



Modern Slavery Bill 2014-15

Bill 8 of 2014-15

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The Bill was introduced into the Commons on 10 June 2014 and is due to have its Second Reading on 8 July 2014. The Bill was preceded by a white paper and a draft Bill, which was subject to pre-legislative scrutiny by the Joint Committee on the Draft Modern Slavery Bill.

The Bill extends to England and Wales and has four main parts. Part 1 would largely consolidate the existing slavery and trafficking offences. Part 2 would introduce two new civil orders to enable the courts to place restrictions on those convicted of modern slavery offences, or those involved in such offences but not yet convicted. Part 3 would establish a new Anti-Slavery Commissioner to encourage good practice on the prevention of modern slavery offences and the identification of victims. Part 4 is based largely on the Joint Committee's recommendations on treatment of victims. It includes a new statutory defence for slavery or trafficking victims compelled to commit criminal offences, and provision for new child trafficking advocates.

Two high profile issues are not covered by the Bill: trafficking in corporate supply chains, and changes to the domestic worker visa system.

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Summary

The term “modern slavery” encompasses human trafficking, slavery, forced labour and domestic servitude. The current criminal offences dealing with modern slavery are spread across several pieces of legislation. Responsibility for tackling human trafficking lies with the National Crime Agency (NCA), within which sits the UK Human Trafficking Centre (UKHTC). The UKHTC works with various partners, including the police, the Home Office, the UK Border Force, the Gangmasters Licensing Authority, and non-governmental organisations, to coordinate action against trafficking.

Theresa May, the Home Secretary, published a draft *Modern Slavery Bill* in December 2013 for pre-legislative scrutiny, together with a white paper. Mrs May had previously asked Frank Field MP to lead an urgent public debate about practical ways of ending modern slavery in the UK. He prepared a report with the Centre for Social Justice and this was published on the same day as the draft Bill. [Library Standard Note 6792 Draft Modern Slavery Bill](#) offers a detailed summary of the Bill and the Field report.

The Joint Committee on the Draft Modern Slavery Bill published its report on 8 April. The Committee welcomed the principle of legislation, but was critical of the approach taken in the draft Bill, as merely a ‘cut and paste’ of existing offences. It set out its own draft Bill at the beginning of its report. The Government response was published on 10 June, the same day as the *Modern Slavery Bill* was introduced into the Commons. It considered that the Committee approach of a suite of six new offences would present significant risks. The Government did adopt some recommendations, including a redraft of the assessment criteria for proposed new offences, an extended role for the Anti-Slavery Commissioner, a statutory defence for victims, and the introduction of child trafficking advocates.

The Bill extends to England and Wales and has four main parts covering offences, prevention orders, the Anti-Slavery Commissioner, and protection of victims:

- Part 1 would consolidate (with some amendments) the existing slavery and trafficking offences.
- Part 2 would introduce two new civil orders to enable the courts to place restrictions on those convicted of modern slavery offences, or those involved in such offences but not yet convicted. The orders are conceptually similar to civil orders issued under the *Sexual Offences Act 2003* aimed at restricting the activities of individuals convicted of sex offences and those thought to pose a risk of sexual harm.
- Part 3 would establish a new Anti-Slavery Commissioner to encourage good practice in the prevention, detection and investigation of offences and identification of victims.
- Part 4 is based largely on the Joint Committee recommendations on treatment of victims, and (other than clause 44) did not appear in the Government’s draft Bill. Part 4 includes a new statutory defence for slavery or trafficking victims compelled to commit criminal offences, and provision for new child trafficking advocates.

Two high profile issues are not covered by the Bill: trafficking in corporate supply chains, and changes to the domestic worker visa system.

1 Introduction

The *Modern Slavery Bill* was introduced into the Commons as Bill 8 of 2014-15 on 10 June 2014. It is due to have its Second Reading on 8 July 2014. It is Bill 8 of 2014-15. Explanatory Notes are also available, as well as an impact assessment, a European Convention on Human Rights memorandum and a delegated powers memorandum.¹

The Bill was preceded by a white paper and a draft Bill, which was subject to pre-legislative scrutiny by the Joint Committee on the Draft Modern Slavery Bill.

The Bill extends to England and Wales. It has five parts and four schedules, which provide for:

- consolidation of the existing modern slavery offences and increased sentencing powers;
- the introduction of two new civil orders to prevent slavery and trafficking;
- the introduction of a new Anti-Slavery Commissioner; and
- the introduction of various new provisions aimed at protecting victims, including a statutory defence for victims forced to commit criminal offences.

2 Background

2.1 The current law

The White Paper published with the draft *Modern Slavery Bill* in December 2013 noted that “modern slavery” encompasses human trafficking, slavery, forced labour and domestic servitude.² The current criminal offences dealing with modern slavery are spread across several pieces of legislation.

Trafficking for the purposes of sexual exploitation is dealt with by section 59A of the *Sexual Offences Act 2003*, while trafficking for the purposes of other types of exploitation (e.g. slavery, forced labour, organ removal and the provision of services) is dealt with by section 4 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*. The offence of forced labour, slavery or servitude is set out in section 72 of the *Coroners and Justice Act 2009*. The maximum penalty (on conviction on indictment) for each of these offences is 14 years’ imprisonment and/or a fine.

Further information about these offences can be found in Library Standard Note 4324 [Human Trafficking: UK responses](#).

2.2 The National Crime Agency and the National Referral Mechanism

Responsibility for tackling human trafficking lies with the National Crime Agency (NCA), within which sits the UK Human Trafficking Centre (UKHTC). The UKHTC works with various partners, including the police, the Home Office, the UK Border Force, the Gangmasters Licensing Authority, and non-governmental organisations, to coordinate action against trafficking. One of its key roles is administering the National Referral Mechanism (NRM), which was established in 2009. The NRM has two key functions:

- the first is to identify and support potential trafficking victims;

¹ [Modern Slavery Bill- Bill 8-EN; Impact Assessment](#), 28 May 2014; [Modern Slavery Bill - European Convention on Human Rights Memorandum by the Home Office](#); and [Modern Slavery Bill - Delegated Powers Memorandum from Home Office](#)

² Home Office, [Draft Modern Slavery Bill](#), Cm 8770, December 2013, p2

- the second is to collect data about victims to build a clearer picture of the scope of human trafficking in the UK.

Under the NRM, “first responder agencies” are responsible for identifying potential victims of trafficking. First responder agencies include the police, the UK Border Force, the NCA, Home Office Immigration and Visas, the Gangmasters Licensing Authority, local authorities, and a number of third sector organisations.³ Once a first responder agency has identified a potential victim, it refers it to one of two “competent authorities”: the UKHTC or the Home Office Immigration and Visas. Referral to a competent authority is voluntary and can only be done with the potential victim’s consent. The competent authority then assesses the case and decides whether the individual is a victim of trafficking. This process has various stages:

Stage one – “Reasonable grounds”

The NRM team has a target date of 5 working days from receipt of referral in which to decide whether there are reasonable grounds to believe the individual is a potential victim of human trafficking. This may involve seeking additional information from the first responder or from specialist NGOs or social services. The threshold at the Reasonable Grounds stage for the case manager is “From the information available so far I believe but cannot prove” that the individual is a potential victim of trafficking.

If the decision is affirmative then the potential victim will be:

- allocated a place within Government funded safe house accommodation, if required
- granted a recovery and reflection period of 45 days. This allows the victim to begin to recover from their ordeal and to reflect on what they want to do next, for example, co-operate with police enquiries, return home etc

The referred person and the first responder are both notified of the decision by letter.

Stage two – “Conclusive decision”

During the 45 day recovery and reflection period the CA gathers further information relating to the referral from the first responder and other agencies.

This additional information is used to make a conclusive decision on whether the referred person is a victim of human trafficking. The CA’s target for a conclusive decision is within the 45 recovery and reflection period.

The case manager’s threshold for a Conclusive Decision is that on the balance of probability “it is more likely than not” that the individual is a victim of human trafficking.

The first responder and the potential victim will both be notified of the decision. If the referred person is conclusively identified as a victim of trafficking, what happens next will depend on their wishes.⁴

Those who have been identified as victims may be granted discretionary leave to remain in the UK in order to assist in police investigations and prosecutions, or in other circumstances dependent on the victim’s personal situation. They may also be given help and financial assistance to return home.

³ For a full list please see NCA website, [UK Human Trafficking Centre: National Referral Mechanism](#) [accessed 2 July 2014]

⁴ NCA website, [UK Human Trafficking Centre: National Referral Mechanism](#) [accessed 2 July 2014]

If the referred person is confirmed not to be a trafficking victim, then they may be referred to the appropriate law enforcement agency or offered support to return to their country of origin.

Some organisations have criticised the NRM for the emphasis that it places on a person's immigration status. One report has even gone so far as to describe the NRM as "not fit for purpose".⁵ In 2010 the then immigration minister Damian Green said that the Government was committed to identifying and protecting victims and would "look very carefully at the individual criticisms of the system set up in 2009, and act where necessary".⁶

In April 2014 the Home Office announced a review of the NRM, which is expected to be completed in October 2014. Terms of reference for the review are available as a Deposited Paper.⁷ The Government said that the review would examine the following matters:

- the process of victim identification and options to improve it to encourage more victims to come forward;
- access to and provision of victim support and rehabilitation, including following a conclusive decision that someone is a victim of trafficking, and the level and consistency of support provided;
- improving the collection and analysis of data;
- the way decisions are made and whether the right structures and right agencies are in place to make the best decisions; and
- how best to administer the system and under what governance arrangements.⁸

2.3 The scale of modern slavery in the UK

During 2008 and 2009 the Home Affairs Committee conducted an inquiry into human trafficking in the UK. Its report, published in May 2009, highlighted the lack of accurate statistical information and estimated that there were at least 5,000 trafficking victims in the UK.⁹

In October 2013, the Inter-Departmental Ministerial Group on Human Trafficking gave the following summary of its assessment of the scale of the problem in the UK:

In 2012, 1,186 potential victims of human trafficking were referred to the National Referral Mechanism (NRM), a 25% increase on the number of referrals in 2011. Of these, 786 were females and 400 were males; 815 were adults and 371 were children. The source countries for the greatest number of potential victims referred into the NRM were Nigeria, Vietnam, Albania, Romania and China. Amongst adult referrals, sexual exploitation remained the most common form of abuse identified through the NRM, although reporting of labour trafficking and other forms of criminal exploitation continued to rise. For child victims, both sexual exploitation and forced labour featured prominently. The UK Human Trafficking Centre (UKHTC) Strategic Assessment for

⁵ The Anti Trafficking Monitoring Group, *Wrong Kind of Victim?*, June 2010, p9. See also Amnesty International press release, *UK: Anti-trafficking measures 'not fit for purpose' and breach international law - new report*, 16 June 2010

⁶ Home Office press release, *Combatting trafficking a key priority*, 16 June 2010

⁷ [DEP2014-0762](#)

⁸ HM Government, *Government response to the Joint Committee on draft Modern Slavery Bill report*, Cm 8889, June 2014, pp18-19

⁹ Home Affairs Committee, *The Trade in Human Beings: Human Trafficking in the UK*, 6 May 2009, HC23-I 2008-09, para 28

2012 estimated that there are up to 2,255 possible victims of human trafficking in the UK.¹⁰

For the most recent NRM statistics, please see [Human Trafficking: National Referral Mechanism Statistics – October to December 2013](#), 30 April 2014.

The All-Party Parliamentary Group on Human Trafficking and Modern Day Slavery reported in January 2014 that “improved data capture and data exchange systems are needed”.¹¹

2.4 Announcement of new legislation by Home Secretary

The Home Secretary, Theresa May, announced in August 2013 that the Government planned to introduce a Modern Slavery Bill.¹² A Home Office press release published in October 2013 stated that Theresa May had asked Frank Field, in his role as vice-chair of the Human Trafficking Foundation and as a member of the Advisory Council to the Centre for Social Justice, to lead “an urgent public debate about practical and effective ways of ending modern slavery in the UK”.¹³

Evidence sessions were hosted by the Centre for Social Justice over the following months, and Frank Field’s report was published on 16 December 2013: see [Establishing Britain as a world leader in the fight against modern slavery: Report of the Modern Slavery Bill Evidence Review](#). The report called for:

- improved protection for the victims of slavery, detailing the protection, entitlements and support that victims are entitled to, and putting these on a statutory basis;
- Crown Prosecution Service guidance on the non-prosecution of victims;
- an examination of legislation in California on supply chains, which requires businesses to report on their efforts to eradicate modern slavery;
- improvements to the NRM, so that NRM decisions on whether individuals are victims are no longer made by UK Visas and Immigration;
- a review of the visa status of overseas domestic workers;
- an extension of the powers of the Gangmasters Licensing Authority to begin investigations in sectors outside its current remit, such as construction, hospitality and catering;
- a system of guardianship for child victims;
- compensation for victims by the Criminal Injuries Compensation Scheme;
- increased policing priority and the development of regional forums in multi-agency networks;

¹⁰ [Second report of the Inter-Departmental Ministerial Group on Human Trafficking](#), Cm 8731, October 2013,p7

¹¹ APPG on Human Trafficking and Modern Day Slavery, *Inquiry into the collection, exchange and use of data about human trafficking and modern slavery*, January 2014. Cited in [Modern Slavery Bill Impact Assessment](#) June 2014

¹² See, for example, “[Theresa May pledges modern-day slavery crackdown](#)”, *BBC News*, 25 August 2013

¹³ Home Office press release, [Human trafficking: Tough sentences to help end modern slavery](#), 18 October 2013

- an Anti-slavery Commissioner independent from Government and accountable to Parliament, with scrutiny powers over Government policies and power to launch inquiries; and
- an appeal or review mechanism for victims to appeal against a negative NRM decision.

On the same date as the Field report was published, [written ministerial statements](#) were made in both Houses announcing the publication of a draft Bill and accompanying white paper. In the Commons, the Home Secretary commented:

The bill will simplify legislation, toughen sentences for slave drivers, and enable the courts to restrict activity where individuals may be at risk. This will mean that more traffickers are pursued, disrupted and brought to justice. The bill will also create an anti-slavery commissioner who will galvanise law enforcement's efforts to tackle modern slavery.¹⁴

3 The draft Modern Slavery Bill

The draft Bill was published on 16 December 2013 within a white paper that included commentary about the wider strategic plan for tackling modern slavery.¹⁵ Accompanying the white paper were a [Draft Modern Slavery Bill: European Convention on Human Rights memorandum](#) and a [Draft Modern Slavery Bill: impact assessment](#). For full background, please see [Library Standard Note 6792 Draft Modern Slavery Bill](#).

Key aspects of the draft Bill were as follows.

3.1 Part 1 – Offences

Part 1 proposed to consolidate and amend existing legislation to create three new offences relating to human trafficking and slavery:

- an offence of slavery, servitude and forced or compulsory labour;
- a single offence of human trafficking covering both sexual and non-sexual exploitation; and
- a separate offence for preparatory offences committed with a view to committing a trafficking offence.

3.2 Part 2 – prevention and restriction orders

Part 2 proposed two new civil orders to enable the courts to place restrictions on individuals convicted of or suspected of involvement in modern slavery offences. Slavery and Trafficking Prevention Orders (STPOs) would have been available in respect of individuals convicted of modern slavery offences, while Slavery and Trafficking Risk Orders (STROs) would have been available in respect of those not convicted.

In order to impose either type of order, the court would have been required to satisfy itself that the individual concerned had acted in a way that made 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”.

¹⁴ [HC Deb 16 December 2013 c82WS](#)

¹⁵ Home Office, [Draft Modern Slavery Bill](#), Cm 8770, December 2013

The effect of either type of order would have been to make the individual concerned subject to the prohibitions set out in the order, for example a foreign travel ban or a ban on operating as a gangmaster.

3.3 Part 3 - Anti-slavery Commissioner

Part 3 proposed a new statutory commissioner with responsibility for encouraging good practice in the prevention, detection, investigation and prosecution of modern slavery offences. The Commissioner would have been appointed and removed from office by the Secretary of State and resourced by the Government.

3.4 Part 4 – duty to notify

Part 4 would have imposed a new statutory duty on specified public authorities to notify the NCA where they had reasonable grounds to suspect that a person might have been a victim of human trafficking. Specified public authorities would include police forces and local authorities. This duty would be distinct from the existing non-statutory NRM process. This new duty to report would mean that adult potential victims of trafficking who did not wish to be referred, assessed and supported through the NRM process would still be referred to the NCA for data collection purposes.

3.5 The wider package relating to slavery and trafficking

The white paper published with the draft Bill contained a section on the wider package of policies and actions relating to slavery and trafficking. The main themes were:

- training for police, NHS professionals and employees in the travel industry;
- strengthening the NCA's law enforcement response to modern slavery;
- strengthening border controls to detect victims and their traffickers;
- guidance on prosecution of victims from the Director of Public Prosecutions;
- applying asset recovery legislation;
- preventing exploitation of workforces and supply chains, with an assessment of extending the experience and knowledge of the Gangmasters Licensing Authority;¹⁶ and
- increasing support for victims.

3.6 Reaction to the draft Bill

There was a general welcome for the principle of the draft legislation. The Association of Chief Police Officers said it would “act as a deterrent to those looking to the United Kingdom as a destination for trafficking related activities”.¹⁷

Some specialist organisations, however, expressed disappointment on the detail and argued that the focus should be on victims and on prevention. Caroline Robinson, founder of [Focus on Labour Exploitation](#), commented in the *Guardian*:

¹⁶ Further information on the Gangmasters Licensing Authority is in Library Standard Note [Human Trafficking: UK responses](#) (SN04324)

¹⁷ ACPO Press Release, [ACPO welcomes modern slavery bill](#), 16 December 2013

... instead of offering legal clarification, the bill offers confused definitions, a blinkered focus on prosecution and an anti-slavery commissioner whose resources and activities would be controlled by the home secretary. Far from a credible attempt to address a complex problem, the bill in its current form is more concerned with what the UK is seen to be doing than the real impact of our actions.¹⁸

There was similar criticism from Anti-Slavery International's Director Aidan McQuade:

'We welcome the move to consolidate anti-slavery legislation in one bill; however, the lack of provisions for victim protection in the bill means that not only does it fail the victims of this horrendous crime but also is a missed opportunity for prosecuting the criminals behind it.

'Currently many trafficked persons are often not identified as victims, especially if their immigration status is irregular when they are more likely to be detained and removed from the country than protected. Many victims are prosecuted, for example those found forced to work on cannabis farms. If the victims are not recognised, then the crime is not recognised and the criminals go unpunished.

'These deficiencies could be reversed by putting protection measures for victims in the Bill: exclusion of a person's immigration status in considering whether they have been a victim of slavery, provision for a right of appeal against a National Referral Mechanism decision, introduction of a system of guardianship for trafficked children who commonly go missing from authorities' care and ensuring that victims are not prosecuted for crimes they have been compelled to commit while enslaved.

'It also disappointing that the Anti-Slavery Commissioner, who will oversee the implementation of the government's anti-slavery policies, will not be politically independent.¹⁹

The children's charity ECPAT UK was concerned about trafficked children's needs:

... ECPAT UK said that the narrow focus of the Modern Slavery Bill omitted several vital measures to keep trafficked children safe. Notable amongst the omissions in the Bill were a system of legal guardianship for child victims of trafficking, a specific offence of child trafficking to reflect the severity of the crime and a non-criminalisation clause to protect victims forced to commit crimes by their traffickers.²⁰

The Shadow Home Secretary Yvette Cooper also called for more protection for child victims, describing it as "appalling that two-thirds of children found by the authorities after being held as slaves go missing again because the system to protect them isn't strong enough".²¹

4 The Joint Committee on the draft Bill

4.1 The Committee's report

A Joint Committee to scrutinise the draft Bill was appointed by the House of Commons on 9 January 2014 and the House of Lords on 15 January 2014.²² The Joint Committee, chaired

¹⁸ "[Theresa May's modern slavery bill will fail to provide protection to victims](#)", *Guardian*, 20 December 2013

¹⁹ "[Modern Slavery Bill draft fails the victims of slavery says Anti-Slavery International](#)" 16 December 2013 Anti-slavery International

²⁰ "[Protection needs of child victims overlooked in draft Modern Slavery Bill](#)" 16 December 2013 ECPAT Press Release

²¹ "[The Modern Day Slavery Bill](#)" 16 December 2013 The Labour Party Press Release

²² Further background on the process of pre-legislative scrutiny is contained in Library Standard Note 5859 [Pre-legislative scrutiny under the Coalition Government](#)

by Frank Field, published its report on 8 April 2014.²³ The Committee was critical of the approach taken in the draft Bill and set out its own draft Bill at the beginning of its report. It summarised the difference in approach as follows:

10. The draft Bill was heavily criticised by our witnesses, with many describing it as merely a 'cut and paste' of the existing offences, 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; nor, according to those who prosecute slave masters and gave evidence to us, will it make successful prosecutions more likely.

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.²⁴

The report made a number of recommendations that it said would improve the Government's draft Bill:

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.²⁵

4.2 The Government's response

The Government published its response to the Joint Committee report on 10 June 2014, the same day as the *Modern Slavery Bill* was introduced in the Commons.²⁶

²³ Joint Committee on the Draft Modern Slavery Bill, *Draft Modern Slavery Bill – Report*, HL Paper 166/HC 1019, 2013-14

²⁴ Joint Committee on the Draft Modern Slavery Bill, *Draft Modern Slavery Bill – Report*, HL Paper 166/HC 1019, 2013-14, p41

²⁵ Joint Committee on the Draft Modern Slavery Bill, *Draft Modern Slavery Bill – Report*, HL Paper 166/HC 1019, 2013-14, p3

The Government rejected the Committee's recommendation to replace the existing offences with a "suite" of six new offences. It identified a number of issues with this approach that it said would present "significant risks", including:

- the proposed offences, particularly those relating specifically to children, are too broad in scope and uncertain, and they could criminalise behaviour that clearly should not be criminalised. For example, there is a risk that the proposed child exploitation offence could cover a parent who expects their child to help with household chores;
- by their very nature, slavery and human trafficking are two of the most serious offences available to prosecutors, both of which will now carry a life sentence. Diluting the offences by allowing a much lower level of exploitation to be captured, rather than relying on other existing offences, would weaken the framework and divert attention from serious abuse;
- creating a suite of offences that could result in six different offences relating to each victim being considered at trial risks causing confusion for juries. The jury would have to both understand each of six offences, and the interrelationship between them. Rather than making successful prosecution easier, the proposed scheme would create a real risk of making convictions more difficult. The current scheme of offences (relying on two offences; trafficking and slavery, servitude and forced or compulsory labour) is simpler and more familiar to the judges, whose responsibility it is to direct juries on the law, and who know where to look for the previous case-law on the meaning of the offences (including the case-law of the European Court of Human Rights). They are accordingly more workable in practice; and
- the offences, as drafted by the Committee, also appear to lack the requirement for any mental element (*mens rea*), which is an integral part of almost all serious criminal offences, and certainly those attracting a maximum sentence of life imprisonment.²⁷

The Government did, however, adopt a number of the Committee's suggestions to improve the Government's proposed new offences.

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

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

This will ensure that when prosecutors and the courts look at whether a vulnerable person (such as a child) has been subject to an offence, they will be absolutely clear that they can consider the vulnerability of that child, in looking at the type or level of

²⁶ HM Government, *The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166/HC 1019*, Cm 8889, June 2014

²⁷ HM Government, *The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166/HC 1019*, Cm 8889, June 2014, pp3-4

coercion they have been subject to. In addition, where a child has been trafficked for the purpose of domestic servitude, the clause 2 offence will apply.²⁸

The Government defended the proposed new STPO and STRO orders in part 2 of the Bill, which the Committee had suggested might not prove to be effective preventative measures in practice:

We have concluded that STPOs and STROs are necessary to prevent modern slavery. This is because:

- STPOs on conviction enhance the court’s ability to place restrictions on individuals who have been convicted of a modern slavery offence, ensuring that even after they have served their sentence any future risk of similar criminality is effectively managed.
- STPOs on application are particularly important. They enable the courts to place restrictions on individuals convicted of modern slavery type offences before, as well as after, the Modern Slavery Bill and also covers individuals convicted abroad. Given that modern slavery is often conducted by organised crime groups who operate across borders, this flexibility is important.
- STROs mirror similar non-conviction orders for other harmful activity (for example – sexual harm), and they enable action to be taken where this is necessary to prevent serious harm to the public notwithstanding the absence of a conviction.²⁹

In relation to the Anti-Slavery Commissioner in part 3, the Government said that the Committee’s recommendations had caused it to “rethink and improve” the role. It therefore proposed two changes from the draft Bill:

- the Commissioner’s role would be extended to include a focus on the effective and prompt identification of victims; and
- the Commissioner’s functions would include specific reference to cooperating and working closely with national and international partners.³⁰

However, the Government rejected the Committee’s recommendations for an overarching role for the Commissioner, for the Commissioner to be supported by non-civil service staff, and for the removal of the requirement for the Secretary of State to approve the strategic plan.

The Government also accepted a number of the Committee’s recommendations relating to victims, most of which have now been included in part 4 of the Bill. These included:

- a statutory defence for victims;
- special measures for witnesses in criminal proceedings;
- introduction of child trafficking advocates;

²⁸ HM Government, *The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166/HC 1019*, Cm 8889, June 2014, p6

²⁹ HM Government, *The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166/HC 1019*, Cm 8889, June 2014, p6

³⁰ HM Government, *The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166/HC 1019*, Cm 8889, June 2014, pp13-14

- statutory guidance from the Secretary of State about identifying and supporting victims;
- a presumption that where the age of a trafficked person is uncertain, they are considered a child until otherwise determined;
- a bespoke order providing for reparation for victims of modern slavery;
- a “duty to notify” provision to make clear that adult victim notifications would be made anonymously to the NCA unless the individual concerned has given their consent to being identified.

5 The Bill

The Bill has four parts, covering offences, prevention orders, the Anti-Slavery Commissioner, and protection of victims. Analysis of some of the key clauses follows; clauses that are uncontroversial or technical are not covered. As at the date of publication, there had been relatively little detailed critique of the Bill (as distinct from the draft Bill). Where available, reaction to the Bill has been included alongside the clause to which it relates.

5.1 Offences

The Government has described the existing law as lacking “clarity and simplicity” due to the fact it currently sits in three different Acts.³¹ Part 1 of the Bill would therefore consolidate (with some amendments) the existing slavery and trafficking offences.

Clause 1 sets out the new offence of holding a person in slavery or servitude, or requiring a person to perform forced or compulsory labour. In determining whether a person is a victim of this offence “regard may be had to all the circumstances”, including “any of the person’s personal circumstances ... which may make the person more vulnerable than other persons”. Such circumstances might include, for example, age, family relationships, and any mental or physical illness.

References to holding a person in slavery or servitude or requiring them to perform forced or compulsory labour are to be read in accordance with Article 4 of the European Convention on Human Rights. Article 4 provides that “forced or compulsory labour” does not include work required to be done in the ordinary course of detention (or during conditional release from such detention), military service, any service exacted in case of an emergency or calamity threatening the life or well-being of the community, or any work or service forming part of normal civic obligations.

Clause 2 sets out the new consolidated offence of human trafficking, which will be committed when a person “arranges or facilitates the travel of another person (“V”) with a view to V being exploited”. The offence is only committed if the person arranging or facilitating V’s travel does so with the intention to exploit V during or after the travel, or if he knows or ought to know that another person is likely to exploit V during or after the travel.

As is the case under the existing law, “travel” is defined as arriving in, departing from, or travelling within any country.

The new offence would have extra-territorial effect for UK nationals, who would commit an offence regardless of where the arranging or facilitating took place or where the travel took place. Foreign nationals would only commit the offence if any part of the arranging or facilitating took place in the UK, or if the travel consisted of arrival in, departure from, or travel within the UK.

³¹ Home Office, *Modern Slavery Bill: Impact Assessment*, June 2014, p3

Clause 3 defines “exploitation” for the purposes of clause 2. It provides that exploitation will include slavery, servitude, and forced or compulsory labour by reference to the offence in clause 1.

It also covers sexual exploitation by reference to conduct that would be an offence under section 1(1)(a) of the *Protection of Children Act 1978* (indecent photographs of children) or under Part 1 of the *Sexual Offences Act 2003* (various sexual offences). Equivalent conduct committed outside of England and Wales that would have involved the commission of such an offence if it were done in England and Wales is also covered.

Exploitation will also cover trafficking for the purpose of organ removal or the sale of human tissue contrary to the *Human Tissue Act 2004*, and equivalent conduct committed outside of England and Wales.

It will also cover all other type of exploitation where a person is forced, threatened or deceived into providing a service of any kind, providing another person with benefits of any kind, or enabling another person to acquire benefits of any kind. This might include, for example, forcing a person to engage in begging or shop theft. The Explanatory Notes make clear that the conduct the person has been forced into need not itself be criminal.³²

Clause 4 provides that it is an offence to commit another offence with a view to committing a trafficking offence under clause 2. The Explanatory Notes state that this

...ensures that the preparatory criminal conduct for a lesser offence, for example theft of a vehicle with the intention of using that vehicle to traffick individuals, can attract the higher penalties provided for in clause 5.³³

Clause 5 deals with sentencing. It provides that the maximum sentence for a clause 1 or 2 offence is life imprisonment for conviction on indictment. This compares with a maximum of 14 years under current legislation.

The maximum sentence for a clause 4 offence will be 10 years imprisonment for conviction on indictment. However, where the preparatory offence was kidnapping or false imprisonment, the maximum penalty will be life imprisonment.

Clause 6 adds the clause 1 and 2 offences to the list of offences set out in Schedule 15 and Part 1 of Schedule 15B to the *Criminal Justice Act 2003*. The effect of this is to engage the sentencing provisions set out in sections 224A, 226A(2) and 246A(2)(b) of the 2003 Act. This means that in certain circumstances a person convicted of a clause 1 or clause 2 offence could be subject to an automatic life sentence or an extended sentence.

Clause 7 deals with the confiscation of assets from those convicted of modern slavery. It provides that the clause 1 and 2 offences will constitute “lifestyle offences” for the purposes of the *Proceeds of Crime Act 2002*. This means that defendants convicted of these offences will be “deemed to have a criminal lifestyle and will therefore be subject to the toughest regime in respect of calculating confiscation orders under the 2002 Act”.³⁴

Clauses 8 to 10 introduce a new “slavery and trafficking reparation order”, under which the court will be able to order a person convicted of a clause 1, 2 or 4 offence **and** subjected to a confiscation order under the *Proceeds of Crime Act 2002* to make financial reparation to his victim(s).

³² *Modern Slavery Bill: Explanatory Notes*, para 26

³³ *Modern Slavery Bill: Explanatory Notes*, para 27

³⁴ *Modern Slavery Bill: Explanatory Notes*, para 38

The new order is largely identical to existing compensation orders that the courts can make under sections 130-134 of the *Powers of Criminal Courts (Sentencing) Act 2000*. However, the Government accepted the view of the Joint Committee on the Draft Modern Slavery Bill that it should “create a specific tariff for victims of modern slavery”.³⁵ The new order will not be available alongside a compensation order, in order to avoid having multiple orders relating to compensation in place for the same victim.

Clause 11 sets out a new power for the court to order the forfeiture of land vehicles, ships and aircraft used (or intended to be used) in the commission of a clause 2 offence. Third parties who claim to have an interest in the vehicle will be entitled to make representations to the court before a forfeiture order can be made.

Clause 12 makes provision for police and immigration officers to detain land vehicles, ships and aircraft on the arrest of a person for a clause 2 offence, if they have reasonable grounds to believe that the vehicle could in future be subject to a forfeiture order under clause 11.

Clause 13 and **Schedule 1** introduce new powers for enforcement officers in relation to ships suspected of involvement in the commission of offences under clauses 1 and 2. The enforcement powers will only be exercisable on UK ships in domestic or international waters, a ship without nationality in domestic waters, or a foreign ship in domestic waters. They will enable enforcement officers to stop, board, divert and detain ships, to search ships (and anyone or anything on them), to arrest anyone on the ship suspected of a clause 1 or 2 offence, and to seize and detain anything on the ship that appears to be evidence of that offence.

5.2 Prevention orders

Part 2 of the Bill would introduce two new civil orders to enable the courts to place restrictions on those convicted of modern slavery offences, or those involved in such offences but not yet convicted. The orders are conceptually similar to civil orders issued under the *Sexual Offences Act 2003* aimed at restricting the activities of individuals convicted of sex offences and those thought to pose a risk of sexual harm.

Clause 15 would introduce slavery and trafficking prevention orders (STPOs) on sentencing. The court would be able to impose an STPO when dealing with a defendant who had been convicted of a “slavery or human trafficking offence” listed in Schedule 2 to the Bill.³⁶ The court would only be able to make an STPO if satisfied that:

- there is a risk the defendant may commit a slavery or human trafficking offence; and
- an STPO is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm likely to occur if the defendant committed such an offence.

Clause 16 provides for the court to impose an STPO following an application from the police, an immigration officer or the Director General of the NCA, rather than on conviction. Applications are to be made by way of complaint to the local magistrates’ court. Applications may only be made in respect of a “relevant offender”, as defined in **clause 17**. A relevant offender is someone convicted of or cautioned for a slavery or human trafficking offence, or an equivalent offence committed outside the UK. Before making the STPO, the court would

³⁵ Joint Committee on the Draft Modern Slavery Bill, *Draft Modern Slavery Bill – Report*, HL Paper 166/HC 1019, 2013-14, para 142

³⁶ The list in Schedule 2 covers the offences under clauses 1, 2 and 4 of the Bill, offences under the existing anti-trafficking and anti-slavery legislation, and equivalent offences in Scotland.

need to satisfy itself that since the individual first became a relevant offender the two conditions listed above relating to risk and protection from harm applied.

Clause 18 sets out the effect of an STPO, which is to prohibit the defendant from doing anything it describes. The only prohibitions that may be included are those that the court considers “necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence”. The prohibitions can cover conduct overseas, as well as conduct anywhere in the UK. The Explanatory Notes to the Bill suggest that appropriate prohibitions might include

...preventing a person from participating in a particular type of business, operating as a gangmaster, visiting a particular place, working with children or travelling to a specified country.³⁷

Prohibitions set out in an STPO have effect for a fixed period (specified in the order) of at least five years, or until further order (different periods may apply to different prohibitions). The exception is any prohibition on foreign travel, which **clause 19** states must be for a fixed period of not more than five years. The foreign travel period can, however, be renewed for further periods of no more than five years each time.

Under **clause 20**, the defendant, the police or (where the order was made on their application) an immigration officer may apply to court to vary, renew or discharge an STPO.

Clause 21 provides for interim STPOs to be made pending the determination of a full application for an STPO under clause 16.

Clause 22 sets out the procedure for a defendant to appeal against the making of an STPO made under clauses 15 or 16, the variation, renewal or discharge of an STPO under clause 20, or an interim STPO under clause 21.

Clause 23 would introduce slavery and trafficking risk orders (STROs). These would only be available following an application to a magistrates’ court by the police, an immigration officer, or the Director General of the NCA. The clause refers to the individual subject to the STRO as “the defendant”, even though there is no requirement for him to have been convicted of or cautioned for any criminal offence.

The court may only make an STRO if satisfied that:

- there is a risk the defendant will commit a slavery or human trafficking offence; and
- an STRO is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm likely to occur if the defendant committed such an offence.

Clauses 24 to 28 deal with the effect of STROs, prohibitions on foreign travel, variation, renewal and discharge, interim STROs, and appeals. The provisions are equivalent to the preceding clauses on STPOs, save in relation to the duration of prohibitions (other than a foreign travel prohibition). For STROs, a prohibition may last for a fixed period of at least two years, or until further order (as opposed to a fixed period of at least five years, or until further order, for an STPO).

³⁷ *Modern Slavery Bill: Explanatory Notes*, para 89

Under **clause 29** it is an offence for person to breach (without reasonable excuse) the terms of an STPO or STRO (or interim STPO or STRO) to which they are subject. The maximum sentence on conviction on indictment is five years imprisonment.

The Joint Committee had expressed concerns about the broad nature of the proposed civil orders. It recommended tighter drafting of the STPOs, and a removal of STROs altogether.³⁸

In its response to the Joint Committee, the Government argued that the proposed orders included substantial safeguards to ensure they were only used when necessary to stop the harm caused by these very serious offences. It committed itself to producing a detailed brief to the Joint Committee on Human Rights explaining why its preferred approach would be fully compliant with human rights.³⁹

5.3 The Anti-Slavery Commissioner

Part 3 of the Bill would establish a new Anti-Slavery Commissioner.

Clause 34 of the Bill would require the Secretary of State to appoint an Anti-Slavery Commissioner. The Secretary of State would also be responsible for paying the Commissioner such expenses, remuneration or allowances as the Secretary of State determines, and providing the Commissioner with staff, accommodation, equipment and other facilities. The Commissioner would be subject to the *Freedom of Information Act 2000*.

Clause 35 sets out the general function of the Commissioner, which is to encourage good practice in:

- the prevention, detection, investigation and prosecution of offences under clauses 1, 2 and 4; and
- the identification of victims of those offences.

The Commissioner must publish any reports it makes to the Secretary of State, but the latter may request that the reports be redacted on the grounds of national security, jeopardy to the safety of any person, or prejudice to the investigation or prosecution of an offence.

Clause 36 requires the Commissioner to prepare a strategic plan covering a period of between one and three years, and to submit this to the Secretary of State for approval. There is an ongoing obligation to publish new strategic plans as the current one expires. The plan must state the Commissioner's objectives and priorities for the relevant period, state any matters on which the Commissioner intends to report, and state any other activities the Commissioner proposes to undertake.

The Secretary of State may approve the plan either without modifications or with modifications agreed with the Commissioner. The Explanatory Notes state that "in practice the Commissioner will work collaboratively with the Secretary of State to produce a mutually agreed plan which focused on priority areas".⁴⁰

The Commissioner will also be required to publish an annual report following the end of each calendar year, to include an assessment of the extent to which the Commissioner's objectives have been met in that year, a statement of the reports the Commissioner has made, and a statement of other activities undertaken.

³⁸ [Joint Committee on the Draft Modern Slavery Bill](#) HL Paper 166/HC 1019 2013-14, paras 54 to 58

³⁹ Cm 8889

⁴⁰ [Modern Slavery Bill: Explanatory Notes](#), para 136

The Secretary of State must lay the Commissioner's strategic plans and annual reports before Parliament, but there is no requirement for parliamentary approval.

Under **clause 37**, the Commissioner may request cooperation from a "specified public authority" in any way that the Commissioner considers necessary for the purposes of his or her functions. The authority has a duty to comply with this request so far as reasonably practicable. The list of specified authorities is to be set out in regulations made by the Secretary of State.

Clause 38 prevents the Commissioner from exercising any function in relation to an individual case, but makes clear that this does not prevent the Commissioner from drawing conclusions from individual cases when considering general issues.

The Joint Committee had argued for more tangible evidence of the independence of the Commissioner's office, such as staff appointed directly by the Commissioner.⁴¹ It also wanted to see a model closer to comparable roles such as the Independent Reviewer of Terrorism Legislation. The report recommended that the role of the Commissioner be widened to have an overarching remit, and that his or her functions should clearly include victim protection, the collection, compilation, analysis and dissemination of information and statistics.

The Government response stated: "On balance, the Government believes that a more tightly focused role is more likely to make a major, and speedy, operational difference to the fight against modern slavery". The Government did, however, agree to extend the Commissioner's role to include a focus on the effective and prompt identification of victims and specific reference to cooperating and working closely with national and international partners. Although the Government agreed to make functions relating to the strategic plan more broad ranging, it did not agree that the requirement for the Secretary of State's approval for the priorities in the strategic plan should be removed.⁴²

5.4 Protection of Victims

Part 4 of the Bill is based largely on recommendations made by the Joint Committee on the Draft Modern Slavery Bill: other than clause 44, none of the other clauses originally appeared in the Draft Modern Slavery Bill.

Clause 39 would introduce a new statutory defence for slavery or trafficking victims who have been compelled to commit a criminal offence. The Explanatory Notes state that this is "intended to provide further encouragement to victims to come forward and give evidence without the fear of being convicted of offences that they were compelled to commit".⁴³

At present, the Crown Prosecution Service follows its own internal non-statutory guidance when deciding whether to prosecute victims of trafficking who have been compelled to commit criminal offences: see Crown Prosecution Service website, [Human Trafficking, Smuggling and Slavery](#) [accessed 2 July 2014].

The proposed new defence provides that a person will not be guilty of an offence if:

- (a) the person does the act which constitutes the offence because the person is compelled to do that act;

⁴¹ For an explanation of the characteristics of independence, see [Library Standard Note 4720 Officers of Parliament: recent developments](#)

⁴² [Cm 8889](#)

⁴³ [Modern Slavery Bill: Explanatory Notes](#), para 146

(b) the compulsion is attributable to slavery or to relevant exploitation, and

(c) a reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative to doing that act.

"Relevant characteristics" are defined as age, sex, and any physical or mental illness or disability.

"Relevant exploitation" is exploitation within the meaning of clause 3 that is attributable to the exploited person being, or having been, a victim of trafficking.

The statutory defence will not apply to any of the serious violent or sexual offences listed in Schedule 3 to the Bill in order "to avoid creating a legal loophole for serious criminals to escape justice".⁴⁴ The Crown Prosecution Service will, however, retain its current discretion to decide not to prosecute if it would not be in the public interest to do so.

Clause 40 amends the *Youth Justice and Criminal Evidence Act 1999*, which deals with the availability of "special measures" (e.g. giving evidence via video link or from behind a screen) for vulnerable witnesses giving evidence in criminal prosecutions. Trafficking victims are already eligible for special measures, and would remain so, but the effect of clause 40 would be to extend the existing law to slavery victims too.

Clause 41 makes provision for new "child trafficking advocates", whose role would be to represent and support children who are thought to be victims of trafficking. The Secretary of State would be given the power to make arrangements enabling child trafficking advocates to be appointed. In doing so, she would be required to have regard to the principle that a child ought to be represented by "someone who is independent of any person who will be responsible for making decisions about the child".

The clause also enables the Secretary of State to make regulations about child trafficking advocates, which may in particular make provision about the circumstances in which a person may act as a child trafficking advocate, the appointment and function of child trafficking advocates, and a requirement for public authorities to cooperate with child trafficking advocates.

Within nine months of the Bill being passed, the Secretary of State must lay before Parliament a report on the steps she proposes to take in relation to the exercise of her powers under this clause. The Explanatory Notes indicate that this report "will follow a trial of the child trafficking advocates scheme, due to commence in summer 2014".⁴⁵ In May 2014, Home Office minister Karen Bradley provided further information on the trial:

We are currently considering bids from a number of voluntary and community services organisations that were identified as potential providers of the advocacy service because of the particular expertise they hold. When the trial goes live we will invite a number of relevant stakeholders, including non-governmental organisations, to inform the project through a consultative group.⁴⁶

On 4 June Ms Bradley announced that the children's charity Barnardo's would deliver the pilot:

Barnardo's strong track record of supporting children makes them ideally qualified to deliver these trials which we intend to run alongside the passage of the Modern

⁴⁴ [Modern Slavery Bill: Explanatory Notes](#), para 153

⁴⁵ [Modern Slavery Bill: Explanatory Notes](#), para 158

⁴⁶ [HC Deb 8 May 2014 c294W](#)

Slavery Bill. Giving child victims of trafficking the help and protection they need should not have to wait for legislation if there are practical steps we can take now.

As part of the trial the charity will also deliver a dedicated network of volunteers to work alongside the specialist advocates and assist with lower level support, a 24-hour helpline for children and professionals looking for immediate support from the service and bespoke training for local professionals.⁴⁷

Barnardo's welcomed the Government's commitment to give child trafficking advocates legal status via the Bill.⁴⁸

Children's rights organisation ECPAT UK, however, criticised the fact that the Bill included an "enabling mechanism" rather than substantive primary legislation to establish a system of independent guardianship. It also expressed disappointment that the Bill did not include a specific criminal offence of child exploitation, which it considered "would improve the woefully low detection and prosecution rate of child trafficking in the UK".⁴⁹

Clause 42 would require the Secretary of State to issue guidance on the identification and support of suspected trafficking victims to such public authorities and other persons as she thinks appropriate.

Clause 43 would apply where a public authority with responsibility for providing assistance and support to suspected trafficking victims believes that a potential victim may be under 18. The clause provides that until the person's age has been determined by a local authority assessment (or otherwise), the public authority must assume they are under 18. This meets the UK's obligations under Articles 13(2), 14 and 15 of the [EU Directive on Preventing and Combating Trafficking in Human Beings 2011/36/EU](#), which requires signatories to assist, support and protect child victims. The Explanatory Notes state that the presumption in clause 43 will enable the individual "to receive immediate access" to such assistance, support and protection.

Clause 44 introduces a new statutory duty for a "specified public authority" to notify the NCA if it suspects that a person may be a victim of slavery or trafficking. The Secretary of State will be required to make regulations about the information to be included in a notification. These must provide that a notification relating to a person aged 18 or over may not include information that identifies that person or enables him to be identified, unless the person concerned consents.

The definition of specified public authority will also be set out in regulations; the Explanatory Notes suggest that this is likely to cover police and local authorities but not non-governmental voluntary organisations.⁵⁰

The new statutory duty will supplement the existing non-statutory NRM (described in section 2.2 of this Research Paper):

Currently [the NRM] is the key source of data on trafficking victims in the UK, but many cases are not reported. In 2012, 1,186 individuals were referred to the NRM, but a further 1,477 were identified through the UK Human Trafficking Centre's 2012 Strategic Assessment. This new duty to report will mean that adult potential victims of trafficking who do not wish to be referred, assessed and supported through the NRM process will

⁴⁷ "Charity to provide specialist support for child victims of trafficking" 4 June 2014 Home Office

⁴⁸ "Barnardo's reaction to the inclusion of Modern Slavery Bill in the Queen's Speech" 4 June 2014 Barnardos

⁴⁹ ECPAT UK, *Improved Modern Slavery Bill introduced but vital protections for children still missing*, 10 June 2014

⁵⁰ *Modern Slavery Bill: Explanatory Notes*, para 165

still be referred through for data purposes by specified public authorities, and that additional information on victims of other forms of modern slavery will also be captured.⁵¹

5.5 Territorial extent

The Bill extends to England and Wales only, although the Government has previously indicated that it was working with the devolved administrations to secure legislation with the broadest UK-wide effect.⁵² Legislative Consent Motions would be required in the Northern Ireland Assembly and the Scottish Parliament to allow broader coverage.

In Scotland, Labour MSP Jenny Marra initiated a formal consultation on a proposal for new anti-trafficking legislation for Scotland. Full details of the consultation, which concluded in January 2014, are available from the Scottish Parliament website: see [Consultation on a proposal for a Bill on human trafficking](#) [accessed 2 July 2014]. Ms Marra's consultation did not secure the right to introduce a Bill, but on March 2014 the Scottish Government announced that it planned to introduce its own "dedicated Human Trafficking Bill for Scotland" during the current session. The Bill has not yet been published, but a press release states that the Bill will:

- Consolidate and strengthen existing criminal law against human trafficking.
- Enhance the status of and support for the victims of trafficking.
- Give statutory responsibility to relevant agencies to work with the Scottish Government to develop and implement a Scottish Anti-Trafficking Strategy.⁵³

In Northern Ireland, the Department of Justice recently conducted a consultation on measures to strengthen Northern Ireland's response to human trafficking.⁵⁴ The legislative proposals set out in the consultation broadly reflect the content of the Bill.

6 What's not in the Bill

Two high profile issues are not covered by the Bill: trafficking in corporate supply chains, and changes to the domestic worker visa system.

Both Frank Field's December 2013 evidence review and the Joint Committee's report on the Draft Bill drew attention to these issues, and there have been calls from various other quarters for the Government to use the Bill to introduce changes.

6.1 Corporate supply chains

In its 2014 report *Profits and Poverty: The Economics of Forced Labour*, the International Labour Office estimated that the total illegal profits obtained worldwide from the use of forced labour (excluding state-imposed forced labour) amounted to some US\$150.2 billion per year, of which US\$43.4 billion could be attributed to non-domestic non-sexual forced labour. The profits from forced labour in agriculture, including forestry and fishing, were estimated at US\$9 billion per year, while profits for other economic activities such as construction, manufacturing, mining and utilities were estimated at US\$34 billion per year.⁵⁵

⁵¹ [Modern Slavery Bill: Explanatory Notes](#), para 166

⁵² Home Office, [Draft Modern Slavery Bill](#), Cm 8770, December 2013, p9

⁵³ Scottish Government, [New human trafficking bill for Scotland](#), 17 March 2014

⁵⁴ Department of Justice, [Human trafficking and slavery: strengthening Northern Ireland's response](#), 21 January 2014

⁵⁵ International Labour Office, [Profits and Poverty: The Economics of Forced Labour](#), 2014, pp13-15

A 2012 report by the UN Special Rapporteur on trafficking in persons highlighted the risk that businesses with complex supply chains might be “indirectly associated with the crime of trafficking when their suppliers, subcontractors or business partners supply goods or services produced or provided by trafficked persons”. The report went on to give some examples of industries that had been accused of exploiting trafficking and slavery victims, including clothing manufacturers, chocolate and confectionary companies, and tobacco companies.⁵⁶

More recently, in June 2014 the *Guardian* highlighted the use of slave labour in the production of seafood products sold by major European and US retailers:

A six-month investigation has established that large numbers of men bought and sold like animals and held against their will on fishing boats off Thailand are integral to the production of prawns (commonly called shrimp in the US) sold in leading supermarkets around the world, including the top four global retailers: Walmart, Carrefour, Costco and Tesco.

The investigation found that the world's largest prawn farmer, the Thailand-based Charoen Pokphand (CP) Foods, buys fishmeal, which it feeds to its farmed prawns, from some suppliers that own, operate or buy from fishing boats manned with slaves.

Men who have managed to escape from boats supplying CP Foods and other companies like it told the *Guardian* of horrific conditions, including 20-hour shifts, regular beatings, torture and execution-style killings. Some were at sea for years; some were regularly offered methamphetamines to keep them going. Some had seen fellow slaves murdered in front of them.⁵⁷

Many parliamentarians and campaign groups have called for the Government to introduce legislation similar to the *California Transparency in Supply Chains Act 2010*, which requires businesses over a certain size to disclose information about their efforts to eliminate trafficking and slavery from their supply chains. In its December 2013 report, the Modern Slavery Bill Evidence Review Panel set out the following summary of the California legislation:

It applies to all retailers and manufacturers with annual revenues of more than US \$100 million that do business in California. The Act requires these businesses to disclose information about their efforts to eradicate slavery and human trafficking from their direct supply chains where they make tangible goods for sale.

The Act requires businesses to publicly post information on their website describing the extent to which they engage in the following:

- Verification of product supply chains to evaluate the risks of modern slavery;
- Perform supplier audits to evaluate compliance with company standards;
- Require certification by direct suppliers that materials incorporated into company products comply with the laws regarding modern slavery of the country or countries in which they are doing business;
- Maintain internal accountability standards and procedures for employees or contractors that fail to meet company standards on modern slavery; and

⁵⁶ UN Special Rapporteur on trafficking in persons, especially women and children, *The issue of human trafficking in supply chains*, A/67/261, 2012, p5

⁵⁷ “Revealed: Asian slave labour producing prawns for supermarkets in US, UK”, *Guardian*, 10 June 2014

- Train relevant company employees and management on modern slavery, particularly concerning the mitigation of risk within supply chains.

Businesses are required to post their disclosures with a “conspicuous and easily understood” link on their website homepage leading to the required information. Companies do not face monetary penalties for failure to disclose this information, but they will receive an order from the Californian Attorney General to take specific action.⁵⁸

In relation to the UK, the Panel concluded that voluntary codes of practice would “not represent an effective enough first step”, and recommended that the Government should adopt legislation to “build and improve” on the California model.⁵⁹

The Joint Committee on the Draft Modern Slavery Bill reached a similar conclusion regarding voluntary codes of practice. It instead recommended that the Government amend section 414C(7) of the *Companies Act 2006*, which currently requires quoted companies to report on “social, community and human rights issues” in a strategic report every financial year, by adding “modern slavery” to the list of issues to be reported on.⁶⁰ The strategic report should include an explanation of how the company had verified its supply chains, audited its suppliers, certified goods and services purchased from suppliers, maintained internal accountability standards, and trained staff.⁶¹

The Committee indicated that this approach had been widely supported by its business witnesses, including Primark and Tesco.

In its response to the Joint Committee’s Report, the Government acknowledged the “vital role” of the private sector in tackling modern slavery. It said that the reporting requirements set out in section 414C(7) of the *Companies Act 2006* had only been in force since October 2013, and as such it was “too early to say whether human rights reporting is effective and sufficient when it comes to the inclusion of disclosures on slavery”. The Government went on to stress that it wanted to “work collaboratively with businesses to support them to eliminate forced labour in supply chains, in a way which does not place additional burdens on them”. It indicated that the Home Secretary was due to meet business leaders in June “to help assess the most effective way forward”.⁶²

Writing in the *Sunday Times* in August 2013, Theresa May said that she “would like the bill to encourage companies to make a commitment that their suppliers do not use slave labour”.⁶³ However, the Bill as introduced in June 2014 does not include anything to this effect. Speaking during the Home Affairs debate on the Queen’s Speech, the Home Secretary said that the Government was “encouraging businesses to look at their supply chains and ensure that they are free from trafficking and exploitation”.⁶⁴

⁵⁸ Modern Slavery Bill Evidence Review Panel, *Establishing Britain as a world leader in the fight against modern slavery: Report of the Modern Slavery Bill Evidence Review*, 2013, pp44-45

⁵⁹ Modern Slavery Bill Evidence Review Panel, *Establishing Britain as a world leader in the fight against modern slavery: Report of the Modern Slavery Bill Evidence Review*, 2013, pp47

⁶⁰ Joint Committee on the Draft Modern Slavery Bill, *Draft Modern Slavery Bill – Report*, HL Paper 166/HC 1019, 2013-14, para 179

⁶¹ Joint Committee on the Draft Modern Slavery Bill, *Draft Modern Slavery Bill – Report*, HL Paper 166/HC 1019, 2013-14, para 184

⁶² HM Government, *The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166/HC 1019*, Cm 8889, June 2014, pp22-23

⁶³ “Modern slave drivers, I’ll end your evil trade”, *Sunday Times*, 25 August 2013 [subscription only]

⁶⁴ [HC Deb 10 June 2014 c410](#)

Shadow Home Secretary Yvette Cooper said that Labour would be pressing the Government “to support joint action on supply chains, as the Joint Committee has suggested”.⁶⁵

Frank Field described the absence of any provision on corporate supply chains from the Bill as a “glaring omission”. He went on to say that he hoped Members would “table amendments that persuade the Government that supply chains must be included in this measure”. He called on employers that publicly support extending the Bill to cover supply chains to lobby the Government to ensure that such provisions have been added by the time it receives Royal Assent.⁶⁶

Anti-trafficking group STOP THE TRAFFIK said it was “disappointed” that the Bill did not include the Joint Committee’s supply chain recommendations, and that legislators would be missing “an incredible opportunity” to tackle trafficking unless provisions on supply chains were added.⁶⁷

6.2 Domestic worker visas

The Immigration Rules provide for two types of visa for domestic workers accompanying overseas employers to the UK: one for domestic workers in private households, and one for private staff in diplomatic households.

In the past, both types of visa gave the workers temporary permission to stay initially, with a route to permanent settlement after five years. Domestic workers in private households were able to change employer during their stay, although those in diplomatic households were not.

However, changes to the Immigration Rules were introduced in April 2012. Under the system now in place, new domestic workers in private households are only able to stay in the UK for a maximum of six months. They are no longer able to change their employer in the UK. New staff in diplomatic households are able to stay for up to five years, but they can no longer settle permanently. As before, they cannot change employer in the UK.

At the time the changes were introduced, the Government said that the changes were necessary to bring the visas in line with its strategy of focussing on the “brightest and best” skilled migrants and restricting eligibility for permanent residence. It also took the view that removal of the right to change employer would not affect the number of undocumented migrants in the UK, or levels of trafficking for domestic servitude, and emphasised that remedies other than changing employer (e.g. the NRM and access to the police) would continue to be available to vulnerable domestic workers.⁶⁸

Full details of the 2012 changes are set out in Library Standard Note 4786 [Immigration: migrant domestic workers](#).

The charity Kalaayan, which provides advice and advocacy services for migrant domestic workers, says that it has seen an increase in the exploitation and abuse of domestic staff following the 2012 changes:

In the two years since the tied visa was implemented Kalaayan has registered 402 new workers. 120 of these workers were tied to their employers as they entered on the tied ODW visa or the diplomatic domestic worker visa.

⁶⁵ [HC Deb 10 June 2014 c425](#)

⁶⁶ [HC Deb 10 June 2014 c466](#)

⁶⁷ STOP THE TRAFFIK website, [STOP THE TRAFFIK Statement on the Introduction of the Modern Slavery Bill into Parliament](#) [accessed 2 July 2014]

⁶⁸ [HC Deb 12 March 2012 c15W](#)

New workers registering with Kalayaan give a report of their treatment in the job with which they entered the UK. It is noticeable that those who entered on a visa which tied them to their employers (the tied or the diplomatic domestic worker visa) had worse conditions and less freedom.

- Migrant domestic workers (MDWs) who were tied to their employers were twice as likely to report having being physically abused to those who were not tied (16% and 8%).
- Almost three quarters of those tied reported never being allowed out of the house where they lived and worked unsupervised (71%), compared to under half on the original visa (43%).
- 65% of tied MDWs didn't have their own rooms, so shared with the children or slept in the kitchen or lounge, compared with 34% of those not tied
- 53% worked more than 16 hours a day compared to 32% of those who had the right to change employer.
- 60% of those on the tied visa reported pay of less than £50 a week, compared with 36% on the original visa.
- Kalayaan staff internally assessed more than double (69%) of those who were tied as trafficked in contrast with 26% of those who had not been tied. Two thirds of referrals into the National Referral Mechanism for identifying victims of trafficking made by Kalayaan were of domestic workers who were tied to their employers.⁶⁹

The Modern Slavery Bill Evidence Review Panel called on the Government to “consider reinstating the rights to change employer afforded to overseas domestic workers visa holders”.⁷⁰ The Joint Committee on the Draft Modern Slavery Bill commented that “tying migrant domestic workers to their employer institutionalises their abuse”; it therefore recommended that the Home Office “reverse the changes” to the visa arrangements.⁷¹

In its response to the Joint Committee’s report, the Government said that it had no plans to change the Immigration Rules regarding overseas domestic workers:

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

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

Therefore the Government do not plan to change the Immigration Rules. The Government is instead focused on improving protection for vulnerable domestic workers through ensuring that staff are trained to recognise potential victims of abuse;

⁶⁹ Kalaayan, *Still enslaved: The migrant domestic workers who are trapped by the immigration rules*, April 2014

⁷⁰ Modern Slavery Bill Evidence Review Panel, *Establishing Britain as a world leader in the fight against modern slavery: Report of the Modern Slavery Bill Evidence Review*, 2013, pp54-56

⁷¹ Joint Committee on the Draft Modern Slavery Bill, *Draft Modern Slavery Bill – Report*, HL Paper 166/HC 1019, 2013-14, para 227

that Overseas Domestic Workers are provided with guidance on their rights and how to obtain help; and that employers know their responsibilities.⁷²

During the Home Affairs debate on the Queen's Speech, Shadow Home Secretary Yvette Cooper said:

The Home Secretary also needs to look again at the domestic workers visa and the risks to those forced into domestic slavery, unable to escape. The charity Kalayaan has found that since the Home Secretary changed the visas, 60% of those on the new visa were paid no salary at all, compared with 14% on the original visa. That is slavery, and the evidence suggests that the Home Secretary's visa reforms have made it worse.⁷³

Any changes to overseas domestic workers visas would be implemented by way of amendments to the Immigration Rules and, as such, would not require primary legislation.

⁷² HM Government, *The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166/HC 1019*, Cm 8889, June 2014, p28

⁷³ [HC Deb 10 June 2014 c425](#)