

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

MODERN SLAVERY BILL

Fourth Sitting

Thursday 4 September 2014

(Morning)

CONTENTS

CLAUSE 2 under consideration when the Committee adjourned till this day at Two o'clock.

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£5.00

Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 8 September 2014

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
FACILITATE THE PROMPT PUBLICATION OF
THE BOUND VOLUMES OF PROCEEDINGS
IN GENERAL COMMITTEES

© Parliamentary Copyright House of Commons 2014

*This publication may be reproduced under the terms of the Open Parliament licence,
which is published at www.parliament.uk/site-information/copyright/.*

Distributed by TSO (The Stationery Office) and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO
PO Box 29, Norwich NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Order through the Parliamentary Hotline *Lo-call* 0845 7 023474
Fax orders: 0870 600 5533
E-mail: customer.services@tso.co.uk
Textphone: 0870 240 3701

TSO@Blackwell and other Accredited Agents

The Houses of Parliament Shop

12 Bridge Street, Parliament Square
London SW1A 2JX
Telephone orders: 020 7219 3890
General enquiries: 020 7219 3890
Fax orders: 020 7219 3866
Email: shop@parliament.uk
Internet:
<http://www.shop.parliament.uk>

The Committee consisted of the following Members:

Chairs: †MR DAVID CRAUSBY, MARK PRITCHARD

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

Public Bill Committee

Thursday 4 September 2014

(Morning)

[MR DAVID CRAUSBY *in the Chair*]

Modern Slavery Bill

Clause 2

HUMAN TRAFFICKING

Question proposed, That the clause stand part of the Bill.

11.47 am

The Chair: With this it will be convenient to discuss the following:

New clause 7—

“Child trafficking

‘(1) It is an offence to traffick a child.

(2) An offence under this section is committed by any person who recruits, transports, transfers, harbours or receives that child, including the exchange or transfer of control over that child, for the purpose of exploitation.

(3) In determining whether an offence has been committed under this section—

(a) the question whether that child, or any person who has responsibility for that child, has consented to any conduct, and

(b) the question whether any coercive means have been used, are irrelevant.”

New clause 8—

“Trafficking

‘(1) It is an offence to traffick a person.

(2) An offence under this section is committed by any person who recruits, transports, transfers, harbours or receives a second person for the purpose of exploitation, where the means used to do any of those acts include—

(a) the threat or use of force or of other forms of coercion,

(b) abduction,

(c) fraud or deception,

(d) abuse of power,

(e) abuse of a position of vulnerability, or

(f) the giving or receiving of any payment or benefit with a view to securing the consent of any other person having control over that second person.”

New clause 15—

“Human trafficking

‘(1) Any person who—

(a) recruits, transports, transfers, harbours or receives a person including by exchange or transfer of control over that or those persons,

(b) by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or abuse of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, and

(c) knows or ought to know that the purpose of the acts in subsections 7(1)(a) and 7(1)(b) above is the exploitation of that person,

commits an offence of human trafficking.

(2) The consent or apparent consent of a person to the acts referred to in subsection 2(1)(a) or to the exploitation shall be irrelevant where any of the means set forth in subsection 2(1)(b) have been used.”

New clause 16—

“Offence of child trafficking

‘(1) Any person who—

(a) recruits, transports, transfers, harbours or receives a child including by exchange or transfer of control over the child, and

(b) knows or ought to know that the purpose of the acts in subsections 8(1)(a) is the exploitation of that child,

commits an offence of human trafficking.

(2) The consent or apparent consent of the child to the acts referenced in subsection 2A(1)(a) or to the exploitation is irrelevant.”

Fiona Mactaggart (Slough) (Lab): It is a pleasure to serve under your chairmanship, Mr Crausby, even if 15 minutes late. That is better than we were led to expect.

With the proposed new clauses I am seeking two things. One is to make the legislation actually about human trafficking. At the moment it is not; it fundamentally fails to take into account the real nature of trafficking. Secondly, I wish to ensure that the Bill includes particular protection for children.

I am not doing this just out of an idea. As I said in relation to earlier proposed new clauses, I have drawn from the extensive pre-legislative scrutiny. I am doing it in order for us to conform to our international obligations, as agreed when we signed the European convention on trafficking. Both these elements are required under that convention: that we have a real definition of trafficking and that children and adults are separated.

Let us be clear why the Bill before us does not deal with trafficking: because of a fundamental mistake made by the previous Government; I am not blaming the present Government. Travel was seen as an essential element of trafficking; it is not. There is a clear international definition of trafficking under the Palermo Protocol, which separates it into three aspects. One aspect is an act, which can include things such as recruitment—it can include transport but that is not an essential element—“transfer, harbouring, or receipt of persons”.

The second aspect is a means, which can be

“the threat or use of force...coercion...abduction...fraud...deception...abuse of power or...vulnerability, giving...of payments or benefits.”

There is no reference to means in the Bill. That is a fundamental problem. The third aspect is “the purpose of exploitation”, including

“prostitution...sexual exploitation, forced labour...slavery or practices similar to slavery...removal of organs”

and other types of exploitation. The Bill is fundamentally flawed because it fails to include those elements.

People could be excused for believing that trafficking is all about travel—bringing people across borders and so on. It might be helpful to use an example of a case of trafficking from my constituency involving exploitation, which would not be covered by the Bill but I think

everybody in the room would want to see it criminalised and able to be dealt with. A constituent of mine, an elderly lady, is entitled to a pension, which her son-in-law basically grabbed. He has not transported her; she lives with him. He is exploiting her grotesquely. She has no means of escape from him. She does not speak English very well, so she arrives in my office and wants to me to—*[Interruption.]*

The Chair: Order. It is perfectly acceptable for Members to take off their jackets. I see some have anyway but if others feel the need to, please do so.

Fiona Mactaggart: My constituent is, in effect, made to hand over her pension, not by force, but because her son-in-law is providing the roof over her head, so she has no choice. She has no autonomy. She is not in slavery or servitude, which would be covered by clause 1. She has not been travelled anywhere and she is not in forced labour, so the Bill would not protect her.

There are many other examples of a failure to protect victims of grotesque exploitations, such as those who are sexually exploited and those who are not moved around the country, but who are trafficked, harboured and received. I am sure the Minister will say, “We intend those who commit such exploitation to be criminalised.” Let us look at clause 2. It has seven subsections, every one of which mentions the word “travel”. There is a fundamental misconception in the Bill that to be trafficked requires someone to travel somewhere. That is wrong. It is not in the convention that we signed up to. It is not in any of the international definitions. One of the aspects of that convention, under article 4, is that there is an international mechanism to assess the degree of compliance. I do not believe that the Bill complies because it fails to criminalise harbouring, receipt and so on. It criminalises only those who engage in getting people to travel from A to B. It is a very serious flaw in the Bill.

The other limiting aspects are in subsection (4). The person who arranges the travel is criminalised if they do so with the intention to exploit or “knows or ought to know”

that exploitation is likely to occur. Yet, so often, the victim of trafficking does not know who arranged the travel or who knew or ought to have known that they were going to be exploited. They only know about the person who is present.

Fiona Bruce (Congleton) (Con): The hon. Lady is making a powerful speech. Does she agree that the number of individuals involved in the transportation can often be legion? I heard one case quoted where 26 people were involved in the chain of transportation of one girl.

Fiona Mactaggart: Indeed. The hon. Lady is right to say that many people are involved in the chain of transportation. Transportation is one element of trafficking; I am not saying it is not. It is often the element that has the most organised criminality, but is often also the element hardest to prosecute. I am not trying to let people off the hook from being prosecuted as part of that chain of organised criminality. I want us to be able effectively to prosecute the people who perhaps do not

organise the travel, but who arrange the exploitation here in the UK and for whom we are more likely and more able to find evidence.

I pitied the Minister a bit the other day because she was being made by her briefing to argue that consent was irrelevant in one aspect and so we should not put it in the Bill, but that it was actually useful when it came to arguing a case. That was kind of unfair. In a way, she will be made to argue that the reference to travel is not exclusionary and is meant to include receipt, harbouring and so on. However, we know that in court a clever lawyer will bust that apart. We should be better than that. We should be willing to say that the offences currently produce so few successful prosecutions—we know that hundreds of people are trafficked and exploited—that we want offences that give us a better number of successful prosecutions. I fear and feel depressed about the fact that we have not rewritten the offences at all. We are just reproducing existing offences that we know do not get to the heart of the matter.

Children who are sexually exploited here in Britain are rarely moved between one place and another, but they are grotesquely exploited. They are effectively enslaved, often not by being locked up, but by being terrorised or groomed into subservience by predatory sexual monsters. The Bill does not help us to get them and it should do. That is why I am making a passionate speech in a Bill Committee, which we know is rarely able to change anything. I know that even if there are people on the Government Benches who agree with me, they are whipped into supporting their Government in a way that we all suck up to. All of us recognise that we are in teams. In the pre-legislative scrutiny of the Bill, we reached across the teams and came up with a unanimous conclusion on a better way. I hope that these two simple new clauses, which use language that the Government have signed up to in international conventions, will enable us to prosecute those cases effectively and that we do that by reaching across the teams again and coming up with unanimity.

There is a reason why we need a specific child-related offence. The Government, in their response to the Joint Committee, refer to evidence from Riel Karmy-Jones in which she says that she thinks such an offence would be too hard to prove and lead to arguments about age definition in court. However, if we read her evidence carefully, we see that although she points out that there have been arguments in court about age definitions—that is quite true—she also acknowledges that it is right that offences against a child should carry a particular burden.

12 noon

The Committee has learned from the written evidence it received that, in the case of *L & Others*—a very important trafficking case from 2013—

“the Court already had case law, which required it to adjourn a case if there was not sufficient evidence before it to reach a decision on the question of the age of a defendant. It was accepted that the Court did not have the power to direct the provision of evidence about age from the parties but that there was an expectation that such evidence would be provided from children’s services, police, CPS or other sources”.

That shows that since the cases that Riel Karmy-Jones was discussing, in which there were extensive arguments about age assessments that held up prosecutions, the courts have found a way to deal with such cases.

It seems to me that we all want provisions in the Bill to protect children more effectively. The way to do that is by making the trafficking of a child a specific offence. If there is such an offence, there can be effective prosecutions, which have been difficult to prove under the law as it stands, which we are repeating in part 1 of the Bill. I am aware of, for example, children in my constituency who have been trafficked to beg. It has been difficult to secure effective prosecutions of those who make them be beggars because of flaws in our current legislation. Yet, in the Bill, we are asked in part 1 simply to crash together into a law—with a little frilling on the edge—existing trafficking, slavery and servitude offences, and to pretend that it is a new suite of offences and that it will be more effective because longer sentences are associated with it. However, if we cannot prove a case with a short sentence attached, we are not going to be able to prove it with a longer sentence attached. We are therefore not going to see the extra prosecutions that I know the Home Office wants.

I do not really know why the Home Office feels so wedded to something that is flawed. Actually, I do not think that it is the politicians who feel that way. We have an apparatus in Britain that likes what it already has. In many ways we are a conservative country, in that the civil service is very good at protecting what it knows. This is an area in which we need to be radical—where we should not protect that which exists because we know that it does not work well enough. We know that Britain is not catching and convicting the overwhelming numbers of people responsible for such a heinous crime. We are catching and convicting tiny numbers, and the Bill will not change that, which is why the Committee has a responsibility to come up with a much better definition of what trafficking is.

The definition is there. It exists in international treaties to which we are signatories and which we have a responsibility to implement, but which we are not implementing in the Bill. We can have smoke and mirrors and say that we have had this enormous debate—it is great to get parliamentary legislative time; I really welcome that—and some huge legislation, and that we are changing the law, but actually, Members of Parliament, we are not. In this part of the Bill we are not changing the law. We are merely putting together two bits of law under which we know our police officers are currently failing to catch and convict people, because the law is difficult to understand and to prove, and because it does not cover some of the worst offences—such as receipt and harbouring—of which we could be convicting people but are not.

That is why we should follow the agreement reached by Members from every party represented in the room and agree unanimously that the new clauses that I have tabled are a better way of defining human trafficking than clause 2. If we did so, we would not be upending the Government's ambition to be more effective on human slavery and trafficking. We would not be travelling away from our international obligations. We would not be coming up with something that police officers would find hard to understand, because the words are straightforward and easy to understand. They describe the means used by traffickers. Such people do not only use travel; they use abduction, fraud, deception, abuse of power and abuse of a person in a position of vulnerability. That point has been covered to some

extent in clause 1. I am glad that the Government have recognised through an amendment to clause 1, as part of their response to the Select Committee, that abuse of a position of vulnerability is part of how people are enslaved. It is, however, also part of how people are trafficked.

We need a definition of trafficking that does not exclude everything but travel and does not ignore the means used to traffic people. We need a definition that recognises that offences involving children should be prosecuted separately. Such a definition will give us a much better Bill. We all want a much better Bill; I do not think that the parties differ on that. I do not even think that Government and Back Benchers differ on that. Experts on the subject are unanimous about the fact that such a definition would be more effective than other definitions that are tried and tested, but have failed. This is not a theoretical argument about two approaches; it is a real argument about an approach that has been in force for some years, namely a definition that limits trafficking to the question of travel, which has made it more difficult to prosecute other forms of exploitation.

Fiona Bruce: Does the hon. Lady believe that the 26 individuals in the case that I referred to earlier, some of whom were simply minders and therefore static outside a brothel, would not be covered by the legislation as currently drafted?

Fiona Mactaggart: I am not a lawyer. The hon. Lady is.

Fiona Bruce: There was no movement, or control of movement, on the part of the minder.

Fiona Mactaggart: Indeed. There is a risk that clause 2—and clause 3, which refers to it—contains the assumption that trafficking is about travel. There are many forms of trafficking, of which the hon. Lady has cited one example. Someone could be convicted of child sexual exploitation under different legislation in many cases, but there are some cases in which that offence is relatively difficult to prove. Many such cases involve no element of movement. Someone who has arranged the exploitation of another human being might receive them into a place when somebody else has arranged for the travel of the victim.

Under clause 2, it might be possible to prosecute the person who had arranged the travel if they had been aware that the victim was at risk of exploitation, but the person who received the victim would not be an offender even though they had a place of work in which people were exploited. If the slavery offence under clause 1 could not be proved, but there was another form of exploitation going on—benefits farming, for example—the person who received the trafficked people, harboured them, provided them with shelter and was part of the criminal enterprise of trafficking them could not be convicted under the Bill. That is why the Bill is not good enough.

There are very few prosecutions, yet we know from the national referral mechanism and other means that there are thousands of victims. If there are thousands of victims, frankly, there should be at least hundreds of prosecutions, but there are not; there are not even tens

in some years. That is why we must say to the Government that their clauses are not good enough and must back the joint decision made after extended scrutiny by the pre-legislative scrutiny Committee.

Mr David Burrowes (Enfield, Southgate) (Con): I am sympathetic to much of what the hon. Lady is saying. I will allow the Minister to deal with the issue of whether the hon. Lady's examples are covered by clauses 1 and 2. The fundamental issue—the challenge—is whether there is evidence that putting a clearer definition in the Bill will lead to an increase in prosecutions and convictions. What we have heard in previous debates is that there is a reliance on case law that shows what we have been saying: there is a commonality in international obligations. Do we rely on that case law or is now the time to put a clear definition in the Bill that will transform things and have the practical impact of more prosecutions? That is the challenge, and that is where we need to convince the Government.

Fiona Mactaggart: The hon. Gentleman is quite right that case law has stretched the definition a wee bit. The problem is that it has not stretched it very far. We are legislators, not lawyers; our duty is to write what we want into legislation. I think that it is both necessary and correct for us to write into legislation the definitions that have been agreed by countries all over the world, and which are the mechanisms that are used to make assessments in America, for example. When we did the pre-legislative scrutiny we heard from Luis CdeBaca, to whom my hon. Friend the Member for Linlithgow and East Falkirk referred in the previous sitting. The report that is produced in America uses the definition of trafficking that is in the new clauses because by focusing on the acts, the means and the purpose of trafficking, and being quite inclusive about those are, people know that they can catch the exploiters.

The weakness that we have is that although our courts have tried to interpret the law that we write in the context of international agreements—that is how our courts operate; they try to do that—because our law is deficient and is not sufficiently inclusive, they have often failed, and many people who should be convicted are not. That is why I have tabled the new clauses, which reflect the internationally agreed definition of trafficking and would establish particular and special protection for children, who are unable to consent to their own exploitation and therefore need particular protection.

Mr Burrowes: We have heard from eminent QCs and lawyers about their concerns with the Bill, and they see gaps. Is there any evidence that in particular cases that have been prosecuted there has been no conviction because of a lack of clarity in the definition? That would show that the current provisions are deficient.

Fiona Mactaggart: In the case about begging that I was talking about, there was a real difficulty with the prosecution. That was some years ago; to be quite honest, I do not know enough about whether the case law has proceeded extensively since then.

Fiona Bruce *rose*—

Fiona Mactaggart: The hon. Lady wants to intervene—perhaps she knows the answer.

12.15 pm

Fiona Bruce: I do not know. I am just referring back to the example I gave, which would not be considered as trafficking under clause 2, but having looked at clause 1 again I think it would certainly be considered as trafficking under that clause. Does the hon. Lady have any comment on that?

Fiona Mactaggart: Clause 1 deals with slavery, but it does not deal with the kind of example I gave, which is exploitation of another person's benefits. That is not slavery; it would not be covered by clause 1. It does not involve movement or trafficking and, as I said, some of the sexual exploitation cases that we have all been so horrified by recently, which we regard as human trafficking and which we would want to be liable for this life sentence, do not necessarily involve any element of transportation and would not be covered by clause 1. They may be covered by other offences, but they would not be dealt with as human trafficking, so there are gaps.

I do not have in front of me the whole human trafficking handbook, which includes lots of cases, so I cannot cite to the hon. Member for Enfield, Southgate extensive evidence of numbers of cases that have failed. However, I can tell him that we know that the number of successful prosecutions is very much lower than the number of people who are responsible for this crime, and we need to address that.

Michael Connarty (Linlithgow and East Falkirk) (Lab): To assist my hon. Friend, I recall that in the evidence we received in this Committee's first evidence session the Director of Public Prosecutions admitted, in response to a question I asked:

"We know that we prosecute under different offences that are not recorded as trafficking."—[*Official Report, Modern Slavery Public Bill Committee, 21 July 2014; c. 11, Q23.*]

It is quite clear that the authorities try to catch people on other, lesser offences, because at this moment they cannot catch them for trafficking, even with all the things that are now consolidated in the Bill. Those things were already there; there is nothing new. They had to find other ways of prosecuting people for offences that were clearly a lesser offence than those we are seeking, which are slavery, exploitation and what is now commonly known as human trafficking.

Fiona Mactaggart: Indeed, when I have asked about numbers of prosecutions I have had responses from Ministers, and they say that these numbers are low, but "We get them on something else." That hints at an awareness of the fact that there is a gap in the law at present.

With that, I ask the Committee to support new clauses 7 and 8.

Diana Johnson (Kingston upon Hull North) (Lab): That was an incredibly powerful speech by my hon. Friend. It clearly set out the objective that I think we all share on this Committee, which is to make this new legislation work as best as possible to secure as many convictions as possible of people who commit the crimes of trafficking and exploitation.

[*Diana Johnson*]

I speak to new clauses 15 and 16; they build on new clauses 7 and 8, tabled by my hon. Friend. I will indicate at this point that because Opposition Members feel so strongly about this matter and about the need for specific clauses about adults and children, as well as specific clauses about trafficking, we will seek to divide the Committee at the appropriate time. So that we are all clear, because of the way that parliamentary procedure operates I understand that because these are new clauses they will not be taken until the end of Committee proceedings. Obviously, however, we will be asked to vote in a stand part debate as we consider this clause of the Bill, so potentially there will be a Division then. I wish to make it clear that although we want new clauses 15 and 16 to cover the offences that we think should be included in the Bill, at this stage we will have to vote against clause 2 when we come to that point.

I want to make that clear; that is what we feel is the appropriate way of dealing with this matter.

Mr Burrowes: Can I just be clear about something? Are Opposition Members saying that, if they were successful in a Division, the Bill would stand but without the whole of clause 2 referencing human trafficking? Is that the position? Obviously Opposition Members cannot guarantee that they will win the vote at the end of the day on their new clauses, but are they willing to simply remove clause 2?

Diana Johnson: I wanted to say at the outset of the debate what the Opposition are planning to do later because we feel so strongly that clause 2 is not the best way of trying to tackle the problem of trafficking and exploitation. We tabled an amendment, which was not selected, to delete the clause and to replace it with new clauses 15 and 16. Due to parliamentary procedure and the selection that has taken place, our delete-all-and-insert amendment has not been selected, so we have ended up having to table new clauses 15 and 16, but because of the way procedure operates, the Divisions on those will take place later.

Fiona Mactaggart: Everything in clause 2 at the moment is in other legislation that we do not have to repeal because it is repealed in bits at the end of the Bill. Deleting clause 2 does not take anything out of the law as it stands at present.

Diana Johnson: I am grateful for that, because it helps a great deal. This is a consolidating Bill, as we have discussed so far.

Mr Burrowes *rose*—

Diana Johnson: I am happy to give way, but before doing so I want to make it clear that we believe that new clauses 15 and 16 would be a better way of legislating on this issue. The Divisions will come later and we will have a stand part debate today. I want the Committee to be clear about what the Opposition are proposing in new clauses 15 and 16 on which votes will be taken later.

Mr Burrowes: I appreciate that this is a consolidating Bill, but this is a stand part debate and I believe that it would be damaging to remove a key element of the Bill. We have had a debate on consent and whether consent to travel is irrelevant. Removing that and other parts of the human trafficking element would be damaging.

Diana Johnson: I hear what the hon. Gentleman says and I have a lot of respect for him. My problem is that because of procedure there is not much I can do about the way in which the votes will be taken. That is why I thought I should set out at the beginning what we are trying to do so that the Committee understands why the new clauses will be taken at the end, as is the norm in Committee procedure.

I shall move on because if I explain our thinking on this it might help the Committee. First, may I say that the Chair's selection of amendments has been helpful in that exploitation and trafficking have been separated into two debates on clauses 2 and 3? That will help us to appreciate the problems with the current drafting.

As my hon. Friend the Member for Slough said, the issue at stake is that clause 2, as proposed by the Minister, which relocates the existing offence of human trafficking in this Bill, albeit with some clarifications, retains the model of an offence of slavery based on the principle of travel for the purposes of exploitation. That is set against the approach advocated by the Joint Committee on the draft Modern Slavery Bill and eloquently presented by my hon. Friend the Member for Slough, of having a stand-alone offence of trafficking for adults and children that does not rely on establishing travel for the purposes of exploitation.

The Opposition, guided by evidence from the police, the Crown Prosecution Service and the charity and voluntary sectors and assisted by the advice of several top lawyers, followed the recommendations of the Joint Committee and suggested the slightly better new clauses 15 and 16. We believe that they best fit the Government's aim of securing more prosecutions.

We would like clause 2 to be removed from the Bill and replaced with new clause 15, which is effectively a like-for-like replacement, but supplemented by new clause 16, which recognises issues relating to the vulnerability of child trafficking victims. New clauses 15 and 16 are, as I have said, very similar to new clauses 7 and 8, and have been informed by the work set out there and the Government's initial criticism of the offences when they were produced by the Joint Committee. The coalition of charities supporting new clauses 7 and 8, and expert lawyers, have taken on board the Government's criticisms, and have made improvements. That work is now set out in new clauses 15 and 16.

The major difference between clause 2 and new clause 15 is travel. It is essential, as my hon. Friend the Member for Slough clearly explained, to establish an offence under clause 2 in which the person referred to as "V" travels. I was also struck by what my hon. Friend said about travel being specified in every subsection of the clause. By contrast, new clause 15 would capture anyone who

"recruits, transports, transfers, harbours or receives a person including by exchange or transfer of control over that or those persons".

Admittedly, clause 2 can include those who recruit, transfer or harbour someone, but only if those acts are connected to travel at some point. It is the focus on travel that we believe is problematic, and which makes the UK's definition of human trafficking incompatible with international definitions used, as my hon. Friend explained, by the International Labour Organisation and the United Nations, and in the Palermo protocol and the EU directive.

The Committee has already discussed at some length, in the debate on new clause 3 tabled by the hon. Member for Enfield, Southgate, the importance of ensuring the compatibility of UK and international definitions, but I want to remind hon. Members of two pieces of supporting evidence. First, Nadine Finch, a barrister who works in the relevant area, told the Committee before the recess:

“There has been quite a criticism about how the wording in clause 2 does not reflect international wording about trafficking. The benefit of having international wording is that there is an awful lot of expertise out there, both internationally and in Europe, where people have discussed academically or in courts the meaning of the words. So although the word “travel” used extensively in clause 2, it is not clear what travel really means. There is a kind of internal definition but I fear that in prosecutions we will go into many long defence submissions about what travel means, as opposed to what the other definitions of trafficking mean, in the EU directive, and other things that we are also bound with.”—[*Official Report, Modern Slavery Public Bill Committee*, 21 July 2014; c. 35.]

A similar point was raised by Nick Hunt, the director of strategy and policy at the Crown Prosecution Service, in evidence to the Joint Committee on the draft Bill. He said:

“The definition of traffic victims and trafficking is fairly clear through the Palermo protocol and so forth, and the trafficking legislation we have reflects most of the Palermo protocol definition. There is an issue there around harbouring and receipt, and it would be quite interesting to consider whether or not that should be considered and possibly put into clause 2 or clause 3 of the Bill.”

When the Minister puts the case for clause 2, will she respond particularly to what the CPS's head of policy has said?

The problem is not just that we are out of line with international definitions, but that the focus on travel fails to capture the reality of modern trafficking. The point is that a person can be trafficked in one place. The issue raised by my hon. Friend the Member for Slough about sexual exploitation of young people is important. In the example of a young woman who is forced into a house in a street where she lives, and regularly sexually abused, with threats made against her and the regular use of force, the person who forces her into that situation and harbours her is a trafficker, but, as I understand it, would not come within the current formulation in clause 2.

We have had a dreadful report about Rotherham. I am conscious that my hon. Friend the Member for Rotherham sits on the Committee and may wish to comment. That report was last week and, just this morning, it has been reported in the press that there have been more arrests concerning the sexual exploitation of young people. The Committee will feel strongly about the issue and will want to ensure that everything is being done to bring people to justice for the trafficking that is clearly taking place.

12.30 pm

The issue of travel is particularly pertinent with regard to children. I want to refer again to Nadine Finch's evidence to the Committee. She said that children

“very rarely understand they have been trafficked—what trafficking means—or what kind of evidence is needed. They particularly do not understand the movement part of being trafficked to the situation of exploitation; because they may well have been duped by their elders—by their parents.... Many of the children we hear about who are kept in cannabis cultivation houses actually escape from the first house. Somewhere along the line they fall back into exploitation, but the only person they come across is the immediate person who brings them their food or their drink. Therefore there is no prosecution of that person, who has been exploiting them, because they have not been involved in the rest of the chain.”—[*Official Report, Modern Slavery Public Bill Committee*, 21 July 2014; c. 35, Q68.]

Will the Minister deal with that example? How does she feel a prosecution could be brought and could clause 2 be used in those circumstances? If she does not think clause 2 could be used, I expect she will say that clause 1 could be. If so, will she explain why she thinks that would fall within the remit of clause 1? In considering the next group of amendments, to clause 3, I will argue that we need specific offences of exploitation but at this point, it is important for the Committee to realise that if we are going to enable a prosecution for harbouring or trafficking victims, we need to separate harbouring from travel and movement, rather than linking them. We will then be able to facilitate far more prosecutions.

New clause 16 recognises the specific vulnerability of children to being trafficked and, in the light of the evidence, some of which I have mentioned, would change the threshold for obtaining a prosecution in cases of child trafficking by removing the need to prove that the purpose of transporting or harbouring the child is for exploitation. That is because the transporting of children can be trafficking even if they are not then exploited or, at least, not exploited initially. The clear example of that is the idea of a miracle baby. I want to refer the Committee to the evidence of the police to the Joint Committee on the draft Bill. Detective Inspector Hyland of the Metropolitan police pointed out:

“There is a sale and a market for children moved from Africa, for example, to the United Kingdom, but there is no final exploitation that we could actually show... For example, a miracle baby is brought from Nigeria and arrives in London. We can't show where that child has come from and how it got here. It is being looked after by a family but they say, ‘Somebody just appeared and gave us the child.’ That kind of thing is not covered in the suggested legislation, and we are dealing with cases exactly like that.”

Will the Minister address that problem? Babies are clearly being trafficked into the United Kingdom. Is the Metropolitan police officer wrong in saying that the legislation would not cover that issue? If he is not wrong, will the Minister explain how prosecution would be obtained?

I raised the issue with Alison Saunders, the Director of Public Prosecutions, when she gave evidence at the start of our deliberations. I challenged her on what would happen with a miracle baby and how the problem would be covered by the Bill. She seemed to say that she thought that that was an immigration offence. I said:

“With situations such as illegal adoption and miracle babies, how would you be able to make a case against people who were involved in that form of trafficking exploitation?”

She replied:

“As we do at the moment, because that relates to immigration offences. For the ‘parents’ or people who bring the child in as their own, we prosecute those people now as offences under immigration laws, and we will continue to do so. In relation to the people who produce the babies, we have not yet had any cases where we have been able to prosecute in this country because they tend to be abroad.”

I asked:

“Are you saying that the Bill would not cover those particular circumstances?”

and she said:

“No, because the child has not been brought in to be exploited or for forced labour or slavery. It has been brought in to be their child.”

I asked her about the UN conventions on the rights of the child and the child’s right to be with their family, to grow up in their country of origin and so on. She said that that particular circumstance was not covered by the Bill and that it is not

“bringing them in for forced labour or servitude, unless you can show circumstances where they are.”—[*Official Report, Modern Slavery Public Bill Committee*, 21 July 2014; c. 5, Q 7-9.]

Perhaps the Minister can deal with that point.

My final remarks are about separate offences for children. We have discussed the new clause for children and we will come on to a separate offence for the exploitation of children in the next group of amendments. I will make some general comments that apply to both in order to address the confusion about the purposes of specific offences. In particular, the argument was made by the Home Secretary on Second Reading—I have also heard it from the Minister—that specific offences are not necessary because a child victim would be an aggravating factor in sentencing. Like all members of the Committee, I am supportive of longer sentences for those who traffic children, but that is missing the point. The purpose of separate offences regarding children is not about giving longer sentences, but realising that because they are children and because of the special nature of children, they have certain special rights. Therefore, the evidential threshold with regard to children is lower. That will assist the Government in their wish to see more successful prosecutions, particularly concerning children.

The two child-specific offences that I am proposing on trafficking and exploitation mean we would need to establish less to meet the test for the offence when the victim is a child. We should not need to establish that the trafficking is for exploitation because a child should never be transported, harboured or controlled and nor should we need to establish that force or coercion was used. We will come on to exploitation in the next group of amendments, but we should not have to prove that the child did not consent to the exploitation because in UK law a child can never consent to their own exploitation.

I have discussed the issues relating to the evidential burden in respect of a specific offence of child trafficking, and we will do so again when we look at child exploitation. The issue at stake is whether or not we define the offences to meet the specific rights relating to children under international law and now recognised in the UK. The idea that the inclusion of a child-specific offence would make prosecutions more difficult because it would place an extra burden on the prosecution—that they would have to prove beyond reasonable doubt that the victim is a child—is the real nub of the issue.

The Minister needs to be clear that the issue of the age of the child is a matter that the court will have to decide on, whether for sentencing or for dealing with a child-specific offence. We know that courts can already do that and do it fairly regularly for various offences, most notably sexual offences. I accept that identifying the age of trafficking victims poses more of a challenge, but it is not insurmountable.

Those arguing that age assessments will overly complicate a criminal case need to pay some attention to the case of *L & Others* last year, which my hon. Friend the Member for Slough referred to, as well as the evidence that Peter Carter, QC gave to the Committee about that. We were very fortunate that Nadine Finch, who appeared in that case for the Children’s Commissioner, also gave evidence to us. She said:

“I would just like to say two more things. It is said by the DPP and others that the offence of child exploitation is unworkable because, I have heard them say, the issue of age assessment will be raised. I appeared last year for the Children’s Commissioner in the case of *L* and others and one of the issues we took up was the difficulty of addressing age assessments in a criminal court. Lord Judge, the highest judge in the criminal courts at that time, accepted that the criminal court already has case law that enables a judge to adjourn a hearing if there is an age dispute. The court can seek expert evidence on its own, but it can expect both prosecution and defence to bring evidence that will enable them to resolve an age dispute. That is set out in detail in the case, and there was no doubt in the mind of the Lord Chief Justice that it was workable. It has worked for decades in terms of age assessments, so that issue, in many ways, is a red herring.”—[*Official Report, Modern Slavery Public Bill Committee*, 21 July 2014; c. 35, Q68.]

Those arguing that age assessments are unworkable need to realise that this case set down some very clear and practical precedents for the criminal courts that make the use of age assessments in the courts highly feasible.

Peter Carter succinctly said:

“What is difficult about saying to a jury, ‘How old is this person? Has the prosecution proved that this person was under 18 at the time?’? That is not difficult. The answer is either yes or no.”—[*Official Report, Modern Slavery Public Bill Committee*, 21 July 2014; c. 39, Q76.]

The principle of child-specific offences is important because we need to recognise the unique rights of children. More importantly, child-specific offences are required to fit the different nature of child trafficking. Without that, we will not get the prosecutions we all seek. The evidence from the experts and practitioners in the field shows that the idea of separating out offences and having a specific one for children is very workable.

In his evidence, Peter Carter raised the issue of the “extraterritorial extent of the two separate provisions”—[*Official Report, Modern Slavery Public Bill Committee*, 21 July 2014; c. 34, Q68.]

in clause 2. I refer the Minister to trafficking as set out in subsections (6) and (7). Peter Carter said that, while that has extraterritorial effect, servitude in the terms of clause 1 does not. As a practitioner in the field, he is confused by the drafting of clause 2 in relation to clause 1, because part of the exploitation can go back to clause 1, on slavery and servitude. Will the Minister help the Committee by dealing with that point?

Will the Minister also comment on the belief put about that it would be complicated and difficult for a jury to be faced with a hierarchy of offences? She said yesterday that it would be too challenging and confusing

for a jury. Peter Carter said that it would not, and that separating offences out into a hierarchy would help prosecutors:

“The idea of a cascade of offences was not, as the director said, to enable a thoughtless or inadequate prosecutor to throw the entire catalogue at a defendant, but to encourage a prosecutor to think carefully about what the evidence demonstrates, and to then be able to draft the appropriate charge, which will be the most serious appropriate charge that the evidence will sustain. The idea was not to draft a series of lesser charges in the hope that some kind of plea negotiation could result, but to prosecute the most serious offence that the evidence sustains. If it turns out that there is some doubt about it—for example, about whether it is a child or an adult—the prosecutor would make a decision as to whether the evidence could sustain that. If it did not, they would go for the next one down the cascade without confusing the jury. Juries are sophisticated bodies. They are used to making differential decisions, and they find it easier to make differential decisions on a cascade than they do on things that have completely different dimensions.”—[*Official Report, Modern Slavery Public Bill Committee*, 21 July 2014; c. 34, Q68.]

Will the Minister deal with that point from a practitioner in the field about juries’ ability to cope with the cascade of offences and separate them out, as we suggest would happen under new clauses 15 and 16?

12.45 pm

Sarah Champion (Rotherham) (Lab): I will briefly reiterate some of the points that my hon. Friends have made. Clause 2 is weak and does not link to international law. The traffickers will know which countries have the weakest legislation, and will operate in them accordingly. I am also concerned because traffickers operate on an international stage, and if our legislation does not tie into international legislation, we will leave ourselves open, and we may lose cases.

The new clauses provide much greater clarity, which will lead to more convictions. I have spent a lot of time with police forces in different parts of the country. To respond to the question of the hon. Member for Enfield, Southgate, I do not find that cases have collapsed because it was not possible to prove trafficking. What has happened is that those pursuing the case do not use existing trafficking legislation, either because they do not know about it or because it is too weak and fluffy. The aspect of the matter that I know most about is child sex exploitation, and unfortunately, if they cannot catch those responsible on charges of grooming, they will wait until there is abuse. That is a situation that none of us wants. If we could achieve greater clarity, as I believe the new clauses would, we could stop things at the point of trafficking, rather than at the point of exploitation.

We feel strongly about the provision we are discussing, and I know that many on the Minister’s side do too. Is there any way for her to pause and consider it further, rather than pushing it to a vote? If it is pushed to a vote the Bill will be much weaker. If there were potential for a pause in which she could consider our points and perhaps return with something else, that would be a win-win—for us but even more for the people who are trafficked, who will not be served by clause 2.

Mr Burrows: I intend to keep it brief. I have mentioned in earlier debates, and will continue to do so, that I join in the cross-party concern that our legislation should reflect international definitions and best practice. There is a need for clarity and I see the benefit of that.

I do not want to overstate the case; we will not necessarily transform the number of prosecutions or convictions by such additional clarity alone. I agree that it will help. I am still looking for evidence that the conviction gap will diminish if the Bill is clearer. I have heard and read practitioners’ evidence about what is needed, and we have an opportunity as legislators to do it, rather than just to rely on the case law that has developed. I share the sympathy for that view.

Plainly, we shall be discussing under later provisions such matters as victim support and assistance, and that can have a huge and transformative role in bringing victims alongside, and maintaining their confidence throughout the process, which may increase the number of prosecutions and convictions.

I do not want to understate the value of consolidation. The Opposition must recognise that it will enable us to make progress. Although clause 2 contains an element of replication, in that it brings together existing offences, there is value in introducing one offence for all types of trafficking, as the explanatory notes state. It will make human trafficking prosecutions administratively simpler, which will help the investigators and prosecutors. If the Bill did not include the clause—one cannot assume what will happen in later Divisions—it would be deficient because the consolidation and simplification would have been removed. I neither want to overstate nor understate the value of consolidation, but the Opposition would remove the value of simplification.

The hon. Member for Kingston upon Hull North said that the clause is weak and does not accord with our international obligations, but that is not true. There is value in clause 2. We have been arguing about consent, and subsection (2) makes it clear that the victim’s consent to travel is irrelevant. The language in subsection (3) reflects the definition of trafficking set out in the Council of Europe convention and the associated Palermo protocol, which we all support. Therefore, it is important that the clause stand part of the Bill. We are not just straddling. As a practitioner, I know the deficiency of straddling different pieces of legislation, not least in a court when convictions and sentencing must be determined; it is therefore important that there is consolidation. We must not throw out that baby with the bathwater of our arguments about having new definitions and clarity in the Bill.

Let us try to stay together. We said we would work on a cross-party basis. One of the rationales behind the Bill was provided by the Centre for Social Justice, whose report many of us know, which said that it is important to have consolidation and simplification. Removing clause 2 would be a backwards step.

Fiona Mactaggart: The hon. Gentleman says that subsection (3) uses the international language. He is right that it refers to “harbouring”, “receiving” or “transferring”. However, it says,

“A person may in particular arrange or facilitate V’s”—
I have always been frustrated by that “V”—
“travel by recruiting V, transporting or transferring V”.

What if harbouring involves no travel? There is an argument that can be made in court, about which we must be clear, that somebody who harbours someone with a view to exploiting them is breaking the law. The clause does not make that explicit.

Mr Burrowes: I hear the hon. Lady's point. There are gaps in criminal liability, and I hope the Minister ensures they are covered and addresses how they will come within the ambit of clause 1. We are dealing with a serious offence that carries a sentence of life imprisonment, and that is the focus of these two clauses. Having said that, one should not ignore the fact that subsection (3) reflects the definitions in the international obligations. The clause can be improved, but its removal, which we may divide on, would be a retrograde step.

Diana Johnson: I know that the hon. Gentleman is not making mischief. However, we are giving the Bill line-by-line scrutiny and we have to work within the procedures of the Committee, which is why I explained at the outset why I will ask my right hon. and hon. Friends to take the action that I set out. I would like the hon. Gentleman to be clear. We have a problem with the fact that a child-specific offence is not set out. We think there is merit in having one, the Joint Committee thinks so, and many esteemed lawyers are telling us that there is merit in having one. I am surprised that the hon. Gentleman does not see the merit in separating children from adults.

Mr Burrowes: I have not come on to the new clauses yet. I have been in a similar position to the hon. Lady during line-by-line scrutiny in opposition. It is one thing to have a stand part debate on a clause; it is another to divide to remove it. The Opposition are seeking to remove human trafficking from the Bill. They have to stand and fall on that. I am not making mischief. It is just the reality of what the Opposition are seeking to do. I am seeking to persuade the Committee not to divide on that. I am willing to talk about the separate issue of child-specific offences.

Sarah Champion: I am challenging the hon. Gentleman on the language he uses. We are not taking away the human trafficking element. Using the tools we have, which are quite cumbersome, we are trying to replace it with stronger language. We are trying to beef it up to make it better, not to remove it from the Bill entirely.

Mr Burrowes: We have heard different points on that. There will be time for further debate on child-specific offences. There is an intoxicating part to the argument. Plainly, everyone wants to do all they can to help child victims and to ensure that we do not leave any gaps. I also know from dealing with other cases of child cruelty and child-specific cases that we should not make additional offences. Legislation exists. There are already ways to deal with it in the current law and this Bill. I have tabled

amendments, and the Government are on the same page as me regarding how we define "child" and how we give specific provision to children in the Bill. That is particularly welcome. I believe that can be sufficient. While the argument is a good one, it is not one that I think in practice will do all that the Opposition, the Government and I want to do to support child victims.

On the evidential value of proving that a child is involved, I am with the practitioners who say that it can be done. That obstacle can be dealt with. When we look at increasing the number of convictions in cases involving child victims, I do not think we need a child-specific offence. We simply have to recognise that we are talking about children, and there are also specific provisions relating to children under international obligations that we can use to deal with this issue.

Michael Connarty: I know that the hon. Gentleman has given this a great deal of thought but there is a deep flaw in his logic. He says that we want to do more and we want to do better. It is clear that if the Government had applied the official position of the Joint Committee, all the things that would improve the Bill and make it the best it could be would be in it. Unfortunately, that means we have to remove clause 2, which is wrong, and accept the new clauses. It is not a case of leaving a blank hole but of putting into that place the best recommendations which all the legal bodies who gave us evidence, including the police, said would work. So it is not good enough for the hon. Gentleman to say he is doing as much as he can. If he is conscience driven he must do his best, and that means accepting that we must lose clause 2 and replace it with the better set of new clauses.

Mr Burrowes: The hon. Gentleman seeks to prick my conscience. The best we have to do is to look at it line by line. The Opposition seek to remove a clause which I think is relevant and important. We have had that argument.

On the question of extraterritorial jurisdiction, I seek reassurance about the apparent difference between clause 1 and 2. That underlines the point about the value of clause 2. Perhaps the Minister can confirm whether this is a replication or an addition. It makes it clear that the extraterritorial effect and the global effect and impact of human trafficking, which are covered in clause 2, have a value and should not be removed.

Ordered, That the debate be now adjourned.—(*Damian Hinds.*)

12.59 pm

Adjourned till this day at Two o'clock.



ISBN 978-0-215-07219-1



9 780215 072191