Modern Slavery Bill: Progress of the Bill

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This is a note on the progress of the *Modern Slavery Bill*. It complements Library Research Paper 14/37 prepared for the Commons Second Reading.

The Bill had its Second Reading in the Commons on 8 July 2014 and was considered by a Public Bill Committee over eleven sittings between July and October 2014. It completed its Report and Third Reading stages on 4 November 2014.

The Public Bill Committee agreed a small number of minor Government amendments to the Bill. It also agreed more substantive Government amendments that added a requirement for individuals subject to either of the proposed new prevention orders to notify the authorities of their name and address.

There were numerous divisions on almost every part of the Bill. There was particularly lengthy debate on the scope of the proposed slavery and trafficking offences, the need for a standalone exploitation offence, the territorial extent of the provisions on enforcement powers for ships, the independence and role of the Anti-slavery Commissioner and child trafficking advocates, the proposed statutory defence for victims, and the need for the National Referral Mechanism to be placed on a statutory footing.

A new clause (moved by David Hanson) aimed at reversing changes to visas for overseas domestic workers, was narrowly defeated on division only after the Chair added his vote to the noes.

On Report, the Commons agreed a number of Government amendments to the Bill. The most significant was a new clause requiring commercial organisations that supply goods or services to publish an annual "slavery and human trafficking statement".

The Bill completed its Lords stages between November 2014 and March 2015. On 17 March 2015 the Bill is due to return to the Commons for consideration of Lords amendments. The most significant amendment was the result of a Government defeat following a division on overseas domestic workers. For full background on this, please see Library Standard Note 4786 *Calls to change migrant domestic worker visa conditions*.

Contents

1 Introduction

The *Modern Slavery Bill 2014-15* was introduced on 10 June 2014.[1] The Library briefing paper 14/37 *The Modern Slavery Bill 2014-5* gives full background to the provisions. The Government published a draft *Modern Slavery Bill* in December 2013 for pre-legislative scrutiny, together with a white paper. The subsequent Joint Committee published its report on 8 April 2014. 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's response was published with the Bill on 10 June.

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.

2 Second Reading

Second reading took place on 8 July 2014.[2] The Home Secretary, Theresa May, outlined the provisions of the Bill, acknowledging concern expressed about supply chains and the review into the National Referral Mechanism, due to be published shortly. The Shadow Home Secretary, Yvette Cooper, said that the Opposition supported the Bill but could not see why the Joint Committee's proposals for a separate offence of child exploitation were not being adopted.[3] She also called for a stronger focus on victims and international efforts against slavery. Fiona Mactaggart, co-chair of the all-party parliamentary group on human trafficking and modern slavery, made some detailed points, including the nature of the proposed offences. The SDLP member Mark Durkan, expressed reservations on the failure to take on board the criticisms made by the Joint Committee of the Bill. He argued for stronger child guardian provisions. Other points made by backbench Members were on the need to strengthen the independence of the Commissioner, to review the visa rules for domestic workers and to improve the prosecution rate. Frank Field commented "the Government will

1 Bill 8 of 2014-15
2 HC Deb 8 July 2014 c166-260
3 HC Deb 8 July 2014 c183

be hard pressed to hold the line they have drawn in the Bill that they have submitted for second reading" given the depth of feeling expressed in the debate.[4]

The Minister, Karen Bradley, in her winding-up speech urged MPs not to endanger the passage of the Bill in a very short session by trying to widen its scope. The Bill represented a crucial first step in the process.[5] The Bill was given an unopposed second reading. A programme motion followed which was also unopposed.

3 Committee Stage

The members of the Committee are listed in the Appendix to this note.

There were 11 sittings at Commons committee stage ending on 14 October 2014. The first sitting on 21 July 2014 heard oral evidence from a number of witnesses.

The individual clauses and parts of the Bill are discussed in the following sections of this Note. Square brackets are used to refer to the numbering of the Bill as reprinted after Committee Stage, as two extra clauses were added (clauses 20 and 27 on the requirement for individuals subject to the new prevention orders to provide details of their name and address).

3.1 Slavery, servitude and forced or compulsory labour

David Burrowes moved an amendment that would have provided that consent was irrelevant when determining whether a person was held in slavery or servitude under **clause 1**.[6] The Committee also considered a similar amendment tabled by the Opposition that would have also covered forced or compulsory labour.

Speaking to the lead amendment, David Burrowes said that this would "recognise the important role of psychological constraints and manipulation" in slavery and servitude cases.[7] Speaking to the Opposition amendment, Diana Johnson said that making consent irrelevant to the clause 1 offence would enable cases to be prosecuted "regardless of how the victim behaves".[8] Sarah Champion said that removing the issue of consent from the offence would prevent juries from wrestling with "whether consent is informed, uninformed or not given" and would remove the risk that "the psychological manipulation and abuse that goes on means that victims will try, in court, to protect their slavemaster".[9]

In response, the Minister, Karen Bradley, said that in slavery, servitude and forced labour cases, "inevitably consent is often relevant to whether forced labour has taken place, and the courts need to be able to consider it".[10] She raised the possibility that making consent an irrelevant factor could in fact lead to fewer convictions if victims who said that they "clearly did not consent" were unable to show this as part of the prosecution evidence.[11] David Burrowes agreed that consent could be an important issue in forced or compulsory labour cases, which was why his amendment only extended to slavery or servitude.[12]

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4 HC Deb 8 July 2014 c215
5 HC Deb 8 July 2014 c258
6 PBC Deb 2 September 2014 c47
7 PBC Deb 2 September 2014 c49
8 PBC Deb 2 September 2014 c55
9 PBC Deb 2 September 2014 c65
10 PBC Deb 2 September 2014 c100
11 PBC Deb 2 September 2014 c98
12 PBC Deb 2 September 2014 c106

The Minister did, however, indicate that she would reflect further on the Committee's discussions on consent in advance of Report stage.[13]

David Burrowes withdrew his amendment; Diana Johnson pressed the Opposition amendment to a division but it was negatived by eight votes to ten.[14]

3.2 Trafficking

Clause 2 of the Bill sets out the proposed new offence of human trafficking, which will involve arranging or facilitating the travel of another person with a view to that person being exploited. During the clause stand part debate, the Committee considered two new clauses tabled by Fiona Mactaggart, and two similar new clauses tabled by the Opposition, which sought to replace the single clause 2 offence with a general human trafficking offence and a specific child trafficking offence.[15] These offences would criminalise anyone who "recruits, transports, transfers, harbours or receives" a person for the purpose of exploitation.

Fiona Mactaggart said that the two proposed trafficking offences under the new clauses would address "the fundamental misconception in the Bill that to be trafficked requires someone to travel somewhere".[16] She said it was also important to criminalise conduct such as the harbouring and receipt of trafficked people, particularly given the evidential difficulties in prosecuting those who actually facilitated the travel itself. Regarding children, she considered that a child-specific offence would establish "particular and special protection for children, who are unable to consent to their own exploitation and therefore need special protection".[17]

Diana Johnson said that the approach in the new clauses followed the approach advocated by the Joint Committee on the draft Modern Slavery Bill "of having a stand-alone offence of trafficking for adults and children that does not rely on establishing travel for the purposes of exploitation".[18] She gave the example of a young woman forced into a house on a street where she lives, who is regularly sexually abused, threatened and subjected to force. She said that the person who forced the woman into that situation was a trafficker but, as she understood it, would not be caught by the current formulation of clause 2.[19]

In response, the Minister said that the link to travel or movement in clause 2 was deliberate in order to target those who move human beings with a view to exploiting them (as opposed to clause 1, which does not contain any requirement for movement). She stressed that subsection (3), which the Government had added since it published its original draft Bill, made it clear that arranging or facilitating travel including recruiting, transporting, transferring, harbouring, receiving, transferring or exchanging control over the victim.[20] She considered

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13 PBC Deb 2 September 2014 cc99-100

14 PBC Deb 2 September 2014 c107

15 PBC Deb 4 September 2014 cc125-6. Ms Mactaggart's new clauses replicated proposals made by the Joint Committee on the draft Modern Slavery Bill, while the Opposition's new clauses replicated proposals made by the Anti-Slavery Monitoring Group. See Joint Committee on the draft Modern Slavery Bill, *Draft Modern Slavery Bill – Report*, HL Paper 166/HC 1019, 2013-14, p7 and The Anti-Trafficking Monitoring Group, *Modern Slavery, Human Trafficking and Human Exploitation Bill*, p7 respectively.

16 PBC Deb 4 September 2014 c127

17 PBC Deb 4 September 2014 c131

18 PBC Deb 4 September 2014 c134. For the Joint Committee's recommendations, see section 1 of its report *Draft Modern Slavery Bill – Report*, HL Paper 166/HC 1019, 2013-14, para 142

19 PBC Deb 4 September 2014 c135

20 PBC Deb 4 September 2014 c151

that this would cover "the person who receives a trafficking victim at the end of their journey at a brothel and stops them leaving".[21]

Regarding children, the Minister said that she did not believe there was any requirement under EU directives or other international obligations to have a separate child trafficking offence.[22] She raised the prospect that a separate offence could prove problematic if the age of the victim was at issue:

> If we have cases where doubt has been put in the jury's mind as to the age of the witness and therefore the reliability of that victim, and the court comes back after an adjournment and makes the victim go through giving more evidence to prove their age, or says it does not think it is a child case but a case of trafficking, I am concerned that we are putting undue burdens on witnesses and very vulnerable people. We do not need to do that, because the clause 2 offence covers people of all ages. The age [of the victim] would be the aggravating factor.[23]

On division, clause 2 was ordered to stand part by eleven votes to eight.[24] In its final sitting the Committee negatived the two new clauses tabled by the Opposition by ten votes to eight.[25]

3.3 Exploitation

Clause 3 of the Bill sets out the definition of exploitation for the purpose of the clause 2 trafficking offence.

The Committee agreed a number of minor Government amendments to subsection (6), which covers the exploitation of children and other vulnerable persons. The amendments replace the phrase "is young" with "is a child", which the Minister said was to avoid any ambiguity over legal definitions as "child" means anyone under 18 as a matter of course.[26]

During the clause stand part debate, the Committee considered two new clauses tabled by Fiona Mactaggart, and two similar new clauses tabled by the Opposition, which sought to introduce two new standalone offences of exploitation and child exploitation.[27]

Speaking to her new clauses, Fiona Mactaggart said that specific exploitation offences would catch those who exploit others (particularly children) without having committed a clause 1 or clause 2 offence:

> …if I had just one thing to move, it would be this provision … that makes exploitation of one human being by another a criminal offence, because if we do that, we will really make this law fit for purpose, and if we do not do it, we will continue to consent to a situation in which one human being who uses another person for their own benefit – not necessarily enslaving them, not forcing them to do labour and moving them across continents, but using them for their own benefit, exploiting them, exploiting their

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21 PBC Deb 4 September 2014 c153
22 PBC Deb 4 September 2014 c159
23 PBC Deb 4 September 2014 c161
24 PBC Deb 4 September 2014 c163
25 PBC Deb 14 October 2014 cc464-5
26 PBC Deb 4 September 2014 cc171-2
27 PBC Deb 4 September 2014 c178. Ms Mactaggart's new clauses replicated proposals made by the Joint Committee on the draft Modern Slavery Bill, while the Opposition's new clauses replicated proposals made by the Anti-Slavery Monitoring Group. See Joint Committee on the draft Modern Slavery Bill, *Draft Modern Slavery Bill – Report*, HL Paper 166/HC 1019, 2013-14, p6 and The Anti-Trafficking Monitoring Group, *Modern Slavery, Human Trafficking and Human Exploitation Bill*, p8 respectively.

> ignorance and other things about them – is not doing anything criminal. That is the situation in Britain today.[28]

Diana Johnson said that the Opposition supported the introduction of separate exploitation offences "for the reason that establishing both trafficking and exploitation is often difficult and prevents prosecutions for exploitation on its own, which is also a serious matter".[29]

In response, the Minister acknowledged that some Committee members were concerned that some types of exploitation that did not involve trafficking – for example requiring children to beg – might not be covered by the clause 1 or clause 2 offences. She indicated that Committee members should raise any concerns about gaps in the Bill with her, and that if genuine problems were identified then these would be corrected.[30] However, she went on to say:

> …we have the clause 1 offence to target the serious abuse involved in slavery, servitude and forced or compulsory labour, and we have the clause 2 offence to target trafficking. These are very serious offences that can carry life imprisonment, and we have a wide range of offences that can be used to target offending that is not serious enough to be captured by a clause 1 offence. Also, adding entirely new exploitation offences could simply confuse law enforcement agencies and undermine the focus on what we have rightly described as modern slavery. Where we are dealing with less serious conduct, it is simply proper that we prosecute criminals using less serious offences.[31]

Taking the child begging example, she said that the person exploiting the child could potentially be prosecuted for a clause 1 offence, a clause 2 offence (if the child had been trafficked), the offence of child cruelty under the *Children and Young Persons Act 1933*, or aiding and abetting, conspiracy and/or assisting or encouraging the criminal offence of begging.[32]

On division, clause 3 was ordered to stand part by eleven votes to eight.[33] In its final sitting the Committee negatived the two new clauses tabled by the Opposition by ten votes to eight.[34]

3.4 Procuring sex for payment

During its consideration of **clause 5** on penalties, the Committee considered a group of amendments tabled by Fiona Mactaggart that would have introduced a new summary offence (punishable by up to 12 months imprisonment and/or a fine) of procuring sex for payment:

> (1) A person commits an offence under this section if he or she procures sexual intercourse or any other sexual act, whether for himself or herself or for another person, in return for payment.
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> (2) A "payment" includes –
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> (a) payment that is promised or given by another person;

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28 PBC Deb 4 September 2014 c182
29 PBC Deb 4 September 2014 c188
30 PBC Deb 4 September 2014 c192
31 PBC Deb 4 September 2014 cc193-4
32 PBC Deb 4 September 2014 c193
33 PBC Deb 4 September 2014 cc194-5
34 PBC Deb 14 October 2014 cc465-6

> (b) provision of non-financial benefits, including, but not limited to, drugs or alcohol.[35]

Fiona Mactaggart said that this was a probing amendment to obtain the Government's views on how to tackle demand for trafficked people.

She referred to section 14 of the *Policing and Crime Act 2009*, which criminalises paying for sex with a person who is subject to exploitation or duress, and said that it had proved difficult to prosecute this offence. She drew particular attention to Sweden, which has already criminalised payment for sex:

> It is interesting that in Sweden, the evidence published by the Nordic Institute for Women's Studies and Gender Research showed that the number of men who pay for sex in Sweden has fallen. A survey in 1996 found that nearly 14% of men reported buying sex. A similar survey in 2008 found that the figure had fallen to 7.9%. So legislating changes behaviour, and I think we would all like to change behaviour.[36]

Fiona Bruce expressed her support for the amendments and the Swedish approach, and said "the message has gone out loud and clear that there is no point trafficking people to Sweden to sell sex".[37] David Burrowes also expressed support, saying that there should be "cross-party momentum" on the issue and asking the Minister to raise it with the Minister for Crime Prevention.[38]

The Minister stressed that her current focus was entirely on modern slavery, and that she could not comment on the focus or commitment of her colleagues.

The lead amendment was withdrawn.

3.5 Enforcement powers in relation to ships

Clause 13 of the Bill sets out a range of new enforcement powers relating to ships.

The Committee agreed a minor Government amendment to extend the proposed enforcement powers to ships without nationality in international waters that are not part of the territorial sea of another state.[39]

There was detailed consideration of two amendments moved by Mark Durkan. The first would have extended the definition of "domestic waters" to cover the "all territorial waters of the United Kingdom including its dependencies and territories", as well as the territorial sea adjacent to England and Wales. The second would have required the Secretary of State to issue regulations covering matters such as the identification and tracking of trends in maritime trafficking and forced labour, the communication of intelligence and information on maritime trafficking and forced labour to enforcement officers, co-ordination and intelligence sharing between agencies, and the making of bi-annual reports by the responsible agencies.

On the first amendment, Mark Durkan said that it was aimed at removing confusion and any loopholes through which people could evade capture and enforcement:

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35 PBC Deb 4 September 2014 c199
36 PBC Deb 4 September 2014 c200
37 PBC Deb 4 September 2014 c202
38 PBC Deb 4 September 2014 c203
39 PBC Deb 9 September 2014 c229

> It is trying to ensure that we do not end up with questions about which part of the Irish sea a particular boat was in, or a boat's whereabouts between Northern Ireland and Scotland, and therefore not around England and Wales.[40]

Michael Connarty queried why the Government had not considered "introducing a Sewel motion to the effect that we could come up with something that covered all the United Kingdom waters, and particularly all the waters in Scotland?"[41]

On the second amendment, Mark Durkan said that it would "frame the necessary responsibility in the legislation and make provision for proper follow-up so that we can deal with the evidence".[42]

In response to the first amendment, Karen Bradley said that there had been "significant and extensive discussions with all devolved Administrations and other Crown and overseas territories and so on".[43] She said that she agreed with many of the arguments as to why the enforcement powers might be more effective if they were UK-wide and also covered Crown dependencies and British overseas territories, and that the Government was "actively considering what further extensions to the clause might be required to make it effective".[44]

In response to the second amendment, Karen Bradley considered that it might place a disproportionate burden on law enforcement and Home Office officials. She added that the new Anti-slavery Commissioner proposed by the Bill would have responsibility for reviewing and improving law enforcement's response to tackling modern slavery.[45]

Mark Durkan pressed both amendments to division; each was negatived by ten votes to seven.[46]

3.6 Prevention orders

During its consideration of **clause 20 [21]**, the Committee agreed a number of Government amendments relating to the proposed new slavery and trafficking prevention orders and slavery and trafficking risk orders.[47]

The first group of Government amendments agreed added the Director General of the National Crime Agency to the list of individuals who could apply to vary, renew or discharge either type of order.

The second group of Government amendments agreed introduced a new power for the courts to require an individual subject to either type of order to notify the police, the National Crime Agency or an immigration officer of their name and address, and to update this information if it changes. It would be an offence for the individual to fail to make such notification. The Minister said that this additional information would enable law enforcement bodies to effectively manage the risk posed by such individuals.[48]

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40 PBC Deb 9 September 2014 c234
41 PBC Deb 9 September 2014 c236
42 PBC Deb 9 September 2014 c235
43 PBC Deb 9 September 2014 c244
44 PBC Deb 9 September 2014 c246
45 PBC Deb 9 September 2014 c246
46 PBC Deb 9 September 2014 c251
47 PBC Deb 9 September 2014 c261
48 PBC Deb 9 September 2014 c262

During its consideration of **clause 29 [31]**, which sets out offences related to the new prevention orders, the Committee considered an amendment moved by David Hanson that sought to increase the maximum fine for those who breach the orders from £5,000 to an unlimited amount.[49] He said that £5,000 "seems a tad on the low side" and asked the Minister for her views on why she considered that was a reasonable level of fine.

In response, Karen Bradley said that the maximum fines had been set "in line with existing limits on fines commensurate with the offence committed".[50] She went on:

> Members will be aware that the Legal Aid, Sentencing and Punishment of Offenders Act 2012 includes a provision that, when commenced, will remove any upper limit on maximum fines in the magistrates courts, which, on the commencement day, are set at £5,000 in the type of circumstances covered by the provision. The wording of the clause allows for amendment of the fine if the provision in the 2012 Act is commenced before the Bill receives Royal Assent in order to bring it into line with the new policy. I assure Members that the clause provides appropriate flexibility to respond to changes in sentencing limits, so the amendment is not required.[51]

David Hanson pressed his amendment to a division but it was negatived by nine votes to six.[52]

3.7 The Anti-slavery Commissioner

There was lengthy debate on Part 3 of the Bill, which sets out the arrangements for a new Anti-slavery Commissioner. Key issues were the Commissioner's independence, the remit of the role (particularly in relation to victims), and the role of Parliament in scrutinising the Commissioner's activity.

The Commissioner's independence

Clause 34 [36] of the Bill would require the Secretary of State to "appoint a person as the Anti-slavery Commissioner". The Committee considered a group of amendments that examined the independence of the proposed Commissioner. The lead amendment would have added the word "independent" to the face of the Bill. Other amendments proposed to give Parliament (in the form of the Home Affairs Select Committee) a role in the appointment process, to give the Commissioner (rather than the Secretary of State) the power to appoint his or her staff, and to establish the Commissioner as a separate office.[53]

Speaking to the lead amendment, Diana Johnson made repeated reference to the views of the Joint Committee on the draft Modern Slavery Bill, which she said had stressed the need for the Bill to make the Commissioner's independence explicit. She added that giving Parliament a role in the appointment process would "ensure that Ministers were not deliberately appointing candidates who might be less challenging to them in the role of Anti-slavery commissioner".[54] She also considered that giving the Commissioner the power to appoint his or her own staff would enable them to get "the right skill mix".[55]

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49 PBC Deb 9 September 2014 c271
50 PBC Deb 9 September 2014 c272
51 PBC Deb 9 September 2014 c273
52 PBC Deb 9 September 2014 c274
53 PBC Deb 9 September 2014 cc277-278
54 PBC Deb 9 September 2014 c280
55 PBC Deb 9 September 2014 c281

In response, the Minister drew a comparison between the proposed new Commissioner and existing equivalents in other areas:

> If I may, I will compare the anti-slavery commissioner with the Victims' Commissioner, the Children's Commissioner, the independent reviewer of terrorism legislation, the independent chief inspector of borders and immigration, the surveillance camera commissioner and the biometrics commissioner. There are small differences in the way in which they operate, but in all cases they are appointed by the relevant Secretary of State, they are located in offices provided by the Departments, their remuneration and expenses are provided as determined by the Secretary of State – these are in subsection (4) for the anti-slavery commissioner – and they all send their reports for the Secretary of State for them to lay in Parliament. There are similarities in how this role fits with those of other commissioners.[56]

She added that although the "independent reviewer of terrorism legislation" and the "independent chief inspector of borders and immigration" are commonly referred to as such, the enabling legislation for these two roles does not mention the word "independent".

However, she acknowledged the Committee's concerns and said that she would reflect on them and consider whether the word "independent" could be added to the Bill without any detrimental effect.[57]

On staffing, she indicated that the Commissioner would be supported by "a small team of analytical and support staff", and that normal Government practice for this type of role involved recruiting staff from the civil service using Home Office human resources.[58] She considered that this was the most cost-effective and efficient way of providing the Commissioner with staff.

On the appointment process, she highlighted that none of the other comparable commissioner roles that the Committee had considered included any statutory requirement for a pre-appointment hearing.

Diana Johnson pressed the lead amendment on the word "independent" to a vote, but it was negatived by eight votes to seven.[59] At a later sitting the Committee also negatived a new clause moved by Mark Durkan (that sought to establish the Commissioner as a separate office) by ten votes to eight.[60]

The Commissioner's remit

Clause 35 [37] of the Bill sets out the general functions of the Commissioner. The Committee considered a group of amendments that sought to expand the list of functions set out in clause 35 [37], particularly in relation to the Commissioner's role in supporting and protecting victims.[61]

Speaking to the lead amendment, Diana Johnson said that the Commissioner's remit as currently drafted was too narrow. She argued that expanding it to cover the support

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56 PBC Deb 9 September 2014 c293
57 PBC Deb 9 September 2014 c294 and c299
58 PBC Deb 9 September 2014 c296
59 PBC Deb 9 September 2014 c299
60 PBC Deb 14 October 2014 c467
61 PBC Deb 9 September 2014 cc300-302

available to victims would encourage more prosecutions and convictions, as working alongside victims would encourage them to be witnesses.[62]

Fiona Bruce recognised that there were concerns about a potential overlap with the role of the Victims' Commissioner, but highlighted the particular circumstances of trafficking victims:

> Provision of assistance under the victim support programme, in accordance with international treaties, is not something provided to other victims. It has a separate process of eligibility, the National Referral Mechanism, and many other unique aspects, so I ask the Minister to reflect on whether the Victims' Commissioner can promote best practice in that sort of support, which is so different from the experience of other victims and witnesses and does not directly involve the criminal justice system. There could be a gap here and action may be better taken by the anti-slavery commissioner who would have specific expertise in understanding the experience of victims of human trafficking and slavery.[63]

In response, the Minister said that she believed the clause as drafted was "sufficiently wide to assist the commissioner in making a real difference both to catching criminals and to protecting and supporting victims".[64] She said that it was important not to be over-prescriptive in setting out the general function of the Commissioner. She went on to highlight that the role was being introduced to fill a specific gap:

> In this country, we already have well established victim care arrangements and are seeking to improve those further through the review of the national referral mechanism and the retendering of the victims care contract. The commissioner's role is deliberately focused on a specific gap that we have identified, and which we have discussed at length in Committee, in the law enforcement response and the ability of public authorities to identify victims. I do not wish to see that role diluted into a general advocacy role. I want to see a commissioner who has the authority and autonomy that they need to carry out their functions effectively, while ensuring that their remit is clearly focused.[65]

Diana Johnson said that it was "no bad thing" if there was some overlap with the roles of other commissioners if it meant that victims' needs would be covered by several commissioners instead of one. She pressed the lead amendment to a division but it was defeated by nine votes to six.[66] At a later sitting the Committee also negatived a new clause moved by Mark Durkan (that sought to set out an expanded role for the Commissioner) by ten votes to eight.[67]

The role of Parliament

Clause 36 [38] of the Bill would require the Commissioner to prepare a strategic plan and submit it to the Secretary of State for approval. It would also require the Commissioner to submit an annual report to the Secretary of State. The Secretary of State would be required to lay both the strategic plan and the annual report before Parliament.

The Committee considered a number of amendments that would have given Parliament a greater role in formulating and scrutinising the strategic plan and the annual report. The lead

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62 PBC Deb 9 September 2014 c303
63 PBC Deb 9 September 2014 c305
64 PBC Deb 11 September 2014 c327
65 PBC Deb 11 September 2014 c333
66 PBC Deb 11 September 2014 c335
67 PBC Deb 14 October 2014 cc467-469

amendment would have required the Commissioner to give consideration to any proposal submitted by a Select Committee when preparing the strategic plan. Other amendments would have required the Commissioner to submit the strategic plan and annual report directly to Parliament, rather than to the Home Secretary.

Diana Johnson said that the amendments were designed to strengthen the role of Parliament in looking at the Commissioner's work.

In response, Karen Bradley said that the Commissioner's reports would be scrutinised by Parliament in the same way as any other document presented to Parliament: for example, through a statement or urgent question; by a Select Committee; or by an Opposition day debate, Back-Bench debate or Westminster Hall debate.[68]

She added that the Commissioner would have the autonomy to consider proposals from Select Committees when formulating the strategic plan, so a specific statutory requirement to this effect was unnecessary.[69]

Diana Johnson said that she still believed the relationship between Parliament and the Commissioner could be improved, but that she was not minded at this stage to press the amendment to a division. The lead amendment was withdrawn.[70]

3.8 Defence for slavery victims

Clause 39 [41] of the Bill would establish a new statutory defence for slavery or trafficking victims compelled to commit an offence. The Committee's debate on this clause focused on how the defence should apply to child victims, and on the extent of the list of exceptions set out in Schedule 3.

Child victims

Mark Durkan spoke to a group of amendments which he said were designed "to ensure that a child is not prosecuted for any crime committed as a direct consequence of having been trafficked".[71] He went on:

> The core amendment in the group is also the lead amendment. Its key purpose is to ensure that a child would not be required to establish that they had been compelled to commit an offence before they could benefit from the statutory defence provided in the Bill. Valuable though that defence may be, to leave the clause as drafted, as we have heard, would mean that the trafficked child would need to provide more evidence that they are entitled to a defence as a trafficked child than would be needed to establish the offence of human trafficking. It is simply wrong to put such an onus on a victim who has been turned into a potential defendant by the situation.[72]

In response, the Minister described how she anticipated the reference to compulsion would operate in cases involving children:

> I accept that the reference to compulsion might appear difficult in cases involving children. However, I will explain to the Committee what that test will mean in practice. Compulsion, as drafted in the clause, is a subjective test. The question is whether the child felt they had to commit the offence. There is no requirement of force, threats or

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68 PBC Deb 11 September 2014 c340
69 PBC Deb 11 September 2014 c342
70 PBC Deb 11 September 2014 c347
71 PBC Deb 11 September 2014 c353
72 PBC Deb 11 September 2014 c379

> any other type of outward action that might typically be associated with compulsion. That means the court can consider the more subtle ways in which children might feel compelled to do something. Children often feel they must do what they are told by an adult, and the requirement for compulsion in the clause covers that. There does not have to be active resistance to demonstrate compulsion. We believe that the reference to compulsion in the clause does work in cases involving children and will not prevent the defence from being relied on in the cases that the Committee are concerned about.[73]

She said that retaining the reference to compulsion was necessary in order to avoid creating a loophole to be exploited by criminals:

> Including compulsion in the defence in relation to children also helps to strike the right balance and ensure appropriate safeguards, so that the defence does not provide a loophole in the law for serious criminals. It is right, as a matter of principle, that the defence should not be available where someone did not in fact feel they had to commit the crime but chose to do so nevertheless. We do not consider the fact that such a person was under 18 – which encompasses older children who are close to their 18th birthday – alters that reasonable position.
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> (…)
>
> We do not want the defence to be abused or misused. We also do not want it to result in more children being forced to commit criminal acts because the slave masters say it is fine because there is no way they will be prosecuted. We must ensure that there is some form of protection for the victims of the crimes – because there will be victims of the crimes that children commit. We must ensure that children are not forced or driven to behaviour that is even worse as a result of this defence being on the statute book.[74]

Mark Durkan pressed the lead amendment to a division, describing clause 39 [41] as "deficient and risky in respect of children". It was defeated by eight votes to seven.[75]

The list of exceptions

The statutory defence would not apply to any of the offences listed in Schedule 3 to the Bill. The Committee considered a group of amendments relating to Schedule 3. One would have removed it entirely; another would have required the Commissioner to include a review of Schedule 3 in his or her annual review; others would have altered the list of offences in Schedule 3, for example by removing references to offences under the *Theft Act 1968*.[76]

Mark Durkan moved the lead amendment, which would have removed the reference to Schedule 3 in its entirety so that the statutory defence would be available for any offence. He said that many of the offences in Schedule 3 "could be argued to have been committed by victims of trafficking as a direct result of exploitation".[77] He acknowledged that his amendment went further than other Members might want, but said that some of the more targeted amendments might be appropriate.

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73 PBC Deb 11 September 2014 c367
74 PBC Deb 11 September 2014 c368 and cc377-378
75 PBC Deb 11 September 2014 c382
76 PBC Deb 11 September 2014 c385
77 PBC Deb 11 September 2014 c386

Sarah Teather queried whether it was appropriate for theft-related offences, immigration offences and customs offences to be included in Schedule 3, given that "those are the types of offences that research shows victims of modern slavery often become embroiled in".[78]

Diana Johnson considered that the best way to deal with the matter was for the Commissioner to conduct an annual review of the Schedule 3 list to ensure that all of the offences listed at that time should stay listed, and to consider whether new offences should be added.[79]

In response, the Minister said:

> As we developed the statutory defence, our approach was to ensure that we covered the types of offences that are often committed by those who are enslaved or trafficked. I have taken detailed advice from the CPS on that point and the offences listed in schedule 3 reflect those discussions. The defence is designed to provide an effective protection against prosecution in the types of circumstances that victims of modern slavery find themselves in. The defence can be varied by statutory instrument if experience shows the coverage is not right and is failing to protect vulnerable victims.[80]

Mark Durkan indicated that he would not press his amendment to a division, but said that the more targeted approach taken by other amendments would require further consideration as the Bill progressed. The lead amendment was withdrawn.[81]

3.9 Child trafficking advocates

Clause 41 [43] of the Bill would empower the Secretary of State to make arrangements to introduce child trafficking advocates. The Committee considered a large group of amendments that focused on matters including the independence of the advocates, the scope of their role, and their duty to act in the best interests of the child.

Speaking to the lead amendment, Fiona Bruce queried why clause 41 [43] stated that the Secretary of State "may" introduce child trafficking advocates as opposed to "must". She considered that this change would set out clearly the Government's determination to provide protection for vulnerable children.[82] Referring to some of the other amendments, she said that it was important for clause 41 [43] to set out a clear "up-front" definition of what the role of a child trafficking advocate actually entailed, otherwise there was a risk that in practice it would fall short of what was required. She set out three elements of the role that should be included in the Bill:

> …first, accompanying the child, advocating for them and assisting them in accessing services; secondly, acting as a link or focal point for all agencies and professional engaging with the child; thirdly, speaking on behalf of the child where necessary.[83]

Diana Johnson said that two of the main problems with clause 41 [43] were that it failed to provide advocates with the appropriate level of legal independence from local authorities and other statutory bodies, and that it did not mandate the advocates to act in the child's best interests (rather than simply following the child's desires or instructions).

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78 PBC Deb 11 September 2014 c387
79 PBC Deb 11 September 2014 c388
80 PBC Deb 11 September 2014 c391
81 PBC Deb 11 September 2014 c392
82 PBC Deb 14 October 2014 c402
83 PBC Deb 14 October 2014 c403

Sarah Teather expressed concern that clause 41 [43] only required advocates to be independent of "any person who will be responsible for making decisions about the child". She suggested that this could lead to an advocate being a social worker from the same local authority sitting at a desk next door to another social worker making decisions about the child.[84] She stressed the importance of the advocate being independent from the organisation as a whole, rather than just individuals.

Fiona Mactaggart spoke to an amendment she had tabled that would have placed a statutory requirement on the advocates to act in the child's best interests. She said this was key to ensuring that advocates had the appropriate authority and duty, particularly in cases where the child is not aware of their own best interests.[85]

In response, the Minister clarified that clause 41 [43] already ensured that advocates would be independent from organisations with responsibility for making decisions about the child, as well as from individuals such as social workers. In accordance with the *Interpretation Act 1978*, the Bill's reference to independence from "any person" covered legal persons, corporate or unincorporated, as well as individual people, so would cover local authorities and other organisations as a whole as well as their individual staff members.[86]

She considered that clause 41 [43] already covered "all those elements of the advocate's role that we feel are necessary to include in primary legislation".[87] The functions of advocates would be set out in greater detail through regulations under the affirmative procedure. She drew attention to the trial of child trafficking advocates that is currently underway, and stressed that it was important to look at the independent evaluation of the evidence from this trial before seeking to set out the precise details of the advocate scheme.[88] She indicated that there would be a further role for Parliament in assessing the evaluation of the trial:

> …I confirm that the Government will table amendments on Report to strengthen Parliament's role in deciding whether the provision is to commence after the trials have been completed and evaluated. In other words, I will ensure that the clause is amended so that Parliament has a say over whatever decision is taken by the Secretary of State, given the evidence, to ensure that it is happy with the decision, and there will be a vote to confirm that.[89]

In response to Fiona Mactaggart's amendment, the Minister confirmed that the Government planned to introduce an equivalent amendment at Report to make clear that advocates had a duty to act in the best interests of the child.[90]

On the basis of this response, the lead amendment was withdrawn and clause 41 [43] was ordered to stand part unamended. At a later sitting Diana Johnson moved a new clause to introduce independent legal guardians for trafficked children, but this was negatived on division by ten votes to eight.[91]

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84 PBC Deb 14 October 2014 c409
85 PBC Deb 14 October 2014 c411
86 PBC Deb 14 October 2014 c421
87 PBC Deb 14 October 2014 c416
88 PBC Deb 14 October 2014 cc416-417. See HC Deb 8 May 2014 c294W and "Charity to provide specialist support for child victims of trafficking", 4 June 2014, Home Office for further details of the pilot
89 PBC Deb 14 October 2014 c420
90 PBC Deb 14 October 2014 c424
91 PBC Deb 14 October 2014 cc495-497

3.10 The National Referral Mechanism

During the clause stand part debate on **clause 42 [44]**, which deals with guidance on identifying and supporting victims, the Committee considered a group of new clauses that would have placed the National Referral Mechanism (NRM) on a statutory footing and made a number of changes to the way in which it currently operates.[92]

Opening the debate, Sarah Teather raised a number of issues with the current operation of the NRM:

- its ability to identify victims of trafficking needs to be improved, particularly by improving front line awareness of the NRM;
- victims cannot currently refer themselves to the NRM, but must instead be referred by a "first responder" organisation, which can involve victims having to repeatedly recount their stories;
- there needs to be improved transparency and consistency in the NRM, particularly given the vastly different records of UK Visas and Immigration (UKVI) and the UK Human Trafficking Centre (UKHTC) in granting NRM referrals (UKVI's grant rate is 20% compared to UKHTC's grant rate of 80%);
- the current 45-day reflection process needs to be lengthened;
- a proper appeal process with appropriate legal support is required.

She referred to the Government's review of the NRM, which is currently underway, and expressed her hope that her remarks would be carefully considered when the results of the review are implemented.[93]

Diana Johnson referred to the interim report into the NRM review, which had been published shortly before the Committee's sitting.[94] She said the report showed "a system that is failing", and identified "numerous bureaucratic problems, discrepancies in the way EEA and non-EEA cases are handled, co-ordination problems and big problems with training of staff".[95] She also drew attention to what was not in the report: in particular, no assessment of the accuracy of NRM decisions and no consideration of what redress is available to victims. She considered that the problems identified in the interim report, and those not mentioned in it, could be prevented if the NRM were put on a statutory footing.[96]

In response, Karen Bradley said that the review, under the lead of Jeremy Oppenheim, was looking at many of the issues Committee members had raised:

> …we have a clear indication of the kinds of issues that Mr Oppenheim is considering: victim identification, access to support and governance of the NRM in particular. Those issues include improving the training of first responders, ensuring that all parties can have confidence in the expertise and objectivity of the decision makers, including

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92 PBC Deb 14 October 2014 c426

93 See DEP2014-0762 and HM Government, *Government response to the Joint Committee on draft Modern Slavery Bill report*, Cm 8889, June 2014, pp18-19 for further details of the review

94 Home Office, *Interim Review of the National Referral Mechanism for victims of human trafficking*, 2 October 2014

95 PBC Deb 14 October 2014 c433

96 PBC Deb 14 October 2014 c434

> whether a right of appeal would help in that regard, and whether the NRM should be placed on a statutory footing.[97]

She indicated that she expected the final report to be published before the Bill is considered by the Lords "to allow ample time for scrutiny before the Bill becomes an Act". She therefore expressed reluctance to set out changes to the NRM in the Bill at this stage.

Sarah Teather said she looked forward to the final report and the debate in the Lords, and on that basis clause 42 [44] was ordered to stand part without division.

3.11 Gangmasters Licensing Authority

David Hanson moved a new clause that would have required the Secretary of State to review the remit of the Gangmasters Licensing Authority (GLA) within one year of the Bill obtaining Royal Assent. It would also have enabled her to amend section 3 of the *Gangmasters (Licensing) Act 2004* by order to include other areas of work where she believed abuse and exploitation of workers or modern slavery or trafficking might be taking place.[98]

David Hanson explained that the current key areas covered by the GLA (as prescribed in the 2004 Act) were agriculture, shellfish collection and horticulture. He said the GLA's activities in these sectors had seen "effective raising of standards, control of exploitation and driving out of performance".[99] He said that his new clause would require the Government to look at other pressing areas, for example construction, hospitality and the care sector, to see if the GLA's remit should be extended to cover these.

In response, Karen Bradley said that the GLA had originally been set up to deal with the use of labour in certain agricultural sectors "because the problem of illegal activity by labour providers was understood to be most prevalent in those sectors", as emphasised by the Morecambe Bay cockle picker tragedy.[100] She considered that the case had not been made for extending the GLA's remit beyond these core areas at this stage. However, she stressed that the Government would continue to keep the GLA's remit under review "to ensure it meets the needs of the modern slavery strategy".[101]

David Hanson pressed the new clause to a division but it was negative by ten votes to eight.

3.12 Corporate supply chains

Sir Andrew Stunnell moved a new clause that would have required quoted companies to report on the impact of their supply chains on social, community and human rights issues in their annual strategic reports. The Committee considered this alongside a number of other new clauses that all attempted to address the issue of modern slavery in corporate supply chains.[102]

Opening the debate, Sir Andrew Stunnell said that "protection of the supply chain was the most obvious and glaring omission" from the Bill as introduced. However, he indicated that he would not be pressing the new clause as he had received assurances that the Government intended to introduce its own amendments in due course:

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97 PBC Deb 14 October 2014 c447
98 PBC Deb 14 October 2014 c469
99 PBC Deb 14 October 2014 c470
100 PBC Deb 14 October 2014 c476
101 PBC Deb 14 October 2014 c480
102 PBC Deb 14 October 2014 c481

> …we have received a helpful letter from the Minister that makes it clear that the Government intend to bring forward on Report proposals that, if they can be taken at face value, go as far as I wanted to and have set out in the new clause. Indeed, I think – other Members can speak for their own new clauses – those proposals substantially encompass all the thinking on bringing the supply chain into the compass of the Bill in its various versions in the group of new clauses.[103]

Diana Johnson spoke to the clause on supply chains that had been tabled by the Opposition:

> Our new clause has the three elements that we need from any Government proposal on Report. First, it will have to apply to all large companies—if possible, based on worldwide turnover; if not, then restricted to the UK. Secondly, it will have to bring in specific regulations on slavery and forced labour within the supply chain to match or improve on the requirements of the Californian legislation. Thirdly, there will have to be a clear way of enforcing those regulations. That is what we will be looking for on Report from the Government amendments.[104]

Michael Connarty said that he hoped for "an amendment on Report that is as good as the Californian legislation".[105]

The Minister said that proposals had been developed following close consultation between the Home Office and key British business, as well as NGOs and campaigners. She gave an overview of how the Government intended to proceed:

> I believe that we can now bring forward a simple but effective provision on Report that will require businesses to produce a disclosure each year setting out what they have done to eradicate modern slavery from their supply chain. Our initial thinking is that that will apply to larger companies. However, we want to get the threshold right. We intend to consult on the exact threshold to ensure that the final provision is fair, workable and robust and protects those small businesses that my hon. Friend the Member for Congleton talked about. The detail about the level of the threshold would then be set by secondary legislation, after careful consideration of the consultation results.
>
> We also intend to produce statutory guidance to accompany this provision, setting out the kinds of information that might be included in a disclosure, so that companies understand and have the support they need to comply. We intend to consult on this guidance before it is finished. I hope all Members of the Committee will welcome the commitment to bring forward this important measure with similarities to the California Transparency in Supply Chains Act. However, because we have had the benefit of California's experience, I can confirm that in some respects our measure will go further. In particular, it will not be limited to businesses that provide goods for sale, so that companies providing services also will be caught by the disclosure obligation. I am also aware that the pre-legislative scrutiny Committee called for this kind of disclosure requirement to be created by amending the Companies Act. However, one of the key reasons that we have decided to introduce a stand-alone measure is that the Companies Act applies only to publicly listed companies, as the shadow Minister pointed out. Our measure will require all companies over a certain size to disclose what they are doing to ensure that there is no slavery in their supply chains.[106]

The lead amendment was withdrawn.

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[103] PBC Deb 14 October 2014 c483
[104] PBC Deb 14 October 2014 c487
[105] PBC Deb 14 October 2014 c490
[106] PBC Deb 14 October 2014 c494

3.13 Overseas domestic workers

David Hanson moved a new clause that would have reversed changes to the Immigration Rules made in 2012, which introduced new visa restrictions for domestic workers. The restrictions limited domestic workers in private households to a maximum stay of six months and prevented them from changing employers. 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.[107]

David Hanson said that the new clause would revert back to the legal position before the 2012 changes, as had been recommended by the Joint Committee on the draft Modern Slavery Bill.[108] He referred to research by the charity Kalayaan, which had reviewed the impact of the changes on domestic workers:

> By any stretch of the imagination, someone being brought to this country and paid no salary, given no room, having their passport removed, not being allowed to leave the house unsupervised and being effectively paid less than the minimum wage for their work is extremely worrying.[109]

In response, the Minister said that she shared the sentiment behind the new clause of strengthening protections for overseas domestic workers. However, she did not consider that changes to their visa terms was the way to do this. She set out how the steps the Government was taking to protect overseas domestic workers instead:

> We are committed to ensuring that protection for overseas domestic workers under the visa regime is robust. Although there are already protections in place, we are currently reviewing whether we can take further steps to ensure that visa applicants have appropriate terms and conditions in place in their contracts with their employer before they come to the UK. We must ensure that employers and workers are fully aware of the expectations we have of them.
>
> It is also vital to remember that all overseas domestic workers have the protection of UK employment law while working in the UK. Anyone who believes they are being mistreated by their employer in any way has access to a number of organisations who can help, including the police, ACAS, the pay and work rights helpline and employment tribunals. We will do absolutely everything we can to protect overseas domestic workers during their short stays in the UK and investigate and prosecute any employers who are found committing these awful offences. I am confident that that commitment, in addition to the Bill, employment legislation and improvements to the protections built into the visa regime, represents the best way of addressing abuse of vulnerable workers, while maintaining a consistent and fair immigration system.[110]

David Hanson pressed the new clause to a division. There were nine votes for and nine against; in accordance with the Standing Orders the Chair said that he would have to make a decision, and he gave his vote to the noes. The new clause was therefore narrowly defeated.[111]

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[107] See Library Standard Note 4786 *Immigration: migrant domestic workers* for a full overview of the changes

[108] Joint Committee on the draft Modern Slavery Bill, *Draft Modern Slavery Bill – Report*, HL Paper 166/HC 1019, 2013-14, chapter 7

[109] PBC Deb 14 October 2014 c499

[110] PBC Deb 14 October 2014 c502

[111] PBC Deb 14 October 2014 c503

4 Report and Third Reading

Report and Third Reading took place on 4 November 2014. A number of Government amendments to the Bill were agreed. The most significant of these was a new clause requiring commercial organisations that supply goods or services to publish an annual "slavery and human trafficking statement". Other Government amendments related to the territorial scope of the proposed new enforcement powers relating to ships, and the addition of "Independent" to the new role of Anti-slavery Commissioner.

There was extensive debate on the issues of a standalone exploitation offence, consent as an element of the slavery offence, the remit of the Gangmasters Licensing Authority, protection for overseas domestic workers, and prostitution. The Opposition pressed a number of new clauses on these matters to division but without success.

4.1 Corporate supply chains

The Bill as introduced did not include any provision on corporate supply chains: see section 6.1 of Library Research Paper 14/37 *Modern Slavery Bill 2014-15*. This omission was raised during the Bill's Commons Committee Stage, at which point the Minister responsible for the Bill indicated that the Government would be bringing forward amendments on corporate supply chains at Report Stage.[112]

The Government duly tabled a new clause for Report, which was added to the Bill without division.[113] The new clause applies to England, Wales, Scotland and Northern Ireland.

The new clause would require a commercial organisation that supplies goods or services to publish a "slavery and human trafficking statement" for each financial year of the organisation. The new requirement would only apply to companies with a minimum total turnover, to be specified in Regulations to be made by the Secretary of State.

The statement would have to set out the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its own business (or set out a statement that the organisation has taken no such steps). Further guidance about the content of the statements would be set out in statutory guidance issued by the Secretary of State.

The statement would need to be published on the organisation's website (and the website's homepage would need to include a prominent link to the statement). Alternatively, if the organisation has no website, it would need to provide a copy of the statement to anyone who makes a written request for one within 30 days of receiving the request.

Speaking to the new clause, Home Office minister Karen Bradley indicated that the Government would be consulting on the turnover threshold to be specified in regulations, and the information that should be in the statutory guidance. She indicated that the Government's intention was "that this provision should apply to large companies in the first instance".[114]

The new clause was generally welcomed, although some Members raised concerns that the clause itself was not specific enough regarding the content of the statements and that

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[112] See section 3.12 above
[113] HC Deb 4 November 2014 c683
[114] HC Deb 4 November 2014 c686

stronger enforcement mechanisms were needed.[115] Some also suggested that the proposed new Anti-Slavery Commissioner should have a role in monitoring the statements.[116]

4.2 Exploitation

The Opposition tabled two new clauses aimed at introducing standalone offences of child and adult exploitation, which would apply whether or not the victim had also been trafficked.[117] Diana Johnson argued that these offences were needed to cover "cases of severe labour exploitation".[118] She cited a number of cases – including the widely-reported case of Craig Kinsella, who was held and exploited by a family – where the perpetrators had not been convicted of slavery or trafficking but of lesser offences.[119]

In response, Home Affairs minister Karen Bradley acknowledged that "the wider criminal law needs to tackle exploitation that should properly be criminal but might fall short of the conduct required for the serious offences in this Bill".[120] However, she considered that adding exploitation offences to the Bill risked causing confusion:

> "Exploitation" is potentially a very broad term, and there is a real risk that we would capture much wider behaviour than was ever intended in this Bill, which focuses rightly on the very serious crimes of slavery and human trafficking. The risk is that, by making the offences too broad, the public will no longer be clear on the conduct that we are targeting through very serious criminal offences that carry a life sentence as a maximum. (…) It is only right and proper that, where we are dealing with less serious conduct, we prosecute those responsible using less serious offences.[121]

The new clauses were defeated on division by 288 votes to 227 (for the child exploitation offence) and by 288 votes to 225 (for the adult exploitation offence).[122]

4.3 Consent to slavery and servitude

The Commons considered a number of amendments that would have provided that consent was irrelevant when determining whether a person was held in slavery or servitude under **clause 1**. There had been debate on this issue at Committee, when the minister indicated that she would reflect further on the matter ahead of Report.[123]

At Report, the minister said:

> I am now seriously considering the issue of consent in clause 1 and whether the law could be clarified to make it clearer that consent does not preclude a determination that a child is being held in slavery or servitude or required to perform forced or compulsory labour.[124]

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115 See, for example, Diana Johnson at HC Deb 4 November 2014 cc692-4

116 See, for example, Sir Andrew Stunnell and David Burrowes at HC Deb 4 November 2014 cc694-6

117 HC Deb 4 November 2014 c705

118 HC Deb 4 November 2014 c707

119 For reports of the Kinsella case, in which the perpetrators were convicted of false imprisonment, actual bodily harm, affray and battery, see for example "Man jailed for six-and-a-half years for keeping vulnerable man a slave", *Guardian*, 8 January 2014 and "Rooke family treated vulnerable man as 'slave'", *BBC News*, 7 January 2014

120 HC Deb 4 November 2014 c720

121 Ibid

122 HC Deb 4 November 2014 c721 and c725

123 See section 3.1 of this note

124 HC Deb 4 November 2014 c721

4.4 Enforcement powers relating to ships

The Commons agreed a number of Government amendments (without debate or division) to give the proposed new enforcement powers relating to ships UK-wide territorial effect.[125] These changes followed discussion at Committee Stage as to whether the original provision, which only extended to England and Wales, would be of limited use if did not also cover the waters of Northern Ireland and Scotland.[126]

The Explanatory Notes to the Bill indicate that the necessary legislative consent motions will be sought from the Scottish Parliament and the Northern Ireland Assembly, as the new clauses relate to devolved matters.[127]

4.5 The Anti-slavery Commissioner

The Commons agreed a number of Government amendments (without debate or division) to change the name of the proposed Anti-slavery Commissioner to the Independent Anti-slavery Commissioner.[128]

4.6 Remit of the Gangmasters Licensing Authority

On Report the Commons considered a new clause moved by the Opposition that would have given the Secretary of State the power to amend (by order) section 3 of the *Gangmasters (Licensing) Act 2004* to cover areas of work where the Secretary of State believed abuse or exploitation of workers, or modern slavery or trafficking might be taking place.[129]

Speaking to the new clause, David Hanson said that there was "ample evidence" that the Gangmasters Licensing Authority (GLA) should have its remit extended to cover other sectors such as care homes and construction. He said that gangmasters were "diversifying" into such sectors and that the legislation needed to support "legitimate business working in those sectors who find themselves being undercut by people who are operating sharp practices".[130]

In response, Home Office minister Karen Bradley said:

> We will consider how to introduce more effective and targeted enforcement action by the GLA. We will consider how to introduce more effective and targeted enforcement action by the GLA. We will also consider changes to the GLA to support its greater role in addressing exploitation. However, we believe this requires a more considered analysis of the types of changes required than simply changing the law today. I believe we should continue the hard work with the GLA rather than simply assuming that the answer is to extend the remit of the GLA beyond the core areas set out in the 2004 Act, as envisaged in the new clause.[131]

Mr Hanson pressed the new clause to a division but it was defeated by 292 votes to 234.[132]

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125 The original provision, which was formerly numbered as clause 13, now appears as five clauses in a new Part 3 of the Bill

126 See section 3.5 of this note

127 Explanatory Notes, paragraphs 9 to 14

128 HC Deb 4 November 2014 cSee section 3.7 of this note

129 HC Deb 4 November 2014 c749

130 HC Deb 4 November 2014 c754

131 HC Deb 4 November 2014 c773

132 HC Deb 4 November 2014 c776

4.7 Overseas domestic workers

On Report the Commons revisited the issue of visas for overseas domestic workers, which had been discussed in detail at Committee Stage.[133] David Hanson spoke to a new clause that would have enabled overseas and domestic workers (including those working for staff of diplomatic missions) to:

- change their employer while in the UK;
- renew their domestic worker visa for a period of up to 12 months subject to certain conditions; and
- to obtain a three month temporary visa permitting them to live in the UK for the purposes of seeking alternative employment as an overseas domestic worker where there was evidence that they had been a victim of modern slavery.

Mr Hanson said there was "real concern" that the current visa regime had been detrimental to domestic workers, and that there was political consensus that the issue should be look at again when the Bill reached the Lords.[134] He asked the Government to consider it further; however, in response Karen Bradley said that she did not believe the new clause was "the solution to those cases where an overseas domestic worker suffers ill treatment in the UK".[135]

The new clause was negatived on division by 288 votes to 234.[136]

4.8 Prostitution

On Report the Commons considered a number of new clauses concerning prostitution.

Fiona MacTaggart tabled two new clauses and an amendment that would have criminalised the purchase of sex for payment, required the Secretary of State to publish an annual strategy on assistance and support for exiting prostitution, and abolished the offence of soliciting or loitering in a street or public place for the purpose of prostitution.[137] She said that the aim of her amendments was "to prosecute the men who seek to purchase sex; to stop prosecuting the women who are soliciting", in line with the "Nordic model" adopted in countries such as Sweden.[138] She argued that prostitution was not a career choice: it should be described as exploitation, not sex work.

John McDonnell and Crispin Blunt both spoke against Ms MacTaggart's amendments, arguing that criminalising the purchase of sex would drive prostitution underground and make it more dangerous for those selling sex.[139]

The Opposition tabled two new clauses on prostitution. New clause 22 would have required the Secretary of State to undertake a review of the links between prostitution and human trafficking and sexual exploitation in England and Wales. New clause 23 would have required the Secretary of State to initiate a statutory consultation on the introduction of legislation prohibiting the procurement of sex for payment.

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133 See section 3.13 of this note
134 HC Deb 4 November 2014 cc755-6
135 HC Deb 4 November 2014 c774
136 HC Deb 4 November 2014 c780
137 HC Deb 4 November 2014 cc751-2
138 HC Deb 4 November 2014 c762
139 HC Deb 4 November 2014 cc769-771 and c776

Home Office minister Karen Bradley said that she could not accept any of the amendments, as she was concerned that they could "distract" from the modern slavery focus of the Bill.[140]

The Opposition pressed new clause 22 to a division but it was defeated by 283 votes to 229.[141]

5 Lords amendments

The Lords made a total of 95 amendments to the Bill. All were Government amendments save for one, Lords Amendment 72, which was agreed following a Government defeat on the issue of overseas domestic workers. Explanatory Notes set out the effect of each amendment made. Further details on selected key areas of debate are set out below.

5.1 Slavery, servitude and forced or compulsory labour

Debate on **clause 1** focused on how the proposed new slavery and forced labour offence would apply to children and vulnerable adults. The Lords agreed a number of Government amendments aimed at clarifying the scope of the offence:

- the Bill now makes explicit that one of the personal circumstances that may make someone vulnerable to slavery is the fact they are a child;
- the clause 1 offence can cover work and services that qualify as exploitation under the definition set out in **clause 3** (which might include, for example, begging or pick-pocketing); and
- the victim's consent to any of the alleged conduct does not preclude a finding that they have been held in slavery or required to perform forced labour.

5.2 Independent Anti-slavery Commissioner

Independence

Debate on the Independent Anti-slavery Commissioner focused on how independent he would be in reality. The Lords considered a number of amendments aimed at, for example, giving the Commissioner greater autonomy over budget and staffing, greater flexibility in preparing reports, and greater access to Parliament.

The Lords ultimately agreed a number of Government amendments relating to the Commissioner.

The Commissioner would be given greater flexibility over budget (subject to an annual cap set by the Secretary of State), and the freedom to appoint his own staff (whether from inside the civil service or from elsewhere). Lord McColl of Dulwich welcomed the amendment on budget and staffing, describing it as "a solid foundation for the independence of the commissioner, not only in fact but in appearance".[142]

Lord Warner moved an amendment that would have enabled the Commissioner to "bring any matter to the attention of either House of Parliament irrespective of other provisions in this Act". He said this would ensure that the Commissioner could bring issues into the public

[140] HC Deb 4 November 2014 c776
[141] HC Deb 4 November 2014 c785
[142] HL Deb 23 February 2015 c1478

domain without "being thwarted or nudged away from airing publicly any significant concern that he or she has".[143] In response, Home Office minister Lord Bates said that this would

> …effectively allow the commissioner to report to Parliament about anything without the important necessary safeguards which would avoid inadvertently jeopardising national security, putting victims' lives at risk or undermining an ongoing prosecution.[144]

The amendment was defeated on division by 178 votes to 154.[145]

Duty to co-operate

Another Government amendment was made to add a new Schedule to the Bill setting out the public authorities that would be under a duty to co-operate with the Commissioner (so that this list appeared on the face of the Bill, rather than being left to secondary legislation). Baroness Garden of Frognal explained that this was based on a recommendation by the Delegated Powers and Regulatory Reform Committee:

> The committee recommended that public authorities to whom this duty would apply should be listed in the Bill, that additions should be made to this list via regulations subject to the negative procedure, and that public authorities should be removed from the duty only where regulations have been made via the affirmative procedure.[146]

Another Government amendment made clear that the duty to co-operate would not override any pre-existing obligations relating to patient confidentiality (clearly of particular relevance to health bodies, which are included on the list of bodies in the new Schedule). A further Government amendment made clear that the duty to co-operate would be capable of being tailored in similar ways to suit the individual circumstances of any particular authority added to the list in future.

5.3 Statutory defence for child victims

Debate on the proposed statutory defence for modern slavery victims focused on how it would apply to children.

During Committee, the Lords agreed a Government amendment to remove the requirement for a child victim of modern slavery to prove that they were compelled to commit the offence in order to make use of the statutory defence:

> This will ensure that, regardless of whether a child felt compelled to commit an offence, they will be able to invoke the statutory defence when the offence was committed as a direct consequence of their trafficking or relevant exploitation. The other aspects of the test for the defence will remain, notably that a reasonable person of the same age and in the same situation as the child would have no realistic alternative but to commit the offence.[147]

The general thrust of the Government amendment was welcomed, although some Members queried whether the "reasonable person" test should also be removed for children. For example, Baroness Kennedy of Cradley said:

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143 HL Deb 23 February 2015 c1470
144 HL Deb 23 February 2015 c1474
145 HL Deb 23 February 2015 c1475
146 HL Deb 23 February 2015 c1468. See also Delegated Powers and Regulatory Reform Committee, *10th Report of Session 2014-15*, HL Paper 70, November 2014, paras 5-7
147 HL Deb 8 December 2014 c1650

> I think it is very hard – if not impossible – for a person to place themselves in the mind of an enslaved or trafficked child. (…) A person would need to understand the cultural, supernatural and psychological impact a trafficker can have on a child as well as the fear they feel. This is a test too high for children.[148]

In response, Baroness Frognal said that the Government considered that "removing the objective test would leave the defence dangerously broad".[149]

5.4 Child trafficking advocates

During Committee, the Lords considered a group of amendments aimed at giving further detail on child trafficking advocates on the face of the Bill, rather than leaving this to secondary legislation. Lord McColl of Dulwich commented that the Bill was missing "a clear and comprehensive definition on the face of the legislation of the role of the child trafficking advocate". He said this led to two problems:

> Without setting out in legislation the details of the advocate's function, there is the potential for confusion about the particular responsibilities of the advocate and what authority the advocate has in relation to other professionals working with that child.[150]

He also expressed concern that the Bill as drafted said that the Secretary of State "may" make regulations about child trafficking advocates, rather than "must". He also considered that it was vital for the Bill to give advocates the statutory ability to appoint and instruct the child's legal representatives.

For the Government, Lord Bates said that setting out the functions and role of advocates in regulations would "give advocates the desired legislative basis without forcing us to make decisions about their role prior to the outcome and evaluation of the ongoing trial".[151] However, he undertook to reflect further. At Report he moved a number of Government amendments that aimed to address some of the concerns raised during Committee:

> The government amendments clarify beyond doubt the independence of the child trafficking advocate's role; ensure the advocate promotes the child's well-being as well as acts in the child's best interests; and give the advocate the power to assist the child in obtaining legal advice (…)
>
> These amendments also remove the Secretary of State's discretion to make detailed regulations and replace this with a duty to do so. We are also ensuring, through these amendments, that the regulations provide for advocates to be appointed to potential child victims of human trafficking as soon as possible.
>
> The government amendments will also place a requirement on public authorities to co-operate and share information with child trafficking advocates, where any disclosures do not contravene a restriction. This will place beyond doubt the status of the advocate across the criminal justice, care and immigration systems.[152]

The amendments were agreed.

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148 HL Deb 8 December 2014 c1652
149 HL Deb 8 December 2014 c1655
150 HL Deb 8 December 2014 c1668
151 HL Deb 8 December 2014 c1685. See footnote 88 above for details of the trial.
152 HL Deb 25 February 2014 cc1665-6

5.5 Victim identification and support

The Lords considered a number of amendments relating to victim identification and support: in particular amendments aimed at putting the National Referral Mechanism (NRM) on a statutory footing. For example, Lord McColl of Dulwich spoke to an amendment that would have set out certain "core principles" relating to victim identification and support on the face of the Bill.[153] The amendment provided for, among other things:

- a requirement for the Secretary of State to make regulations on determining whether a person is to be treated as a victim of modern slavery, including a formal review and appeals process for potential victims who wish to challenge negative decisions under the NRM; and

- a requirement to provide assistance and support for persons referred to the NRM for a minimum of 90 days (as opposed to the current minimum of 45 days).

Lord Rosser moved an amendment that would have required the Home Secretary to establish (by regulations) an NRM to identify and support potential modern slavery victims, including a one year renewable residence permit in certain circumstances for persons deemed to be modern slavery victims.[154] Lord Warner moved a similar amendment at Report Stage.[155]

For the Government, Lord Bates acknowledged that the identification of and support for victims was "an essential issue". However, he said that the Government had some concerns about moving immediately to a statutory footing for the NRM, particularly as there had just been a review of the NRM which commented that "any process put on a statutory footing can become inflexible and unresponsive".[156] Its preferred approach was instead to legislate for "an enabling power which allows the Government to move to place the national referral mechanism on a statutory basis, once we have a more settled and effective system and when the pilot schemes have been considered and evaluated".[157]

Government amendments to this effect were agreed on the second day of Report. The amendments set out a basic enabling power allowing the Secretary of State to make regulations regarding the identification and support of victims, but do not make any detailed specification as to what the regulations should cover. Lord Bates said that the amendments would allow for regulations to be made about matters such as accommodation, financial assistance, assistance in obtaining healthcare, the provision of information, and translation and interpretation services.[158]

5.6 Overseas domestic workers (Government defeat)

There was lengthy debate at Committee and Report regarding the visa situation for overseas domestic workers, which had been the subject of a narrow division during the Commons Committee Stage.[159] For full background on this issue, please see Library Standard Note 4786 *Calls to change migrant domestic worker visa conditions*.

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153 HL Deb 8 December 2014 c1688
154 HL Deb 10 December 2014 c1836
155 HL Deb 23 February 2015 c1512
156 HL Deb 23 February 2015 c1517. For the review, please see Home Office, *Review of the National Referral Mechanism for victims of human trafficking*, November 2014.
157 HL Deb 23 February 2015 c1517
158 HL Deb 25 February 2015 c1684
159 See section 3.13 of this note

During Committee, Baroness Cox moved an amendment aimed at giving overseas domestic workers the ability to change employer while in the UK; the ability to renew their visa for up to 12 months; and the right to a three month temporary visa to live in the UK (for the purposes of seeking alternative employment as an overseas domestic worker) where there was evidence they had been a victim of modern slavery.

Speaking to the amendment, she said that overseas domestic workers were effectively "bonded" to their employers under the current Immigration Rules, and lacked "the minimum bargaining power of any employee – the freedom to resign their job".[160]

For the Government, Baroness Garden of Frognal argued that "the best way to prevent an abusive working relationship from being brought to the UK is to test its genuineness before a visa is issued". She referred to moves by the Government to introduce standard template contracts covering matters such as passport retention and sleeping accommodation, and a card to be handed directly to domestic workers on arrival setting out their entitlements.[161]

She went on to argue that the changes proposed by the amendment would "create an anomaly in the system" as "non-skilled, non-European Economic Area domestic workers could come to the UK with an employer and then change employer and stay here in a way that is denied to other non-skilled, non-EEA workers".[162]

Baroness Cox said that the Government totally underestimated the seriousness of the situation, and that the effectiveness of its "remedial suggestions" such as templates and cards was "nonsensical".[163] She withdrew her amendment, but an identical amendment was subsequently moved at Report Stage by Lord Hylton.[164] The amendment was narrowly accepted on a division by 183 votes to 176.[165]

The Government disagrees with the amendment, and has tabled its own amendment in lieu for consideration when the Bill returns to the Commons.

The Government's proposed amendment states that the Immigration Rules must allow for overseas domestic workers (whether in private or diplomatic households) who have been found to be a victim of slavery or human trafficking and satisfy other requirements of the Immigration Rules, to be granted at least six months' leave to remain. Those granted leave to remain would be restricted to working as a domestic worker in a private household, but would be entitled to change employer.

Furthermore, the proposed amendment requires the Home Secretary to issue guidance about exercising immigration functions in respect of domestic workers who may be victims of slavery or trafficking, and specifies that this must include allowing for a period of time when the worker would not be subject to enforcement action as a result of overstaying or breaching a condition attached to their original immigration status.

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160 HL Deb 10 December 2014 c1854
161 HL Deb 10 December 2014 c1867
162 HL Deb 10 December 2014 c1869
163 HL Deb 10 December 2014 c1872
164 HL Deb 25 February 2014 c1689
165 HL Deb 25 February 2014 c1704

5.7 Transparency in supply chains

There was a general welcome for the clause on transparency in supply chains, which the Government had added to the Bill at Commons Report Stage.[166] However, a number of Members considered that the clause needed to be more specific as to the contents of slavery and human trafficking statements and the penalties for breach. There were also repeated calls for a central repository of statements (for example a website) to enable easy analysis as to whether and how companies were complying with their obligations.

For example, at Committee, Lord Rosser moved an amendment providing that a slavery and human trafficking statement "must" contain information relating to four specific areas: accountability for tackling modern slavery; investigation and monitoring of modern slavery; support and access to remedy for victims of modern slavery; and training of staff and suppliers.[167] He described the clause introduced by the Government in the Commons as "vague and woolly", and said it failed to ensure that companies would provide sufficient information to be able to judge whether they were effectively addressing the issue of modern slavery.[168]

Lord Alton moved an amendment that would have set out specified minimum requirements for the content of a slavery and human trafficking statement on the face of the Bill, together with a requirement for statements to be uploaded to a central Government-maintained website.[169] He said that under the Government's clause as introduced:

> …neither the content of what is reported on, nor the location of the report are likely to produce the meaningful, accessible and comparable information that is so essential to take a proper view on how companies are tackling the risk of slavery in their supply chains.[170]

Lord Bates gave an undertaking to look at the issue further ahead of Report. At Report, he moved a number of amendments to build on the clause as originally introduced. The amendments, agreed by the Lords, do the following:

- set out six areas of information that an organisation "may" include in its slavery and human trafficking statement (the organisation's structure and supply chains; its policies in relation to modern slavery; its due diligence processes; that parts of its business and supply chains where there is a risk of modern slavery and the steps it has taken to assess and manage that risk; its effectiveness in ensuring that modern slavery is not taking place in its business or supply chains; and the modern slavery training available to its staff); and
- require statements to be approved and signed at a senior level within the business.

Lord Bates said that these amendments would ensure that senior managers would be taking direct responsibility for the statements, and that businesses would have clearer guidance as to what they should consider including in a statement.[171]

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166 See section 4.1 of this note
167 HL Deb 10 December 2014 c1883
168 HL Deb 10 December 2014 c1884
169 HL Deb 10 December 2014 c1892
170 HL Deb 10 December 2014 c1896
171 HL Deb 25 February 2014 c1745

Lord Alton remained concerned that there would be no central repository of statements. At Third Reading he pressed an amendment on this point to a division but it was defeated by 232 votes to 205.[172]

5.8 Gangmasters Licensing Authority

At Committee and Report the Lords considered a number of amendments aimed at giving the Government the power to expand the remit of the Gangmasters Licensing Authority (GLA).

For example, during Committee Baroness Butler-Sloss moved an amendment that would have given the Secretary of State the power to make regulations to amend the *Gangmasters (Licensing) Act 2004* to enlarge the functions, powers and duties of the GLA. She said that this would allow the Government to review the GLA "at an appropriate time" to see whether its functions should be extended to other areas – for example construction and hospitality – where modern slavery is known to exist.[173]

In response, Baroness Garden of Frognal said that the Government needed to consider the issue carefully, as it did not want to undermine the good work the GLA was already doing by broadening its remit too far beyond its current targeted focus. She added that significant changes to the GLA's remit would be likely to require primary legislation in any event, so an enabling power might not be the most appropriate way to deal with the issue.[174]

The Government returned to the issue on Third Reading, when Lord Bates moved an amendment requiring the Secretary of State to publish a paper on the role of the GLA within 12 months of the Bill receiving Royal Assent, and to consult such representative bodies as he or she considers appropriate about the matters dealt with by that paper.[175]

Lord Bates said that the Government considered that an enabling provision to allow extension of the GLA's remit by regulations would not have achieved its main aim of avoiding further primary legislation should a decision be taken to extend the GLA remit. Such changes would instead be likely to require reform of the 2004 Act and substantive changes to wider primary legislation on employment matters. The Government's preferred approach was to commit to a full consultation on the GLA in the immediate future:

> This amendment achieves several important things, including a full public consultation on the role of the GLA, which will be placed in the context of the wider landscape of organisations fighting worker mistreatment. It provides for an evidence-based approach to further improving the role of the GLA in tackling abuse of workers. In addition, this new clause places this commitment to a consultation in legislation, meaning that a future Government must live up to the commitments that have been made during the passage of this Bill and ensure there is an urgent focus on the work of the GLA at the start of the next Parliament.[176]

The amendment was agreed.

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172 HL Deb 4 March 2015 c229
173 HL Deb 10 December 2014 c1872
174 HL Deb 10 December 2014 cc1879-1880
175 HL Deb 4 March 2015 c243
176 HL Deb 4 March 2014 c244

Appendix: Members of the Public Bill Committee

Chairs: David Crausby, Mark Pritchard

Karen Bradley (Parliamentary Under-Secretary of State for the Home Department)
Fiona Bruce (Congleton) (Con)
Conor Burns (Bournemouth West) (Con)
David Burrowes (Enfield, Southgate) (Con)
Sarah Champion (Rotherham) (Lab)
Michael Connarty (Linlithgow and East Falkirk) (Lab)
Mark Durkan (Foyle) (SDLP)
David Hanson (Delyn) (Lab)
Damian Hinds (East Hampshire) (Con)
Diana Johnson (Kingston upon Hull North) (Lab)
Mike Kane (Wythenshawe and Sale East) (Lab)
Karen Lumley (Redditch) (Con)
Fiona Mactaggart (Slough) (Lab)
Caroline Nokes (Romsey and Southampton North) (Con)
Christopher Pincher (Tamworth) (Con)
Chloe Smith (Norwich North) (Con)
Sir Andrew Stunnell (Hazel Grove) (LD)
Sarah Teather (Brent Central) (LD)
Phil Wilson (Sedgefield) (Lab)