

## Combating modern slavery

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### Introduction

What's not to like about a Bill aimed at combatting modern slavery? After years of lobbying by prominent NGOs such as AntiSlavery International, ECPAT, the Poppy Project, Kalayaan, Unseen, and many children's and church-based charities, the institution of a UK Anti-Slavery Day, the failure of Michael Connarty MP's Private Members Bill on slavery in supply chains (talked out by Tory Whips), a growing volume of detailed research on modern slavery, initiated by the Joseph Rowntree Foundation (see for example Craig et al. (2007) and the range of research studies funded by JRF on forced labour: [www.jrf.org.uk/research/forced-labour](http://www.jrf.org.uk/research/forced-labour)), and the creation of an All Party Parliamentary Group on Trafficking (APPGT) in 2008, the seriousness of modern slavery within the UK was finally accepted by government when the Home Secretary announced in August 2013 she would be presenting a Bill to Parliament later that year.

### Early criticisms

The draft Bill finally emerged in December 2013 and in the period before and after its publication, its provisions were subject to the most intense scrutiny, including a special inquiry chaired by Frank Field MP, an investigation into data on trafficking chaired by Fiona McTaggart MP, of the now-renamed APPGTrafficking and Modern Day Slavery (in recognition of the much wider range of slavery offences coming to light), intense lobbying by NGOs and researchers, and a joint Select Committee of Lords and Commons. The outcome of this scrutiny was a tacit acknowledgement by government that the draft Bill was deficient in many respects. As a result, a final version of the Bill was published in June 2014 and welcomed in principle across the political spectrum as it had its first and second readings.

Since then, however, as the Bill has begun to progress through Parliament, the fault lines

have begun to emerge. A number of key issues have been highlighted which have underlined the difference between the current government's over-emphasis on criminal justice issues and on defining the precise nature of offences on the one hand, and a wider understanding of the nature, causes and scope of modern slavery on the other (see for example the report of the Joint Committee on Human Rights report on the JCHR (2014)) Some of these wider issues may be picked up as the Bill becomes an Act (by March 30 2015); however, it is likely that some remain to be dealt with by an incoming government.

### Some plus points

First, the good news. The government has stressed that the Act will make it clear that victims of modern slavery (such as trafficked women – perhaps 5,000 or so in the UK now according to a variety of estimates<sup>1</sup> – and young men often smuggled under violent conditions into cannabis farms – of which there are thousands now in the UK) will not be criminalised for any acts they are forced to undertake. Secondly, government has also agreed at the time of writing – under pressure, unexpectedly, also from big businesses afraid of losing market share to less scrupulous employers making use of forced labour – that they will introduce a clause along the lines of Michael Connarty MP's original Bill requiring companies to report in their accounts what they are doing to scrutinise their supply chains – of, hopefully, both labour and products – for evidence of slavery practices. Thirdly, offences will result in very heavy punishment – including life sentences – for those found guilty of promoting them.

### And now the bad news

However – and it is a big however – there is much yet to be done which is unlikely to be reflected in the final form of the Act as compromises are done to ensure it reaches the Queen for royal

assent by the end of March. First, perhaps most worryingly, the Bill as a whole has a continuing emphasis on human (both child and adult) trafficking for sexual purposes as the major focus. Trafficking for labour exploitation (which numerically is beginning to overtake cases of sex trafficking), and particularly forced labour, have yet properly to be reflected within the Bill as separate and highly significant forms of modern slavery within the UK. It is still the case that labour exploitation is perceived by many as something which happens in poor 'underdeveloped' countries. (It is of course important to recognise that most such incidences of forced labour do happen outside the UK and that is why the issue of supply chains – which result in slave-produced goods such as Bangladeshi clothing and Thai prawns being sold within this country – is so significant.) And the system for identifying and dealing with victims of trafficking has been shown to be not fit for purpose with government undertaking a review of the National Referral Mechanism (NRM) which processes alleged victims. We do not know yet what this will show but there remains intense anxiety that the NRM is still far too closely linked to the needs of immigration policy – and we know what that does to serious and evidence-based debate! For example, the chances of a victim of trafficking having their claim accepted as such are about three times higher if they are white European than if they are Black African in origin.

We also know that most organisations tasked with identifying victims are hugely underprepared and ill-trained to do so. This is both reflected in the failure of many agencies to understand the nature of human trafficking and what precisely they are looking for in terms of victims – as many cases of child sexual abuse have also shown – and of the legislature in particular to understand the nature of forced labour. Cases have fallen or derisory punishments applied because judges, magistrates and prosecutors do not understand the circumstances under which a person may be said to be in forced labour; for example, freedom physically to move around or visit local shops does not imply freedom from psychological, financial or emotional pressure which effectively keeps a person in bondage. The Act needs to clarify the nature of the offences,

identify all the slavery-like practices as separate and distinct, and require the Home Secretary to use effective guidance and instructions to all those organisations with a responsibility for addressing the issues.

Secondly, despite intense lobbying (which resulted in a tied vote in Committee with the Chair finally casting his vote for the government position) the government has refused to give ground on the issue of overseas domestic workers' (ODWs) visas. Until 2010, ODWs, often coming to work for a specific employer such as a diplomat or businessman, were able to change employers if they found they were being abused or exploited, as was often revealed to be the case in the work of Kalayaan (2014) the major NGO operating to support ODWs. The incoming government in 2010 changed this arrangement so that any ODW seeking to change employers would be deported, thus trapping the ODW in an exploitative situation. ODWs' families are dependent on their income for children and family either with them or back at home (in the Philippines for example) and are more or less forced to accept their exploitation or lose their status and thus their income. Lobbying continues around this issue with Labour attempting to find a compromise such as a visa which can be renewed annually under certain conditions.

### **More work to be done**

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Thirdly, the government committed early on to establishing the post of an Anti-Slavery Commissioner, effectively the National Rapporteur called for by UN, EU and Council of Europe conventions and protocols, a role which is being performed very effectively in several countries such as the Netherlands and Finland. However, whilst the government has agreed to include the term Independent in the title for this role, it is clear that the person would not be independent in any meaningful sense: the Commissioner reports to the Home Secretary (and not to Parliament), who has the power to redact reports. Clearly, the government also sees the role as a criminal justice role: it has profoundly annoyed many Parliamentarians who discovered late in the day that the post had been advertised and candidates interviewed before it had even been

debated in parliament, and most of the candidates turned out to be senior serving police officers. The person appointed was a recently retired Metropolitan Police Officer. As it stands, the Commissioner's mandate is weak and narrow and it is unlikely to enjoy the confidence of campaigning organisations, victims or indeed of Parliament as a whole, as National Rapporteurs do in other countries where they exist.

Fourthly, there remains concern about the remit of the Gangmasters Licensing Authority (GLA) which is the major regulatory body with powers to combat forced labour (introduced after the Morecambe Bay tragedy in 2004 where 23 Chinese cocklepickers were left to drown by an illegal gangmaster). The GLA is acknowledged to be effective in what it does, given its limited remit (three industrial sectors) and resources (which were actually cut substantially in 2013). Government moved the departmental home for the GLA from the agriculturally based departmental home DEFRA to the Home Office, which again appears to emphasise the links between forced labour and immigration policy.<sup>2</sup> Many have argued that a more appropriate home would either be in BIS, with its interests in business development or even DWP, with a labour market-wide purview. Wherever the GLA finally ends up, although government appears to acknowledge that its remit needs to be extended to other industrial sectors such as construction, care and hospitality and leisure, this will be meaningless without a significant increase in its resources. At present, the number of prosecutions of criminal gangmasters through the GLA has fallen dramatically (from 19 in 2010 to 3 in 2014) (Guardian, 14 November, 2014) with the government cuts underpinned by a policy line suggesting that the GLA should only pursue likely high profile cases (and, presumably, leaving other criminals to flourish?)

Finally, there is a concern that, although the devolved administrations are all introducing some form of legislation to address various aspects of modern slavery, there appears to be little attempt to align these to ensure that comparable offences are recognised and dealt with in a comparable fashion. Without this alignment it would be possible, for example, for a criminal

gangmaster in one territory to decide to move to another territory where the legal and regulatory regime was less unhelpful.

## Conclusion

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It is 182 years since Wilberforce's second anti-slavery legislation in the UK Parliament; it seems likely that a new government might need barely a year to identify the obvious weaknesses in the Modern Slavery Act 2015 and legislate again to address them.

## Notes

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- <sup>1</sup> The report of last full year of the UK Human Trafficking Centre (NCA 2014) indicated that there were at least 3,000 referrals of people alleged to have been trafficked but most commentators have suggested this is a substantial underestimate.
- <sup>2</sup> In fact most people found to be in forced labour in the UK are either UK nationals or EU migrant workers with a legal right to be working within the UK (Scott et al., 2012)

## References

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