

MODERN SLAVERY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Modern Slavery Bill, as brought from the House of Lords on 5 March 2015. They have been prepared by the Home Office in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 51, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister except for Amendment 72, which was opposed by the Government. (In the following Commentary, an asterisk appears in the heading to each of the paragraphs dealing with non-Government amendments.)

COMMENTARY ON LORDS AMENDMENTS

Lords Amendments 1 to 4: Modern slavery offences

5. Lords Amendments 1 to 3 clarify the offence in clause 1 of the Bill (Slavery, servitude and forced or compulsory labour).
6. Lords Amendment 1 would make explicit that one of the personal circumstances that may make someone vulnerable to slavery, servitude and forced or compulsory labour is that they are a child.
7. Lords Amendment 2 would clarify that the offence of forced or compulsory labour can cover a very broad range of types of work and services including examples such as begging or pick-pocketing which would amount to exploitation under clause 3(5) or 3(6).
8. Lords Amendment 3 would state that a victim's consent does not prevent the court from finding someone guilty of a clause 1 offence.

9. Lords Amendment 4 amends the clause 2 offence (Human trafficking). It would clarify that the consent of a victim to their travel is irrelevant to whether the offence has been committed, regardless of whether they are an adult or a child.

Lords Amendments 5 to 13: Reparation orders

10. Lords Amendments 5 to 13 are intended to future proof the reparation order provisions in clauses 8 to 10 of the Bill. Currently confiscation orders may only be made in the Crown Court. As a confiscation order is a necessary pre-condition for making a reparation order, the power to make such an order was similarly limited to the Crown Court. However, section 97 of the Serious Organised Crime and Police Act 2005 makes provision for an order to extend the power to make confiscation orders to the magistrates' court in certain circumstances, and work is currently under way to make such provision.

11. These Amendments would give the power to make a slavery and trafficking reparation order to any magistrates' court that has the power to make a confiscation order by virtue of an order under section 97 of the Serious Organised Crime and Police Act 2005.

Lords Amendments 14, 17 to 19, 22, 23, 75 to 76, and 88: Amendments to reflect enactment of Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

12. These Amendments would update the Bill to take account of the enactment of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2 (N.I.)) ("the Northern Ireland Act"). That Act replaces the existing slavery and trafficking offences in Northern Ireland with new offences similar to those in the Bill, and also makes provision for slavery and trafficking prevention orders.

13. Lords Amendment 14 would amend clause 30 to provide that an offence under the law of England and Wales is committed where an individual breaches a slavery and trafficking prevention order, or interim order, made under Schedule 3 to the Northern Ireland Act.

14. Lords Amendments 17 and 18 would make amendments to clause 34 (interpretation of Part 2) consequential on Lords Amendment 14.

15. Lords Amendment 19 would amend clause 37 (Enforcement powers in relation to ships: Northern Ireland) to ensure that relevant maritime enforcement activity can be taken in relation to the new offences in the Northern Ireland Act, and to remove references to repealed offences.

16. Lords Amendments 22 and 23 would amend clause 41 (General functions of Independent Anti-slavery Commissioner) to ensure that the Commissioner's remit

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covers the new offences in the Northern Ireland Act, and to remove references to repealed offences.

17. Lords Amendments 75 and 76 would ensure that the definition of slavery and human trafficking in clause 51 (transparency in supply chains) covers new offences in the Northern Ireland Act, and would remove references to repealed offences.

18. Lords Amendment 88 would add the new offences in the Northern Ireland Act, to the list of offences in schedule 1 of the Bill (which defines slavery and human trafficking offences for the purposes of Part 2).

Lords Amendments 15 and 16: Slavery and trafficking risk and prevention orders

19. These Amendments would amend clause 30 to remove the £5,000 limit on fines that can be imposed in the magistrates court for an offence of breaching of a slavery and trafficking prevention order or risk order (or an interim prevention or risk order). This is to reflect the changes to magistrates' courts sentencing powers under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Lords Amendments 20 and 31: Independent Anti-slavery Commissioner's budget and staffing

20. Lords Amendment 20 would alter the arrangements for the Independent Anti-slavery Commissioner under clause 40(4), so that instead of the Secretary of State providing staff, the Commissioner would have his own budget and be able to appoint his own staff. This includes the ability to appoint staff from outside the Civil Service.

21. The Amendment would also include arrangements to ensure that the Secretary of State sets the budget for the Commissioner prior to the start of each financial year and would allow the Secretary of State to permit the Commissioner to exceed his budget for a specified purpose.

22. Lords Amendment 31 is a consequential amendment on Lords Amendment 20. It would align the production of the Commissioner's annual reports to each financial year rather than each calendar year.

Lords Amendments 21, 24 to 27: Independent Anti-slavery Commissioner's remit and persons with whom the Commissioner can work

23. Lords Amendment 27 would clarify that the Independent Anti-slavery Commissioner can consider the provision of assistance and support to victims of slavery and human trafficking offences in pursuance of the Commissioner's existing functions under clause 41(1).

24. Lords Amendment 21 would be a minor consequential amendment as a result of Lords amendment 27, to reflect the fact that "offences" would now appear

elsewhere in the clause than just subsection (1).

25. Clause 41(3) makes clear that the Commissioner may consult and co-operate with people in support of the Commissioner's remit as set out in clause 41(1). Amendments 24 and 25 would make clear on the face of the Bill that this includes co-operating and consulting with public authorities, including the Commissioner for Victims and Witnesses, and voluntary organisations.

26. Lords Amendment 26 would clarify that, where relevant to the remit of the Independent Anti-slavery Commissioner as set out in clause 41(1), the Commissioner can co-operate or work jointly with persons internationally (as well as in the UK).

Lords Amendments 28, 29, 30, 32, 33: Reports of the Independent Anti-Slavery Commissioner

27. These Amendments would ensure that the powers to remove material from reports made by the Commissioner in clauses 41 and 42 reflect responsibilities within the Scottish Government.

28. These Amendments would make it clear that, where a report may inadvertently prejudice the prosecution of an offence under the law of Scotland, the Lord Advocate is the appropriate person to decide whether to remove the necessary material from the report.

Lords Amendments 34 to 37, 79, 80, 84 to 87 and 89: Duty to Co-operate with the Independent Anti-slavery Commissioner

29. These Amendments relate to the duty to co-operate with the Independent Anti-slavery Commissioner in clause 43 of the Bill.

30. Lords Amendments 34, 35 and 36 would ensure that existing safeguards protecting the disclosure of patient information are not overridden by the duty to co-operate with the Commissioner and ensures that health professionals would not be under conflicting professional obligations.

31. Lords Amendments 37 and 89 implement a recommendation from the Delegated Powers and Regulatory Reform Committee and would create a new Schedule specifying the initial list of public authorities which would be under a duty to co-operate with the Independent Anti-slavery Commissioner. The list at present only covers authorities in England and Wales and those with a UK-wide remit. The Scottish Government and Northern Ireland Executive will specify public authorities which exercise functions solely in, or as regards, Scotland and Northern Ireland through regulations after Royal Assent.

32. Lords Amendments 37, 79 and 84 to 87 would also implement a recommendation from the Delegated Powers and Regulatory Reform Committee. The Amendments would ensure that a public authority can only be removed from the

proposed list of public authorities under a duty to co-operate with the Independent Anti-slavery Commissioner through the affirmative resolution procedure (or equivalent in the devolved legislatures), unless the authority is being removed because it has ceased to exist. The negative resolution procedure (or equivalent in the devolved legislatures) would be used to add a new authority to the list or to remove an authority where it has ceased to exist.

33. Lords Amendments 37, 80, 84 and 87 would also enable the duty to co-operate to be tailored to suit the specific circumstances of authorities which may be added through regulations in future. This is to ensure that placing a public authority under the duty to co-operate will not result in any conflict with a pre-existing duty or give rise to other unintended consequences as a result of that authority's particular functions of legislative framework. To ensure that the duty to co-operate cannot be altered without appropriate Parliamentary scrutiny, any regulations which modify the duty in relation to a particular public authority will be subject to the affirmative resolution procedure.

Lords Amendments 38 to 44: Statutory defence for child victims of modern slavery

34. Clause 45 establishes a statutory defence for victims of slavery and trafficking who are compelled to commit an offence. The effect of Lords Amendments 38 to 44 would be to create a new defence for child victims of modern slavery. The defence would not require the child to have been compelled to commit the offence. It would apply when an offence was committed as a direct consequence of a child victim's trafficking or relevant exploitation, and it could be shown that a reasonable child in the same situation would have committed the offence. Certain serious offences, listed in schedule 3, would continue to be excluded from the defence.

Lords Amendments 45: Legal aid for victims of slavery, servitude or forced or compulsory labour

35. Currently, victims of trafficking are able to apply for civil legal aid for advice and representation in relation to certain immigration matters, damages claims and certain employment claims under paragraph 32 of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Amendment 45 inserts a new clause that would extend the same legal aid provision to victims of slavery, servitude or forced or compulsory labour.

Lords Amendments 46 to 57: Child trafficking advocates

36. These Amendments relate to the provision of child trafficking advocates in clause 47 of the Bill.

37. Lords Amendments 46, 50, 52, 53 and 55 would change the name of child trafficking advocates throughout clause 47 to "independent child trafficking

advocates”.

38. Lords Amendment 47 would ensure that the drafting of clause 47 is consistent with the new clause proposed by Lords Amendment 61. It would not affect how a child’s entitlement to an advocate is to be determined.

39. Lords Amendments 48 and 57 would further define the role of a child trafficking advocate by ensuring the advocate promotes the child’s wellbeing as well as acting in the child’s best interests, and giving the advocate the power to assist the child to obtain legal advice, including (where necessary) instructing legal representatives to act on behalf of the child.

40. Lords Amendments 49 and 51 would remove the Secretary of State’s discretion to make regulations in clause 47(4), and replace this with a duty.

41. Lords Amendment 54 would require regulations under clause 47 (4) to provide for advocates being appointed to potential child victims of human trafficking as soon as practicably possible.

42. Lords Amendment 56 would require the Secretary of State to make regulations requiring public authorities to cooperate and share information with child trafficking advocates, subject to any restrictions on disclosure of information.

Lords Amendments 58 to 65, 67 and 81: Identification and support for victims

43. Lords Amendment 61 would add a new clause to provide for an enabling power to make regulations about identification and support for victims. The UK currently meets its international obligations on victim identification and support on a non-statutory basis, through the National Referral Mechanism. The Home Office intends to pilot significant changes to the National Referral Mechanism as a result of the recent review of its operation. This enabling power allows for the future possibility of this system being set out in statute.

44. Lords Amendments 58 to 60 and 62 to 65, and 67 are consequential on Lords Amendment 61 and would provide for consistency of language across the victims provisions.

45. Lords Amendment 81 would require any regulations made under the proposed new clause to be made by the affirmative resolution procedure.

Lords Amendments 66, 68 to 71, and 82: Duty to notify

46. Lords Amendments 66, 68 to 71, and 82 amend the duty to notify a specified body about suspected victims of slavery or human trafficking under clause 50.

47. Lords Amendments 66, 68, and 69 would change the duty so that, rather than notifying the National Crime Agency, specified public authorities will notify the Secretary of State. In order to future proof the provision, the Secretary of State will

also be able to make regulations to alter who the notification will be made to. This amendment reflects the fact that the Home Office intends to pilot significant changes to the National Referral Mechanism, including changing the current role of the National Crime Agency.

48. Lords Amendment 70 would ensure that regulations made by the Secretary of State may provide that a public authority which includes information in a notification in accordance with the regulations does not breach any obligations of confidence owed by the public authority in relation to that information. The amendment would also ensure that the regulations which determine the information to be included in any notification under the duty do not require or authorise the disclosure of information which contravenes any other restriction on the disclosure of information (however imposed). This would ensure that existing safeguards protecting the disclosure of information are respected, such as those in the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000 and the Crime and Courts Act 2013.

49. Lords Amendment 71 would implement a recommendation from the Delegated Powers and Regulatory Reform Committee and specify the initial list of public authorities under a duty to notify potential victims of modern slavery to the Secretary of State. It would also give the Secretary of State power to amend the list by regulations.

50. Lords Amendment 82 would also implement a recommendation from the Delegated Powers and Regulatory Reform Committee and would ensure that a public authority can only be removed from the list through regulations subject to the affirmative resolution procedure. However, the negative resolution procedure will continue to apply to add a new public authority, or to remove a public authority in consequence of it having ceased to exist.

****Lords Amendment 72: Overseas domestic workers***

51. Lords Amendment 72 is not a Government amendment. It would insert a new clause allowing all overseas domestic workers to change their employer after they have arrived in the UK and be granted extensions to their visa of up to twelve months at a time to work either for the same employer or a new one, provided this is within the same work sector. Additionally, the amendment would create a right for overseas domestic workers, where there is evidence that they have been victims of modern slavery, to be issued a visa extension valid for three months to seek alternative employment as a domestic worker.

Lords Amendments 73 and 74 and 83: Transparency in Supply Chains

52. These Amendments relate to the Transparency in Supply Chains provision in clause 51.

53. Lords Amendment 73 would set out six areas of information that a slavery and human trafficking statement (that commercial organisations, as defined within subsection (2), must disclose under subsection (1)) may include. Businesses would not

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be required to cover each of these areas, but the Amendment would provide a clear indication as to what a business could include. The Government expects many businesses would choose to cover these areas, and this in turn would make statements easier to assess and compare.

54. Lords Amendment 73 would also introduce a subsection to require that statements are approved and signed at a senior level within the business. For companies, the provisions are modelled on the Companies Act and would require approval by the Board and a director's signature. This would ensure that these statements have appropriate support and approval from senior management, who are best placed to implement changes in the business.

55. Lords Amendment 74 is a consequential amendment on proposed Amendment 73. It would simply make clear that the statutory guidance produced may provide more information about what could be included in a slavery and human trafficking statement, in more detail than the initial areas listed on the face of the Bill by Amendment 73.

56. Lords Amendment 83 would provide that the regulations made under clause 51(3), to set out how turnover should be defined for the purposes of clause 51, must be subject to the affirmative resolution procedure the first time they are made. This change would put into effect a recommendation of the Delegated Powers and Regulatory Reform Committee.

Lords Amendment 77: Gangmasters Licensing Authority

57. Lords Amendment 77 would insert a new clause that would require the Secretary of State to publish a paper on the role of the Gangmasters Licensing Authority within a year of Royal Assent, and to consult on that paper.

Lords Amendment 78: Interpretation of Bill

58. Lords Amendment 78 would define "child" for the entire Bill as someone under the age of 18.

Lords Amendment 90 to 94: Amendments to consequential amendments schedule

59. These Amendments would make additions and corrections to the consequential amendments schedule, Schedule 4.

60. Lords Amendment 90 would ensure that the courts retain the ability to make Serious Crime Prevention Orders in respect of those found guilty of existing trafficking offences. Victims of trafficking are able to apply for civil legal aid for advice and representation in relation to certain immigration matters, damages claims and certain employment claims under paragraph 32 of Part 1 of Schedule 1 to Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

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61. Lords Amendment 91 updates the definition of exploitation in relation to trafficking in this paragraph to refer to the trafficking offence in this bill rather than to the offence it replaces in the Asylum and Immigration (Treatment of Claimants) etc.) Act 2004.

62. Lords Amendments 92 to 94 would make minor amendments to the Proceeds of Crime Act 2002 that are intended to clarify how certain sections of that Act are to apply in relation to a slavery and trafficking reparation order.

Lords Amendment 95: Long title

63. Lords Amendment 95 would amend the long title of the Bill to include a specific reference to the provisions on the protection of victims. This reflects Part 5 of the Bill which relates to protection of victims.

FINANCIAL EFFECTS OF THE LORDS AMENDMENTS

64. Lords Amendment 45 which extends civil legal aid to victims of slavery, servitude and forced or compulsory labour may have financial effects. It is difficult to quantify the cost of the extension to legal aid as data is currently only collected on victims of human trafficking, and in some cases those subject to slavery, servitude or forced or compulsory labour would already qualify for legal aid due to their status as victims of trafficking. It is expected that these costs will be minimal and will not increase the Bill's overall anticipated costs to the justice system.

65. Lords Amendment 61 creates an enabling power to make regulations about identification and support for victims. An enabling power creates no financial costs but its use could have financial effects. These effects would be dependent upon the system the regulations set out. The UK is already under an obligation to provide support to victims of trafficking through the European Directive on preventing and combating trafficking in human beings and protecting its victims, and so it is not anticipated that this enabling power would dramatically increase costs that the UK is already subject to from the Directive. As any final scheme would be designed based upon the results of the pilots testing the recommendations of the Review of the National Referral Mechanism, which published its report in November 2014, it is not possible to estimate the costs of any final scheme at this stage.

*66. Lords Amendment 72, relating to Overseas Domestic Workers, is not a Government amendment. Based on existing practice, current fees and estimates of additional applications for leave to remain annually, we estimate it would, if implemented, generate a net income of approximately £2.9 million. Those applying for a visa extension will also be required to pay the NHS Health Surcharge raising revenue of approximately £1.1 million annually. The visa does not carry any entitlement to public funds.

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