent to modern slavery; making provision for distinct child assistance and support; and establishing a statutory system of advocates;
- ensuring that victims are not prosecuted for crimes they were forced to commit while enslaved;
- strengthening the asset recovery regime to seize the illicit gains made from modern slavery;
- ensuring independence for the Anti-Slavery Commissioner in order to establish the post as a focal point for galvanising the fight against modern slavery; and
- taking steps to make sure that goods and services produced elsewhere but sold in the UK are free from the taint of slavery.

4. We thank the Home Office for its cooperation and support during the course of our inquiry. In some areas, though, Government action has been less forthcoming than we had hoped. A review of the governance and functioning of the National Referral Mechanism (NRM) was announced several months ago, but progress has been at best scant. Our

1 Q 682 (Luis CdeBaca)

Report recommends a statutory and much-revised NRM. Whether a person is a victim of modern slavery and their immigration status must be kept entirely and overtly separate.

5. In the case of the domestic worker's visa, policy changes have unintentionally strengthened the hand of the slave master against the victim of slavery. The moral case for revisiting this issue is urgent and overwhelming. Protecting these victims does not require primary legislation and we call on the Government to take immediate action.

6. Recent progress towards a Modern Slavery Bill has been rapid. Years of dedicated work by NGOs and campaigners was encapsulated by the Centre for Social Justice's March 2013 report, *It Happens Here*. We have built on that work, the independent Evidence Review commissioned by the Home Secretary in October 2013 and the recent inquiry into data by the All-Party Parliamentary Group on Human Trafficking and Modern Day Slavery. We collected an unusually high volume of evidence commensurate with the importance of getting this Bill right. We are grateful to our witnesses, those who have provided written evidence, our Joint Committee staff, and our Specialist Advisers—Christine Beddoe,² Peter Carter QC,³ James Ewins,⁴ Lucy Maule,⁵ Anthony Steen⁶ and Tim Weedon⁷—who have all contributed enormously to our efforts. We extend particular thanks to those victims of modern slavery who have shared the horror of their experiences with us.

7. The Home Secretary and the Prime Minister have breathed life into a strategy against modern slavery. The immediate support the Leader of the Opposition gave to the independent Evidence Review, which influenced the development of the draft Bill, emphasised the cross-party determination to confront modern slavery. We hope the Government will accept our recommendations and it is in this spirit that we recommend our Report to both Houses of Parliament, making a plea that they support its recommendations and do not unduly delay the Bill's progress into law. Life can and should be made as difficult as possible for today's slave masters and traffickers, and the position of the victims of slavery must be transformed. It is with these two objectives in mind that we hope both Houses of Parliament will go about their work on this Bill.

2 Contracted by the Anti-Trafficking Monitoring Group to provide a briefing paper to this Committee; provides advice to Baroness Doocey on child trafficking matters.

3 No relevant interests declared.

4 Unpaid 'advocate' for International Justice Mission.

5 Employed by the Centre for Social Justice, of which Mr Frank Field MP is a member of the Advisory Council.

6 Chair of the Human Trafficking Foundation; Specialist Adviser to the Home Affairs Select Committee; Special Envoy to the Home Secretary on Combating Modern Slavery; Advisor to the All-Party Group on Human Trafficking and Modern Day Slavery (all honorary).

7 Head of Office, Mr Frank Field MP.

The Committee Bill

8. We have produced a revised Bill to illustrate the ways in which our recommendations might be translated into legislation. It is presented below and referred to throughout our Report as the "Committee Bill" in order to distinguish it from the Government's draft Bill.

Modern Slavery Bill

A

BILL

TO

Make provision about slavery and human trafficking; to make provision for an Anti-Slavery Commissioner; and for connected purposes

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

PART 1

OFFENCES

Slavery

1. Slavery of children and adults

1. It is an offence to hold a person in, or subject a person to, slavery.
2. For the purposes of this Act "slavery" means the control by a person of a second person in such a way as-
 - a. significantly to deprive that second person of their individual liberty, and
 - b. by which any person obtains a benefit through the use, management, profit, transfer or disposal of that second person.
3. Where that second person is a child, slavery also includes any act or transaction whereby the child is transferred or purports to be transferred to

another person in return for money or other consideration, other than through lawful adoption or similar formal process

Exploitation

2. Child Exploitation offences

1. It is an offence to exploit a child.
2. It is an offence for one person to obtain a benefit through the use of a child for the purpose of exploitation.
3. In determining whether an offence has been committed under this section,—
 - a. the question whether a child, or any person who has responsibility for the child, has consented to any conduct, and
 - b. the question whether any coercive means have been used,are irrelevant.

3. Exploitation offence: general

1. It is an offence to exploit a person.
2. An offence under this section is committed where one person obtains a benefit through the use of a second person for the purpose of exploitation by means of—
 - a. the threat or use of force or of other forms of coercion,
 - b. abduction,
 - c. fraud or deception,
 - d. abuse of power,
 - e. abuse of a position of vulnerability, or
 - f. the giving or receiving of any payment or benefit with a view to securing the consent of any person having control over that second person.

Trafficking

4. Child trafficking

1. It is an offence to traffick a child.
2. An offence under this section is committed by any person who recruits, transports, transfers, harbours or receives that child, including the exchange or transfer of control over that child, for the purpose of exploitation.
3. In determining whether an offence has been committed under this section—
 - a. the question whether that child, or any person who has responsibility for that child, has consented to any conduct, and
 - b. the question whether any coercive means have been used,are irrelevant.

5. Trafficking

1. It is an offence to traffick a person.
2. An offence under this section is committed by any person who recruits, transports, transfers, harbours or receives a second person for the purpose of exploitation, where the means used to do any of those acts include—
 - a. the threat or use of force or of other forms of coercion,
 - b. abduction,
 - c. fraud or deception,
 - d. abuse of power,
 - e. abuse of a position of vulnerability, or
 - f. the giving or receiving of any payment or benefit with a view to securing the consent of any other person having control over that second person.

6. Facilitating the commission of an offence under Part 1

A person who is concerned in, or who facilitates, the commission of an offence under any of sections 1, 2, 3, 4 or 5 in relation to a second person or child commits an offence if that first person knows or ought to know that second

person or child is, or is to be, held in or subjected to slavery, or exploited, or trafficked.

7. Definition of “exploitation”

For the purposes of this Part -

1. “exploitation” includes but is not limited to the prostitution of others or other forms of sexual exploitation, labour or services including begging, practices similar to slavery, servitude, or the exploitation of or for criminal activities, or the removal of organs etc.

2. “sexual exploitation” means

(a) an offence under Part 1 of the Sexual Offences Act 2003,

(b) an offence under section 1(1)(a) of the Protection of Children Act 1978,

(c) an offence under any provision of the Sexual Offences (Northern Ireland) Order 2008,

(d) an offence listed in Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),

(e) an offence under Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)), or

(f) anything done outside England and Wales and Northern Ireland which is not an offence within any of paragraphs (a) to (e) but would be if done in England and Wales or Northern Ireland.

3. “removal of organs etc.” means

a. an offence under section 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors) as it has effect in England and Wales, or

b. which would involve the commission of such an offence if it were done in England and Wales.

8. Commission of offences within or outside the United Kingdom

1. A person who is a United Kingdom national or resident commits an offence under this Part regardless of—

- a. where the offence took place, or
 - b. the country or territory which is the place of arrival, entry, departure or travel of any person in relation to whom the offence is committed.
2. A person who is not a United Kingdom national or resident commits an offence under this Part if—
- a. any part of the offence takes place in the United Kingdom, or
 - b. the United Kingdom is the country of arrival, entry, departure, or travel of any person in relation to whom the offence is committed.

9. Penalties

1. A person guilty of an offence under any of sections 1, 2, 3, 4 or 5 is liable—
 - a. on conviction on indictment, to imprisonment for life or a fine or both;
 - b. on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
2. A person guilty of an offence under section 6 is (unless subsection (3) applies) liable—
 - a. on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine or both;
 - b. on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
3. Where the commission of an offence under section 6 involves the offender kidnapping or falsely imprisoning any person, a person guilty of that offence is liable, on conviction on indictment, to imprisonment for life or a fine or both.
4. In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the references in subsections (1)(b) and (2)(b) to 12 months are to be read as references to 6 months.

10. Sentencing

1. The Criminal Justice Act 2003 is amended as follows.

2. In Part 1 of Schedule 15 (specified offences for purposes of Chapter 5 of Part 12: sentencing of dangerous offenders), after paragraph 63F insert—

“63G An offence under Part 1 of the Modern Slavery Act 2014.”

3. In Part 1 of Schedule 15B (offences listed for purposes of sections 224A, 226A and 246A: life sentences, extended sentences, release on licence of prisoners serving extended sentences), after paragraph 43 insert—

“43A An offence under Part 1 of the Modern Slavery Act 2014.”

Supplementary

11. Repeal of existing provisions

1. In the Sexual Offences Act 2003, omit—

- a. section 59A (trafficking people for sexual exploitation),
- b. section 60 (interpretation of section 59A),
- c. section 60A (forfeiture of land vehicle etc.),
- d. section 60B (detention of land vehicle etc.),
- e. section 60C (interpretation of sections 60A and 60B).

2. In the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, omit—

- a. section 4 (trafficking people for exploitation),
- b. section 5(3) and (4) (section 4 - supplementary provision).

3. In the Coroners and Justice Act 2009, omit section 71 (slavery, servitude and forced or compulsory labour).

PART 2

MODERN SLAVERY PREVENTION ORDERS

12. Modern slavery prevention orders on sentencing

1. A court may make an order under this section against a person (“the defendant”) where it deals with the defendant in respect of—

- a. a conviction for a modern slavery offence,
- b. a finding that the defendant is not guilty of a modern slavery offence by reason of insanity, or
- c. a finding that the defendant is under a disability and has done the act charged against the defendant in respect of a modern slavery offence.

2. The court may make the order only if it is satisfied that it is necessary to do so for the purpose of protecting persons generally, or particular persons, from physical or psychological harm caused by a real risk of the defendant committing an offence under Part 1.

3. For the purposes of this Part, a “modern slavery offence” means an offence listed in the Schedule.

4. For the purposes of this section, convictions and findings include those taking place before this section comes into force.

5. For the purposes of this section the Court may only make an order where the defendant is aged 16 or older.

13. Modern slavery prevention order on application

1. A magistrates’ court may make an order under this section against a person (“the defendant”) on an application by—

- a. a chief officer of police, or
- b. the Director General of the National Crime Agency (“the Director General”).

2. The court may make the order only if it is satisfied that—

- a. the defendant is a relevant offender (see section 14), and
- b. since the defendant first became a relevant offender, the defendant has acted in a way which gives rise to a reasonable belief of a real and immediate risk that the defendant will commit an offence under Part 1, and
- c. makes it necessary to make the order for the purpose of protecting persons generally, or particular persons, from physical or psychological harm caused by the defendant committing an offence under Part 1.

3. A chief officer of police may make an application under this section only in respect of a person—
 - a. who lives in the chief officer’s police area, or
 - b. who the chief officer believes is in that area or is intending to come to it.
4. The Director General must give notice of any application the Director General makes under this section to the chief officer of police for—
 - a. the police area where the person in question lives, or
 - b. a police area which the Director General believes the person is in or is intending to come to.
5. An application under this section is to be made by complaint.
6. The acts of the defendant which may be relied on for the purposes of subsection (2)(b) include acts taking place before this section comes into force.

14. Meaning of “relevant offender”

1. A person is a “relevant offender” for the purposes of section 13 if subsection (2) or (3) applies to the person.
2. This subsection applies to a person if they are aged 16 years or older and within a period of 3 years prior to the application—
 - a. the person has been convicted of a modern slavery offence,
 - b. a court has made a finding that the person is not guilty of a modern slavery offence by reason of insanity,
 - c. a court has made a finding that the person is under a disability and has done the act charged against the person in respect of a modern slavery offence, or
 - d. the person has been formally cautioned in respect of a modern slavery offence.
3. This subsection applies to a person if, they are aged 16 years or older and under the law of a country outside the United Kingdom—
 - a. the person has been convicted of an equivalent offence (whether or not the person has been punished for it),

- b. a court has made, in relation to an equivalent offence, a finding equivalent to a finding that the person is not guilty by reason of insanity,
 - c. a court has made, in relation to an equivalent offence, a finding equivalent to a finding that the person is under a disability and has done the act charged against the person, or
 - d. the person has been formally cautioned in respect of an equivalent offence.
4. An “equivalent offence” means an act which—
- a. constituted an offence under the law of the country concerned, and
 - b. would have constituted a modern slavery offence under the law of England and Wales if it had been done in England and Wales, or by a UK national, or as regards the United Kingdom.
5. For the purposes of subsection (4) an act punishable under the law of a country outside the United Kingdom constitutes an offence under that law, however it is described in that law.
6. For the purposes of this Part, a “modern slavery offence” means an offence listed in the Schedule.
7. On an application under section 13 where subsection (3) is alleged to apply to the defendant, the condition in subsection (4)(b) is to be taken as met unless—
- a. not later than provided by rules of court, the defendant serves on the applicant a notice which states that in the defendant’s opinion the condition is not met, shows the grounds for that opinion, and requires the applicant to prove that the condition is met, or
 - b. the court permits the defendant to require the applicant to prove that the condition is met without service of such a notice.
8. References in this section to convictions, findings and cautions include those taking place before this section comes into force.

15. Effect of modern slavery prevention orders

1. An order under section 12 or 13 (a “modern slavery prevention order”) prohibits the defendant from doing anything described in the order.

2. The only prohibitions that may be included in the order are those under section 16 or which prevent the defendant:

- a. from working with children,
- b. operating as a gangmaster,
- c. entering, leaving, travelling within or visiting a specified location or premises,
- d. undertaking specified work or work of a specified description, where “work” includes any business or occupation (whether paid or unpaid),

and that the court is satisfied meet the requirements of section 12(2) or 13(2).

3. Subject to section 16(1), a prohibition contained in a modern slavery prevention order has effect—

- a. for a fixed period, specified in the order, of at least 5 years, or
- b. until further order.

4. A modern slavery prevention order—

- a. may specify that some of its prohibitions have effect until further order and some for a fixed period;
- b. may specify different periods for different prohibitions;
- c. may provide that such requirements of the order as it may specify shall, during any period when the offender is detained in legal custody, be suspended until his release from that custody.

5. If a court makes a modern slavery prevention order in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

16. Prohibitions on foreign travel

1. A prohibition on foreign travel contained in a modern slavery prevention order must be for a fixed period of not more than 5 years.

2. A “prohibition on foreign travel” means—

- a. a prohibition on travelling to any country outside the United Kingdom named or described in the order,

- b. a prohibition on travelling to any country outside the United Kingdom other than a country named or described in the order, or
 - c. a prohibition on travelling to any country outside the United Kingdom.
- 3. Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 17.
- 4. A modern slavery prevention order that contains a prohibition within subsection (2)(c) must require the defendant to surrender all of the defendant's passports at a police station specified in the order—
 - a. on or before the date when the prohibition takes effect, or
 - b. within a period specified in the order.
- 5. Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a modern slavery prevention order containing a prohibition within subsection (2)(c).
- 6. Subsection (5) does not apply in relation to—
 - a. a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
 - b. a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

17. Variation, renewal and discharge

- 1. A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a modern slavery prevention order.
- 2. The persons are—
 - a. the defendant;
 - b. the chief officer of police for the area in which the defendant lives;
 - c. a chief officer of police who believes that the defendant is in, or is intending to come to, that officer's police area;
 - d. where the order was made on an application by a chief officer of police under section 13, that officer.

3. An application under subsection (1) may be made—
 - a. where the appropriate court is the Crown Court, in accordance with rules of court;
 - b. in any other case, by complaint.

4. On the application the court, after hearing—
 - a. the person making the application, and
 - b. the other persons mentioned in subsection (2) (if they wish to be heard),

may make any order varying, renewing or discharging the modern slavery prevention order that the court considers appropriate.

5. An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if the court is satisfied that it is necessary to do so for the purpose of protecting persons generally, or particular persons, from physical or psychological harm caused by the defendant committing an offence under Part 1.

6. Any renewed or varied order may contain only those prohibitions which the court is satisfied are necessary for that purpose.

7. The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and—

- a. where the application is made by the defendant, the chief officer of police for the area in which the defendant lives;
- b. where the application is made by a chief officer of police, that chief officer.

8. Subsection (7) does not apply to an order containing a prohibition on foreign travel and no other prohibitions.

9. In this section “the appropriate court” means—
 - a. where the Crown Court or the Court of Appeal made the modern slavery prevention order, the Crown Court;
 - b. where a magistrates’ court made the order, a magistrates’ court;
 - c. where a youth court made the order, a youth court.

18. Interim modern slavery prevention orders

1. This section applies where an application under section 13 (“the main application”) has not been determined.

2. An application for an order under this section (an “interim modern slavery prevention order”)—

- a. may be made by the complaint by which the main application is made, or
- b. if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

3. The Court may impose an interim modern slavery prevention order where it is necessary for the purpose of protecting persons generally, or particular persons, from immediate physical or psychological harm caused by the defendant committing an offence under Part 1.

4. The only prohibitions that may be included in the order are those under section 16 or which prevent the defendant:

- a. from working with children,
- b. operating as a gangmaster,
- c. entering, leaving, travelling within or visiting a specified location or premises,
- d. undertaking specified work or work of a specified description, where “work” includes any business or occupation (whether paid or unpaid),

and that the court is satisfied meet the requirements of section 12(2) or 13(2) as appropriate

5. Such an order—

- a. has effect only for a fixed period, specified in the order;
- b. ceases to have effect, if it has not already done so, on the determination of the main application.

6. The applicant or the defendant may by complaint apply to the court that made the interim modern slavery prevention order for the order to be varied, renewed or discharged.

19. Review and appeals

1. Where the order was imposed under section 12(1)(b) or (c), or 14 (2)(b) or (c) a person within subsection (2) must apply to the court for a review of the order if that person is presented with evidence that there are reasonable grounds to believe that the defendant is no longer:

- a. labouring under the defect of reason owing to a disease of the mind,
or
- b. under the disability,

which was the basis of the verdict referred to under section 12(1)(b) or (c), or 14 (2)(b) or (c)

2. The persons are—

- a. the chief officer of police for the area in which the defendant lives;
- b. a chief officer of police who believes that the defendant is in, or is intending to come to, that officer's police area;
- c. where the order was made on an application by a chief officer of police under section 13, that officer.

3. On a review under subsection (1), the court may make such orders as may be necessary to give effect to its determination of the review, and may also make such incidental or consequential orders as appear to it to be just.

4. A defendant may appeal against the making of a modern slavery prevention order—

- a. where the order was made under section 12(1)(a), as if the order were a sentence passed on the defendant for the offence;
- b. where the order was made under section 12(1)(b) or (c), as if the defendant had been convicted of the offence and the order were a sentence passed on the defendant for that offence;
- c. where the order was made on an application under section 13, to the Crown Court.

5. A defendant may appeal to the Crown Court against the making of an interim modern slavery prevention order.

6. A defendant may appeal against the making of an order under section 17, or the refusal to make such an order—

- a. where the application for such an order was made to the Crown Court, to the Court of Appeal;
- b. in any other case, to the Crown Court.

7. On an appeal under subsection (4)(c), (5) or (6)(b), the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

8. Any order made by the Crown Court on an appeal under subsection (4)(c) or (5) is for the purposes of section 17(9) or 18(5) (respectively) to be treated as if it were an order of the court from which the appeal was brought.

9. Subsection (8) does not apply to an order directing that an application be reheard by a magistrates' court.

20. Offences

1. A person who, without reasonable excuse, does anything that the person is prohibited from doing by—

- a. a modern slavery prevention order, or
- b. an interim modern slavery prevention order,

commits an offence.

2. A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed under section 16(4).

3. A person guilty of an offence under this section is liable—

- a. on conviction on indictment, to imprisonment for a term not exceeding 5 years;
- b. on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £5,000 or both.

4. Where a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make an order for conditional discharge in respect of the offence.

21. Guidance

1. The Secretary of State must issue guidance to chief officers of police and to the Director General of the National Crime Agency in relation to the exercise by them of their powers with regard to modern slavery prevention orders and interim modern slavery prevention orders.
2. The Secretary of State must by order issue guidance as to the risk factors which may be taken into account when determining whether the imposition of a modern slavery prevention order or interim order is necessary.
3. The Secretary of State may, from time to time, revise the guidance issued under subsection (1).
4. The Secretary of State must arrange for any guidance issued or revised under subsection (1) to be published in a way the Secretary of State considers appropriate.

PART 3

VICTIMS

22. Non-criminalisation of victims of modern slavery

1. Where a person charged with any offence (“the accused”) is a victim of one or more offences under Part 1 of this Act, that person shall not be guilty of the offence charged if –
 - a. the offence was committed as a direct and immediate result of being a victim of the Part 1 offence; and
 - b. a person of the same sex and age as the accused, with a normal degree of tolerance and self-restraint and in the circumstances of the accused, might have reacted in the same or in a similar way.
2. Where the offence charged is murder, a defence under (1) shall reduce murder to manslaughter.
3. Once the defence set out in subsection (1) is raised by the accused or on his behalf, or the court of its own volition or on hearing submissions from any party decides that such a defence should be considered by the court, the burden of

proving that the offence was not committed as a direct and immediate result of him being a victim as set out in subsection (1) shall lie upon the prosecution.

4. For the purpose of subsection (1) the accused is a victim of modern slavery if there is evidence that the accused is a victim of one or more of the offences in Part 1 of this Act.

23. Assistance and support for victims of modern slavery

1. The Secretary of State must in consultation with the Anti-Slavery Commissioner by order publish and maintain guidance on the provision of assistance and support to victims of modern slavery.

2. Such guidance must consider how victims of modern slavery are to be identified for the purpose of providing assistance and support.

24. Advocates for child victims of modern slavery

1. An advocate shall be appointed to represent any child who might be a victim of modern slavery if the person who has parental responsibility for the child fulfils any of the conditions set out in subsection (5). The advocate will act in the best interest of the child and be appointed as soon as any public authority or relevant body has a reasonable suspicion to believe the child is such a victim.

2. The advocate may request a public authority or relevant body to co-operate with them in any way that the advocate considers necessary and that is in the best interest of the child. A public authority or relevant body must so far as reasonably practicable comply with a request made to it under this section.

3. The advocate will have powers to appoint and instruct legal representatives on behalf of the child in all matters relevant to the interest of the child.

4. The advocate shall at a minimum have responsibilities to—

- a. ensure that all decisions relating to the child are made in the child's best interest and ascertain the child's wishes and feelings in relation to those decisions;
- b. explain to, accompany and ensure the child receives appropriate care, safe accommodation, medical treatment, psychological or psychiatric assistance, education, translation and interpretation services, legal or similar representation or advice;

- c. assist the child to access legal and other representation where necessary;
- d. accompany, consult with, advise, represent or keep the child informed of police interviews, immigration, criminal or compensation proceedings;
- e. contribute to a plan to safeguard and promote the long-term welfare of the child based on an individual assessment of that child's best interests;
- f. provide a link between the child and various statutory and other bodies who may provide services to the child, accompanying the child to any relevant meetings;
- g. assist in establishing contact with the child's family, where the child so wishes and it is in the child's best interests;
- h. liaise with all professionals handling the child's case including immigration, police, social welfare, health, education and support services;
- i. accompany the child wherever it is deemed appropriate to do so.

5. Subsection (1) shall apply if the person who has parental responsibility for the child—

- a. is suspected of taking part in the trafficking of human beings;
- b. has another conflict of interest with the child;
- c. is not in contact with the child;
- d. cannot be identified;
- e. is in a country outside the United Kingdom; or
- f. is a local authority.

6. In subsection (1), an advocate may be—

- a. an employee of a statutory body;
- b. an employee of a recognised charitable organisation; or
- c. a volunteer for a recognised charitable organisation.

7. A person discharging duties as an advocate shall not discharge any other statutory duties in relation to a child for whom they are providing assistance under this section.

8. Where an advocate is appointed under subsection (1), the authority of the advocate in relation to the child shall be recognised by any public authority or relevant body.

9. In this section a “relevant body” means a person or organisation—

- a. which provides services to the child; or
- b. to which a child makes an application for services; or
- c. to which the child needs access in relation to being a victim.

10. The Secretary of State shall by order prescribe the arrangements for the appointment, training and supervision of advocates and provision of support to them.

11. A person’s appointment as an advocate for a particular child under this section shall come to an end if—

- a. the child reaches the age of 21; or
- b. a durable solution for the child has been found based on an individual assessment of the best interests of the child.

25. National Referral Mechanism

1. The Secretary of State must by order establish a mechanism for the identification and protection of victims of modern slavery offences as defined in Part 1 of this Act.

2. In establishing the mechanism the Secretary of State must have regard to the desirability of making provision for the following matters:

- a. the means and process for the identification and referral to the mechanism of potential victims of modern slavery;
- b. the provision to a child of an advocate in accordance with section 24 of this Act, if no such advocate has already been appointed upon identification of the child as a victim or referral to the mechanism;

- c. the appropriate stages in the formal identification process of a victim of modern slavery, the tests to be applied at each stage, and the timescales within which each stage must be completed;
- d. the suitability, qualification and necessary training of a person or organisation to fulfil the processes at paragraphs (2)(a) or (c);
- e. the principle that an organisation whose functions include determining asylum and immigration is unsuitable to deal with the matters referred to in paragraph (c).
- f. the care assistance or services which shall be provided as a minimum to all potential and formally identified victims of modern slavery;
- g. the provision of an internal review and appeal of a decision under paragraphs (2)(a) or (c).

26. Victims of Modern Slavery Legal Fund

1. The Secretary of State must by order establish a fund for the provision of legal advice, services and advocacy for victims of modern slavery offences.
2. In establishing the fund, the Secretary of State must have due regard to the minimum standards required by Articles 12 and 15 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

27. Presumption of age

1. Where the age of a victim of modern slavery is uncertain and there are grounds to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection.

Special measures

28. Amendment to the Youth Justice and Criminal Evidence Act 1999 section 17

1. In section 17(4) of The Youth Justice and Criminal Evidence Act 1999 omit the words “or an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004” and insert “or an offence under Part 1 of the Modern Slavery Act 2014”.

29. Restriction on evidence or questions about crimes committed by a complainant

1. If at a trial a person is charged with a modern slavery offence, then, except with the leave of the court—

- a. no evidence may be adduced, and
- b. no question may be asked in cross-examination,

by or on behalf of any accused at the trial, about any crimes committed by the complainant at the behest of the defendant or as a direct and immediate result of being a victim of a modern slavery offence.

2. The court may give leave in relation to any evidence or question only on an application made by or on behalf of an accused, and may not give such leave unless it is satisfied--

- a. that if the complainant is a child subsection (3) applies, or
- b. that a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case.

3. This subsection applies if the evidence or question relates to a relevant issue in the case and the issue is not an issue of consent.

4. For the purposes of subsection (3) no evidence or question shall be regarded as relating to a relevant issue in the case if it appears to the court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.

5. Where this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a modern slavery offence—

- a. it shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but
- b. it shall not cease to do so in the event of that person or those persons pleading guilty to, or being convicted of, that charge.

6. Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.

30. Interpretation and application of section 29

1. In section 29—

- a. "relevant issue in the case" means any issue falling to be proved by the prosecution or defence in the trial of the accused;
- b. "issue of consent" means any issue whether the complainant in fact consented to the conduct constituting the offence with which the accused is charged (and accordingly does not include any issue as to the belief of the accused that the complainant so consented);

2. Section 29 applies in relation to the following proceedings as it applies to a trial, namely—

- a. the hearing of an application under paragraph 2(1) of Schedule 3 to the Crime and Disorder Act 1998 (application to dismiss charge by person sent for trial under section 51 or 51A of that Act),
- b. any hearing held, between conviction and sentencing, for the purpose of determining matters relevant to the court's decision as to how the accused is to be dealt with, and
- c. the hearing of an appeal,

and references (in section 289 or this section) to a person charged with an offence accordingly include a person convicted of an offence.

31. Procedure on applications under section 29

1. An application for leave shall be heard in private and in the absence of the complainant.

In this section "leave" means leave under section 29.

2. Where such an application has been determined, the court must state in open court (but in the absence of the jury, if there is one)—

- a. its reasons for giving, or refusing, leave, and

- b. if it gives leave, the extent to which evidence may be adduced or questions asked in pursuance of the leave,

and, if it is a magistrates' court, must cause those matters to be entered in the register of its proceedings.

- 3. Criminal Procedure Rules may make provision--
 - a. requiring applications for leave to specify, in relation to each item of evidence or question to which they relate, particulars of the grounds on which it is asserted that leave should be given by virtue of subsection (3) or (5) of section 29;
 - b. enabling the court to request a party to the proceedings to provide the court with information which it considers would assist it in determining an application for leave;
 - c. for the manner in which confidential or sensitive information is to be treated in connection with such an application, and in particular as to its being disclosed to, or withheld from, parties to the proceedings.

PART 4

ANTI-SLAVERY COMMISSIONER

32. The Anti-Slavery Commissioner

1. The Secretary of State must appoint an independent Anti-Slavery Commissioner (in this Part "the Commissioner").
2. The Commissioner is to hold a full-time office in accordance with the terms of the Commissioner's appointment.
3. The Secretary of State shall pay remuneration and allowances to the Commissioner and—
 - a. shall before the beginning of each financial year specify a maximum sum which the Commissioner may spend on functions for that year,
 - b. may permit that to be exceeded for a specified purpose, and
 - c. shall defray the Commissioner's expenditure for each financial year subject to paragraphs (a) and (b).
4. The Commissioner may appoint staff.

5. In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership: other disqualifying offices) at the appropriate place insert—

“Anti-Slavery Commissioner”.

6. In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general) at the appropriate place insert—

“The Anti-Slavery Commissioner”.

33. General functions of Commissioner

1. The Commissioner must encourage best practice in the:
 - a. prevention of modern slavery;
 - b. protection of victims;
 - c. prosecution of perpetrators of modern slavery;
 - d. promotion of co-operation and partnerships to meet (a), (b) and (c).
2. The things that the Commissioner may do in pursuance of subsection (1) include—
 - a. making reports to the Secretary of State, of his own initiative, at least annually;
 - b. making recommendations to any public authority about the exercise of its functions in England and Wales;
 - c. undertaking or supporting (financially or otherwise) the carrying out of research, including the gathering and analysis of information, data and statistics concerning modern slavery;
 - d. providing information, education or training;
 - e. consulting people;
 - f. engaging with international commissioners or equivalent persons;
 - g. engaging with and making recommendations to persons and organisations involved in the prevention of modern slavery and protection of victims.

3. The Commissioner must (after ascertaining whether the Secretary of State wishes to exercise the power conferred by subsection (4)) publish each report made to the Secretary of State under subsection (2)(a).

4. The Secretary of State may direct the Commissioner to omit from any report before publication any material whose publication the Secretary of State thinks—

- a. it is necessary to omit for reasons of national security,
- b. might jeopardise an individual's safety, or
- c. might prejudice the investigation or prosecution of an offence.

5. In this section “public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998 (other than a court or tribunal) which exercises functions in England and Wales.

34. Annual plans and annual reports

1. Upon appointment and annually thereafter the Commissioner must—

- a. prepare an annual plan setting out how the Commissioner proposes to exercise the Commissioner's functions during the year, and
- b. submit the annual plan to the Secretary of State for approval.

2. An annual plan must in particular—

- a. state the Commissioner's objectives and priorities for the year;
- b. state any matters on which the Commissioner proposes to report under section 33(2)(a) during the year;
- c. state any other activities the Commissioner proposes to undertake during the year in the exercise of the Commissioner's functions.
- d. include a business plan for the year.

3. The Secretary of State may approve an annual plan either without modifications or with modifications agreed with the Commissioner.

4. As soon as reasonably practicable after the end of each calendar year the Commissioner must submit to the Secretary of State an annual report on the exercise of the Commissioner's functions during the year.

5. An annual report must include—

- a. an assessment of the extent to which the Commissioner's objectives and priorities for the year have been met;
- b. a statement of the matters on which the Commissioner has reported under section 33(2)(a) during the year;
- c. a statement of the other activities the Commissioner has undertaken during the year in the exercise of the Commissioner's functions;
- d. the annual plan for the following year.

6. The Secretary of State must lay before Parliament—

- a. any annual plan the Secretary of State approves;
- b. any annual report the Secretary of State receives.

within 4 weeks of such approval or receipt.

7. But before laying an annual report before Parliament the Secretary of State may remove from the report any material whose publication the Secretary of State thinks—

- a. the omission of which is necessary in the interests of national security,
- b. might jeopardise an individual's safety, or
- c. might prejudice the investigation or prosecution of an offence.

35. Duty to co-operate with Commissioner

1. The Commissioner may request a specified public authority to co-operate with the Commissioner in any way that the Commissioner considers necessary for the purposes of the Commissioner's functions.

2. A specified public authority must so far as reasonably practicable comply with a request made to it under this section.

3. A public authority which discloses information to the Commissioner in pursuance of subsection (2) does not breach—

- a. any obligation of confidence owed by the public authority, or
- b. any other restriction on the disclosure of information (however imposed).

4. But subsection (2) does not require or authorise any disclosure of information which—

- a. contravenes the Data Protection Act 1998, or
- b. is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

5. In this section—

“public authority” has the same meaning as in section 33;

“specified public authority” means a public authority which is specified in, or is of a description specified in, an order made by the Secretary of State for the purposes of this section.

36. Restriction on exercise of functions

1. The Commissioner must not exercise any function in relation to—

- a. an individual case of modern slavery;
- b. the initiation or conduct of a particular investigation or particular proceedings;
- c. anything done or omitted to be done by a person acting in a judicial capacity or on the instructions of or on behalf of such a person.

2. Subsection (1)(c) does not prevent the Commissioner from considering or drawing conclusions about an individual case for the purpose of, or in the context of, considering an issue of general relevance to the exercising of any of his functions set out in section 33.

PART 5

SUPPLY CHAINS AND THE GANGMASTERS LICENSING AUTHORITY

Supply chains

37. Amendment to the Companies Act 2006 section 414C

1. Section 414C(7)(iii) of The Companies Act 2006 is amended as follows.

Before “social” insert “modern slavery”.

2. After section 414C(7) insert—

“(7A) In relation to the information about modern slavery in subsection (7)(iii) the Secretary of State must by order specify the information that must be included in the strategic report and any other necessary requirements. The order must include requirements:

- (a) that the modern slavery information in the strategic report be published online, and
- (b) that the information included in the strategic report must include an explanation of measures taken by the quoted company to:
 - i. verify and evaluate its supply chains to address the risks of modern slavery,
 - ii. audit its suppliers,
 - iii. certify goods and services purchased from suppliers,
 - iv. maintain accountability for modern slavery issues within the company, and
 - v. train staff.

Gangmasters Licensing Authority

38. Amendment to the Gangmasters (Licensing) Act 2004

- 1. Section 3(5)(a) of the Gangmasters (Licensing) Act 2004 (“Work to which this Act applies”) is amended as follows.
- 2. After “excluding” add “or including”.

PART 6

ASSETS AND PROCEEDS OF CRIME

39. Forfeiture of property related to an offence under Part 1

- 1. This section applies if a person is convicted on indictment of an offence under Part 1.

2. The court may order the forfeiture of a land vehicle used or intended to be used in connection with the offence if the convicted person—

- a. owned the vehicle at the time the offence was committed,
- b. was at that time a director, secretary or manager of a company which owned the vehicle,
- c. was at that time in possession of the vehicle under a hire-purchase agreement,
- d. was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
- e. was driving the vehicle in the course of the commission of the offence.

3. The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—

- a. owned the ship or aircraft at the time the offence was committed,
- b. was at that time a director, secretary or manager of a company which owned the ship or aircraft,
- c. was at that time in possession of the ship or aircraft under a hire purchase agreement,
- d. was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
- e. was at that time a charterer of the ship or aircraft, or
- f. committed the offence while acting as captain of the ship or aircraft.

4. But where subsection (3)(a) or (b) does not apply to the convicted person, forfeiture of a ship or aircraft may be ordered only if subsection (5) applies or—

- a. in the case of a ship, its gross tonnage is less than 500 tons;
- b. in the case of an aircraft other than a hovercraft, the maximum weight at which it may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.

5. This subsection applies where a person who, at the time the offence was committed—

- a. owned the ship or aircraft, or
- b. was a director, secretary or manager of a company which owned it,

knew or ought to have known of the intention to use it in the course of the commission of an offence under Part 1.

6. The court may order the forfeiture of property, other than real property, which the court deems to have been related to the offence if the convicted person—

- a. owned the property at the time the offence was committed,
- b. was at that time a director, secretary or manager of a company which owned the property,
- c. was at that time in possession of the property,
- d. was at that time a director, secretary or manager of a company which was in possession of the property, or
- e. was using the property in the course of the commission of the offence.

7. Where a person who claims to have an interest in property falling under this section applies to a court to make representations about its forfeiture, the court may not order its forfeiture without giving the person an opportunity to make representations.

40. Detention of property related to an offence under Part 1

1. If a person has been arrested for an offence under Part 1, a constable or senior immigration officer may detain relevant property.

2. Property is relevant if the constable or officer has reasonable grounds to believe that an order for its forfeiture could be made under section 39 if the person arrested or any other person were convicted of the offence.

3. The property may be detained—

- a. until a decision is taken as to whether or not to charge the person arrested with the offence,
- b. if that person has been charged, until he is acquitted, the charge against him is dismissed or the proceedings are discontinued, or

- c. if that person has been charged and convicted, until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.
4. Any other person may apply to the court for the release of the property on the grounds that the person—
- a. owns the property,
 - b. was, immediately before the detention of the property, otherwise lawfully in possession of it,
 - c. was, immediately before the detention of a vehicle, ship or aircraft, in possession of it under a hire-purchase agreement, or
 - d. is a charterer of the ship or aircraft.
5. The court to which an application is made under subsection (4) may, if satisfactory security or surety is tendered, release the property on condition that it is made available to the court if—
- a. the person arrested is convicted, and
 - b. an order for its forfeiture is made under section 39.
6. In this section, “the court” means—
- a. if the person arrested has not been charged, or has been charged but proceedings for the offence have not begun to be heard, a magistrates’ court;
 - b. if the person arrested has been charged and proceedings for the offence have begun to be heard, the court hearing the proceedings.
7. In this section, “senior immigration officer” means an immigration officer (appointed under the Immigration Act 1971) not below the rank of chief immigration officer.

41. Deprivation of rights in real property used to commit an offence under Part 1

1. Where any premises are used in the commission of an offence under Part 1, the High Court shall have power on application to deprive any person convicted of an offence under that Part of any interest that person has in such premises.
2. An application under subsection (1) is made by or on behalf of the Director of Public Prosecutions following a declaration made under subsection (3).

3. Subject to subsection (4) the court by or before which the person is convicted may make a declaration if that court is satisfied that any premises which were in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—

- a. have been used for the purpose of committing, or facilitating the commission of, any offence, or
- b. were intended by him to be used for that purpose.

4. In considering whether to make a declaration under this section in respect of any property, a court shall have regard to—

- a. the value of the property; and
- b. the likely financial and other effects on the offender of the making of the order (taken together with any other order made against the person convicted by way of sentence or otherwise).

5. The Secretary of State shall prescribe by Order how any proceeds of orders made under this section are to be used.

42. Interim order prohibiting entry to premises related to an offence under Part 1

1. A magistrates' court may make an order under this section against a person arrested for an offence under Part 1 ("the defendant") on an application by—

- a. a chief officer of police, or
- b. the Director General of the National Crime Agency ("the Director General").

2. An application under this section must specify the premises for which the application is made and to which the order will apply.

3. The court may make the order only if it is satisfied that there are reasonable grounds to believe that —

- a. the defendant used or intended to use the premises specified in the application for the purpose of committing, or facilitating the commission of, an offence under Part 1; and
- b. an order would be made under section 41 if the defendant were convicted of the offence.

4. An order under this section prohibits the defendant entering, leaving, or visiting premises specified in the order.
5. An order under this section has effect—
 - a. for a fixed period specified in the order, or
 - b. until further order.

PART 7

MISCELLANEOUS

Review

43. Five-yearly review by Secretary of State

1. The Secretary of State must review this Act.
2. In carrying out the review of Part 1 of this Act the Secretary of State must have regard to—
 - a. whether there has been an increase in the proportion of successful prosecutions;
 - b. whether Part 1 operates as an effective tool for prosecutions, and is easily understood by all parts of the criminal justice system;
 - c. whether Part 1 is broad enough to meet the current known forms of modern slavery, but also future forms;
 - d. whether there are any gaps in coverage;
 - e. whether Part 1 is consistent with relevant international conventions and assists the international response to modern slavery
 - f. such other factors as the Secretary of State considers relevant.
3. The Secretary of State must prepare and publish a report on the outcome of the review.
4. The first report must be published before the end of the period of three years beginning with the day on which any section or part of this Act comes into force.
5. Each subsequent report must be published before the end of the period of five years beginning with the day on which the previous report was published.

6. The Secretary of State may arrange for the Anti-Slavery Commissioner or some other person to carry out the whole or part of a review under this section on the Secretary of State's behalf.

7. The Secretary of State must lay before Parliament a report prepared under this section.

Interpretation

44. Interpretation

1. In this Act—

“aircraft” includes hovercraft;

“captain” means master (of a ship) or commander (of an aircraft);

“child” means any person under eighteen years of age;

“country” includes territory or other part of the world;

“exploitation” has the meaning given in section 7 of this Act;

“land vehicle” means any vehicle other than a ship or aircraft;

“public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998 which exercises functions in England and Wales;

“ship” includes every description of vessel used in navigation;

“United Kingdom national” means—

(a) a British citizen,

(b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has a right of abode in the United Kingdom, or

(c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.

“United Kingdom resident” means an individual who is resident in the United Kingdom.

2. In Part 6, a reference to being an owner of property includes a reference to being any of a number of persons who jointly own it.

Final provisions

45. Saving, transitional and consequential provision

1. The Secretary of State may by order make whatever saving, transitory or transitional provision the Secretary of State thinks appropriate in connection with the coming into force of any provision of this Act or of an order made under this Act.

2. The Secretary of State may by order make whatever provision the Secretary of State thinks appropriate in consequence of this Act.

3. The provision which may be made by an order under subsection (2) includes provision amending, repealing or revoking any provision of an Act or of subordinate legislation (within the meaning of the Interpretation Act 1978).

46. Orders

1. Any power of the Secretary of State to make an order under this Act is exercisable by statutory instrument.

2. A statutory instrument containing an order under this Act is subject to annulment in pursuance of a resolution of either House of Parliament, subject to subsections (3), (4) and (5).

3. Subsection (2) does not apply to a statutory instrument containing—

- a. only orders under section 45(1) (transitional etc. provision) or section 48 (commencement);
- b. an order under section 45(2) which amends or repeals any provision of an Act.

4. A statutory instrument containing an order under section 45(2) which amends or repeals any provision of an Act may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

5. A statutory instrument containing an order under section 23 or 25 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

47. Extent

This Act extends to England and Wales only.

48. Commencement

1. Sections 45 to 49 come into force on the day on which this Act is passed.
2. The other provisions of this Act come into force on whatever day or days the Secretary of State appoints by order.
3. Different days may be appointed for different purposes.

49. Short title

This Act may be cited as the Modern Slavery Act 2014.

SCHEDULE

[The Schedule in the draft Bill without amendment]

1 Offences

9. Modern slavery is a heinous crime. Those who commit it deserve severe punishment. Prosecuting is recognised nationally and internationally as a core activity in the ongoing fight to eradicate modern day slavery. To ensure effective detection, investigation, and prosecution the statutory framework and definitions chosen for modern slavery offences must be clear, simple and easy to use.

The existing statute and draft Bill—problems identified

10. The draft Bill was heavily criticised by our witnesses, with many describing it as merely a ‘cut and paste’ of the existing offences,⁸ with little thought beyond consolidation. In particular, the draft Bill does not give adequate consideration to slavery and trafficking offences committed against children, which many consider to be particularly egregious;⁹ nor, according to those who prosecute slave masters and gave evidence to us, will it make successful prosecutions more likely.¹⁰

11. Our aim in Part 1 of the Committee’s Bill is to produce an easily understood and effective tool to increase the proportion of successful prosecutions. Clauses 1 to 6 of the Committee’s Bill meet this aim by simplifying the language of the offences, making appropriate reference to international conventions, meeting potential future forms of modern slavery, and, most importantly, removing existing loopholes and gaps in coverage.

12. In coming to our conclusions on offences and suggesting an alternative approach we have borne in mind the request from the Minister for Modern Slavery and Organised Crime, Karen Bradley MP, that we should provide examples of acts of modern slavery that would not be caught by the offences proposed in the draft Bill.¹¹ Our evidence has provided plenty to choose from.

Gaps in coverage—Children

13. The draft Bill makes no provision for an offence committed without an element of force, coercion, threat, deception or other means of control (referred to here as “consent elements”). Such consent elements are irrelevant in cases involving the exploitation or trafficking of children, because children cannot consent to their own exploitation.

14. Clause 1 of the draft Bill (Slavery, servitude and forced or compulsory labour) copies the wording of the existing offence in section 71 of the Coroners and Justice Act 2009. The weakness of the existing offence as a prosecutorial tool in cases of child exploitation is illustrated by the CPS’s guidance, which focuses upon indicators of *forced* labour. As we were told, it is very difficult in some circumstances to prove that a child has been forced,

8 Q 2 (Chloe Setter) and written evidence from the Anti-Trafficking Monitoring Group

9 Q 494 (Ilona Pinter); Q 495 (Alison Worsley)

10 Q 157 (Riel Karmy-Jones)

11 Q 1313 (Karen Bradley MP)

particularly where they are part of a family, or where, for cultural reasons, they accept their exploitation because they have been taught to accept what an adult member of the community says to them.¹² The exploitative behaviour may have become “normalised to them so that they see it as perfectly acceptable and reasonable when, clearly and frankly, it is not”.¹³

15. The copying of the section 71 offence into the draft Bill maintains the existing weaknesses in relation to child victims. Examples of offences which would not be caught by the draft Bill because of this include domestic servitude cases where the child is “working essentially full time as a household drudge”,¹⁴ but crucially their labour is not always *forced* or *compulsory* for the purpose of section 71, or is not seen to be so, because they are, for example, attending school. In addition, these children are often living in a household other than that of their parents or guardian or in which their parents or guardian has only a minor role.¹⁵

16. Clauses 2 and 3 of the draft Bill are modelled on the existing offence of “Trafficking people for exploitation” which is set out in section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The draft Bill splits the existing section 4 into two parts—first, in clause 2, an offence of trafficking with a view to the victim being exploited, and second, in clause 3, a definition of exploitation, although the draft Bill stops short of making exploitation a standalone offence. Again, the replication of the existing section in clauses 2 and 3 of the draft Bill retains a number of gaps. The gaps are created by the need to prove both the first element of trafficking (movement of the child) and as a second element, that the trafficking is “with a view to [the] V[ictim] being exploited”. For example:

- a) In cases where the child is exploited, but there is no movement of the child, the provisions of the draft Bill would not enable a prosecution. The prosecution would fail because the first element of the offence in clause 2 of the draft Bill would not be satisfied as it requires movement. Both elements of clause 2 need to be satisfied. In addition, exploitation alone will not fall within clause 3, as that clause is not a standalone offence. The sorts of behaviour that we consider to be criminal, but that could not be prosecuted, include: begging, using a child to obtain fraudulently social security benefits, and putting a child on the streets to steal.¹⁶
- b) Alternatively, there may be movement but no exploitation. In this type of case, the movement falls within the first element of clause 2 of the draft Bill, but without exploitation, the second element of clause 2(1) “with a view to V being exploited”, cannot be satisfied.¹⁷ Examples of this type of criminal behaviour are: illegal adoption, and ‘miracle babies’.¹⁸

12 Q 1091 (Chief Inspector Carswell); Q 1092 (Nadine Finch)

13 Q 1091 (Chief Inspector Carswell)

14 Q 496 (Mike Dottridge)

15 Q 496 (Mike Dottridge)

16 Q 1092 (Chief Inspector Carswell)

17 Exploited being defined in clause 3 of the draft Bill.

18 Q 496 (Ilona Pinter); QQ 554-555 (Detective Inspector Hyland); Q 1092 (Nadine Finch)

- c) The need to prove both elements of clause 2 of the draft Bill to satisfy the offence means that in cases where there are two or more defendants, one who has trafficked the child and a second defendant who has exploited the child, the requirements of clause 2 of the draft Bill cannot be satisfied.¹⁹ The same problem applies in relation to offences committed against adults by two or more defendants.

Gaps in coverage—Adults and children

17. Copying section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“Trafficking people for exploitation”) into clause 2 of the draft Bill not only preserves the existing problems in relation to children, but also a broader problem caused by the words “with a view to V being exploited”. Clause 2(3) of the draft Bill requires the prosecution to prove that the defendant trafficked the victim because they (a) intended to exploit, or (b) believed that another person was likely to exploit the victim. We were told that this prevents prosecutions where the defendant trafficks (i.e. moves) the victim, but does not care how the victim will be treated by the person to whom they are delivered—that defendant doesn’t intend or believe anything about the future treatment of the victim, and therefore their behaviour cannot satisfy clause 2 of the draft Bill.²⁰ One of the examples we were given of an offence which would not be criminalised by the provisions of the draft Bill is sham marriages:

This happened in the last trial I had, where the defence tried to argue that the intention was not formed and it just happened later; that it was all agreed to—it was a sham marriage, and she wanted to come over for a sham marriage. They said it was not exploitation because her life was being made better, and it was only once she got here that things went terribly wrong, so therefore the defendant should not be convicted.²¹

18. We were told that some criminal behaviour would fall between clauses 1 and 2 of the draft Bill and that this could cause problems for judges in summing up.²² There is a further, related gap in coverage concerning family groups of exploiters, where each member of a family exploits the victim but to a different degree or in different ways.²³

In a lot of these cases, there are family groups that bring in individuals, even from their own community. The last one ... was a Roma Gypsy Slovakian group that brought in another Roma Gypsy woman who was homeless and very much on hard times. She was very ill-educated. There were members of the family who undoubtedly must have known about it, and undoubtedly exerted some control over the victim, but it was quite hard to get them, because we had very little evidence

19 Q 1092 (Nadine Finch)

20 QQ 152-153 (Riel Karmy-Jones)

21 Q 152 (Riel Karmy-Jones)

22 QQ 151-152 (Riel Karmy-Jones)

23 Q 155 (Riel Karmy-Jones)

about what they had actually done. In some instances, it has come down to harbouring, exerting an element of control over or receiving.²⁴

Neither of the offences in clause 1 or 2 of the draft Bill will cover general exploitative behaviour, such as receipt or harbouring of a victim. Not only is this a weakness in the draft Bill, it is also inconsistent with the United Kingdom’s international obligations.²⁵

19. We were also concerned to receive evidence from the police illustrating cases where commonsense would suggest that the defendants should be prosecuted for slavery or trafficking offences, but where other core offences such as rape, or fraud were charged.²⁶ Detective Inspector Keith Roberts told us about a case involving Lithuanian chicken catchers. Twenty-nine males were put through a victim debriefing centre, and seventeen gave written evidence and statements. They told the police that they had been subjected to:

beatings; theft of their wages; living with anything up to 12 people in a two-bedroom house; bed bug-ridden mattresses; dogs being set on workers; being held within the back of a transit van for up to five to six days at a time without any ablutions—no washing or toilet facilities; being driven from job to job; and being paid only for the time that they were working.²⁷

The CPS decided that this “did not amount to forced labour within the legislation as it stood.” We asked the CPS to provide further information about this case and, having received it, we make no comment on the decision not to bring forced labour prosecutions.²⁸ But the general point stands, that the current offences as drafted are not being used largely because they are difficult to use to prosecute slave masters and traffickers. Simply cutting and pasting them into the draft Bill offers no remedy to the defects.

Other problems

20. We also considered issues arising from the drafting of the clauses of the draft Bill, which did not create gaps in the coverage of the offences but did create practical and legal problems. The evidence that we received from His Honour Judge Edmunds QC was particularly helpful in this respect, as it questions whether clause 2 of the draft Bill creates one offence or many. This ambiguity gives rise to concerns about potential “duplicity in even the most straightforward case” and, in relation to conspiracy to commit this offence, arguments about how detailed the agreement to commit the offence has to be. Judge Edmunds added that:

24 Q 155 (Riel Karmy-Jones)

25 For example, Article 3, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereafter “Palermo Protocol”).

26 QQ 558-559 (Detective Inspector Roberts); Q 560 (Chief Inspector Winters)

27 Q 558 (Detective Inspector Roberts)

28 Supplementary written evidence from the Crown Prosecution Service

experience shows that when a person is trafficked they are commonly exploited in a number of ways; whatever advantages the trafficker. Thus a person who is in forced labour may also be required to work in controlled prostitution. This is a very common scenario.²⁹

21. We asked whether it was helpful for the draft Bill to specify that prosecutors must construe the terms slavery, servitude and forced or compulsory labour in clause 1 of the draft Bill in accordance with Article 4 of the European Convention on Human Rights. The evidence we received did not support retaining a reference to Article 4.³⁰ For example, the Rt Hon. the Lord Judge told us:

My worry about referring to article 4 of the convention, Palermo or anybody else is that these things move, too. The European Court of Human Rights will be construing it on a case from somewhere, so suddenly we will all have to say, “Is what our Act of Parliament meant article 4 as it stood at the time when it was passed, or do we mean article 4 as it has been developed down the years?” I think domestic legislation should say, “We mean this. It is defined as that.”³¹

22. Lord Judge also questioned the drafting of clause 1(1)(a) of the draft Bill which makes it an offence to hold somebody “in slavery or servitude” where the alleged criminal “knows or ought to know.” In contrast, under clause 2(3) of the draft Bill, the jury must determine whether the defendant “believes” someone is likely to be exploited. Lord Judge argued for consistency:

Please can we have the same language? When you come to look at the legislative structure, could you please consider whether knowing or believing is sufficient for this purpose? If you believe someone is being trafficked or held in compulsory labour, that is a very serious matter. ... Some lawyers will be saying, “There must be a different meaning because the words are different.” As a judge trying to construe this, you might be forced to the absurd conclusion that there is supposed to be a different meaning. That is not to anybody’s advantage.³²

23. Early in our inquiry we questioned why clause 3(6) of the draft Bill referred to a person who is “young”. This term had been copied from the existing Act,³³ but our witnesses did not think the term was clear or helpful. Nor do we.³⁴

24. The Helen Bamber Foundation also recommended amendments to clause 3(6), which it criticised as an ineffective definition of victims’ vulnerability:

29 Written evidence from HHJ Edmunds QC, The Crown Court at Isleworth – This is a personal response from HHJ Edmunds QC, within the constraints he explains at paragraphs 1 – 3. However, Lord Thomas, the Lord Chief Justice of England and Wales, has read and agrees with his observations on the questions asked by the Joint Committee.

30 QQ 156-158 (Riel Karmy-Jones)

31 Q 644 (Lord Judge)

32 Q 644 (Lord Judge)

33 Section 4(4)(d) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

34 Q164 (Riel Karmy-Jones)

‘vulnerability’ is often complex and multi-faceted rather than definable by one single element. It is also cumulative, and increases as victims are sold, exploited and trafficked on. Crucial factors to trafficking vulnerability, for example socio-economic deprivation, adversity, change of familial or political circumstances, are overlooked in the Modern Slavery Bill.

The Foundation considers that the provision of a restrictive list of only some of the many aspects of vulnerability may hinder the prosecution of traffickers. It highlights that clause 3(6) currently requires the prosecution to:

- a) prove that the victim was “chosen” because of a specific vulnerability, yet the “person who trafficks another person may well have no interest in their specific vulnerability and may be following the orders or advice of others”;
- b) provide retrospective diagnoses of mental or physical illness;
- c) prove that the victim is “disabled” which the Foundation describes as “itself complex, and context dependent”; and
- d) in addition, prove for clause 3(6)(b), that “a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose”. The Foundation describes this as a high threshold, which “assumes that traffickers are transparent in describing the true purpose for which victims will be used”.³⁵

25. As a final point of drafting, we found a general lack of clarity throughout the other clauses of the draft Bill on how those clauses relate to Part 1 offences. For example, clauses 7 and 8 of the draft Bill on forfeiture and detention of land vehicles, ships or aircraft apply only to the human trafficking offence in clause 2 of the draft Bill. More confusingly, the duty in clause 35 of the draft Bill to notify the National Crime Agency (NCA) only applies to the clause 2 human trafficking offence, while the Government’s White Paper which accompanied the draft Bill (the White Paper) refers to “all suspected victims of modern slavery”.³⁶

Conclusions on Part 1 of the draft Bill

26. At the heart of our deliberations was the question of how to differentiate between offences against children and those against adults to allow for alternative counts or an aggravated offence. In particular, we bore in mind the advice we had received from a large number of witnesses on the practical difficulty of requiring the prosecution to prove the age of a child.³⁷ We were told that this was a serious practical problem,³⁸ because “Often the people who are trafficked are victims for a reason; because they come from a community or a background which does not necessarily have birth certificates.”³⁹

35 Written evidence from the Helen Bamber Foundation

36 Cm 8770, p8

37 For example, Q 162 (Riel Karmy-Jones)

38 Written evidence from HHJ Edmunds QC

39 Q 162 (Riel Karmy-Jones)

27. It was clear from the evidence we received that merely suggesting amendments to clauses 1 to 3 of the draft Bill was insufficient to meet our aim, or that of the Home Office, to consolidate and simplify existing offences to make enforcement administratively simpler. The clauses as currently drafted maintain existing gaps in coverage of behaviour that we consider to be criminal and, in addition, we have identified errors in drafting which could cause practical and legal problems. On this latter point we draw the attention of the Home Office and parliamentary counsel to the evidence provided by the Rt Hon. the Lord Judge and HHJ Edmunds QC for their further consideration.

28. We conclude that the current definitions within Part 1 of the draft Bill are not as broad as the Government believes them to be, nor as broad as international definitions such as those in the Palermo Protocol, and as a result fail to capture current or potential future forms of modern slavery. As HHJ Edmunds QC told us, “it is important that the new offences remain four-square within the EU obligations so as to ensure that when evidence is sought from other EU jurisdictions there is no doubt that the “double criminality”⁴⁰ requirements are met”.⁴¹ We believe that maintaining a link to international definitions is important to prevent the “double criminality” requirement being used as an escape route from prosecution by slave masters and traffickers.

29. We also find the language of the international legislation and conventions much easier to understand than Part 1 of the draft Bill. **The Home Office must recognise that Part 1 needs to be sufficiently broad, clear, and simple, to allow all parts of the law enforcement process to understand and apply it. It is far too confusing as it stands.**

Part 1 of our Committee Bill

30. We considered the use of aggravated offences rather than offences that work within an indictment as alternative counts, but were concerned that this would remove from juries questions of fact which significantly affect the culpability of the defendant and, as a result, affect the level of the eventual sentence. The aggravated offences approach would also require basic offences to be drafted without reference to consent elements, which could be inappropriate in relation to adults, particularly given the long arc of behaviours that could be described as forced labour.⁴²

31. We have included a model indictment in Annex A to show how the offences we have drafted for our Committee Bill operate to create the following hierarchy:

- a) Slavery of children and adults
- b) Child exploitation offences
- c) Exploitation offence: general

40 That is the requirement that the offence being investigated by the requesting country is also an offence in the receiving country.

41 Written evidence from HHJ Edmunds QC

42 Q 179 (Professor Allain)

d) Child trafficking

e) Trafficking

32. The first offence in the hierarchy is slavery of children and adults, because it is so serious an offence that consent can never be an issue. It would be incompatible with the designation of slavery as an international crime that a person could in law consent to deprivation of all their rights, including the right to be released from slavery. We have included a separate sub-clause to clarify that the sale of a child or illegal adoptions can be charged as slavery⁴³ because this is an existing gap in coverage and, as a basic principle, the sale and purchase of a child for any remuneration (other than through a formal lawful adoption process) is an act of appropriation inconsistent with the right of any human. It is too serious to be charged only as child exploitation or child trafficking.

33. An offence of child exploitation (which includes labour exploitation or the use of a child to commit a criminal offence or for begging) is next in the hierarchy. Including a specific child exploitation offence makes clear:

a) that this is more serious than exploitation of an adult; and

b) that consent elements can never be in issue.

Exploitation of a child involves using the child for the purposes of the exploiter in a manner that is inconsistent with the interests of the child. A focus on the purpose of the exploitation, rather than on the intent of the exploiter, would exclude from the scope of the offence acts such as requiring a child to help occasionally with the family business for periods which did not affect schoolwork or recreation. What would be made clear in our offence is the fundamental principle that child exploitation is not limited to physical force or threats.

34. The basic offence of exploitation would apply to cases where the victim is an adult. In addition, it could be used as an alternative count for those cases where the prosecution cannot prove to the requisite criminal standard that the victim is a child. We have not included a separate offence in relation to vulnerable adults because the evidence we received made clear that victims usually become victims precisely because they are vulnerable in one way or another.⁴⁴

35. Child trafficking for the purposes of exploitation of any kind is the fourth offence. It encompasses trafficking by all the acts—the recruitment, transportation, transfer, harbouring or receipt of persons—set out in the Palermo Protocol⁴⁵ and other international legislation and conventions and so avoids the unnecessary restrictions inherent in the draft Bill. Our drafting of this offence makes clear that consent or the use of any coercive means are irrelevant where the victim is a child. Again, a focus on purpose, not intent,

43 Written evidence from Professor Jean Allain

44 Q 656 (Caroline Haughey) and written evidence from the Helen Bamber Foundation

45 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereafter “Palermo Protocol”).

distinguishes between what is criminal behaviour and, for instance, a parent taking a child on holiday.

36. The basic offence of trafficking would apply in relation to adults. In addition, it could be included as an alternative offence in those cases where the age of a victim alleged to be a child cannot be established to the jury's (or magistrates') satisfaction.

37. In addition to the hierarchy of offences, a final offence of facilitating the commission of a modern slavery offence captures those who know or ought to know that a person or child is or is to be held in slavery or exploited. It also ensures compliance with Article 3 of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (the EU Directive),⁴⁶ which requires Member States to ensure that inciting, aiding and abetting or attempting to commit an offence is punishable.

38. We conclude that a series of offences that allow for indictments containing alternative counts in decreasing levels of severity of criminal behaviours, drafted with reference to agreed international definitions, would best meet the aims which we and the Government share. We recommend six offences: slavery of children and adults, child exploitation, exploitation, child trafficking, trafficking, and facilitating the commission of an offence of modern slavery.

39. Our proposed clauses would ensure that any indictment followed the pattern set out in the Act. This would create a cascade of overlapping offences, enabling the prosecution to invite the jury, and the judge to direct the jury, to approach the case by considering the more serious count first and only consider a lesser alternative count if not satisfied of the more serious one. On our model, the jury would acquit only where it concluded that the defendant is not guilty of any modern slavery offence, and not on the basis of some technicality about the nature or type of exploitation. We think that this approach also helps to identify the level of offending and enables the judge to impose a sentence which reflects the jury's conclusion as to the gravity of the offending.

Implied repeal

40. We do not consider that our proposed offences impliedly repeal existing laws against slavery, but recommend that the Home Office give due consideration to the issue of implied repeal in responding to our Report and in the drafting of any Modern Slavery Bill presented to Parliament.

⁴⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (hereafter "EU Directive").

2 Civil Prevention Orders

41. The Home Office’s evidence stated that the “nature of modern slavery is so complex that it requires bespoke orders to target effectively the behaviour of individuals and organised criminals operating in this space”.⁴⁷ The Orders in Part 2 of the draft Bill, Slavery and Trafficking Prevention Orders (STPOs) and Slavery and Trafficking Risk Orders (STROs) are, according to the Home Office, designed to allow courts “to tailor the orders to address the risks posed by the individual in order to protect the community”.⁴⁸ As our witnesses pointed out, the Orders are a copy of the orders for sexual harm contained in Part 9 of the Anti-social Behaviour, Crime and Policing (ABCP) Act.⁴⁹ We note that Part 9 of the ABCP Act was introduced by a late amendment at Report stage in the House of Commons on 14 October 2013. The lateness of these amendments meant that their provisions were not subject to scrutiny by the Joint Committee on Human Rights, who criticised the Government for preventing scrutiny of “amendments which clearly have human rights implications.”⁵⁰

42. The Minister for Modern Slavery and Organised Crime, Karen Bradley MP, suggested that the Orders in Part 2 of the draft Bill were an example of a measures that would effectively prevent modern slavery. We agree with her in principle, but disagree that this is what the Orders do in practice.

43. Prevention is a core element of the fight to eradicate modern slavery, and Article 4 of the European Convention on Human Rights places on states specific preventive obligations; however, such obligations only arise where the State knew or ought to have known of a real and immediate risk to a specified individual. In contrast, the Orders in Part 2 of the draft Bill would apply beyond cases of known, real and immediate risk, to general risks, and to unidentifiable people. In this respect, the Orders go beyond the requirements of Article 4. In addition, when executing the positive obligations under Article 4, the UK must do so in a way that takes into account the rights of defendants. We received evidence as to whether the draft Bill struck that balance correctly.⁵¹

44. We noted that the modern slavery offences are already covered by existing civil prevention orders (Serious Crime Prevention Orders, Sexual Offences Prevention Orders, Foreign Travel Orders and Risk of Sexual Harm Orders),⁵² and questioned our witnesses on their use in practice.

47 Written evidence from the Home Office on Part 2 of the draft Bill

48 Cm 8770 p7

49 Q 435 (Professor Zedner) and written evidence from the Anti-Trafficking Monitoring Group, para 4.

50 Fourth Report from the Joint Committee on Human Rights, Session 2013-14, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, HL Paper No. 56 and HC 713, para 9.

51 Written evidence from Professor Liora Lazarus

52 Written evidence from Maya Sikand

Prevention Orders on sentencing

45. Clause 11 of the draft Bill provides for Prevention Orders on sentencing. Our evidence did not raise any particular concerns regarding these Orders in principle. Liberty said that it had:

no problem in principle with imposing restrictions on liberty in the community as part of a sentence, handed down by a judge at the time when other sanctions are handed down, within the criminal justice system.⁵³

46. There are, however, three potential problems in relation to clause 11 of the draft Bill. First, a lack of specificity about the Order and the prohibitions that can be included in it. The evidence we received makes a clear contrast with terrorism prevention and investigation measures, which provide a list of specified things that can be imposed on the individual. We discuss the problems caused by a lack of specificity below in relation to the other Orders.

47. Second, Liberty also raised concerns in relation to sub-clause 11(1)(b) and (c),⁵⁴ questioning whether there should be special provision for review of Orders:

where there is potentially some element of a very serious and debilitating mental health condition that has led to the action taking place. In those contexts, it is very important to be aware of the potentially transient nature of mental health conditions, when treated properly, and the fact that an individual may no longer, in effect and practically, pose a risk after a given period of time.⁵⁵

48. Third, unlike other civil prevention orders, there is no clear provision to delay commencement of an Order until the defendant has been released from prison.⁵⁶

Prevention Orders on application and Risk Orders

49. Our evidence raised a number of concerns in relation to Prevention Orders on application and, in particular, Risk Orders. The first concerns are practical: the Magistrates' Association was very clear that despite the choice of the magistrates' court as the venue for application for these Orders, it did not anticipate magistrates seeing many of them, and felt that the types of criminal behaviour that constitute modern slavery offences were likely to be "above our pay grade".⁵⁷

50. The Magistrates' Association also highlighted a key concern which was expressed by a number of our witnesses, namely that "if there is not any evidence to lead to a prosecution,

53 Q 456 (Rachel Robinson)

54 Order can be imposed where there is (b) a finding that the defendant is no guilty of a slavery or human trafficking offence by reason of insanity, or (c) a finding that the defendant is under a disability and has done the act charged against the defendant in respect of a slavery or human trafficking offence.

55 Q 459 (Rachel Robinson)

56 For example, under section 1C(5) Crime and Disorder Act 1998 the starting point of an ASBO can be suspended until an offender has been released from a custodial sentence.

57 Q 485 (Richard Monkhouse)

is there any evidence to lead to an STRO?”⁵⁸ **It is unclear to us what types of slavery-related behaviour would fall within the scope of a Part 2 Order, but would not be a criminal offence and therefore more appropriately prosecuted as a criminal offence.**

51. A number of witnesses suggested that there was a danger that the police could choose to apply for a Prevention or Risk Order (including Interim Orders) instead of investigating with a view to prosecution.⁵⁹ However, if the police did secure an Order, and wished to investigate, we were told that the imposition on a defendant of restrictions sufficient to make the Order effective would serve to prevent the defendant engaging in the kinds of activities that would allow the police to gather further evidence. The result then would be insufficient evidence to prosecute, leaving a case to become cold and the defendant on the streets.⁶⁰

52. Our evidence raised legal concerns as well, primarily over the lack of legal certainty, which is a well-established common law legal principle:

The acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it. Where those consequences are regulated by a statute the source of that knowledge is what the statute says.⁶¹

As Professor Lazarus said, the effect of this principle is that any rules interfering with these Convention rights must be sufficiently certain and accessible to allow people to understand what is expected of them and when an interference with their daily lives will be justified. **Given the potential for restrictions of everyday behaviours or rights to result from the imposition of the Prevention and Risk Orders, there is a high threshold requirement of legal certainty: first over the threshold requirements for the imposition of an Order; and second, clarity as to the contents of the Order and the effects of such an Order being imposed upon an individual. But this is also a practical issue for magistrates, who will be required to assess whether an Order is *necessary* but with no guidance on the risk factors they should consider to make the imposition of an Order proportionate, or on the possible restrictions they could impose which would be proportionate to the actual risk presented by the defendant in front of them. This should be rectified.**

53. The Home Office’s response to our evidence, and in particular, that of Professor Lazarus, is that the requirement that the Order be “*necessary*”, ensures that any interference with a defendant’s rights will be in accordance with the law, and in addition the Court is itself subject to a duty under section 6 of the Human Rights Act 1998 to ensure that it acts compatibly with the European Convention on Human Rights. A barrister, Maya Sikand, from whom the Committee commissioned research, disagreed with this analysis.⁶² She

58 Q 477 (Richard Monkhouse)

59 Q 456 (Rachel Robinson)

60 QQ 445-448 (Professor Zedner)

61 *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, HL, at 638 per Lord Diplock.

62 Written evidence from Maya Sikand

found that the Home Office was incorrect to rely upon Courts complying with section 6 and that the Home Office had mistakenly combined two issues and missed the point about what legal certainty requires, namely that if common law or Convention rights are interfered with, the law that interferes with them must be sufficiently certain and accessible on its face. **We agree that the Home Office cannot simply rely upon the Court’s duties under section 6 of the Human Rights Act to rectify a lack of legal certainty on the face of the Bill.**

54. Witnesses have drawn our attention to the following major deficiencies in these Orders:

- a) that the Orders are very broad and can be imposed without a threat to a specified individual. This allows for a broader set of prohibitions to be contained in any Order than would have been required where a specified individual was at risk;⁶³
- b) the Interim Orders include no necessity threshold and can be imposed if the court considers it just to do so;⁶⁴
- c) in relation to equivalent offences under the law of a country outside the UK, the reference to “cautioned” could be very broad indeed and refer to different legal systems with differing levels of protection for those who are accused of committing crimes. A reference to a “formal” caution could mitigate this;⁶⁵
- d) that not including a temporal link within the clauses means that there is nothing to prevent the imposition of an Order based upon a previous conviction, caution, or mere behaviour which happened a long time ago;
- e) the absence of a minimum age at which the Orders are imposed, meaning they could be imposed on children.

55. Some witnesses found merit in the Orders in the draft Bill. We note that they could be beneficial in relation to exploiters who exploit more than one adult or child, including where the exploiter moves between victims. Members of the police who gave evidence to us supported the Orders, although we question whether some of the examples of potential use that they presented to us would fall within the clauses, or indeed work on a practical level, given that the Home Office has confirmed that a summons must be served on the defendant a reasonable time before the hearing.⁶⁶ We do see merit, however, in the use of Orders to prevent criminal activity by those on the periphery of gangs, in order to allow the police time to investigate the core offenders and then return to those on the periphery.

63 Written evidence from Professor Liora Lazarus

64 Written evidence from Professor Liora Lazarus

65 Q 437 (Professor Lazarus)

66 QQ 572-578 (Detective Inspector Hyland, Chief Inspector Winters and Detective Inspector Roberts) and written evidence from the Home Office, Prevention Orders

Conclusions and recommendations on Orders

56. We applaud the Home Secretary's wish to take the battle to the slave masters and traffickers. The Orders in the draft Bill are a copy of the orders for sexual harm currently contained in Part 9 of the Anti-social Behaviour, Crime and Policing Act 2014. We support the need for and likely use of the Slavery and Trafficking Prevention Order on sentencing (clause 11 of the draft Bill), but request that the Home Office amends the clause to meet the requirements of legal certainty and to specify the type of restrictions that can be imposed by the Order; and considers creating a further means of review in relation to Orders imposed under clause 11(1)(b) and (c) of the draft Bill. Clearer provision for the Orders to start to run upon release from prison is needed.

57. We recommend the following changes be made to the Slavery and Trafficking Prevention Order on application in the draft Bill:

- a) Clause 12 be amended so that the test meets the requirements of the principle of legal certainty;
- b) Clause 13(3)(d) be amended to read “formal” caution;
- c) Specify the type of restrictions that can be imposed by the Order;
- d) Specify the time limit between the commission of the offence and the application for the Order – we suggest three years;
- e) Amend the Interim Order to read: *The Court may, impose such an order where it is necessary for the purpose of protecting persons generally, or particular persons, from immediate physical or psychological harm caused by the defendant committing such an offence;*
- f) Apply a minimum age for imposition of the Orders—we suggest 16 years of age.

58. The White Paper states that Risk Orders can be imposed “only where a court is satisfied that the individual presents a sufficiently serious risk to others”. However, the test for imposition of a Risk Order under clause 21 of the draft Bill is much lower, namely that “The court ... is satisfied that the defendant has acted in a way which makes it necessary to make the order”. We have heard convincing evidence that the Risk Orders have not been sufficiently thought through. We recommend that the clauses 21 to 28 of the draft Bill be removed.

3 Victims

Background

59. Modern slavery is a heinous abuse of human rights and the UK has a moral and legal obligation to offer assistance and support. Victim protection is also fundamental to increasing the proportion of successful prosecutions for modern slavery offences. A number of respected individuals and organisations made this point very powerfully to the Modern Slavery Bill Evidence Review. Maria Grazia Giammarinaro, the Organization for Security and Co-operation in Europe’s (OSCE) Special Representative and Co-ordinator for Combating Trafficking in Human Beings, told the Review that:

In order to strengthen the criminal justice response, we need a multi-faceted range of criminal and social measures, which should include strengthening victims’ access to assistance, support and compensation”.⁶⁷

Luis CdeBaca, United States Ambassador-at-Large to Combat Trafficking in Persons, was clear on the US experience:

When we started focusing on how to effectively respond to modern slavery in the United States, we very quickly realised that prosecution alone is not enough. We can’t prosecute our way out of this crime. Prosecution is a very important part of the response, but we also need to enact systematic and structural changes to ensure that victims feel they can come forward and be made safe.⁶⁸

We also agree with Anti-slavery International that “victims that are adequately safeguarded and supported are more likely to be willing to participate in criminal proceedings and better testify in court”.⁶⁹ Yet the draft Bill does not address either the identification or protection of victims.

Case study: “Mary was born and grew up in Nigeria. After her mother’s death, Mary was forced to move to the country’s capital in order to make some money. It was there that she met Tony. He told her he could offer her a good job in England. Tony organised her plane ticket, and they both left for the UK. Hours after her arrival, Mary was taken to what appeared to be a house. It was actually a brothel. She was then forced, under threat, to have sex with men who paid money to Tony. Before Mary even realised she had been deceived, she was trapped. For many months she was locked in her room and forced to have sex with as many men as Tony dictated—often up to ten or 12 men a day—and she was never allowed to say ‘no’. After some time Mary fell pregnant. When Tony found out he was furious; he attacked Mary and tried to abort her baby by force. These attempts were not successful. One evening after this ordeal, Tony and his friends had a party at the brothel. Mary took her chance to escape and, with the men too drunk to notice, fled the property”.⁷⁰

67 Report of the Modern Slavery Bill Evidence Review, p33.

68 Report of the Modern Slavery Bill Evidence Review, p34.

69 Written evidence from Anti-Slavery International

70 Case study submitted by the William Wilberforce Trust, quoted in the Centre for Social Justice, *It Happens Here*, March 2013, p7.

Non-criminalisation of victims of modern slavery

60. Avoiding abuse of victims by the State through prosecutions which are incompatible with their status as victims is key to improving victim protection.

61. Race in Europe research found at least 142 cases between January 2011 and December 2013 of Vietnamese nationals prosecuted for cannabis cultivation where there were strong indicators of trafficking.⁷¹ This is a severe indictment of the efficacy of previous CPS guidance. As the AIRE Centre told us,⁷² and as explained by Peter Willis, by the time that the Court of Appeal heard the four appeals in *R v L*⁷³ in summer 2013:

The guidance had failed in those 4 cases. The judgment is all the more striking in that it comes several years after the Court of Appeal (in *R v O*⁷⁴) had already found – in what Laws LJ described as a "shameful set of circumstances" – that prosecutors had failed to follow guidance on this issue.⁷⁵

Case study: “In the early hours of the morning of 5 March 2012 police officers attended a house in Mansfield. They had been alerted by a number of local residents who had seen the defendant (HVN) being removed from the house by a group of men. His hands were bound. The police found him nearby, barefoot and apparently frightened. Inside the house a large quantity of cannabis was being grown, as a professional operation. The appellant was arrested. He admitted that he had been in the premises and was looking after the crop. He knew it was cannabis, but initially did not know it was illegal. He worked that out later. In the meantime the finger prints taken from the house in Derby were matched with the finger prints taken from the appellant when he was arrested. The police immediately referred HVN to the social services department of Nottinghamshire County Council. An age assessment interview was conducted. [...] The appellant had provided a date of birth which was accepted by social workers, and it was concluded that he was then just under 17 years old. They also recorded that he “described being locked in a cannabis cultivation house by gang members that recruited him in London. He was driven to Nottinghamshire – an unknown location to him at the time. He was unable to leave the property once he was locked in. [...] On 8 May 2012 at Nottingham Crown Court HVN pleaded guilty to two counts of producing a controlled drug of class B, contrary to s.4(2)(a) of the Misuse of Drugs Act 1971. On 21 May he was sentenced to 8 months detention and training concurrent on each count.”⁷⁶

62. Our evidence revealed mixed opinions on whether there should be a statutory defence of being a victim of modern slavery, with those who did not support a statutory solution, or who favoured the prosecutorial discretion status quo, raising the following arguments:

a) That the scope of the defence would be difficult to define;⁷⁷

71 RACE in Europe Partners, *Victim or Criminal? Trafficking for Forced Criminal Exploitation in Europe, UK chapter*, January 2014, p18.

72 Written evidence from the AIRE Centre

73 [2013] EWCA Crim 991; [2014] 1 All E.R. 113 (hereafter *R v L*)

74 [2008] EWCA Crim 2835 (hereafter *R v O*)

75 Written evidence from Peter Willis

76 *R v L Ibid.*

77 Q 641 (Lord Judge) and written evidence from Dr Anne Gallagher

- b) That the temporal link between the commission of the offence and the enslavement of the victim would be difficult to define and use in practice;⁷⁸
- c) That there is a potential for unintended consequences, for example, an increase in the use of victims of trafficking for the commission of serious offences;⁷⁹
- d) That the defence could be open to abuse by perpetrators of modern slavery who are inventive as to the defences they adopt and the arguments they advance in attempting to avoid or frustrate prosecution;⁸⁰
- e) That persons who are or have been trafficked can and do commit serious crimes. They may kill their exploiters. More commonly they may traffick or exploit others;⁸¹
- f) That no such statutory defence is available for drug mules, or, in relation to terrorism, for those who assist in terrorist offences through fear, threat or coercion;
- g) That the real issue is not statutory protection from prosecution, but improved identification of victims.⁸²

63. In contrast, the evidence we received in favour of a statutory defence made a moral and practical case for statutory reform, highlighting the failure of guidance (since the first guidance was issued in 2004, it has been updated 12 times, mostly to reflect changes in legislation or updates in case law), while victims continue to be prosecuted, and the importance of legislation as an educational tool to create a ripple effect of knowledge through all levels of law enforcement.

64. The arguments presented by this group of witnesses suggested problems in relying solely upon an abuse of process approach, because it has traditionally been seen as a form of judicial review of a prosecutor's decision-making process, and not as a consideration of the merits of the substantive decision. They told us that, while the Court of Appeal in *R v L* had suggested that "the court will reach its own decision on the basis of the material advanced in support of and against the continuation of the prosecution",⁸³ it is not clear whether this statement expands the grounds for applications beyond the traditional abuse of process review. This confusion has been reflected in the current CPS Guidance, which focuses first upon whether there is "clear evidence of credible common law defence of duress" and if there is not, as a second stage of whether "the public interest lies in proceeding to prosecute or not". We note that there is no mention of *R v L* in the CPS guidance until the document discusses age assessment of children.⁸⁴

78 Written evidence from Dr Anne Gallagher

79 Written evidence from Dr Anne Gallagher

80 Written evidence from Rt Hon Frank Mulholland QC, Lord Advocate for Scotland

81 Written evidence from Dr Anne Gallagher

82 Written evidence from Rt Hon Frank Mulholland QC, Lord Advocate for Scotland and Q 632 (Nick Hunt)

83 *R v L*, para 17

84 CPS Guidance on Human Trafficking, Smuggling and Slavery, February 2014.

65. Those in favour of a statutory defence also told us that the existing defence of duress was insufficiently nuanced to recognise the complexities of human trafficking.⁸⁵ It also sets a very high threshold, requiring proof that the victim was compelled to commit the crime: “that the victim has effectively lost the ability to consent to their actions or to act with free will”.⁸⁶ Few thought that a victim of modern slavery could meet that threshold and we do not think they should have to.

66. The crux of their argument was that by legislating rather than relying upon guidance, the need not to prosecute victims of modern slavery was made clear and easily found. It would also ensure that victimhood was considered earlier in the decision-making process, namely at the evidential stage of the CPS Full Code test in the Code for Crown Prosecutors, rather than in “addition to applying the Full Code Test” through a separate three-stage assessment.⁸⁷ This approach recognises that the question is not whether the victim of slavery has committed the offence, but whether they should be prosecuted and, if not, the best way to prevent prosecution.

67. We have borne in mind that the guidance provided in the case of *R v L* has only been in place since June 2013, and that the latest CPS guidance was only published in February 2014. We also bore in mind that obligations at international level are not prescriptive, and are met by the UK’s system of prosecutorial discretion and sentencing practice.⁸⁸ Nonetheless, we note that there are existing statutory defences for other crimes.⁸⁹

68. In coming to our conclusion we have considered not only the most obvious cases, one end of the spectrum, where prosecution should not have commenced, let alone proceeded to conviction (for example, the child cannabis farmers in *R v L*), but also hypothetical cases at the other extreme where, for example, a victim is forced to commit theft and in doing so inflicts serious physical injuries on or kills a member of the public.

69. We conclude that there should be a statutory defence of being a victim of modern slavery, which should:

- a) **be clear on the causative link between the slavery of the victim and the offence committed**
- b) **provide protection that is proportionate to the offence committed by the victim**
- c) **include consideration of the temporal link between the slavery and the offence, and**
- d) **make specific provision for murder, namely, that there is no full defence, but, as with the existing law on loss of self control, murder is reduced to manslaughter.**

⁸⁵ Written evidence from the AIRE Centre.

⁸⁶ CPS Guidance on Human Trafficking, Smuggling and Slavery, February 2014.

⁸⁷ *Ibid.*

⁸⁸ For example Article 26 of the Trafficking Convention, and see also, *R v L* at para 9.

⁸⁹ For example, the Immigration and Asylum Act 1999 section 31 creates a series of defences described as “Defences based on Article 31(1) of the Refugee Convention”, or the law on self defence which arises both under the common law defence of self-defence and the defences provided by section 3(1) of the Criminal Law Act 1967 (use of force in the prevention of crime or making arrest). It has been refined by the introduction and amendment of section 76 of the Criminal Justice and Immigration Act 2008 in relation to householders and use of force.

70. Our proposed defence would only be considered by the court where there is evidence (rather than mere assertion) that the accused was the victim of a Part 1 offence and the offence charged was committed as a direct and immediate result of the Part 1 offence – with the words “direct and immediate” creating a temporal and causative limitation on the circumstances in which the defence could be raised.

71. Like duress, this defence applies to every offence except murder, but it involves a more realistic evidential burden than that which applies to the defence of duress in order to protect those who really should not be prosecuted for acts committed in the throes of their slavery or in attempts to escape. Our proposed defence is proportionate because it would apply only where an ordinary person in the same circumstances as the accused might have done the same. This mirrors the wording of the existing defence of loss of self-control.⁹⁰

72. Where the offence is murder, our clause recognises the unique nature of that crime and does not provide a complete defence. Subsection (2) allows a jury to determine whether the defence should apply, and, if the jury deems it should, the effect of the defence is not acquittal but to reduce the conviction to manslaughter. This recognises the effect of mandatory life sentences and provides for judicial discretion in sentencing; a judge may still, however, impose a life sentence for the manslaughter conviction.

73. In essence we think that it enacts a test of sympathetic reasonableness, while providing a simple and clear guide to the CPS and other prosecutors as to the test they should apply in deciding whether the evidence justifies prosecution. A prosecutor would still be able to apply the interests of justice test where, for example, the defence would not apply but the circumstances of the accused were such that a merely nominal penalty is likely.

Assistance and support for victims of modern slavery

74. The National Referral Mechanism (NRM) is the means used to identify victims of human trafficking in UK and acts as the gateway to victim support services. It is also a source of data on the extent of trafficking. The NRM was introduced in 2009 to meet the UK’s obligations under the Trafficking Convention.

75. The NRM operates a three-stage system for identifying potential victims. Initially, a first responder (first responders include law enforcement bodies, local authorities and some NGOs) makes a referral to a competent authority. Second, the competent authority determines whether there are reasonable grounds to believe the person concerned is a victim of trafficking. If the competent authority finds there are reasonable grounds, the potential victim is accommodated for a reflection and recovery period of 45 days. During this period, the competent authority should make a conclusive decision on whether the person is a victim. The two competent authorities are the multi-disciplinary UK Human Trafficking Centre (UKHTC), which is part of the National Crime Agency, and UK Visas and Immigration (UKVI), which is part of the Home Office.

76. Many of the problems that we have identified in the provision of care and assistance to victims, and the issues we have considered as to how to provide that care, focus on the NRM. **Referral to the National Referral Mechanism (NRM) remains a voluntary decision for the individual victim, and we expect that there will be some victims who do not use the NRM system, simply because they do not wish to be referred. There may be other victims too who do not use the NRM but to whom it is appropriate to provide some care and assistance. It is to this end that we have included an order-making clause in the Committee Bill that gives power to 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.**

Reforming the National Referral Mechanism

77. There are longstanding concerns about the fairness and effectiveness of the NRM.⁹¹ In October 2013, the Home Office announced it would review the NRM’s governance and functioning.⁹² Six months on we have seen very little evidence of progress on this review.⁹³

78. **We are very disappointed that there has been so little progress on the review of the NRM. It has made our task more challenging.**

A statutory NRM

79. At present the NRM has no statutory basis. This has advantages: it provides for flexibility to respond to specific circumstances. We were also told that victims might perceive a statutory system as more legalistic and less empathetic than the current arrangements.⁹⁴

80. We heard, nevertheless, a variety of arguments in favour of making the NRM statutory. Anti-Slavery International told us that the current arrangements “led to arbitrariness of application and access for victims”.⁹⁵ Others pointed out that giving victims statutory rights would make claiming and enforcing those rights more straightforward.⁹⁶ Focus on Labour Exploitation (FLEX) argued that a statutory footing was necessary for reasons of transparency and accountability and that the weaknesses of the current “ad hoc structure is borne out in the experiences of victims”.⁹⁷ The AIRE Centre told us that a statutory NRM was necessary both for the UK to fulfil its international obligations and to secure the most effective victim identification process. The latter, they argued, would result in better protected victims more equipped to cooperate in prosecutions.⁹⁸ The Head of the UKHTC,

91 Written evidence from the Anti-Trafficking Monitoring Group on the National Referral Mechanism

92 Report of the Modern Slavery Bill Evidence Review, p57.

93 QQ1320-1323 (Karen Bradley MP)

94 Q 1243 (Glyn Williams)

95 Written evidence from Anti-Slavery International

96 Written evidence from Hope for Justice

97 Written evidence from Focus On Labour Exploitation (FLEX)

98 Written evidence from the AIRE Centre

Liam Vernon, suggested that legislating for the NRM could raise awareness of it among front-line agencies.⁹⁹

Case study: "Ms O was referred to the National Referral Mechanism on 27 January 2012. Whilst detained in Yarls Wood Immigration Removal Centre, the Poppy project chased the NRM for a decision repeatedly. In total Ms O spent 336 days in both prison and immigration detention without being properly identified as a trafficked person. Forty-nine of those days were after the referral had been made and three of those days were after the positive reasonable grounds decision had been issued".¹⁰⁰

81. Putting the NRM on a statutory basis would also be an opportunity to establish a clear review and appeals process.¹⁰¹ The Anti-Trafficking Monitoring Group (ATMG) detailed the present patchy and chaotic system of informal requests for decisions to be reconsidered. These requests can only come from a first responder or other support provider directly involved in the case, but some of these bodies lack the capacity, willingness or remit to challenge decisions.¹⁰² Judicial review offers a more formal route but can only be used to challenge the way in which a conclusion has been reached rather than the merits of the conclusion itself. Judicial review is also expensive and potential victims are eligible to apply for legal aid only if a competent authority has established reasonable grounds to consider them a victim of trafficking.

82. We recommend that the draft Modern Slavery Bill is amended to give statutory authority for the NRM to ensure greater consistency in its operation, decision-making and provision of victim support services. This statutory basis should also provide for a mechanism for potential victims to trigger an internal review and to appeal against decisions taken by competent authorities.

Coverage of the NRM

83. The scope of operation of the NRM is at present limited to victims of human trafficking. The recent Connors cases demonstrate that those subjected to forced labour require similar support and assistance.¹⁰³ **We recommend that the NRM should cover all victims of modern slavery as defined in Part 1 of the Committee's Bill.**

UK Visas and Immigration's competent authority status

84. UKVI came into being in April 2013, following the abolition of the UK Border Authority (UKBA) and the earlier splitting out of immigration enforcement functions to the Border Force. UKVI caseworkers take decisions in respect of potential victims from non-EEA countries identified as part of the immigration process. UKVI is also responsible

99 Q 1242 (Liam Vernon)

100 Example provided by the Poppy project within the written evidence from ILPA

101 Written evidence from Anti-Slavery International; and the AIRE Centre

102 Written evidence from the Anti-Trafficking Monitoring Group on the National Referral Mechanism

103 Written evidence from Anti-Slavery International

for taking immigration-related decisions. Several witnesses identified this dual role as a potential source of conflict of interest.¹⁰⁴

85. Statistics provided by the ATMG show that the UKHTC granted positive conclusive grounds decisions in 80 per cent of cases in 2012. UKBA (now UKVI) reached a similar conclusion in just 20 per cent of cases in the same period.¹⁰⁵ The Director General of UKVI, Sarah Rapson, told us that she thought her organisation was now granting positive conclusive grounds decisions in “about half” of cases, though she conceded that the data was “not very good”.¹⁰⁶ Commenting on the same statistic, the Minister noted the added confusion caused by the high number of pending cases at UKVI.¹⁰⁷

86. The Director of Asylum at UKVI, Glyn Williams, argued that the different nature of cases handled by UKHTC and UKVI should be considered in assessing their relative rates of granting positive conclusive grounds decisions. The EEA cases considered by UKHTC, he argued, often followed police investigations, and therefore were taken with the benefit of access to corroborating evidence. Police investigations were less common in the non-EEA cases handled by UKVI.¹⁰⁸

87. The ATMG posited that the statistical discrepancy was not solely attributable to differences in the ways the respective individuals had been referred to the NRM. It claimed that UKVI’s decision-making was characterised by a “culture of disbelief”, a “disproportionate focus on [victim] credibility” and an adversarial or dismissive approach to dealing with the professional representatives of victims. It also noted a “conflation of NRM and asylum decisions” when the processes should be entirely separate. The ATMG also told us that the treatment of children in NRM decision-making was particularly inappropriate.¹⁰⁹

88. In rebuttal, the Director-General of UKVI told us that the organisation aspired to cultural change and was able to focus on victims and vulnerable people in a way that its predecessor, UKBA, had been unable to do.¹¹⁰ UKVI’s Director of Asylum assured us that caseworkers were trained in the separate processes involved in handling trafficking and asylum cases.¹¹¹ The Minister emphasised the merits of having asylum expertise applied to trafficking cases at UKVI.¹¹²

89. Notwithstanding those points, the evidence provided by UKVI concerned us in a number of ways:

104 For example, Q 65 (Saadiya Chaudary)

105 Written evidence from the Anti-Trafficking Monitoring Group on the National Referral Mechanism

106 Q 1234 (Sarah Rapson)

107 Q 1324 (Karen Bradley MP)

108 Q1225 (Glyn Williams)

109 Written evidence from the Anti-Trafficking Monitoring Group on the National Referral Mechanism

110 Q 1227 (Sarah Rapson)

111 Q 1223 (Glyn Williams)

112 Q 1326 (Karen Bradley MP)

- a) There were repeated references to a lack of “corroboration” of victims’ stories from the police in non-EEA cases preventing UKVI making positive conclusive grounds decisions.¹¹³ As the Immigration Law Practitioners’ Association (ILPA), told us “since corroboration is not required at all, it should not be making a difference”.¹¹⁴
- b) UKVI seemed to imply that police evidence was given particular weight in conclusive grounds decision-making. The official competent authority guidance states that “due weight should also be given to reports submitted by recognised support providers and children’s services”.¹¹⁵ The ATMG told us “treating cases where no police evidence is available differentially [...] compromises the fairness of the whole NRM process”.¹¹⁶
- c) UKVI referred to the “independent verification” of the stories of potential victims of trafficking.¹¹⁷ Yet there is no requirement for such verification.
- d) Despite asserting that the NRM and asylum decision-making were separate processes, UKVI repeatedly conflated them in evidence.¹¹⁸ In response to a question about the absence of a formal appeal process in the NRM, we were referred to a statistic that “78% of trafficking claims are linked with an asylum claim, and there is appeal against an asylum decision”;¹¹⁹ such conflation of NRM and asylum considerations was underlined by UKVI providing its Director of Asylum as a witness on human trafficking issues.¹²⁰
- e) UKVI’s evidence revealed a worrying lack of understanding of the victim support services provided by NGOs as part of the NRM.¹²¹

90. Officials with responsibility for determining immigration claims should not take decisions on modern slavery victimhood. There is an inherent conflict of interest in such an arrangement. The UK Human Trafficking Centre’s (UKHTC) multi-disciplinary staffing model is far more appropriate.

91. The current NRM subjects victims of trafficking to a support and assistance lottery dependent on their nationality and the region where support is offered. We recommend that competent authority status be removed from UK Visas and Immigration (UKVI).

113 Q 1225 and Q 1274 (Glyn Williams)

114 Q 1302 (Shauna Gillan)

115 Home Office, *Guidance for the Competent Authorities*, p14.

116 Written evidence from the Anti-Trafficking Monitoring Group (further submission on the National Referral Mechanism)

117 Q 1251 (Glyn Williams)

118 Q 1243, Q 1244, Q 1247 (all Glyn Williams) and Q 1270 (Sarah Rapson)

119 Q 1243 (Glyn Williams)

120 Q 1224 (Glyn Williams)

121 Q 1277 (Glyn Williams)

Matters for the NRM review

92. The quality of victim support and assistance provided under the NRM varies greatly. We have privately heard from victims some harrowing stories of poor medical treatment, no access to legal advice and wholly unsuitable accommodation. FLEX told us that it was “at best patchy and at worst seriously inadequate”.¹²²

93. We also heard evidence that the 45 day period was insufficient for a victim properly to reflect and recover. Though the UK is more generous than the minimum of 30 days stipulated in the Trafficking Convention, the United Nations Entity for Gender Equality and the Empowerment of Women has noted several states have longer reflection periods including Chile with six months, Canada and Norway with 180 days, Germany three months, Czech Republic 60 days and Denmark a 30 to 100 day period.¹²³ The Minister assured us that questioning the duration of the reflection and recovery period would form part of the Home Office’s review of the NRM.¹²⁴

94. UKVI’s Director-General acknowledged that it was “unacceptable”,¹²⁵ but not surprising,¹²⁶ that a victim had waited 8 months for a reasonable grounds decision that was supposed to take five days. We were told that following reforms at UKVI, such decisions were now being taken within five days.¹²⁷ But the Director-General acknowledged also that subsequent conclusive grounds decisions were still not being made within 45 days and that she did not have access to statistics to tell her how long cases had been in their system.¹²⁸ A representative of ILPA told us of a client who had been waiting four months for a conclusive grounds decision.¹²⁹ The Salvation Army suggested that the quality and timeliness of NRM decisions would be improved by independent case review and audit mechanisms.¹³⁰

95. Conclusive grounds decisions in the NRM have a different standard of proof to asylum decisions. A conclusive grounds NRM decision is subject to the “balance of probabilities” while in asylum cases the standard is “a reasonable degree of likelihood” of future harm, a lower threshold. The UKVI Director of Asylum was unable to explain why different standards are used or what impact this has in practice.¹³¹

96. Witnesses were also critical of the apparently haphazard way in which decisions had been made on who was and was not a first responder: there are no written criteria and some of those, including medical professionals and prison staff, who may come into

122 Written evidence from Focus On Labour Exploitation (FLEX)

123 United Nations Entity for Gender Equality and the Empowerment of Women, <http://www.endvawnow.org/>

124 Q 1319 (Karen Bradley MP)

125 Q 1228 (Sarah Rapson)

126 Q 1254 (Sarah Rapson)

127 Q 1228 (Sarah Rapson)

128 Q 1253 (Sarah Rapson)

129 Q 1291 (Zofia Duszynska)

130 Written evidence from the Salvation Army

131 QQ1247-51 (Glyn Williams)

contact with potential victims are excluded.¹³² It was also suggested that first responders should be permitted to take reasonable grounds decisions,¹³³ and that public authorities should have a statutory duty to identify potential victims of human trafficking.¹³⁴

97. It was suggested to us that the Anti-Slavery Commissioner might be given responsibility for overseeing the NRM. René Cassin thought these powers might be extended to overturning negative decisions.¹³⁵

98. The NRM is overdue major reform. The Home Office’s review should be ambitious and have a wide remit. We recommend that the Secretary of State should, by Order, and in light of the conclusions of the review, set out: the stages of the identification process; the criteria for assessing whether organisations are suitable for carrying out those stages; the timescales by which each stage should occur; the tests to be applied, including standards of proof; provisions for an independent internal review or appeal; and the minimum standards of assistance and services which shall be provided for victims and potential victims of modern slavery in the framework.

Duty to notify

99. Clause 35 of the draft Bill places a duty on specified public authorities to notify the National Crime Agency if they have reasonable grounds to suspect that an individual may be a victim of human trafficking. This measure is designed to improve data collection without requiring potential victims to be referred to the NRM. There is no similar duty proposed regarding victims of other forms of modern slavery.

100. The White Paper accompanying the draft Bill makes clear that a notification could be made without identifying the victim if the victim wished to remain anonymous.¹³⁶ But, as Human Rights Watch pointed out, the explanatory notes¹³⁷ accompanying the Bill indicate that “the nationality of the victim, type of exploitation experienced and the location and dates it took place” would be included in notifications, thus revealing “a significant amount of data on the victim and the perpetrator”.¹³⁸ We also heard concern that notification could occur without the informed consent of adult victims.¹³⁹ This risks undermining the trust of victims in NGOs and public services.¹⁴⁰ The Impact Assessment accompanying the draft Bill implies that the “specified public authorities” for the purposes of the duty to notify would be NRM first responders, which include NGOs such as Kalayaan, the Medaille Trust

132 HC Deb, 23 January 2014, col 282W

133 QQ 915-6 (Corinne Dettmeijer-Vermeulen); recommended by the Anti-Trafficking Monitoring Group in *Wrong kind of victim?*, June 2010.

134 Written evidence from the Anti-Trafficking Monitoring Group on the National Referral Mechanism

135 Written evidence from René Cassin

136 Cm 8770, p8.

137 Explanatory Notes to the draft Modern Slavery Bill, para100.

138 Written evidence from Human Rights Watch

139 Written evidence from the Prison Reform Trust

140 Written evidence from the Anti Trafficking and Labour Exploitation Unit (ATLEU); and the Trades Union Congress (TUC)

and the Poppy Project.¹⁴¹ Victims of exploitation might avoid using victim support or public services for fear of the consequences of being reported: it would be understandable for someone wary of authorities to think of a notification to the National *Crime* Agency as ominous, and exploiters could use this fear to exert further control over their victims.¹⁴²

101. The varying descriptions of the scope and effect of clause 35 of the draft Bill in Home Office documentation suggest that it is ill thought-through. While we very much support the Government's desire to improve statistics on modern slavery, it is not clear that imposing a duty on NRM first responders to notify the National Crime Agency to potential victims of human trafficking would achieve that aim. At the same time, it risks undermining trust in, and use of, vital victim services. We recommend that the duty to notify clause is removed from the draft Bill and is reconsidered as part of the NRM review. The NRM review should also consider the merits of the Anti-Slavery Commissioner rather than the National Crime Agency receiving and collating victim notifications.

Advocates for child victims

Trafficked children

102. Trafficked children from outside the EEA have the same legal rights in the UK as those from the UK and EEA countries.¹⁴³ There are statutory duties on public bodies, including local authorities, police, youth agencies¹⁴⁴ and UKVI,¹⁴⁵ to safeguard and promote the welfare of all children. Children trafficked into the UK may be particularly vulnerable as a result of their experiences.¹⁴⁶ Add to this cultural and language barriers,¹⁴⁷ an unawareness of their rights,¹⁴⁸ a general suspicion of public authorities, or that victims may have been groomed to give a false account of themselves by their exploiters and it is not hard to understand why, despite efforts on the part of public authorities, it remains difficult to establish a connection between trafficked children and those with a duty to protect and provide for them.¹⁴⁹ Nevertheless the existing processes require trafficked children to go "from agency to agency, to meet different people, to retell their story again and again" in order to access welfare and legal assistance.¹⁵⁰ Other witnesses added that inadequate treatment of trafficked children was a consequence of existing services being improperly implemented and cautioned against recommending new measures.¹⁵¹

141 Draft Modern Slavery Bill: impact assessment, p3.

142 Written evidence from Doctors of the World UK

143 For example, those contained in the Children Act 1989 and the Children (Leaving Care) Act 2000.

144 Section 11 of the Children Act 2004.

145 Section 55 of the Borders, Citizenship and Immigration Act 2009

146 Written evidence from Cafcass

147 Written evidence from the Refugee Children's Consortium

148 *Ibid.*

149 Q 513 (Ilona Pinter)

150 Q 513 (Dan Boucher)

151 Written evidence from Love146

103. Trafficked children are “very vulnerable to being re-trafficked”.¹⁵² Dan Boucher of Christian Action Research and Education (CARE) told us that “between 2005 and 2010, 32% of rescued trafficked children were lost while in local authority care.”¹⁵³ It is hard to be certain about the reasons for this. In part it may be because the children continue to have the same vulnerabilities that made them susceptible to trafficking in the first place, or because those who originally trafficked them continue to exert influence. But we are concerned that the barriers we have identified to trafficked children securing safe welfare services and legal assistance may force some, through desperation, to turn to their former traffickers, or another adult who offers assistance with a view to exploiting them, and thus be a contributory factor to the high proportion of children re-trafficked.

Care orders and Cafcass guardians

104. A child who is the subject of an application for a Care Order under section 31 of the Children Act 1989 will have an independent guardian appointed by Cafcass and may have an Independent Reviewing Officer (IRO). While this can provide some valuable remedy for trafficked children, the remit and expertise of Cafcass guardians, restricted as it is to welfare and the family courts, is too narrow to meet the particular and cross-agency needs of trafficked children.¹⁵⁴ Equally, IROs do not provide a sufficient service.¹⁵⁵ We also noted that children aged 17, or 16 if they are married, are not eligible for section 31 care orders.¹⁵⁶

105. Local authority Care Orders and Cafcass guardians are an insufficient response to the particular needs of trafficked children.

Options for advocates

106. There was widespread agreement among our witnesses that the specific support required by a trafficked child would most appropriately be provided by an individual representative with the following characteristics:

- expertise, knowledge and training across a wide range of public services¹⁵⁷
- an ability to act as a focal point for issues regarding the child
- independence, to give unbiased advice to the child and engender trust that someone is “on their side”¹⁵⁸
- an ability to ensure that “the child’s voice is heard”,¹⁵⁹ and

152 Q 513 (Dan Boucher)

153 *Ibid.*

154 QQ 897-902

155 Q 1105 (Nadine Finch)

156 Section 31(3) of the Children Act 1989.

157 See, for example, written evidence from CARE. See also Home Office press release 008/14, *Child victims of slavery to be given personal support*; and Heaven Crawley and Ravi KS Kohli, *She Endures with Me: An evaluation of the Scottish Guardianship Service Pilot*, April 2013.

158 Written evidence from Barnardo’s; Home Office press release 008/14.

- the right to have access to information and appropriate documents from police, social services, the NHS and other agencies.

107. 'Guardian' is the most common description of this type of role and is used in the EU Directive.¹⁶⁰ We prefer the term 'advocate'. It does not carry any implication of parental responsibility for the child, and best expresses the key purposes of the role—to ensure that the child's voice is heard and that decisions are taken in the child's best interest. We considered three different models for creating an advocate scheme: a Government policy initiative, an agreement among stakeholders, and a statutory scheme.

Advocates by policy

108. The Home Office announced a trial involving 'personal advocates' in January 2014.¹⁶¹ The Minister for Modern Slavery and Organised Crime, Karen Bradley MP, told us that a personal advocate would be:

both an expert in trafficking and also someone who is completely independent of the local authority- somebody who is just there for the victim, not part of the local authority, who knows what the processes are, what the offences are, how to help the victim...it is a one-stop shop for the victim.¹⁶²

Twenty-two local authorities are expected to be involved in the trials which are planned to commence by the summer of 2014.¹⁶³

109. While our witnesses generally welcomed the Home Office's commitment to developing an advocate scheme, we heard concerns that a solely policy-based approach would not fully meet the needs of trafficked children. Barnardo's described the Home Office's announcement as a "step in the right direction" but cautioned that personal advocates would not have "legal responsibility for the child in order to make decisions in their best interest" and would not be equipped to "hold agencies to account if they fail to support child victims of trafficking". As a result, they concluded that Home Office-appointed personal advocates would "not address the most significant issues these children face".¹⁶⁴

Advocates by agreement among stakeholders

110. The Scottish Guardianship Scheme, which was extended by three years in February 2013 following a 30 month pilot, is underpinned not by legislation but by a protocol agreed

159 Q 892 (Philip Ishola); the Refugee Council and Children's Society, *Still at Risk, A review of support for trafficked children*, September 2013 Home Office press release 008/14.

160 EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, articles 14 and 16.

161 Home Office press release 008/14.

162 Q 1348 (Karen Bradley MP)

163 *Ibid.*

164 Written evidence from Barnardo's

between stakeholders. The Scheme's Service Manager, Catriona MacSween, described guardians as:

assertive, committed watchdogs—we make sure that we defend the rights of the child, that decisions are taken in their best interests and that young people's wishes and views are heard and involved in all the decisions that are made about them.¹⁶⁵

We heard evidence of the success of the Scheme,¹⁶⁶ including that “less than 10%” of children involved had gone missing.¹⁶⁷

111. We were told that there were some initial difficulties both in assuring other professionals over the functions and motives of the guardians and in ensuring that guardians were included in discussions about social services and immigration issues.¹⁶⁸ We were also cautioned that the Scottish model would not necessarily translate well to England, as in Scotland both trafficked children and expertise in dealing with them are heavily concentrated in Glasgow, where partnership working is particularly well established,¹⁶⁹ whereas the pattern of offending in England arises in both urban and rural areas, and is the responsibility of many different police forces and local agencies.

Advocates in legislation

112. The majority of the children charities we heard from supported a statutory advocacy scheme. Legislation, they argued, would grant advocates legally enforceable powers to “take any action that is in the best interests of the child”,¹⁷⁰ even when it went against the child's expressed desires. The Immigration Law Practitioners' Association (ILPA) told us that child victims may, often as a result of grooming by traffickers, give instructions to their lawyers that are against their own best interests which the lawyer is then required to follow. An advocate with the appropriate legal powers would be able to give instructions to a lawyer on the child's behalf even where the child's expressed wishes are against his or her best interests.¹⁷¹

113. The power to represent a child would provide advocates with a legal basis to hold agencies accountable both through complaints mechanisms and, ultimately, through legal action. This would make advocates better equipped to compel action and ensure decisions are made both accurately and in a timely fashion.¹⁷²

114. We recommend that in the Modern Slavery Bill the Government provides for the introduction of advocates for all trafficked children. Their extreme vulnerability

165 Q 535 (Catriona MacSween)

166 Q 892 (Philip Ishola)

167 Q 537 (Catriona MacSween)

168 Q 538 (Graham O'Neill)

169 *Ibid.*

170 Written evidence from UNICEF UK

171 Written evidence from the Immigration Law Practitioners' Association

172 Q 883 (Chloe Setter)

justifies bespoke support. Such a scheme would also further support the Bill's primary objectives by protecting children from those who would exploit them and by giving those who have been victims the support and confidence required to give evidence against their abusers in court. The introduction of advocates should not prevent local authorities taking trafficked children into care where appropriate.

115. We welcome the Home Office announcement of pilot schemes for personal advocates for trafficked children. It is not, however, a substitute for a statutory advocate scheme. The nature of the exploitation suffered by children, together with their youth and isolation, means they are frequently unable to make decisions in their own best interests. Co-ordinated and timely action on the part of public agencies is more likely to occur if those agencies know they will be held to account and that the advocate has a right to access information and appropriate documents. Both of these functions require an advocacy scheme underpinned by statute providing a legal basis for the advocate to represent the child.

When should an advocate be appointed and when should the appointment cease?

116. Chloe Setter of ECPAT told us that an advocate should be appointed “as soon as any relevant agency or NGO first identifies the child as a potential victim of trafficking”.¹⁷³ Dr Dan Boucher of CARE agreed, noting that “children are most at risk of being re-trafficked in the early days”.¹⁷⁴

117. CARE suggested the advocate's role should come to an end when “the child reaches the age of 18; or...a durable solution for the child has been found”.¹⁷⁵ Philip Ishola, of the Counter Human Trafficking Bureau, told us that an abrupt removal of support at 18 could be counter-productive and a transition period would be required, in line with the approach taken by social services to looked-after children.¹⁷⁶ Such a transitional approach may reduce the risk of a child being re-trafficked at the point at which they reach adulthood and child-specific support and services are withdrawn.

118. We recommend that an advocate is appointed at the point at which a child is identified as a potential trafficking victim and that the advocate continues to represent the child until a durable solution based on the best interests of the child is found, or the child reaches the age of 21, whichever is the earlier.

Cost

119. We have commented elsewhere in this report on the shortage of reliable data about trafficking and modern slavery generally. Child trafficking is no exception and thus any estimates over the number of advocates required must be treated with caution. From the

173 Q 886 (Chloe Setter)

174 Q 595 (Dan Boucher)

175 Written evidence from CARE

176 Q 895 (Philip Ishola)

information there is, however, it would not be unreasonable to assume that more than 500, but fewer than 1,000, children would require advocates at any one time.¹⁷⁷ Both Cafcass and Scottish Guardianship Scheme guardians typically work with around 25 children.¹⁷⁸ Extrapolating from the cost of the Scottish scheme, the annual cost of our proposed scheme might be somewhere between £1.5 and £3 million.¹⁷⁹

120. The Children’s Society and UNICEF UK suggested that the cost of advocates would be offset by savings realised through the better decision-making and more effective legal representation they would bring, therefore reducing the number of costly appeals. They told us, for example, that the cost of an age assessment appeal “ranges from £15,000 to £75,000 per case.” Similarly, substantial damages have been awarded to children wrongly detained as adults in detention centres.¹⁸⁰

121. In recommending the creation of an advocate scheme for trafficked children we have been mindful of the effect on the public purse. On the basis of the evidence we have received, we do not believe the cost of an advocate scheme for the small number of highly traumatised children involved would be disproportionate.

Children and presumption of age

122. Article 13 of the EU Directive requires Member States to ensure that where the age of a trafficked person is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 (Assistance and support to child victims) and 15 (Protection of child victims of trafficking in human beings in criminal investigations and proceedings). The Trafficking Convention contains a similar provision.¹⁸¹ However, the Children’s Society pointed us to a study of 17 trafficked children that suggested that the presumption of childhood was not being applied in practice:

ten of the 17 children had their ages disputed by the authorities, and some had undergone multiple age assessments before it was agreed by the authorities that they were children. Sometimes children’s ages were questioned on the basis of the false documents traffickers had provided them. While their age was disputed some children were placed in adult accommodation or detention centres, did not have access to education or an independent advocate which would otherwise be provided to a looked-after child.¹⁸²

123. The Joint Committee on Human Rights, in its report on unaccompanied migrant children, made detailed recommendations on the recording of statistics on age disputes, and the development of a clear set of statutory guidelines for age assessment, making clear

177 Q 887 (Chloe Setter)

178 Q 540 (Catriona MacSween), Q 1153 (Anthony Douglas)

179 Based on data provided in written evidence by The Children’s Society and UNICEF UK.

180 Written evidence by The Children’s Society and UNICEF UK

181 Council of Europe Convention on Action against Trafficking in Human Beings, Article 10(3).

182 Written evidence by the Children’s Society

that young people should be given the benefit of the doubt unless there are compelling grounds to discount their claim.¹⁸³ The Government's response noted existing pilot schemes on collecting age dispute statistics, and work to develop a multi-disciplinary approach to age assessment. It did not believe that statutory guidance was likely to be needed, or that the age assessment process is a matter of young people being given the benefit of the doubt.¹⁸⁴

124. Chloe Setter of Ecpat told us that local authorities face “a conflict of interest” in making age assessments in that if “they find that person to be a child, they have to support and accommodate them. If they find them to be an adult, they send them to London, and they have to be put through the asylum system”.¹⁸⁵ UNICEF UK said that the appropriate response to this issue was a statutory presumption that, where age is uncertain or disputed, but there is reason to believe the victim may be a child, the victim is presumed to be under 18.¹⁸⁶ **We recommend that a presumption of age clause be added to the draft Bill to give clear effect to the UK's international obligations.**

Special measures and protection of victims

125. Special measures, such as providing screens to shield witnesses and enabling witnesses to give evidence via a video link or in private, are designed to help vulnerable and intimidated witnesses give evidence in court to the best of their ability.¹⁸⁷ Child witnesses are eligible for special measures under section 16 of the Youth Justice and Criminal Evidence Act 1999. Adult victims of sexual or trafficking (but not all modern slavery) offences¹⁸⁸ appearing as a witness in relation to those proceedings are eligible for special measures under Section 17(4) of that Act. The CPS acknowledges that it needs to use special measures more effectively to protect victims of modern slavery.¹⁸⁹

126. Section 41 of the Youth Justice and Criminal Evidence Act 1999 restricts evidence or questions about a complainant's sexual history when the accused is charged with a sexual offence. There is no analogous provision in respect of modern slavery offences, leaving victims unprotected from questioning of their personal history when giving evidence.¹⁹⁰ We were told that victims of exploitation were often targeted because of particular vulnerabilities: “alcoholism, drug abuse, mental health problems, poverty”, information which could be used by the defence to focus unfairly on the victim's background and “obfuscate the real issues in the case”.¹⁹¹ It was also suggested to us that “the crimes a victim

183 Joint Committee on Human Rights, *Human Rights of unaccompanied migrant children and young people in the UK*, First Report of Session 2013–14, HL Paper 9 and HC 196, paras 88–89 and 103.

184 The Government Response to the First Report from the Joint Committee on Human Rights of Session 2013–14, HL Paper 9 and HC196, Cm 8778.

185 Q 23 (Chloe Setter)

186 Written evidence by UNICEF UK.

187 Crown Prosecution Service, www.cps.gov.uk

188 Defined by section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

189 Q 612 (Nick Hunt)

190 Q 673 (Caroline Haughey)

191 *Ibid.*

commits at the behest of the trafficker should only be admissible in the trafficking trial by leave of the judge”.¹⁹²

127. A further possibility is for modern slavery offences to attract a “ticket” for Judges, whereby only specially-trained Judges would be able to sit on modern slavery trials. A similar system is in place in respect of judges hearing cases involving sexual offences.

128. **We recommend that the Government**

- a) **extends the existing special measures under section 17(4) of the Youth Justice and Criminal Evidence Act 1999 to include all modern slavery offences;**
- b) **extends the scope of section 41 of the Youth Justice and Criminal Evidence Act 1999 to include victims of modern slavery;**
- c) **considers, in collaboration with the Lord Chief Justice and the President of the Queen's Bench Division, the merits of a Modern Slavery Act "ticket" for judges, or similar arrangements.**

Legal assistance

129. Many of the victims we met had been located, identified and assisted by lawyers working pro bono for victims’ charities. The importance of legal assistance is recognised in Article 15(2) of the Trafficking Convention, which requires a signatory state to provide a “right to legal assistance and to free legal aid for victims under the conditions provided by its internal law”.¹⁹³

130. Access to and eligibility for legal aid for civil legal services is determined by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO 2012”). Only those civil legal services expressly included within Schedule 1 of LASPO 2012 may be funded by the Legal Aid Agency, unless the case meets the strict requirements of the exceptional funding scheme, which has been heavily criticised and has made only a very small number of grants of funding to date.¹⁹⁴ All civil funding is also subject to a means (of the applicant) and merits (of the case) test. At present, victims of trafficking can receive legal aid for certain specified civil legal services under paragraph 32 of Schedule 1, but in order to do so they must have received a positive NRM reasonable grounds decision.

131. If a victim has received a negative NRM decision, they may seek to redress an erroneous decision by way of judicial review, which challenges the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached. NRM judicial reviews currently attract legal aid funding but the Ministry of Justice’s proposed residence test will mean that unless a person has accrued 12 months’ lawful residence in the UK, they will be ineligible for legal aid. There is a proposed exemption from the residence test for

192 Q 174 (Riel Karmy-Jones)

193 Council of Europe Convention on Action against Trafficking in Human Beings, Article 15(2).

194 Joint Committee on Human Rights, *The implications for access to justice of the Government's proposals to reform legal aid*, Seventh Report of Session 2013–14, HL Paper 100 and HC 766, paras 132–144.

trafficked persons but this does not extend to judicial review.¹⁹⁵ As the Immigration Law Practitioners' Association ("ILPA") told us:

By definition, a trafficking case involves a person being brought to the UK for the purposes of their exploitation.¹⁹⁶ Many will have been taken to the UK through irregular means and thus will be unable to meet the requirement for 12 months lawful residence in the UK.¹⁹⁷

132. ILPA suggested that the current legal aid system leaves gaps in assistance. First, the threshold requirement, which means that only those who have received a positive NRM reasonable grounds decision receive funding, automatically excludes funding for legal assistance to help a victim increase their chance of receiving that positive NRM decision.¹⁹⁸ Without a positive NRM decision, the victim has no access to funded civil legal services. Second, the structure of legal aid contracts restricts the number of cases taken on and therefore the number of victims who can be provided with assistance.¹⁹⁹

133. We recommend the establishment of a fund for provision of legal services to victims of modern slavery consistent with our international obligations but also to meet the practical need for timely legal advice. Regardless, we recommend 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 NRM decisions. We also recommend that legal aid is available to defendants for Slavery and Trafficking Prevention Orders or Risk Orders as with other civil prevention orders.

Compensation

134. Luis CdeBaca, the United States Ambassador-at-Large to Combat Trafficking in Persons, told us that compensation payments to victims, whether as part of the exploiter's sentence, by way of civil action or through a recognised scheme or similar process, are one of the "characteristics of successful victim support legislation".²⁰⁰ All of the methods Mr CdeBaca mentioned are theoretically available in the UK, though the extent to which they are used varies.

Compensation orders in favour of victims

135. Section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 gives a court the power to require a person convicted of an offence to pay compensation for personal injury, loss, damage, funeral expenses or bereavement resulting from the offence. Since 2012, a

¹⁹⁵ The Government Response to the Seventh Report from the Joint Committee on Human Rights of Session 2013-14, HL Paper100 and HC766, Cm 8821.

¹⁹⁶ As defined in the Council of Europe Convention on Action against Trafficking in Human Beings, Article 4(a).

¹⁹⁷ Q 1288 (Shauna Gillan)

¹⁹⁸ Q 1824 (Zofia Duszyńska) and written evidence by Human Rights Watch

¹⁹⁹ Q 1294 (Shauna Gillan)

²⁰⁰ Q 694 (Luis CdeBaca)

court has been required to “consider making a compensation order in any case where” section 130 empowers it to do so.²⁰¹ The effect of section 130(12) of the 2000 Act and of section 13(5) and (6) of the Proceeds of Crime Act 2002 is that compensation is protected from erosion by fines or confiscation orders where the offender’s means are insufficient to pay both.

136. Article 15(4) of the Trafficking Convention suggests the establishment of a fund for victim compensation or other forms of assistance to victims, funded by assets confiscated from traffickers. Professor Tsachi Keren-Paz of Keele University School of Law noted that Israel had established such a fund and, while such schemes have problems, in his opinion the absence of such a fund is worse.²⁰² For Professor Keren-Paz, the point is that the proceeds of fines and confiscation should be used only to compensate victims, and not for funding law enforcement or prevention. He commented that to do otherwise means that “victims, as a group, subsidise law enforcement activities”.²⁰³ The Report of the Modern Slavery Bill Evidence Review recommended that a significant element of the proceeds of the confiscation order should be allocated to a special victims compensation fund within the Criminal Injuries Compensation Scheme.²⁰⁴ Similarly, the Immigration Law Practitioners’ Association suggested that if cash seizure and forfeiture is pursued, “the police should have in mind the ‘victim’ provisions in section 301 of the Proceeds of Crime Act 2002 that allow a person who has been deprived of their cash by unlawful means to make an application for the seized money to be released to them”.²⁰⁵

137. We questioned whether all victims of the exploiter or only those who appear as witnesses at the exploiter’s trial should receive compensation from a compensation order. Luis CdeBaca explained that the United States has a mandatory restitution scheme where a sum ordered by a judge is paid to victims by the Government from confiscated assets. It is not a pre-condition that the victim has to give evidence in order to benefit. As Mr CdeBaca explained, this can mean that in cases with a large number of victims there may not be much paid to each victim; in the case he described there were 300 victims, not all of whom testified, but “everybody got victim services; everybody got family unification; everybody got the full panoply of victim protections”.²⁰⁶

Ring-fencing

138. The Report of the Modern Slavery Bill Evidence Review recommended that some of the proceeds of confiscation orders enforced in modern slavery cases should be ring-fenced for both victim compensation and to support policing efforts in combating modern slavery.²⁰⁷ We asked Mark Sedwill, Permanent Secretary at the Home Office, for his views

201 Section 130(2A) of the Powers of Criminal Courts (Sentencing) Act 2000.

202 Written evidence from Professor Tsachi Keren-Paz

203 Penal Law 5737–1977 SH 5737; SH 5766 §377E (Isr.).

204 Report of the Modern Slavery Bill Evidence Review, p18.

205 Written evidence by the Immigration Law Practitioners' Association

206 QQ 704-705 (Luis CdeBaca)

207 Report of the Modern Slavery Bill Evidence Review, p18.

on ring-fencing for victims and for policing. He cautioned that ring-fencing for victims would not necessarily increase the funding available, in part because it tends to displace other sources of funding, even if the original intention was to supplement them. In his opinion, the “key thing is to identify the amount of funding that is required for victims and then work on whatever funding sources might be necessary for that”.²⁰⁸ In relation to policing, he said that the Home Office was reviewing how to fund modern slavery investigations and would consider ring-fencing, but cautioned that the range of training and capabilities which police forces need to build are not specific to modern slavery.²⁰⁹

Civil claims and the compensation scheme

139. Victims of trafficking can bring claims for breach of contract, protection from harassment and false imprisonment in the County Court or High Court; and for discrimination, unpaid wages, breach of working time and unfair dismissal in the Employment Tribunal. ATLEU suggest that “the ability of victims to take such claims is severely constrained by the lack of availability of legal aid”.²¹⁰

140. In addition to claims brought in the civil courts and tribunals, the UK meets its international obligations to provide compensation to victims²¹¹ through the Criminal Injuries Compensation Scheme 2012 (“the 2012 Scheme”). However, as our evidence from Hogan Lovells International LLP makes clear, the 2012 Scheme has not been drafted or adapted to meet the needs of victims of modern slavery.²¹² To be eligible, a victim of crime must have sustained “a criminal injury which is directly attributable to their being a direct victim of a crime of violence committed in a relevant place.” The existing modern slavery offences are not included within the Scheme’s definition of a “crime of violence”, in contrast to crimes such as arson, which are listed as part of the definition.²¹³ As a result, only certain victims of modern slavery receive compensation from this source, specifically those victims for whom the facts of their enslavement means that they were subject to “a threat against a person, causing fear of immediate violence in circumstances which would cause a person of reasonable firmness to be put in such fear”.²¹⁴ Hogan Lovells say that this is often very difficult to prove in the absence of detailed records to evidence specific attacks or threats. Some victims’ claims have been accepted under the 2012 Scheme, due to the control and exploitation involved in their enslavement, but not all and this has created a patchwork of coverage, contrary to the UK’s international obligations.

141. Compensation under the 2012 Scheme is calculated according to the injury sustained and the severity of that injury. For sexual and physical abuse cases the 2012 Scheme provides a specific tariff. Hogan Lovells argue that “Having a simple award for human

208 Q 743 (Mark Sedwill)

209 QQ 745-746 (Mark Sedwill)

210 Written evidence from Anti Trafficking And Labour Exploitation Unit (ATLEU)

211 Trafficking Convention Article 15(4) and EU Directive Article 17.

212 Written evidence from Hogan Lovells International LLP

213 Definition 2(1)(e) of Annex B to the 2012 Scheme.

214 *Ibid.*

trafficking would take into account the psychological damage often attributable and would take into account the loss of liberty and other injuries that victims of trafficking or slavery suffer.”²¹⁵

Conclusions on compensation

142. We recommend that paragraph 2(1) of Annex B of the Criminal Injuries Compensation Scheme 2012 is amended to make specific reference to crimes of modern slavery, and that the Scheme should be funded accordingly. Victims should be compensated not for a loss of earnings for what is illegal employment, but for the loss of opportunity to earn money freely. We also recommend that the Government considers creating a specific tariff for victims of modern slavery, and uses some of the proceeds of confiscated assets to boost the money available for victim compensation through the Criminal Injuries Compensation Scheme.

Child Rights Impact Assessment

143. Cabinet Office guidance on how the Government should consider the articles of the UN Convention on the Rights of the Child when making new policy and legislation includes the suggestion that it “would be helpful... if explanatory notes included a summary of the anticipated effects of legislation on children and on the compatibility of draft legislation with the UNCRC”. No such assessment has been made for the draft Modern Slavery Bill.²¹⁶ **We recommend that the Home Office complies with Cabinet Office guidance when publishing the Modern Slavery Bill and includes a summary in the explanatory notes of the anticipated effects of the Bill on children.**

215 Written evidence from Hogan Lovells International LLP

216 Cabinet Office, *Guide to Making Legislation*, July 2013, para 11.30 states “The Government has also made a commitment to give due consideration to the articles of the UN Convention on the Rights of the Child (UNCRC) when making new policy and legislation. In doing so, the Government has stated that it will always consider the UN Committee on the Rights of the Child’s recommendations but recognise that...[it] may at times disagree on what compliance with certain articles entails. It would be helpful...if explanatory notes included a summary of the anticipated effects of legislation on children and on the compatibility of draft legislation with the UNCRC.

4 Anti-Slavery Commissioner

144. The Home Office identified the provisions relating to the creation of an Anti-Slavery Commissioner (the Commissioner) as “one of the most important aspects” of the draft Bill; a role which could galvanise the national response to modern slavery.²¹⁷ Our witnesses, who included two EU independent national anti-trafficking rapporteurs and the holders of three domestic posts upon which the proposal for an Anti-Slavery Commissioner is based, put similar emphasis on the significance of the role.²¹⁸ Their evidence however, while generally supportive of the proposition that there be an Anti-Slavery Commissioner, has caused us to have concerns regarding the Commissioner’s status and remit as set out in the draft Bill: first, the absence of statutory protection to secure the Home Secretary’s stated intention of independence for the Commissioner; and second, the narrowness with which it is proposed the role be defined.

Independence

145. The Dutch National Rapporteur, Corinne Dettmeijer-Vermeulen, illustrated the importance of statutory independence for a UK Anti-Slavery Commissioner when she told us that the long-standing effectiveness of her own role lay in its statutory independence and the trust engendered as a consequence.²¹⁹ The Home Office told us that it intends the Anti-Slavery Commissioner to be “independent”, with “the authority and autonomy they need to carry out their functions effectively”.²²⁰ We welcome this assurance and have no doubt that the current Home Secretary would prioritise the Commissioner’s independence in practice. Many of our witnesses, however, pointed out the draft Bill is not consistent with these assurances. We are sympathetic to those who cautioned against relying on either the good intentions of the holder of the office of Home Secretary²²¹ or the personal qualities of a particular Commissioner to ensure long-term independence;²²² a clear statutory framework of independence is necessary.

Appointment of staff

146. Under clause 30(4) of the draft Bill, the Secretary of State would provide the Commissioner with such staff as the Secretary of State considers necessary. This is not a novel proposition, mirroring the arrangements put in place for the Surveillance Camera Commissioner.²²³ The Home Office clarified in written evidence that the intention is that

217 Written evidence from the Home Office, Role of the Anti-Slavery Commissioner

218 *Ibid.*

219 QQ 916-917 (Corinne Dettmeijer-Vermeulen)

220 Written evidence from the Home Office, Role of the Anti-Slavery Commissioner

221 Written evidence from Lord Morrow

222 Q 1057 (John Vine)

223 Written evidence from the Home Office, Role of the Anti-Slavery Commissioner

the Commissioner will “be supported by a small team of civil servants from within the Home Office”.²²⁴

147. The Independent Police Complaints Commission stressed the importance of freedom to appoint staff to the Commissioner’s independence:

[...] the perception of that independence, if not its reality, may be affected by its statutory closeness to the department. Unlike the Prisons Inspectorate or the IPCC (or indeed the Victims Commissioner), the Anti Slavery Commissioner [...] will be unable to engage his or her own staff, or be located outside the department. He or she will therefore be relying on negotiating the right number and expertise of departmental civil servants, whose careers and ultimate accountability lie within the department. In my view, this is unfortunate, as it does not provide the Commissioner with any visible separation from the department.

Other comparable domestic and international Commissioners have the freedom to appoint their own staff.²²⁵ The Independent Reviewer of Terrorism Legislation, David Anderson QC, told us that he had appointed a specialist adviser and, given his role, it was “essential that [he] should make that decision”. He added that if the Commissioner was to be a simple “adjunct to the law enforcement process”, such freedom might not be required.²²⁶ The Independent Chief Inspector of Borders and Immigration, John Vine, told us that his staff were largely civil servants from across the civil service but that he was “able to advertise for staff in newspapers in order to get a good mix of skills”.²²⁷ We note that, under the UK Borders Act 2007, section 49, “the Chief Inspector may appoint staff”.²²⁸

Reports and plans

148. The draft Bill provides for the Commissioner to make three distinct types of reports:

- on “permitted matters” (under clause 31)
- annual plans (under Clause 32), and
- annual reports (also under Clause 32).

149. Clause 31(3) of the draft Bill defines a permitted matter as one which either the Secretary of State has “authorised the Commissioner to report on”, or one proposed in “the current annual plan, approved by the Secretary of State”. Regardless of the flexibility the Home Secretary may grant in practice, the terms of the draft Bill in this subsection give the Home Secretary the power to exercise operational control over the choice of topic of the Commissioner’s reports and to prevent the Commissioner responding quickly to an urgent or topical issue. The Independent Reviewer of Terrorism Legislation, David Anderson QC,

224 *Ibid.*

225 Q39 (Dr Maggie Atkinson), Q918 and Q924 (Corinne Dettmeijer-Vermeulen), Q 1040 (Eva Biaudet), Q1061 (John Vine), Q1062 (David Anderson QC)

226 Q1062 (David Anderson QC)

227 Q 1061 (John Vine)

228 UK Borders Act 2007 s.49

pointed out that he had the right to produce reports on his own initiative,²²⁹ while the Independent Chief Inspector of Borders and Immigration felt “totally free” to choose the topics of his reports as he was “appointed to bring [his] experience and judgment to bear on what [he] should look at”.²³⁰ We believe that the Anti-Slavery Commissioner should be able to exercise the same degree of discretion and judgement.

150. Clause 32 of the draft Bill requires the Commissioner to submit an annual plan setting out objectives, priorities and proposed activities for the year which would be subject to approval by the Secretary of State. This arrangement was criticised by the United States Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, Luis CdeBaca:

One of the things that struck me about the Anti-Slavery Commissioner was the idea that that person would have to be basically negotiating the terms of their mandate with the Secretary of State every year. With regard to ... my mandate, it works for the reporting and the co-ordinating that I do across the United States because I do not have to renegotiate it with anybody. If, in the United States, a new Secretary of State or a new Attorney-General comes in...we don't have to go and convince them that they need to listen to some guy in the State Department, because the statute says that it needs to be done. It was something that just jumped out at me. It seemed like it was going to be a stumbling block—or a potential stumbling block.²³¹

151. The draft Bill gives the Secretary of State powers to remove (or in the case of reports on permitted matters direct the Commissioner to omit) material from reports where the Secretary of State thinks it is “undesirable for reasons of national security, might jeopardise an individual’s safety or might prejudice the investigation or prosecution of an offence”.²³² Such wide-ranging powers to enforce redaction seem unnecessary to us and are out of step with international comparators. Both the Dutch and Finnish national rapporteurs publish reports unredacted.²³³ The Australian Independent National Security Legislation Monitor is trusted to decide whether there is information in his reports that might prejudice national security or endanger a person’s safety.²³⁴

152. The Home Office suggested that the redaction provisions in the draft Bill broadly mirror those applicable to the Independent Reviewer of Terrorism, in terms of prejudicing criminal proceedings, and the Independent Chief Inspector of Borders and Immigration regarding the safety of individuals and national security.²³⁵ Yet the Independent Reviewer of Terrorism himself told us that the use of the term “undesirable” in the draft Bill seems

229 Q 1063 (David Anderson QC)

230 Q 1063 (John Vine)

231 Q 706 (Luis CdeBaca)

232 Clauses and 31(5) and 32(7)

233 Q 921, Q 1040

234 Australia Independent National Security Legislation Monitor Act 2010 c.29.

235 Written evidence from the Home Office, Role of the Anti-Slavery Commissioner

“to give the Home Secretary a very broad discretion” to redact material on grounds of national security and suggested “necessary” might be more appropriate.²³⁶ We concur.

153. The draft Bill states that the Secretary of State should lay the Commissioner’s annual reports before Parliament.²³⁷ The Independent Chief Inspector of Borders and Immigration, to whom a similar arrangement applies, told that it did not impinge on his independence.²³⁸ The Independent Reviewer of Terrorism noted that formally his reports are laid before Parliament by the Secretary of State on receipt but that in practice this had meant “a struggle” of up to three weeks and left open the potential for the provision of information to Parliament and publication to be delayed for news management purposes.²³⁹ The draft Bill gives no indication of timescales for laying the Commissioner’s reports before Parliament.

Conclusions and recommendations on independence

154. **We welcome the Government’s proposal to create an independent Anti-Slavery Commissioner. But we note that the statutory safeguards intended to ensure independence for the Commissioner fall short of those applicable to comparable roles, such as the Independent Reviewer of Terrorism and the Independent Chief Inspector of Borders and Immigration. The draft Bill does not offer sufficient protection for the Commissioner’s independence in the long term. Failure to do will undermine the Commissioner’s credibility and capacity to establish relationships based on trust with NGOs and other stakeholder groups whose role in combating modern slavery is well-recognised.**

155. **We do not consider the Surveillance Camera Commissioner an appropriate model for providing staff and recommend that the Commissioner be permitted to appoint his or her own staff on the same terms as the Independent Chief Inspector of Borders and Immigration. We further recommend that the Commissioner be given powers to publish both annual and ad hoc reports on his or her own initiative and without the requirement to secure the approval of the Home Secretary; and to prepare a business plan covering more than a single year. The Commissioner’s reports should be redacted on national security grounds only when necessary and should be laid before Parliament within four weeks of receipt. Our Bill sets out how these conditions should be achieved in legislation.**

Functions

156. The Minister for Modern Slavery, Karen Bradley MP, explained that the Commissioner was intended to be “the person who puts the rocket up the law enforcement agencies”²⁴⁰ and indeed the functions of the Commissioner, as set out in Clause 31(1) of the

236 Q 1067 (David Anderson QC)

237 Clause 32(6)

238 Q 1070 (John Vine)

239 Q 1070 (David Anderson QC)

240 Q 1340 (Karen Bradley MP)

draft Bill, encapsulate this ambition. Police representatives agreed that the national co-ordination and promotion of best practice which the Commissioner could bring to this aspect of his work would improve the fight against modern slavery.²⁴¹

157. We are disappointed however that the functions envisaged for the Commissioner in the draft Bill are restricted to law enforcement. As the ATMG told us, the role as drafted is “significantly weaker than equivalent mechanisms elsewhere in Europe”.²⁴² Its narrow remit contrasts, for example, with that of the successful Dutch national rapporteur, who described “a very broad mandate”, facilitating innovative and creative action.²⁴³

Responsibility for victims

158. Several of our witnesses called for the Commissioner’s role to go beyond simply encouraging the prosecution of specific offences and for it expressly to be extended to representation of, and advocacy for, victims of modern slavery. The Modern Slavery Bill Evidence Review recommended the Commissioner should “represent and give a voice to the concerns and best interests of victims and survivors of modern slavery”.²⁴⁴ The United Nations High Commissioner for Refugees (UNHCR) concurred, arguing that such an extension “would be an important step in the fight against trafficking”.²⁴⁵

159. The Home Office told us that a focused Commissioner role was “crucial” to improving law enforcement and that this would be “the most effective way to prevent people from becoming victims in the first place”.²⁴⁶ Yet our other witnesses emphasised that victim support was fundamental to achieving more prosecutions and should therefore be a specific function of the Commissioner. Luis CdeBaca emphasised the indivisibility of the three Ps of protection, prosecution and prevention. We agree with the Dutch rapporteur that “protecting victims and prosecuting criminals are two sides of the same coin”.

160. We recommend that the Anti-Slavery Commissioner’s functions clearly include victim protection. It is fundamental to achieving the Government’s aim of improved law enforcement.

Broader responsibilities

161. We note that the draft Bill includes no clear or specific mention of data collection. Our evidence suggests that this is a weakness: we heard of how the long-run statistical reports produced by the office of the Dutch national rapporteur had enabled authorities to make an informed assessment of the changing nature of modern slavery.²⁴⁷ The AIRE Centre

241 Q 585 (Detective Inspector Roberts)

242 Written evidence from the ATMG, Anti-Slavery Commissioner

243 Q 918 (Corinne Dettmeijer-Vermeulen)

244 Report of the Modern Slavery Bill Evidence Review, p41.

245 Written evidence from the United Nations High Commissioner for Refugees

246 Written evidence from the Home Office, Role of the Anti-Slavery Commissioner

247 Q 841 (Klara Skrivankova)

emphasised the potential importance of improved data in shaping measures to prevent modern slavery.²⁴⁸ We were also told that an independent Commissioner was more likely to be trusted than government and therefore could be a more effective collector and collator of statistics from victims and NGOs.²⁴⁹ The All-Party Parliamentary Group on Human Trafficking and Modern Day Slavery has argued that the creation of the Commissioner would be key to improving statistics on modern slavery.²⁵⁰ We agree.

162. We also heard evidence of the importance of the Commissioner promoting trust, co-operation and partnerships between law enforcement bodies, national and local government, agencies, other commissioners and NGOs. Partnership was a key feature of the Commissioner role as envisaged by the Centre for Social Justice and set out in its report, *It Happens Here*:

This position should work independently from but in partnership with government departments, encourage engagement and the sharing of information with NGOs and communicate the UK's stance on fighting modern slavery at a European and international level.²⁵¹

The Dutch and Finnish national rapporteurs and Luis CdeBaca all gave examples of the ways in which they, with their broader mandates, facilitated effective multi-agency and cross-sector collaboration.²⁵²

163. The Modern Slavery Bill Evidence Review recommended that the “The Anti-Slavery Commissioner should be mandated to work closely with international equivalents [...] and international partners to increase bi-lateral law enforcement agreements and more effective prevention measures”. The Dutch national rapporteur emphasised the importance of such international co-operation in preventing trafficking.²⁵³ The lack of a defined international role was identified by the ATMG as a weakness of the Commissioner role as set out in the draft Bill.²⁵⁴

164. Accurate and comprehensive data is an essential element in the prevention of modern slavery. It can also play an important role in prosecution by identifying trends in modern slavery crime. An independent Commissioner is ideally placed to act as a focal point for the collection, compilation, analysis and dissemination of information and statistics. The Commissioner's functions should reflect this.

165. Just as the three Ps of combating of modern slavery—prevention, protection and prosecution, are indivisible, so too should a fourth P be added to the list: partnership. The Anti-Slavery Commissioner will not be sufficiently empowered to adopt a

248 Written evidence from the Aire Centre

249 Q843 (Klara Skrivankova) and Q847 (Klara Skrivankova and Professor Bales)

250 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, p7.

251 Centre for Social Justice, *It Happens Here*, March 2013, p59.

252 Q 696 (Luis CdeBaca), Q 925 (Corinne Dettmeijer-Vermeulen), Q 1045 (Eva Biaudet)

253 Q936 (Corinne Dettmeijer-Vermeulen)

254 Written evidence from the ATMG, Anti-Slavery Commissioner

galvanising role if their remit is limited simply to filling in gaps between other pre-existing roles. It is essential that the Commissioner is empowered to work with national and international partners and to promote and facilitate domestic and international collaboration on the part of others. The Commissioner needs to have an overarching remit to enable the necessary holistic approach. Clause 33 of the Committee Bill would achieve this.

5 Supply chains

166. Modern slavery is a global problem. One sobering example, given in our very first evidence session, was that such is the use of forced labour and slavery in the manufacture of clothing that “each of us is probably wearing at least one garment that has been made with some element of forced labour”.²⁵⁵ Given the length and complexity of major companies’ supply chains, global slavery cannot be tackled by domestic measures alone. In this chapter, we consider a range of options for effective action on company supply chains. We also examine the case for reform of the Gangmasters Licensing Authority as a means of strengthening the domestic response to modern slavery.

Voluntary initiatives

167. NGOs have played an important role in raising awareness of the problem of modern slavery and especially in uncovering some of the worst examples of slavery and forced labour in companies’ supply chains. The Walk Free Foundation’s Global Slavery Index in particular has helped to provide much needed data on countries where slavery is most prevalent.

168. Major companies tend to employ ethical auditors to accredit their supply chains. However, given that “retailers have had ethical audit programmes for 20-plus years”, this has clearly not been an entirely successful approach.²⁵⁶ We heard a great deal about the steps that retailers take to validate their first tier suppliers, but the supply chains of major firms are extremely complex, involve many levels of outsourcing and subcontracting,²⁵⁷ and potentially an enormous number of companies.²⁵⁸ There is a danger that such complexity enables companies to absolve themselves of responsibility for how their goods are produced. As David Camp of the Association of Labour Providers told us, the “further you get away from the end user is where the murky stuff is”.²⁵⁹ The effect is that some international companies that had factories in the ill-fated Rana Plaza building in Bangladesh may not even have known that they did.²⁶⁰ Wilful or unthinking blindness is no excuse.

169. We heard some encouraging evidence about the progress of voluntary industry-level initiatives such as the Stronger Together network.²⁶¹ However, Luis CdeBaca warned that voluntary agreements would not be afforded high business priority:

Voluntary codes of practice in corporations typically get done by their corporate social responsibility people, whereas mandatory regulations end up being handled by

255 Q 31 (Aidan McQuade)

256 Q 224 (Catherine Pazderka)

257 Written evidence from Professor Nicola Phillips

258 Q 345 (David Arkless)

259 Q 251 (David Camp)

260 Q 1196 (Paul Lister)

261 Q 1186 (Giles Bolton)

their general counsel and even their directors because they are part of a filing requirement.²⁶²

The CORE Coalition warned us that the purely voluntary approach has not been effective at eliminating modern slavery.²⁶³

170. We recognise the important role NGOs have played in raising awareness of the problem of modern slavery in supply chains. We also welcome the voluntary actions that have taken place at company and industry level. However, we do not believe that voluntary initiatives alone will be enough to ensure that all companies take the necessary steps to eradicate slavery from their supply chains.

Legislating for supply chains

171. Companies have an economic incentive to maintain and demonstrate ethical supply chains. Matt Crossman, of Rathbone Greenbank Investments, told us that:

As an investor, I still want a company to think strategically about its supply chain and to think how it might be reducing its vulnerability to supply chain shocks and increasing the strength of its supply chain to respond to those shocks, ultimately adding to the bottom line.²⁶⁴

IKEA told us that ethical supply chains were “absolutely” more profitable,²⁶⁵ Tesco said that a good reputation “more than pays for itself” in the long run,²⁶⁶ and Marks & Spencer told us that trust was “a key part of [their] competitive advantage”.²⁶⁷ Andrew Forrest, founder and CEO of Walk Free, added that he did not think that eliminating slave labour necessarily equated to more expensive goods.²⁶⁸

172. We were repeatedly told legislation could serve to “level the playing field” and raise the standards of companies that failed to tackle modern slavery in their supply chains voluntarily. This would ensure that companies who take eradication of modern slavery from their supply chains seriously would not be undercut by unscrupulous or ignorant competitors. Marks & Spencer told us “legislation could have a valuable role to play in encouraging more companies to take these issues more seriously”.²⁶⁹ David Arkless suggested that a “little stimulus” through legislation was all that was required to generate

262 Q 699 (Luis CdeBaca)

263 Written evidence from CORE

264 Q 356 (Matt Crossman)

265 Written evidence from IKEA

266 Q 1213 (Giles Bolton)

267 Written evidence from Marks & Spencer

268 Q 728 (Andrew Forrest)

269 Written evidence from Marks & Spencer

momentum for change.²⁷⁰ Amazon, IKEA, Marks & Spencer, Primark, Sainsbury's and Tesco all told us that they could support legislation that was not unduly burdensome.²⁷¹

173. Legislation on supply chains does not have to be burdensome for reputable businesses to implement. Proportionate legislative action can ensure that firms no longer turn a blind eye to exploitation occurring in their names and can therefore stimulate significant improvement. We welcome the support of major businesses for appropriate legislative measures. We also call on the Government to take a responsible lead in eradicating modern slavery from its own supply chains.

The Bribery Act model

174. We considered legislation based on the Bribery Act 2010, which requires companies to carry out risk-based due diligence to prevent bribery in their supply chains. We were told that the Bribery Act had resulted in “a step change in compliance processes and culture”.²⁷² The advantage of adopting this approach in relation to modern slavery is that UK companies would be able to utilise an already existing structure.

175. Not all our witnesses, however, were convinced that this was an effective option. We were told by businesses that requiring companies to carry out due diligence akin to that required under the Bribery Act would be much more burdensome than some of the other options for possible legislation we have considered. David Arkless gave us some flavour of the task involved by explaining that due diligence of three levels of Manpower's supply chain involved “17.8 million potential suppliers”.²⁷³ Paul Lister of Associated British Foods told us that:

Due diligence under the Bribery Act is tricky. It is an extensive process. For an extensive supply chain, it could prove to be very burdensome, because the due diligence for the Bribery Act itself is burdensome. That extra burden could be difficult.²⁷⁴

Marks & Spencer argued that similar provisions for modern slavery would “result in an increased reporting burden without delivering any additional benefits.”²⁷⁵

California's Transparency in Supply Chains Act 2010

176. Since 2012, retailers and manufacturers with annual worldwide gross receipts of more than \$100 million and which do business in California have been subject to the provisions of the California Transparency in Supply Chains Act 2010 (TISC).²⁷⁶ They are required to

270 Q 344 (David Arkless)

271 See written evidence from Amazon, IKEA and Marks & Spencer, Q 1155 (Giles Bolton, Judith Batchelar and Paul Lister)

272 Written evidence from Chris Tattersall

273 Q 345 (David Arkless)

274 Q 1155 (Paul Lister)

275 Written evidence from Marks & Spencer

276 Civil Code Section 1714.43, also known as Senate Bill 657. The Act took effect in 2012.

disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale. The Act requires, at a minimum, disclosure of to what extent, if any, the company does each of the following:

Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.

Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.

Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.

Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.

Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

The disclosures must be posted on the company's website with a "conspicuous and easily understood link" to the information on the website's homepage.²⁷⁷

177. The United States Ambassador-at-Large told us that some companies had exceeded the reporting requirements and were keen to demonstrate progress over time. This, he argued, would not have occurred without the legislation.²⁷⁸ We were also told that TISC had helped to raise consumer, investor and business awareness of modern slavery issues.²⁷⁹

178. TISC did not, however, meet universal approval. Sainsbury's, for example, argued that "any reporting requirement should build on existing reporting rather than add an extra level of burden".²⁸⁰ Moreover, we are unsure whether incorporating similar provisions within wider legislation would have the same impact as the standalone TISC Act has had.

Companies Act reporting

179. Amending section 414C (7) of the Companies Act 2006 is a straightforward way to "build on existing reporting" as Sainsbury's suggested. Under this section, quoted companies are required to report on "social, community and human rights issues" in a strategic report every financial year, or explain why they are not doing so. To this list modern slavery should be added.

²⁷⁷ California Senate Bill No. 657, section 3.

²⁷⁸ Q 699 (Luis CdeBaca)

²⁷⁹ Q 349 (Matt Crossman)

²⁸⁰ Q 1155 (Judith Batchelar)

180. This approach was widely supported by our business witnesses. Primark told us that they would “have no issue with any extension to the Companies Act to include slavery”,²⁸¹ while Tesco said they were “very comfortable” with the idea.²⁸²

181. There are several advantages to this approach:

- it is clear which companies have to comply (quoted companies except those within the small business exemption) and it builds on an existing process;
- it would not impose an additional burden on companies which are already tackling modern slavery;
- it would force companies which have not addressed the issue of modern slavery in supply chains to do so; and
- it would allow NGOs, consumers and investors easily to identify ethical companies.

182. Many companies which are addressing the issue of slavery in their supply chains already meet the requirements of this possible amendment to the Companies Act. Others may well do so as part of the requirement to report on human rights issues, though modern slavery is likely to have a higher profile in strategic reports if it is a distinct obligation. We share the Minister’s desire not to impose additional burdens on companies who are already tackling modern slavery in their supply chains effectively.²⁸³ This measure is consistent with that objective.

183. We recommend that, as a proportionate and industry-supported initial step, quoted companies be required to include modern slavery in their annual strategic reports. This could be done in a straightforward way by amendment of section 414C of the Companies Act 2006 to include modern slavery among the issues which companies are required to address in the strategic report.

184. We recommend that the Secretary of State, by Order, specify the requirements for the modern slavery section of companies’ strategic report. These requirements must include explanations of how the company has, with respect to modern slavery:

- a) **verified its supply chains to evaluate and address risks**
- b) **audited suppliers**
- c) **certified goods and services purchased from suppliers**
- d) **maintained internal accountability standards, and**
- e) **trained staff.**

The Order should also require that this information is published online.

281 Q 1155 (Paul Lister)

282 Q 1165 (Giles Bolton)

283 Q 1346 (Karen Bradley MP)

185. We were attracted to the suggestion of designating a non-executive director with specific responsibility for the veracity of the statement on modern slavery, which would be “a useful addition” to a new reporting process.²⁸⁴ This would have some attractive qualities in making an individual director accountable.

186. The British Retail Consortium, however, told us that this proposal could “duplicate what is already in place and add a further level of bureaucracy without adding any value.”²⁸⁵ Other witnesses suggested that assigning responsibility to a particular non-executive could detract from collective responsibility. Primark told us that its Board had taken joint responsibility for eradicating modern slavery from its supply chains,²⁸⁶ while ethical trading at Tesco is considered by a committee chaired by the Group Chief Executive, reflecting “the gravity of the obligation”.²⁸⁷ David Arkless stressed that holding CEOs accountable was the route to achieving meaningful change.²⁸⁸

187. We see merit in companies making individual non-executive directors responsible for the company’s annual statement on slavery in supply chains. However, we have no desire to reverse some of the effective alternative approaches some companies have already adopted. At this stage, legislating to specify companies’ internal accountability arrangements for modern slavery eradication is not justified. Nonetheless, whether specific, individual responsibility at board level for modern slavery issues should be mandated should be considered by the Government in its statutory review of the Modern Slavery Act recommended in chapter 9 of this Report.

The Gangmasters Licensing Authority

188. The Gangmasters Licensing Authority (GLA) is the Non-Ministerial Departmental Public Body responsible for regulating the supply of workers to parts of the agricultural, horticultural and shellfish industries. In order to operate, employment agencies (described in the Act as labour providers) working in those sectors have since October 2006 been required to be licensed by the authority.

189. There was consensus from our witnesses over the excellent reputation of the GLA. Sainsbury’s said that the system “is working”,²⁸⁹ while Anti-Slavery International told us that “across Europe, the GLA has been held in high regard as an example of good practice.”²⁹⁰

190. We heard from the Authority itself that there are limitations to what the GLA can currently do.²⁹¹ Its Chief Executive, Paul Broadbent, told us that the GLA’s underpinning

284 Q 350 (Matt Crossman)

285 Written Evidence from the British Retail Consortium

286 Q 1159 (Paul Lister)

287 Q 1158 (Giles Bolton)

288 Q 359 (David Arkless)

289 Q 1169 (Judith Batchelar)

290 Written evidence from Anti-Slavery International

291 Written evidence from the Gangmasters Licensing Authority

legislation was “good up to a point”, but did not provide for the GLA to carry out what he described as “hot pursuit”: on discovery of a licensed labour provider using trafficked workers, the GLA is currently unable to do more than remove the license, and it is restrained from both pursuing intermediaries and securing the best evidence quickly.²⁹² The GLA is also unable to fine businesses which have deliberately sought to evade licensing over a period of time,²⁹³ and is not currently able to conduct joint investigations with the police or the National Crime Agency.²⁹⁴

191. Several witnesses made the case for widening the industrial remit of the GLA to other sectors where forced labour is prevalent. The Forced Labour Monitoring Group told us that this should include social care, hospitality and construction.²⁹⁵ A group of academics went further, advocating extension to encompass “all workers at or near the minimum wage.”²⁹⁶ We note that any such extensions would significantly extend the scope of the GLA’s work at a time when the Government has recently chosen to restrict further its industrial remit.²⁹⁷

192. While supportive of expanding the GLA’s scope, Dr Sam Scott, co-ordinator of the Forced Labour Monitoring Group, cautioned that “one of the great strengths of the GLA is its [food] sector-specific insight” and that its existing financial model would not equip it to take on a much-expanded role.²⁹⁸ We heard suggestions that the GLA might be better funded through contributions from retailers at the top of supply chains or by being permitted to apply—and keep the proceeds of—civil fines.²⁹⁹

193. We also heard representations that Defra may not be the most appropriate sponsoring department for the GLA.³⁰⁰ This argument would be particularly salient if the GLA’s industrial remit was extended beyond Defra’s areas of responsibility.

194. The Gangmaster Licensing Authority (GLA) has been much praised as an internationally-respected model of good practice. The weight of evidence we received suggested that expanding the GLA’s powers and industrial remit would yield positive results. At the same time, we recognise that its resources are already over-stretched, and any expansion in its role would require additional resources.

195. We are aware that the Government is currently undertaking a routine triennial review of the GLA under the Public Bodies Act 2011. We note that such reviews are “to ensure that non-departmental public bodies are still needed and are complying with principles of

292 Q 270 (Paul Broadbent)

293 Q 247 (David Camp)

294 Written evidence from the Gangmasters Licensing Authority

295 Written evidence from the Forced Labour Monitoring Group

296 Written evidence from Dr Genevieve LeBaron, Professor Jean Allain, Professor Andrew Crane and Ms Laya Behbahani

297 Gangmasters Licensing (Exclusions) Regulations 2013

298 Q 198 (Dr Sam Scott)

299 Written evidence from the British Retail Consortium

300 Q 210 (Dr Sam Scott)

good corporate governance”.³⁰¹ The extent to which changes to the GLA may contribute to tackling modern slavery warrants broader consideration than this. **We recommend that the Government conducts a review of the GLA including its:**

- a) **powers;**
- b) **industrial remit, which might include risk-based analysis of sectors;**
- c) **funding model and levels;**
- d) **sponsoring department; and**
- e) **collaboration with other agencies.**

The review should be completed in time for any necessary amendments to the Gangmasters (Licensing) Act 2004 to be made before the Modern Slavery Bill receives Royal Assent.

³⁰¹ See <https://www.gov.uk/government/collections/triennial-review-reports>

6 Asset recovery

Background

196. In the White Paper, the Government states that “serious organised criminals become involved [in modern slavery] because they believe it is lucrative. We must demonstrate that this crime does not pay”.³⁰² The draft Bill contains two provisions which would allow for forfeiture and detention of land vehicles, ships and aircraft used or intended to be used in connection with a human trafficking offence.³⁰³ In addition to these provisions, the Government proposes that a range of existing powers available to the authorities for the restraint (freezing) and confiscation of assets be used to deprive modern slavery suspects and offenders of the proceeds of crime. These include:

- The provisions of the Proceeds of Crime Act 2002 (“POCA”), which provide extensive powers to restrain or confiscate the proceeds of crime.³⁰⁴ These powers are set out in more detail below.
- The general powers of forfeiture set out in the Powers of Criminal Courts (Sentencing) Act 2000, which will continue to apply to the consolidated offences set out in the draft Bill.³⁰⁵ Section 143 of the 2000 Act gives courts the power to deprive a convicted offender of his rights to certain property and that property shall (if it has not already) be taken into the possession of the police. Relevant property is property which has been used for the purpose of committing, or facilitating the commission of, any offence or was intended to be used for that purpose; and property which was unlawfully possessed by the offender, where the offence was one of unlawful possession.

197. The most draconian powers are those contained in POCA, which sets out the statutory regime for the recovery of criminal assets; investigatory powers for law enforcement agencies; money-laundering offences; and the Suspicious Activity Reporting regime mandating persons in regulated financial services to report suspicious activity. Those powers most relevant to recovering the proceeds of modern slavery offences are the powers of restraint and confiscation set out in Part 2 of POCA.

Restraint orders

198. A restraint order under section 41 in Part 2 of POCA prevents a specified person from dealing with any realisable property held by him, subject to certain exceptions for reasonable living and legal expenses and for carrying on any trade, business, profession or occupation. “Realisable property” includes all types of property, including money, personal property (such as a car), real property (such as buildings), and even intangible property

302 Cm 8770, p 12.

303 Clauses 7 and 8 of the draft Bill.

304 Cm 8770, p 12.

305 Cm 8770, p 13.

(such as intellectual property rights). Prosecuting authorities may seek a restraint order as soon as a criminal investigation has started, even before arrest and charge. A restraint order may, therefore, be sought at any stage in a criminal investigation or proceeding in order to prevent dissipation of assets which might, eventually, become the subject of a confiscation order. It should also be noted that a restraint order, if granted, might as an ancillary matter be a useful method of disrupting criminal activity where the assets restrained were used in connection with an offence.

199. To obtain a restraint order, the prosecuting authorities must show that a criminal investigation or proceedings have commenced; and that there is reasonable cause to believe that the alleged offender has benefitted from his criminal conduct.³⁰⁶ In addition, current case law requires that the prosecuting authorities demonstrate that there is a risk of dissipation of the assets.³⁰⁷ The bar for obtaining a restraint order is set quite high, particularly if the suspect has held relevant assets for some time as this would suggest a reduced risk of dissipation. The Director of Public Prosecutions told the Public Accounts Committee (“PAC”) during its recent inquiry into confiscation orders that the current test made obtaining a restraint order extremely challenging, particularly in the early stages of an investigation where intelligence and evidence were still being gathered.³⁰⁸ Greg McGill, Head of Organised Crime at the CPS, gave us similar evidence, highlighting the difficulty of proving the risk of dissipation.³⁰⁹

Confiscation orders

200. Confiscation orders are applied post-conviction by the Crown Court. The Court is required to:

- a) decide whether the defendant has a criminal lifestyle;
- b) if the Court finds that he has a criminal lifestyle, decide whether, on the balance of probabilities, he has benefited from his *general* criminal conduct;
- c) if the Court finds that the defendant does not have a criminal lifestyle, decide whether he has benefited from his *particular* criminal conduct;
- d) if the Court decides that the defendant has benefited from his criminal conduct, decide the recoverable amount and make a confiscation order requiring him to pay that amount; and
- e) if the Court believes that any victim has started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the criminal conduct, the mandatory duty in d) becomes a discretionary power.³¹⁰

³⁰⁶ Proceeds of Crime Act 2002, section 40.

³⁰⁷ *R v B* [2008] EWCA Crim. 1374 (Moses LJ).

³⁰⁸ Oral evidence taken before the Public Accounts Committee on 15 January 2014, HC (2013-14) 942, Q 94 (Alison Saunders).

³⁰⁹ Q 765 (Greg McGill)

³¹⁰ Proceeds of Crime Act 2002, Section 6.

201. POCA therefore defines the criminal “benefit” which may be subject to a confiscation order either by reference to a specific crime or on the basis of a judgment that an offender has lived a “criminal lifestyle”. If an offence is designated as a “lifestyle” offence, any assets and expenditure over the previous six years can be included in the benefit assessment. The court must impose an order of a value based on the amount of criminal benefit unless the offender does not have the assets, in which case the value of the order is based on the amount of assets assessed to be available.³¹¹

202. The interpretation of “criminal lifestyle” is set out in section 75 of POCA. Schedule 2 lists those offences which are automatically “lifestyle” offences and these include human trafficking under the existing legislation. If an offence is not specifically listed in Schedule 2, it may still be possible for the court to find that a defendant has a criminal lifestyle if the other conditions in section 75 are satisfied. These conditions are based on the number of offences, the value of the benefit derived from the offences, and the duration of the offences. Where an offence is a “lifestyle offence”, the Court must consider a confiscation order at the sentencing stage.

203. The Secretary of State may by Order amend Schedule 2 of POCA. The Government’s White Paper suggests that the Secretary of State will seek to amend Schedule 2 of POCA to include not only the new human trafficking offence set out in clause 2 of the draft Bill (Schedule 2 currently refers to the existing human trafficking offences) but also the new forced labour offence under clause 1. This would be in line with the recommendations of the Report of the Modern Slavery Bill Evidence Review and with evidence given to us by the NCA and the CPS.³¹²

204. We recommend that the Home Secretary use her powers to introduce an Order to amend Schedule 2 of the Proceeds of Crime Act 2002 (POCA) specifically 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.

Challenges with Part 2 of POCA

205. Given that successful asset recovery in modern slavery cases will largely rely on the use of existing powers, it is important to understand how effective those powers currently are. In a recent report looking at the use of confiscation orders generally, the Public Accounts Committee (“PAC”) of the House of Commons found that the use of powers to confiscate the proceeds of crime under POCA was seriously inadequate. The PAC stated that, “Identifying and confiscating criminal assets is difficult, but the failure to put in place an effective system to act promptly, prioritise, co-ordinate and incentivise this work, demonstrates that the various bodies involved [within the criminal justice system] have

311 Since the Supreme Court case of *R v Wya* [2013] 1 All ER 889, in order to comply with Article 1 of the First Protocol to the ECHR (entitlement to peaceful enjoyment of possessions - as set out in Schedule 1 to the Human Rights Act 1998), a confiscation order must be proportionate to the statutory objective of removing the proceeds of crime and must not simply amount to another financial penalty.

312 Report of the Modern Slavery Bill Evidence Review, p 18; Q 761 (Steve Wilkinson); Q 763 (Greg McGill)

simply not done enough.”³¹³ We consider below some of the particular problems which arise in the context of modern slavery.

Improving restraint orders

206. In evidence to this Committee, Steve Barclay MP, a member of the PAC, set out the challenges which need to be met in the area of asset recovery. He stated that, in order to recover assets effectively under confiscation orders post-conviction, restraint orders freezing those assets should be sought at the earliest possible opportunity, preferably within 24 hours of arrest. This was necessary in order to prevent offenders dissipating their assets before they could be confiscated. However, Mr Barclay considered that there were a series of problems preventing early restraint and, later, confiscation of assets. He noted principally that the test which must be satisfied in order to get a restraint order is very difficult to satisfy (see above). In addition, there are cost implications for an unsuccessful application which act as a brake on CPS activity in this area given that they are operating with constrained resources.³¹⁴ He stated that both the police and the CPS have insufficient resources to tackle asset recovery effectively and that there are insufficient financial incentives for the investigating authorities to undertake detailed, lengthy and costly financial investigations which, if they deliver any results at all, will only do so some way into the future.³¹⁵

207. In its response to Mr Barclay’s evidence, the Home Office has confirmed that it is “committed to improving the early and increased use of restraint orders in order to prevent the dissipation of assets,” and that it is seeking to introduce legislation to lower the test for obtaining a restraint order from “reasonable cause to believe” to “reasonable suspicion” as soon as parliamentary time allows.³¹⁶ The CPS has endorsed this approach to modifying the test and has specifically approved the removal of the need to prove the risk of dissipation in seeking a restraint order.³¹⁷

208. It is imperative that law enforcement authorities should be able to freeze relevant assets at the earliest possible stage in an investigation, and rarely, if ever, more than 24 hours after arrest. We therefore strongly recommend that the test for obtaining a restraint order be amended to make it less stringent. We note that the Government has already committed to reducing the test from “reasonable cause to believe” to “reasonable suspicion”. We approve of this formulation. We also recommend that the existing requirement to demonstrate risk of dissipation be explicitly removed. We urge the Government to bring forward the necessary amending legislation before the end of this Parliament.

209. In deciding whether to seek early restraint of assets, investigators and prosecutors must make difficult judgements. Applying for an early restraint order, perhaps even before

313 Public Accounts Committee, 49th Report of Session 2013-14, *Confiscation Orders*, HC 942, p 2.

314 Q 753 (Steve Barclay MP); see also Q 765 (Greg McGill)

315 Q 753 (Steve Barclay MP)

316 Written Evidence from Home Office, *Effective Recovery of Criminal Assets*

317 Q 770 (Steve Wilkinson); Q 776 (Greg McGill)

arrest, may have the effect of tipping off a suspect and hampering investigations and, perhaps, putting victims in danger. Investigators and prosecutors must exercise good judgement in such circumstances in order to protect the vulnerable and progress the case effectively. Although we support a presumption in favour of early restraint, this must always be subject to considerations about any risk to victims and we believe that the Association of Chief Police Officers might properly have a role in giving guidance on this issue.

210. We recommend 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 to such activities.

Improving confiscation orders

211. The PAC made a significant finding that not enough confiscation orders were imposed and that, of those that were, not enough were enforced effectively. The problems with enforcement were particularly acute for the higher-value orders.³¹⁸ The NAO report on confiscation orders, which formed the basis for the PAC inquiry, set out key findings in relation to why collection rates are so low:

- There is no coherent overall strategy within the criminal justice system for the use of confiscation orders.
- A flawed incentive scheme and weak accountability compounds this problem.
- The absence of good performance data or benchmarks across the system weakens decision-making.
- Throughout the criminal justice system, there is insufficient awareness of proceeds of crime legislation and its potential impact.
- Enforcement, efficiency and effectiveness are hampered by outdated, slow ICT systems, data errors and poor joint working.³¹⁹

212. Mr Barclay made similar points in his evidence to us.³²⁰ The Home Office has since reaffirmed that it is coordinating the prioritisation of asset recovery and financial investigation across the criminal justice system. The multi-agency Criminal Finances Board, chaired by a Minister, oversees strategy and operational activity in this area.³²¹ The PAC also heard evidence that the National Crime Agency, Crown Prosecution Service, Serious Fraud Office and HM Courts & Tribunals Service have recently jointly identified

318 Public Accounts Committee, 49th Report of Session 2013-14, *Confiscation Orders*, HC 942, p 3.

319 National Audit Office, *Confiscation Orders*, HC 738, Session 2013-14, 17 December 2013, pp 6-7.

320 Q 753 (Steve Barclay MP)

321 Written Evidence from Home Office, *Effective Recovery of Criminal Assets*

124 high priority cases for additional enforcement activity.³²² We wish to see the Criminal Finances Board, and the Minister in particular, monitoring the use and enforcement of confiscation orders closely and making asset recovery in modern slavery cases a particular priority.

213. We recommend strongly that the Government places modern slavery at the top of its list of priority areas for the pursuit and enforcement of confiscation orders.

Enforcement

214. Sanctions for non-payment of a confiscation order are set by POCA, which provides for 8% annual interest to be payable on the order, and prison sentences of up to 10 years, depending on the order size. The order plus interest remains payable once the prison sentence is served. Although there is a lack of data to test effectiveness, these sanctions were thought by the NAO to be ineffective as a deterrent.³²³ Where orders were high-value, it was claimed that some offenders saw the prison sentence as an occupational hazard for the protection of their considerable assets.³²⁴ This point was also made to us in evidence by Mr Barclay.³²⁵ Keith Bristow, Director General of the National Crime Agency, gave the PAC an example of an offender choosing a default sentence rather than paying up on the confiscation order.³²⁶

215. The Home Office told us that its Serious and Organised Crime Strategy makes clear that the Government is “committed to legislating to substantially strengthen the default sentence for those who do not pay their confiscation orders”.³²⁷

216. We 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.

Clauses 7 and 8 of the draft Bill

217. Clauses 7 and 8 of the draft Bill provide, respectively, for the forfeiture (upon conviction on indictment) and detention (upon arrest) of land vehicles, ships and aircraft used or intended to be used in connection with a human trafficking offence under clause 2.

218. The Government is considering whether to extend these powers so that they apply to any property the court deems to have been related to the offence.³²⁸ Mark Sedwill, Permanent Secretary at the Home Office, noted that under clauses 7 and 8 ownership was

322 Public Accounts Committee, 49th Report of Session 2013-14, *Confiscation Orders*, HC 942, p 4.

323 National Audit Office, *Confiscation Orders*, HC 738, Session 2013-14, 17 December 2013, pp 6-7.

324 Oral evidence taken before the Public Accounts Committee on 15 January 2014, HC (2013-14) 942, Q 28 (Mark Sedwill).

325 Q 753 (Steve Barclay MP)

326 Oral evidence taken before the Public Accounts Committee on 15 January 2014, HC (2013-14) 942, Q 12 (Keith Bristow).

327 Written Evidence from Home Office, *Effective Recovery of Criminal Assets*

328 Draft Modern Slavery Bill, CM 8770, December 2013, p 13.

not a necessary ingredient for a successful forfeiture or detention order and that this was an important distinction from the POCA regime of confiscation and restraint. The test under clauses 7 and 8 applies to the property itself, which must be used or intended to be used in connection with a relevant offence. It follows that these powers are aimed, not at the proceeds of crime, but at the means by which a crime is committed.³²⁹

219. We support the substance of clauses 7 and 8 of the draft Bill but would like to see the powers of forfeiture and detention extended to include, not just land vehicles, ships or aircraft, but other property as well, including premises. Depriving offenders of the premises where they hold their victims would be a meaningful method of disrupting their activities. The Government's formulation in the White Paper for describing relevant property which might be forfeit or detained under an extension of clauses 7 and 8 is, "any property that the court deems to have been related to the offence," and this seems sensible.³³⁰

220. Support for the extension of these powers to other types of property has been given in evidence to the Committee. Greg McGill, Head of Organised Crime at the CPS, supported an extension of the powers under clauses 7 and 8 to premises on the basis that they tend to hold their value and meaningful amounts of money can be realised from them through sale post-conviction.³³¹ In the context of a question about seizing premises, Liam Vernon, Head of the UK Human Trafficking Centre at the National Crime Agency, pointed to the importance of the disruptive effect on criminal networks of seizing property and supported any progress in that direction.³³² Greg McGill, however, cautioned that there are human rights implications inherent in the seizure of premises and noted that, although a judge could make such an order, he would have to take into account the provisions of the Human Rights Act 1998, both as it applied to the defendant and to any dependent people as well.³³³

221. We have set out suggested clauses in the Committee's Bill as an illustration of our recommendation to extend the effect of clauses 7 and 8 of the draft Bill. The intention here has been to keep the drafting simple in order to make our intention clear. However, we recognise that these suggested clauses may need some revision to ensure that they are in conformity with rights at common law, and consistent with the European Convention on Human Rights under the Human Rights Act 1998.

222. We recommend that clauses 7 and 8 of the draft Bill be extended to cover any property that the court deems to have been related to the offence. We consider it especially important that premises used in connection with modern slavery should be removed from the control of those involved in such offences.

329 Q 738 (Mark Sedwill)

330 Draft Modern Slavery Bill, CM 8770, December 2013, p 13.

331 Q 777 (Greg McGill)

332 Q 786 (Liam Vernon)

333 Q 785 (Greg McGill)

7 Overseas domestic workers

223. The experiences of overseas domestic workers who are ill-treated by their employers are “often at the exploitative end of employment or at the cusp of domestic servitude”,³³⁴ but some of these workers are also subject to extreme exploitative and violent behaviour.³³⁵ Part 1 of the Committee Bill offers protection to those whose experiences “slip over into domestic servitude and the worst excesses”,³³⁶ but neither it nor the Government’s draft Bill addresses the less extreme forms of abuse which would in other circumstances be more properly dealt in the civil courts or through an employment tribunal.

224. The difficulties faced by this group of workers appear to have been compounded by changes made to Immigration Rules in 2012 which had the net effect of removing their right to change employer, and thus denying them one means of removal from an abusive situation.³³⁷ The Impact Assessment that accompanied the 2012 changes stated that the ability of these workers to change employer and access the UK labour market was “contrary to general Government policy on low skilled migration”. It acknowledged the “vulnerability to abuse and exploitation” of these workers, but suggested that “up to 60% of employer changes are not related to abusive employment” and that anyway there were other mechanisms in place, including the NRM, to protect those experiencing abusive employment conditions.

225. Evidence we received challenges the assumption that such mechanisms provide adequate protection: we were given examples of employers interpreting for workers at key interviews, or keeping hold of their workers’ passports during immigration control. Another witness described the effect of the 2012 changes as “absolutely disastrous” for overseas domestic workers. One of the factors we found most distressing was that those who are contacted by these workers are now often unable to help as the victims are in effect tied to their employer.³³⁸ Tying migrant domestic workers to their employer institutionalises their abuse; it is slavery and is therefore incongruous with our aim to act decisively to protect the victims of modern slavery.

226. It was suggested to us that abuse was a problem for a disproportionate number of workers who held diplomatic domestic worker visas.³³⁹ Diplomatic domestic workers are treated differently to other overseas domestic workers for immigration purposes but they have the same restriction upon them in terms of an inability to change employer.³⁴⁰ Their employer is also protected from prosecution under UK law by diplomatic immunity. ATLEU suggested that ensuring that diplomatic domestic workers were given leave to enter only if they had direct contractual arrangements with the Embassy or other

334 Q 82 (Chris Randall)

335 Q125 (Marissa Begonia)

336 Q 82 (Chris Randall)

337 Q 84 (Chris Randall)

338 Q 82 (Julia Harris); Q125 (Marissa Begonia)

339 QQ110 (Chris Randall); Q 129 (Kate Roberts)

340 Q 88 (Chris Randall)

diplomatic mission would enable those in an abusive employment condition to bring claims against their employer in the UK courts, albeit perhaps in a limited range of circumstances.

227. We recommend the Home Office reverse the changes to the Overseas Domestic Worker Visa. This would at the very least allow organisations and agencies to remove a worker from an abusive employment situation immediately. It would also enable the abuse to be reported to the police without fear that the victim would be deported as a result. This in turn would facilitate the prosecution of modern slavery offences.³⁴¹

228. Enabling diplomatic domestic workers to bring claims against their employer would be a powerful deterrent to abuse. We recommend the Government consider the merits of granting visas to diplomatic domestic workers only where they have contractual arrangements directly with the Embassy or other diplomatic mission.

341 Written evidence from Human Rights Watch

8 The Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly

229. We welcome initiatives in the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly to tackle modern slavery. The draft Bill currently extends to England and Wales only, and we are pleased that the White Paper recognises that, as modern slavery is an issue which affects the whole of the UK, the Government will work with the Devolved Administrations to secure a Bill with a broad UK-wide effect.³⁴²

230. Responding to a proposal for a Member's Bill presented by Jenny Marra MSP,³⁴³ the Scottish Government announced on 17 March that, following consultation, they will bring forward legislation in this session of the Scottish Parliament to:

consolidate and strengthen the existing criminal law against human trafficking; enhance the status of and support for the victims of trafficking; and give statutory responsibility to relevant agencies to work with the Scottish Government and implement a Scottish Anti-Trafficking Strategy.³⁴⁴

231. A Private Member's Bill on Human Trafficking, proposed by Lord Morrow MLA, is currently being considered in the Northern Ireland Assembly.³⁴⁵ Separately, the Department of Justice Northern Ireland launched a consultation on *Human Trafficking and Slavery: Strengthening Northern Ireland's Response*³⁴⁶ in January 2014. These proposals largely mirror those contained in the draft Bill.

232. The Welsh Government responded to the report of the Cross Party Working Group on Trafficking of Women and Children in Wales, *Knowing No Boundaries: Local Solutions to an International Crime*,³⁴⁷ by appointing an Anti-slavery Co-ordinator in March 2011.³⁴⁸ In addition a number of groups have been established in Wales, such as the Wales Anti-Slavery Leadership Group and local anti-slavery fora. In February 2014, a TV and poster campaign was launched in Wales to raise awareness of slavery and human trafficking. There are no separate legislative proposals for Wales as the draft Bill extends to Wales. The Welsh Government broadly supports the aims of the draft Bill, and told us that they will

³⁴² Cm 8770, p8.

³⁴³ The Human Trafficking (Scotland) Bill.

³⁴⁴ Written evidence from the Scottish Government

³⁴⁵ Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill.

³⁴⁶ Department of Justice Northern Ireland, *Human Trafficking and Slavery: Strengthening Northern Ireland's Response*, January 2014

³⁴⁷ Cross Party Working Group on Trafficking of Women and Children in Wales, *Knowing No Boundaries: Local Solutions to an International Crime*, 2010

³⁴⁸ Originally titled Anti-Human Trafficking Co-ordinator.

monitor its progress with interest, as well as maintaining regular contact with the Home Office on matters of detail.³⁴⁹

233. Aspects of modern slavery that are devolved matters in Scotland and Northern Ireland are rightly being addressed by the Devolved Administrations in ways that suit their particular circumstances.³⁵⁰ But **modern slavery straddles borders without respect for jurisdiction: the UK government must work closely with the devolved institutions as they produce their own legislative responses.**

234. We noted the enthusiasm of the devolved institutions to work together with the UK Government in tackling modern slavery. As expressed by the Scottish Government, “Given the cross border nature of the crime, it is appropriate that a partnership approach to tackling it is appropriate, within the UK and internationally.”³⁵¹ There are some areas of the draft Modern Slavery Bill which were highlighted where it may be best to adopt a UK-wide legislative approach. For example the Scottish Government indicated in that, as an issue that may require extra-territorial powers, Slavery and Trafficking Prevention Orders would be “best delivered through UK-wide legislation.”³⁵²

Anti-Slavery Commissioner

235. We heard evidence in favour of both a UK-wide Anti-Slavery Commissioner and a network of people appointed to similar roles by each administration. David Ford MLA said:

What I believe we would benefit from by having a UK-wide commissioner operating in Northern Ireland is that they would be able to examine the operation of all the agencies operating in Northern Ireland, whether devolved or agencies of UK Government bodies.³⁵³

Joyce Watson AM, chair of the National Assembly for Wales Cross Party Group on Human Trafficking, said that the relationship between the proposed Anti-Slavery Commissioner and the existing Anti-Slavery Co-ordinator for Wales “requires further discussion.”³⁵⁴ Lesley Griffiths AM, Minister for Local Government and Government Business, concurred, adding that the Commissioner’s interaction with local authorities and other stakeholders in Wales also merited consideration.³⁵⁵

236. We recommend that the proposed Anti-Slavery Commissioner should work across the whole of the UK, in co-ordination with any existing or future commissioner,

349 Written evidence from the Welsh Government

350 Written evidence from the Scottish Government, and Q996 (David Ford MLA)

351 Written evidence from the Scottish Government

352 Written evidence from the Scottish Government

353 Q 996 (David Ford MLA)

354 Written evidence from Joyce Watson AM

355 Written evidence from the Welsh Government

co-ordinator, or similar persons that any of the Devolved Administrations may wish to appoint.

National Crime Agency in Northern Ireland

237. David Ford MLA highlighted that the National Crime Agency is not fully operational in Northern Ireland. He told us:

the Assembly has not agreed that the NCA should have operational powers within Northern Ireland except in the reserved sphere. They can deal with things like revenue and customs matters, but they cannot deal with ordinary organised crime, including many trafficking offences.³⁵⁶

Mr Ford said this is “producing difficulties where the PSNI [Police Service Northern Ireland] has to devote resources to deal with issues that would be the responsibility of the NCA in any part of England and Wales or Scotland”.³⁵⁷

238. The Home Office must consider and discuss with the Northern Ireland Executive the effect in Northern Ireland of any potential increase in the use of the National Crime Agency to tackle modern slavery on a UK-wide basis, given that in Northern Ireland the Agency has operational powers only in the reserved sphere.

356 Q 991 (David Ford MLA)

357 Q 990 (David Ford MLA)

9 Review

239. For domestic legislation to remain a useful tool in the detection, investigation, prosecution and conviction of offenders, and in the protection of victims, there needs to be regular review and opportunity for revision. The criminal trade of modern slavery is constantly evolving as slave masters and traffickers devise new ways to exploit vulnerable people and attempt to circumvent national and international eradication attempts. We have included a review clause in the Committee Bill intended to ensure that the legislation remains current and its effectiveness in tackling modern slavery is regularly considered. The argument for regular review is strongest in relation to offences (Part 1 of the draft Bill), hence we have suggested detailed requirements in this area, but our review proposal is not limited to this part of the legislation. **We recommend that there should be a clause requiring regular review of the Modern Slavery Act as a statutory means of ensuring the currency and continuing effectiveness of the legislation. Our Bill makes clear that the outcomes of the first such review should be published three years after any part of the legislation has come into force and that further reviews should take place on a five-year cycle.**

Conclusions and recommendations

Offences

1. It was clear from the evidence we received that merely suggesting amendments to clauses 1 to 3 of the draft Bill was insufficient to meet our aim, or that of the Home Office, to consolidate and simplify existing offences to make enforcement administratively simpler. The clauses as currently drafted maintain existing gaps in coverage of behaviour that we consider to be criminal and, in addition, we have identified errors in drafting which could cause practical and legal problems. On this latter point we draw the attention of the Home Office and parliamentary counsel to the evidence provided by the Rt Hon. the Lord Judge and HHJ Edmunds QC for their further consideration. (Paragraph 27)
2. We conclude that the current definitions within Part 1 of the draft Bill are not as broad as the Government believes them to be, nor as broad as international definitions such as those in the Palermo Protocol, and as a result fail to capture current or potential future forms of modern slavery. We believe that maintaining a link to international definitions is important to prevent the "double criminality" requirement being used as an escape route from prosecution by slave masters and traffickers. (Paragraph 28)
3. The Home Office must recognise that Part 1 needs to be sufficiently broad, clear, and simple, to allow all parts of the law enforcement process to understand and apply it. It is far too confusing as it stands. (Paragraph 29)
4. We conclude that a series of offences that allow for indictments containing alternative counts in decreasing levels of severity of criminal behaviours, drafted with reference to agreed international definitions, would best meet the aims which we and the Government share. We recommend six offences: slavery of children and adults, child exploitation, exploitation, child trafficking, trafficking, and facilitating the commission of an offence of modern slavery. (Paragraph 38)
5. Our proposed clauses would ensure that any indictment followed the pattern set out in the Act. This would create a cascade of overlapping offences, enabling the prosecution to invite the jury, and the judge to direct the jury, to approach the case by considering the more serious count first and only consider a lesser alternative count if not satisfied of the more serious one. On our model, the jury would acquit only where it concluded that the defendant is not guilty of any modern slavery offence, and not on the basis of some technicality about the nature or type of exploitation. We think that this approach also helps to identify the level of offending and enables the judge to impose a sentence which reflects the jury's conclusion as to the gravity of the offending. (Paragraph 39)
6. We do not consider that our proposed offences impliedly repeal existing laws against slavery, but recommend that the Home Office give due consideration to the issue of

implied repeal in responding to our Report and in the drafting of any Modern Slavery Bill presented to Parliament. (Paragraph 40)

Civil Prevention Orders

7. The Minister for Modern Slavery and Organised Crime, Karen Bradley MP, suggested that the Orders in Part 2 of the draft Bill were an example of a measures that would effectively prevent modern slavery. We agree with her in principle, but disagree that this is what the Orders do in practice. (Paragraph 42)
8. It is unclear to us what types of slavery-related behaviour would fall within the scope of a Part 2 Order, but would not be a criminal offence and therefore more appropriately prosecuted as a criminal offence. (Paragraph 50)
9. Given the potential for restrictions of everyday behaviours or rights to result from the imposition of the Prevention and Risk Orders, there is a high threshold requirement of legal certainty: first over the threshold requirements for the imposition of an Order; and second, clarity as to the contents of the Order and the effects of such an Order being imposed upon an individual. But this is also a practical issue for magistrates, who will be required to assess whether an Order is necessary but with no guidance on the risk factors they should consider to make the imposition of an Order proportionate, or on the possible restrictions they could impose which would be proportionate to the actual risk presented by the defendant in front of them. This should be rectified. (Paragraph 52)
10. We agree that the Home Office cannot simply rely upon the Court's duties under section 6 of the Human Rights Act to rectify a lack of legal certainty on the face of the Bill. (Paragraph 53)
11. We applaud the Home Secretary's wish to take the battle to the slave masters and traffickers. The Orders in the draft Bill are a copy of the orders for sexual harm currently contained in Part 9 of the Anti-social Behaviour, Crime and Policing Act 2014. We support the need for and likely use of the Slavery and Trafficking Prevention Order on sentencing (clause 11 of the draft Bill), but request that the Home Office amends the clause to meet the requirements of legal certainty and to specify the type of restrictions that can be imposed by the Order; and considers creating a further means of review in relation to Orders imposed under clause 11(1)(b) and (c) of the draft Bill. Clearer provision for the Orders to start to run upon release from prison is needed. (Paragraph 56)
12. We recommend the following changes be made to the Slavery and Trafficking Prevention Order on application in the draft Bill:
 - a) Clause 12 be amended so that the test meets the requirements of the principle of legal certainty;
 - b) Clause 13(3)(d) be amended to read "formal" caution;

- c) Specify the type of restrictions that can be imposed by the Order;
 - d) Specify the time limit between the commission of the offence and the application for the Order—we suggest three years;
 - e) Amend the Interim Order to read: The Court may, impose such an order where it is necessary for the purpose of protecting persons generally, or particular persons, from immediate physical or psychological harm caused by the defendant committing such an offence;
 - f) Apply a minimum age for imposition of the Orders—we suggest 16 years of age. (Paragraph 57)
13. The White Paper states that Risk Orders can be imposed "only where a court is satisfied that the individual presents a sufficiently serious risk to others". However, the test for imposition of a Risk Order under clause 21 of the draft Bill is much lower, namely that "The court ... is satisfied that the defendant has acted in a way which makes it necessary to make the order". We have heard convincing evidence that the Risk Orders have not been sufficiently thought through. We recommend that the clauses 21 to 28 of the draft Bill be removed. (Paragraph 58)

Victims

Non-criminalisation of victims of modern slavery

14. We conclude that there should be a statutory defence of being a victim of modern slavery, which should:
- a) be clear on the causative link between the slavery of the victim and the offence committed
 - b) provide protection that is proportionate to the offence committed by the victim
 - c) include consideration of the temporal link between the slavery and the offence, and
 - d) make specific provision for murder, namely, that there is no full defence, but, as with the existing law on loss of self control, murder is reduced to manslaughter. (Paragraph 69)

Assistance and support for victims of modern slavery

15. Referral to the National Referral Mechanism (NRM) remains a voluntary decision for the individual victim, and we expect that there will be some victims who do not use the NRM system, simply because they do not wish to be referred. There may be other victims too who do not use the NRM but to whom it is appropriate to provide some care and assistance. It is to this end that we have included an order-making

clause in the Committee Bill that gives power to 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. (Paragraph 76)

Reforming the National Referral Mechanism

16. We are very disappointed that there has been so little progress on the review of the NRM. It has made our task more challenging. (Paragraph 78)
17. We recommend that the draft Modern Slavery Bill is amended to give statutory authority for the NRM to ensure greater consistency in its operation, decision-making and provision of victim support services. This statutory basis should also provide for a mechanism for potential victims to trigger an internal review and to appeal against decisions taken by competent authorities. (Paragraph 82)
18. We recommend that the NRM should cover all victims of modern slavery as defined in Part 1 of the Committee's Bill. (Paragraph 83)
19. Officials with responsibility for determining immigration claims should not take decisions on modern slavery victimhood. There is an inherent conflict of interest in such an arrangement. The UK Human Trafficking Centre's (UKHTC) multi-disciplinary staffing model is far more appropriate. (Paragraph 90)
20. The current NRM subjects victims of trafficking to a support and assistance lottery dependent on their nationality and the region where support is offered. We recommend that competent authority status be removed from UK Visa and Immigration (UKVI). (Paragraph 91)
21. The NRM is overdue major reform. The Home Office's review should be ambitious and have a wide remit. We recommend that the Secretary of State should, by Order, and in light of the conclusions of the review, set out: the stages of the identification process; the criteria for assessing whether organisations are suitable for carrying out those stages; the timescales by which each stage should occur; the tests to be applied, including standards of proof; provisions for an independent internal review or appeal; and the minimum standards of assistance and services which shall be provided for victims and potential victims of modern slavery in the framework. (Paragraph 98)

Duty to notify

22. The varying descriptions of the scope and effect of clause 35 of the draft Bill in Home Office documentation suggest that it is ill thought-through. While we very much support the Government's desire to improve statistics on modern slavery, it is not clear that imposing a duty on NRM first responders to notify the National Crime Agency to potential victims of human trafficking would achieve that aim. At the same time, it risks undermining trust in, and use of, vital victim services. We

recommend that the duty to notify clause is removed from the draft Bill and is reconsidered as part of the NRM review. The NRM review should also consider the merits of the Anti-Slavery Commissioner rather than the National Crime Agency receiving and collating victim notifications. (Paragraph 101)

Advocates for child victims

23. Local authority Care Orders and Cafcass guardians are an insufficient response to the particular needs of trafficked children. (Paragraph 105)
24. We recommend that in the Modern Slavery Bill the Government provides for the introduction of advocates for all trafficked children. Their extreme vulnerability justifies bespoke support. Such a scheme would also further support the Bill's primary objectives by protecting children from those who would exploit them and by giving those who have been victims the support and confidence required to give evidence against their abusers in court. The introduction of advocates should not prevent local authorities taking trafficked children into care where appropriate. (Paragraph 114)
25. We welcome the Home Office announcement of pilot schemes for personal advocates for trafficked children. It is not, however, a substitute for a statutory advocate scheme. The nature of the exploitation suffered by children, together with their youth and isolation, means they are frequently unable to make decisions in their own best interests. Co-ordinated and timely action on the part of public agencies is more likely to occur if those agencies know they will be held to account and that the advocate has a right to access information and appropriate documents. Both of these functions require an advocacy scheme underpinned by statute providing a legal basis for the advocate to represent the child. (Paragraph 115)
26. We recommend that an advocate is appointed at the point at which a child is identified as a potential trafficking victim and that the advocate continues to represent the child until a durable solution based on the best interests of the child is found, or the child reaches the age of 21, whichever is the earlier. (Paragraph 118)
27. In recommending the creation of an advocate scheme for trafficked children we have been mindful of the effects on the public purse. On the basis of the evidence we have received, we do not believe the cost of an advocate scheme for the small number of highly traumatised children involved would be disproportionate. (Paragraph 121)

Children and presumption of age

28. We recommend that a presumption of age clause be added to the draft Bill to give clear effect to the UK's international obligations. (Paragraph 124)

Special measures and protection of victims

29. We recommend that the Government

- a) extends the existing special measures under section 17(4) of the Youth Justice and Criminal Evidence Act 1999 to include all modern slavery offences;
- b) extends the scope of section 41 of the Youth Justice and Criminal Evidence Act 1999 to include victims of modern slavery;
- c) considers, in collaboration with the Lord Chief Justice and the President of the Queen's Bench Division, the merits of a Modern Slavery Act "ticket" for judges, or similar arrangements.

Legal assistance

30. We recommend the establishment of a fund for provision of legal services to victims of modern slavery consistent with our international obligations but also to meet the practical need for timely legal advice. Regardless, we recommend 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 NRM decisions. We also recommend that legal aid is available to defendants for Slavery and Trafficking Prevention Orders or Risk Orders as with other civil prevention orders. (Paragraph 133)

Compensation

31. We recommend that paragraph 2(1) of Annex B of the Criminal Injuries Compensation Scheme 2012 is amended to make specific reference to crimes of modern slavery, and that the Scheme should be funded accordingly. Victims should be compensated not for a loss of earnings for what is illegal employment, but for the loss of opportunity to earn money freely. We also recommend that the Government considers creating a specific tariff for victims of modern slavery, and uses some of the proceeds of confiscated assets to boost the money available for victim compensation through the Criminal Injuries Compensation Scheme. (Paragraph 142)

Child Rights Impact Assessment

32. We recommend that the Home Office complies with Cabinet Office guidance when publishing the Modern Slavery Bill and includes a summary in the explanatory notes of the anticipated effects of the Bill on children. (Paragraph 143)

Anti Slavery Commissioner

Independence

33. We welcome the Government's proposal to create an independent Anti-Slavery Commissioner. But we note that the statutory safeguards intended to ensure independence for the Commissioner fall short of those applicable to comparable roles, such as the Independent Reviewer of Terrorism and the Independent Chief

Inspector of Borders and Immigration. The draft Bill does not offer sufficient protection for the Commissioner's independence in the long term. Failure to do will undermine the Commissioner's credibility and capacity to establish relationships based on trust with NGOs and other stakeholder groups whose role in combating modern slavery is well-recognised. (Paragraph 154)

34. We do not consider the Surveillance Camera Commissioner an appropriate model for providing staff and recommend that the Commissioner be permitted to appoint his or her own staff on the same terms as the Independent Chief Inspector of Borders and Immigration. We further recommend that the Commissioner be given powers to publish both annual and ad hoc reports on his or her own initiative and without the requirement to secure the approval of the Home Secretary; and to prepare a business plan covering more than a single year. The Commissioner's reports should be redacted on national security grounds only when necessary and should be laid before Parliament within four weeks of receipt. Our Bill sets out how these conditions should be achieved in legislation. (Paragraph 155)

Functions

35. We recommend that the Anti-Slavery Commissioner's functions clearly include victim protection. It is fundamental to achieving the Government's aim of improved law enforcement. (Paragraph 160)
36. Accurate and comprehensive data is an essential element in the prevention of modern slavery. It can also play an important role in prosecution by identifying trends in modern slavery crime. An independent Commissioner is ideally placed to act as a focal point for the collection, compilation, analysis and dissemination of information and statistics. The Commissioner's functions should reflect this. (Paragraph 164)
37. Just as the three Ps of combating of modern slavery—prevention, protection and prosecution, are indivisible, so too should a fourth P be added to the list: partnership. The Anti-Slavery Commissioner will not be sufficiently empowered to adopt a galvanising role if their remit is limited simply to filling in gaps between other pre-existing roles. It is essential that the Commissioner is empowered to work with national and international partners and to promote and facilitate domestic and international collaboration on the part of others. The Commissioner needs to have an overarching remit to enable the necessary holistic approach. Clause 33 of the Committee Bill would achieve this. (Paragraph 165)

Supply Chains

Voluntary initiatives

38. We recognise the important role NGOs have played in raising awareness of the problem of modern slavery in supply chains. We also welcome the voluntary actions that have taken place at company and industry level. However, we do not believe that

voluntary initiatives alone will be enough to ensure that all companies take the necessary steps to eradicate slavery from their supply chains. (Paragraph 170)

Legislating for supply chains

39. Legislation on supply chains does not have to be burdensome for reputable businesses to implement. Proportionate legislative action can ensure that firms no longer turn a blind eye to exploitation occurring in their names and can therefore stimulate significant improvement. We welcome the support of major businesses for appropriate legislative measures. We also call on the Government to take a responsible lead in eradicating modern slavery from its own supply chains. (Paragraph 173)
40. We recommend that, as a proportionate and industry-supported initial step, quoted companies be required to include modern slavery in their annual strategic reports. This could be done in a straightforward way by amendment of section 414C of the Companies Act 2006 to include modern slavery among the issues which companies are required to address in the strategic report. (Paragraph 183)
41. We recommend that the Secretary of State, by Order, specify the requirements for the modern slavery section of companies' strategic report. These requirements must include explanations of how the company has, with respect to modern slavery:
- a) verified its supply chains to evaluate and address risks
 - b) audited suppliers
 - c) certified goods and services purchased from suppliers
 - d) maintained internal accountability standards, and
 - e) trained staff.

The Order should also require that this information is published online. (Paragraph 184)

42. We see merit in companies making individual non-executive directors responsible for the company's annual statement on slavery in supply chains. However, we have no desire to reverse some of the effective alternative approaches some companies have already adopted. At this stage, legislating to specify companies' internal accountability arrangements for modern slavery eradication is not justified. Nonetheless, whether specific, individual responsibility at board level for modern slavery issues should be mandated should be considered by the Government in its statutory review of the Modern Slavery Act recommended in chapter 9 of this Report. (Paragraph 187)

The Gangmasters Licensing Authority

43. The Gangmaster Licensing Authority (GLA) has been much praised as an internationally-respected model of good practice. The weight of evidence we received suggested that expanding the GLA's powers and industrial remit would yield positive results. At the same time, we recognise that its resources are already over-stretched, and any expansion in its role would require additional resources. (Paragraph 194)
44. We recommend that the Government conducts a review of the GLA including its:
- a) powers;
 - b) industrial remit, which might include risk-based analysis of sectors;
 - c) funding model and levels;
 - d) sponsoring department; and
 - e) collaboration with other agencies.

The review should be completed in time for any necessary amendments to the Gangmasters (Licensing) Act 2004 to be made before the Modern Slavery Bill receives Royal Assent. (Paragraph 195)

Asset Recovery

45. We recommend that the Home Secretary use her powers to introduce an Order to amend Schedule 2 of the Proceeds of Crime Act 2002 (POCA) specifically 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. (Paragraph 204)
46. It is imperative that law enforcement authorities should be able to freeze relevant assets at the earliest possible stage in an investigation, and rarely, if ever, more than 24 hours after arrest. We therefore strongly recommend that the test for obtaining a restraint order be amended to make it less stringent. We note that the Government has already committed to reducing the test from "reasonable cause to believe" to "reasonable suspicion". We approve of this formulation. We also recommend that the existing requirement to demonstrate risk of dissipation be explicitly removed. We urge the Government to bring forward the necessary amending legislation before the end of this Parliament. (Paragraph 208)
47. We recommend 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 to such activities. (Paragraph 210)

48. We recommend strongly that the Government places modern slavery at the top of its list of priority areas for the pursuit and enforcement of confiscation orders. (Paragraph 213)
49. We 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. (Paragraph 216)
50. We recommend that clauses 7 and 8 of the draft Bill be extended to cover any property that the court deems to have been related to the offence. We consider it especially important that premises used in connection with modern slavery should be removed from the control of those involved in such offences. (Paragraph 222)

Overseas domestic workers

51. We recommend the Home Office reverse the changes to the Overseas Domestic Worker Visa. This would at the very least allow organisations and agencies to remove a worker from an abusive employment situation immediately. It would also enable the abuse to be reported to the police without fear that the victim would be deported as a result. This in turn would facilitate the prosecution of modern slavery offences. (Paragraph 227)
52. Enabling diplomatic domestic workers to bring claims against their employer would be a powerful deterrent to abuse. We recommend the Government consider the merits of granting visas to diplomatic domestic workers only where they have contractual arrangements directly with the Embassy or other diplomatic mission. (Paragraph 228)

The Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly

53. Modern slavery straddles borders without respect for jurisdiction: the UK government must work closely with the devolved institutions as they produce their own legislative responses. (Paragraph 233)
54. We recommend that the proposed Anti-Slavery Commissioner should work across the whole of the UK, in co-ordination with any existing or future commissioner, co-ordinator, or similar persons that any of the Devolved Administrations may wish to appoint. (Paragraph 236)
55. The Home Office must consider and discuss with the Northern Ireland Executive the effect in Northern Ireland of any potential increase in the use of the National Crime Agency to tackle modern slavery on a UK-wide basis, given that in Northern Ireland the Agency has operational powers only in the reserved sphere. (Paragraph 238)

Review

56. We recommend that there should be a clause requiring regular review of the Modern Slavery Act as a statutory means of ensuring the currency and continuing effectiveness of the legislation. Our Bill makes clear that the outcomes of the first such review should be published three years after any part of the legislation has come into force and that further reviews should take place on a five-year cycle. (Paragraph 239)

Appendix 1: Model Indictment

Model Indictment for Modern Slavery Offences

In the Crown Court at ...

The Queen
- against -
Richard Rowe

Count 1

Statement of Offence

Slavery, contrary to section 1 of the Modern Slavery Act 2014

Particulars of Offence

Richard Rowe, between 15th July and 20th December 2014 held John Doe³⁵⁸ in slavery.

Count 2

Statement of Offence

Exploiting a child, contrary to section 2 of the Modern Slavery Act 2014

Particulars of Offence

Richard Rowe, between 15th July and 20th December 2014 exploited John Doe, then aged 16 years, by

1. sexual exploitation; and/or
2. requiring him to perform services, namely begging; and/or
3. requiring him to perform labour.

Count 3

Statement of Offence

³⁵⁸ John Doe and Richard Rowe were the fictional names used in mediaeval court pleadings to designate the parties.

Exploiting a person, contrary to section 3 of the Modern Slavery Act 2014

Particulars of Offence

Richard Rowe, between 15th July and 20th December 2014 exploited John Doe by

1. sexual exploitation; and/or
2. requiring him to perform services, namely begging; and/or
3. requiring him to perform forced labour.

Count 4

Statement of Offence

Trafficking a child, contrary to section 4 of the Modern Slavery Act 2014

Particulars of Offence

Richard Rowe, between 15th July and 20th December 2014 trafficked John Doe, then aged 16 years, by

1. harbouring him at 27 Acacia Avenue for the purpose of exploiting him or knowing or having reasonable grounds to believe that another intended to exploit him; and/or
2. transporting or arranging for his transportation to 15 Dudley Place for the purpose of exploiting him or knowing or having reasonable grounds to believe that another intended to exploit him.

Count 5

Statement of Offence

Trafficking a person, contrary to section 5 of the Modern Slavery Act 2014

Particulars of Offence

Richard Rowe, between 15th July and 20th December 2014 trafficked John Doe by

1. harbouring him at 27 Acacia Avenue
2. transporting or arranging for his transportation to 15 Dudley Place

for the purpose of exploiting him or knowing or having reasonable grounds to believe that another intended to exploit him.

Appendix 2: List of Acronyms and Terms

ABCP	Anti-social Behaviour, Crime and Policing Act 2014
ATLEU	Anti Trafficking and Labour Exploitation Unit
ATMG	Anti-Trafficking Monitoring Group
CAFCASS	Children and Family Court Advisory and Support Service
CARE	Christian Action Research and Education
Cm8770	Draft Modern Slavery Bill – White Paper and Bill “Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty. December 2013”
CPS	Crown Prosecution Service
Defra	Department for the Environment, Food and Rural Affairs
EEA	European Economic Area - The EEA includes EU countries and also Iceland, Liechtenstein and Norway.
EU Directive	Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
Modern Slavery Bill Evidence Review	“Establishing Britain as a world leader in the fight against modern slavery. Report of the Modern Slavery Bill Evidence Review”, 16 December 2013
FLEX	Focus on Labour Exploitation
GLA	Gangmasters Licensing Authority
ILPA	Immigration Law Practitioners’ Association
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
NCA	National Crime Agency
NGO	Non-Governmental Organisation
NRM	National Referral Mechanism – the means used to identify victims of human trafficking in the UK.
PAC	Public Accounts Committee, House of Commons
Palermo Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
POCA	Proceeds of Crime Act 2002

STPO	Slavery and Trafficking Prevention Order – see clauses 11 and 12 of the draft Bill onwards.
STRO	Slavery and Trafficking Risk Order – see clause 21 of the draft Bill onwards.
TISC	Californian Transparency in Supply Chains Act 2010
Trafficking Convention	Council of Europe Convention on Action against Trafficking in Human Beings
UKHTC	UK Human Trafficking Centre (part of the NCA)
UKVI	UK Visas and Immigration (part of the Home Office) – formerly UKBA (UK Border Authority)
UNCRC	United Nations Convention on the Rights of the Child

Appendix 3: Members' Interests

The Members of the Joint Committee that conducted this inquiry were:

Baroness Butler-Sloss (Crossbench)

Bishop of Derby (Bishops)

Baroness Doocey (Liberal Democrat)

Baroness Hanham (Conservative)

Baroness Kennedy of Cradley (Labour)

Lord McColl of Dulwich (Conservative)

Lord Warner (Labour)

Fiona Bruce MP (Conservative)

Michael Connarty MP (Labour)

Mr Frank Field MP (Labour)

Fiona Mactaggart MP (Labour)

Sir John Randall MP (Conservative)

Mrs Caroline Spelman MP (Conservative)

Sir Andrew Stunell MP (Liberal Democrat)

The following declarations relevant to the inquiry were made:

Baroness Butler-Sloss declared an interest as Co-Chair of the All-Party Parliamentary Group on Human Trafficking and Modern Day Slavery.

Baroness Hanham declared an interest as Chair of Monitor from 20 January 2014.

Fiona MacTaggart MP declared an interest as Co-Chair of the All-Party Parliamentary Group on Human Trafficking and Modern Day Slavery.

Full lists of Members' interests are recorded in the Commons Register of Members' Interests:

<http://www.publications.parliament.uk/pa/cm/cmregmem.htm>

and the Lords Register of Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Appendix 4: Witnesses

Tuesday 21 January 2014

Aidan McQuade, Director, Anti-Slavery International, **Chloe Setter**, Head of Advocacy, Policy and Campaigns (Child Trafficking), ECPAT UK, **Dorcas Erskine**, National Co-ordinator, POPPY Project, **Kate Roberts**, Community Advocate, Kalayaan, and **David Rhys Jones**, Helen Bamber Foundation—all on behalf of the Anti-Trafficking Monitoring Group

Tuesday 28 January 2014

Dr Maggie Atkinson, Children’s Commissioner, Office of the Children’s Commissioner

Matthew Evans, Director, and **Saadiya Chaudary**, Solicitor and Legal Project Manager, AIRE Centre

Chris Randall, Solicitor, Bates Wells Braithwaite, and **Julia Harris**, Managing Director, The Childcare Recruitment Company

Bridget Anderson, Professor of Migration and Citizenship and Deputy Director at COMPAS, **Dr Virginia Mantouvalou**, Reader in Human Rights and Labour Law & Co-Director of the Institute for Human Rights, University College London, **Kate Roberts**, Community Advocate, Kalayaan, and **Marissa Begonia**, J4DW

Thursday 30 January 2014

Riel Karmy-Jones, Barrister, Red Lion Chambers

Professor Jean Allain, School of Law, Queen’s University, Belfast

Tuesday 4 February 2014

Dr Sam Scott, Senior Lecturer, Human Geography, University of Gloucestershire, co-ordinator of the Forced Labour Monitoring Group

David Camp, Director and Stronger Together Co-ordinator, Association of Labour Providers, **Catherine Pazderka**, Sustainability Policy Adviser, British Retail Consortium, and **Dr Karen Jochelson**, Director of Economy and Employment Programme, Equality and Human Rights Commission

Paul Broadbent, Chief Executive, and **Margaret McKinley**, Chair, Gangmasters Licensing Authority

Caroline Robinson, Policy Director, Focus on Labour Exploitation (FLEX)

Thursday 6 February 2014

David Arkless, Founder and Chairman, Arklight Consulting Ltd, and **Matt Crossman**, Ethical Researcher, Rathbone Investment Management

Dr Alex Balch, Politics Department, University of Liverpool

Andrew Coulcher, Director of Business Solutions, Chartered Institute of Purchasing and Supply, and **Kevin Green**, Chief Executive, Recruitment and Employment Confederation

Tuesday 11 February 2014

Professor Lucia Zedner, Faculty of Law, University of Oxford, and **Professor Liora Lazarus**, Faculty of Law, Oxford University

Rachel Robinson, Policy Officer, Liberty

Richard Monkhouse, Chairman, Magistrates' Association

Tuesday 25 February 2014

Dr Dan Boucher, Director of Parliamentary Affairs, CARE (Christian Action Research and Education), **Ilona Pinter**, Policy Adviser, Children's Society and the Refugee Children's Consortium, **Alison Worsley**, Deputy Director, Barnado's, and **Mike Dottridge**, Consultant

Catriona MacSween, Aberlour, and **Graham O'Neill**, Scottish Refugee Council

Detective Chief Inspector Nicholas Sumner, and, **Detective Inspector Kevin Hyland**, Human Trafficking Unit, Metropolitan Police Service, **Detective Inspector Keith Roberts**, Kent Police, **Alan Hardwick**, Police and Crime Commissioner for Lincolnshire, and **Chief Inspector Mike Winters**, Area Commander, Cambridgeshire Police

Nick Hunt, Director of Strategy and Policy, Crown Prosecution Service

The Rt Hon the Lord Judge

Wednesday 26 February 2014

Luis CdeBaca, United States Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons

Thursday 27 February 2014

Andrew Forrest, Chairman, and **Fiona David**, Executive Director of Global Research, Walk Free Foundation

Mark Sedwill, Permanent Secretary, Home Office

Steve Barclay MP, Member of the Public Accounts Committee

Greg McGill, Head of Organised Crime, Crown Prosecution Service, **Liam Vernon**, Head of UK Human Trafficking Centre, National Crime Agency, **Steve Wilkinson**, Head of Proceeds of Crime, National Crime Agency, and **Ian Davidson**, Police Service

Myria Vassiliadou, EU Anti-Trafficking Co-ordinator, European Commission

Professor Kevin Bales, Wilberforce Institute for the Study of Slavery and Emancipation, University of Hull, and **Klara Skrivankova**, Trafficking Programme Co-ordinator, Anti-Slavery International

Tuesday 4 March 2014

Chloe Setter, Head of Advocacy, Policy & Campaigns (Child trafficking), ECPAT UK, and **Philip Ishola**, Director, Counter Human Trafficking Bureau

Corinne Dettmeijer-Vermeulen, Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children

Jenny Marra MSP, Scottish Parliament, **Joyce Watson AM**, Welsh Assembly, and **Lord Morrow of Clogher Valley MLA**, Northern Ireland Assembly

David Ford, Minister for Justice, and **Simon Rogers**, Deputy Director, Protection and Organised Crime Division, Department of Justice, Northern Ireland

Thursday 6 March 2014

Eva Biaudet, Finnish Ombudsman

David Anderson QC, Independent Reviewer of Terrorism Legislation, Brick Court Chambers, and **John Vine CBE QPM**, Independent Chief Inspector of Borders and Immigration

Nadine Finch, Barrister, Garden Court Chambers, and **Chief Inspector Colin Carswell**, Metropolitan Police

Andrew Webb, President, The Association of Directors of Children's Services Ltd, and **Anthony Douglas**, Chief Executive, Cafcass

Tuesday 11 March 2014

Paul Lister, Director of Legal Services and Company Secretary, ABF, Primark, **Giles Bolton**, Ethical Trading Director, Tesco, and **Judith Batchelar**, Director of Brand, Sainsbury's

Caroline Young, Deputy Director, and **Liam Vernon**, Head of the UK Human Trafficking Centre, National Crime Agency Organised Crime Command, **Sarah Rapson**, Director General, and **Glyn Williams**, Director of Asylum, UK Visas and Immigration

Zofia Duszynska, Legal Director, Immigration Law Practitioners' Association, and **Shauna Gillan**, Legal Officer, Immigration Law Practitioners' Association

Wednesday 12 March 2014

Karen Bradley MP, Minister for Modern Slavery and Organised Crime, Home Office

Appendix 5: List of written evidence

- 1 Sarah Godfrey
- 2 Professor Tsachi Keren-Paz
- 3 Stop The Traffik
- 4 Catholic Church
- 5 The Salvation Army
- 6 Environmental Justice Foundation
- 7 UK Network Of Sex Work Projects
- 8 Colleen Theron, Finance Against Trafficking
- 9 René Cassin
- 10 African's Unite Against Child Abuse
- 11 TRAC UK
- 12 Trade Unions Council
- 13 Dr. Genevieve Lebaron
- 14 Ray Sparra Everingham
- 15 Peter Willis
- 16 St John's Church, Waterloo
- 17 Focus On Labour Exploitation (Flex)
- 18 Wilberforce Institute For The Study Of Slavery And Emancipation
- 19 Julia Thurl
- 20 Anti-Slavery International
- 21 Love146
- 22 Core (Corporate Responsibility Coalition)
- 23 Doctors Of The World UK
- 24 Joseph Rowntree Foundation
- 25 Dalit Freedom Network UK
- 26 Prison Reform Trust
- 27 The Aire Centre
- 28 Anti-Trafficking Monitoring Group
- 29 Abolition Scotland
- 30 Housing For Women
- 31 Northern Refugee Centre
- 32 Police Service Of Scotland
- 33 Association Of Labour Providers
- 34 CARE (Christian Action Research And Education)
- 35 West Yorkshire Racial Justice Network
- 36 Ethical Trading Initiative
- 37 British Retail Consortium
- 38 Unseen
- 39 Hibiscus Initiatives
- 40 Anti Trafficking And Labour Exploitation Unit
- 41 United Nations High Commissioner For Refugees
- 42 Hogan Lovells International LLP

- 43 Barnardo's
- 44 Kalayaan
- 45 Brighton Act Group, Stop The Traffik
- 46 Hope For Justice
- 47 Helen Bamber Foundation
- 48 Nicola Phillips
- 49 Anti Trafficking And Labour Exploitation Unit, supplementary evidence
- 50 Lord Morrow of Clogher Valley
- 51 Human Tissue Authority (HTA)
- 52 Forced Labour Monitoring Group
- 53 Law Society
- 54 ECPAT UK
- 55 Refugee Action
- 56 UNICEF UK
- 57 Immigration Law Practitioners' Association (Endorsed By The Anti-Trafficking Legal Project)
- 58 The Chartered Institute Of Purchasing & Supply
- 59 Andrew Forrest, Walk Free Foundation
- 60 British Medical Association
- 61 Independent Police Complaints Commissioner (IPCC)
- 62 Human Rights Watch
- 63 Church Of England, Mission And Public Affairs Council
- 64 Detective Inspector, Kevin Hyland, Metropolitan Police, Human Trafficking Unit
- 65 Croydon Community Against Trafficking
- 66 Community Safety Glasgow—Tara Service
- 67 West Midlands Regional Anti Trafficking Network
- 68 Professor Liora Lazarus, Faculty of Law, University of Oxford
- 69 HM Revenue & Customs
- 70 Cafcass
- 71 Joyce Watson AM for Mid and West Wales, Chair of the Cross Party Group on Human Trafficking in Wales
- 72 Gangmasters Licensing Authority
- 73 Equality And Human Rights Commission
- 74 Equality And Human Rights Commission, supplementary evidence
- 75 Children's Society
- 76 Refugee Children's Consortium
- 77 Anti-Trafficking Monitoring Group, supplementary evidence
- 78 The Rt Hon Frank Mulholland QC, Lord Advocate
- 79 Maya Sikand
- 80 Home Office
- 81 Amazon
- 82 Crown Prosecution Service
- 83 Mike Winters, Chief Inspector, Area Commander, Fenland
- 84 Dr Anne Gallagher
- 85 Home Office, supplementary evidence
- 86 CARE, supplementary evidence

- 87 IKEA Group
- 88 Crown Prosecution Service (CPS)
- 89 ECPAT UK, supplementary evidence
- 90 The Children's Society And UNICEF UK
- 91 HHJ Edmunds QC
- 92 Anti-Trafficking Monitoring Group, supplementary evidence
- 93 Professor Jean Allain
- 94 Scottish Government
- 95 The Aire Centre, supplementary evidence
- 96 Anti-Trafficking Monitoring Group, supplementary evidence
- 97 Traveller Movement
- 98 Home Office, supplementary evidence
- 99 Chris Tattersall
- 100 Andrew Crane, George R. Gardiner Professor of Business Ethics, York University, Canada
- 101 Welsh Government
- 102 The Rt Hon Baroness Newlove of Warrington, Victims' Commissioner

All oral and written evidence is published on the Committee's webpages:

<http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-modern-slavery-bill/written-evidence/>

Appendix 6: Call for Evidence

The following call for evidence was issued by the Committee on 24 January 2014:

The Committee, comprised of Members of the House of Commons and House of Lords, has been formed to scrutinise the Government's draft Modern Slavery Bill and make recommendations for its improvement.

The draft Bill proposes to consolidate and simplify existing criminal offences relating to slavery and human trafficking and introduce civil orders to restrict the activity of those involved in or convicted of slavery and trafficking offences. The draft Bill also proposes the appointment of an Anti-Slavery Commissioner to encourage good practice in the prevention, detection, investigation and prosecution of offences. The draft Bill was published on 16 December 2013 alongside a white paper detailing the Government's non-legislative approach to modern slavery.

The Committee invites written evidence from all interested parties on the content and form of the draft Bill, its likely effectiveness and the contribution it would, if enacted, make to tackling modern slavery. Detailed proposals for alternative wording are welcome.

The Committee wishes to hear your views on the draft Bill and any of the issues it raises. Evidence addressing the following questions is particularly welcome:

- Would the draft Bill be effective in reducing the incidence of and preventing modern slavery?
- Are there other provisions which should be included in the draft Bill?
- What non-legislative action needs to be taken to ensure effective implementation of the draft Bill?
- Does the draft Bill achieve its objectives effectively and fairly?
- Does the draft Bill provide for adequate safeguarding of survivors of slavery and trafficking?
- How could the proposals for the Anti-Slavery Commissioner be improved?

Formal Minutes

Thursday 3 April 2014

Members present:

Mr Frank Field MP, in the Chair

Baroness Butler-Sloss	Fiona Bruce MP
Bishop of Derby	Michael Connarty MP
Baroness Doocey	Fiona Mactaggart MP
Baroness Hanham	Sir John Randall MP
Baroness Kennedy of Cradley	Sir Andrew Stunnell MP
Lord McColl of Dulwich	
Lord Warner	

Draft Report (Draft Modern Slavery Bill), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time.

Paragraphs 1 to 239 read and agreed to.

Appendices agreed to.

Resolved, That the Report be the Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report is made to the House of Lords

Written evidence was ordered to be reported.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.