# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# MODERN SLAVERY BILL

*Ninth Sitting*

*Thursday 11 September 2014*

*(Afternoon)*

CONTENTS



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

£6·00

PBC (Bill 008) 2014 - 2015

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 15 September 2014**

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

**The Committee consisted of the following Members:**

*Chairs:* †Mr David Crausby, Mark Pritchard

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

Fergus Reid, Kate Emms, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Thursday 11 September 2014*

*(Afternoon)*

[Mr David Crausby *in the Chair*]

## Modern Slavery Bill

### Clause 36

Strategic plans and annual reports

*Amendment proposed (this day)*: 113, in clause 36, page 25, line 29, at end insert—

'(1A) When preparing the strategic plan the Commissioner must give consideration to any proposal submitted to the Commissioner from any Parliamentary Select Committee. If the Commissioner does not accept the Committee's proposal the Commissioner must write to the relevant Committee explain the decision."—*(Diana Johnson.)*

2 pm

*Question again proposed,* That the amendment be made.

**The Chair:** I remind the Committee that with this we are discussing the following:

Amendment 114, in clause 36, page 26, line 4, leave out "Secretary of State" and insert "Parliament".

Amendment 107, in clause 36, page 26, line 12, at end insert—

'(8) An annual report can also include observations and recommendations as to the adequacy, efficacy and co-ordination of measures, policies and performance of relevant services including public authorities as specified in Clause 37 section 5 or under relevant devolved powers."

Amendment 115, in clause 36, page 26, line 13, leave out subsection (9).

Amendment 116, in clause 36, page 26, line 18, leave out "Secretary of State may" and insert

"Commissioner must consult with the Secretary of State and".

**Diana Johnson** (Kingston upon Hull North) (Lab): It is good to see you back in the Chair, Mr Crausby. We have had an interesting debate, and all right hon. and hon. Members will appreciate that that is important, given Parliament's role in scrutinising the anti-slavery commissioner's work. We have been able to put forward our arguments, and I was particularly pleased that my hon. Friend the Member for Foyle spoke about his amendment and the amendments in my name and those of my hon. Friends. We still believe that the relationship between the commissioner and Parliament could be improved, but we have listened to what the Minister has said, and I am not minded at this stage to press the amendment to a Division. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 36 ordered to stand part of the Bill.*

### Clause 37

Duty to co-operate with Commissioner

**Mark Durkan** (Foyle) (SDLP): I beg to move amendment 108, in clause 37, page 26, line 38, at end insert—

'(6) Specified public authority can also include a public authority which has been specified under relevant procedures of devolved institutions."

The amendment is in a similar vein to my amendment to clause 36: it is essentially about providing an opt-in for the relevant devolved services or authorities. On the previous amendments, the Minister said she wanted to allow time for the discussions between the Government and the devolved authorities to ripen before making any provision for the devolved areas. However, I should make the point that nothing in the amendment is prescriptive. It is a straightforward enabling provision to specify that a specified authority can

"include a public authority which has been specified under relevant procedures of devolved institutions."

The choice is therefore entirely there in relation to the devolved institutions. This is about enabling them to make the most of their services and commitments, as well as their co-operation with the services, enforcement officers and agencies we are looking at in the Bill.

I know the Minister is precious about what she sees as the sensitivities around this issue, but from talking to people from a range of parties in Northern Ireland, I am aware of no sensitivity, and people will be looking forward in anticipation to such a measure being passed. No doubt the Minister will say that, although that is what I have picked up through my contacts, she cannot presume anything on that basis about the conduct of business here.

I think we will have to come back to this point, but I will park it for now—I have no wish to drive it to a Division. I do not accept what the Minister said about not doing these things now, but if the understanding with the devolved authorities ripens, and the scope of devolution changes, as seems likely, depending on developments next week, we will return to this matter, so I will leave it until then.

**The Parliamentary Under-Secretary of State for the Home Department (Karen Bradley):** It is a pleasure to have you back in the Chair, Mr Crausby.

I am grateful to the hon. Member for Foyle for tabling and speaking to amendment 108, which would include those public authorities related to the devolved Administrations. I was hoping to hear more from the hon. Member for Linlithgow and East Falkirk about his views on the devolved Administrations, because I know how much he adds to these debates. *[Interruption.]* No, I genuinely was.

The commissioner will have a fundamental role in working with public authorities. Public authorities working at the coal face are the very organisations and institutions that are likely to come into contact with potential victims and investigate the perpetrators. We have talked about how the commissioner would practically carry out their work, particularly with the third sector; we discussed that in the previous debate. In carrying out their functions, the commissioner will need to work collaboratively with a range of stakeholders and partners. Although the commissioner does not have a specific

remit to work with non-governmental organisations, they do have a role to play in consulting and co-operating with people in the UK and internationally.

At present, the commissioner has a remit that covers England and Wales only. Amendment 108 would include in the list of specified public authorities those authorities specified under relevant procedures in the devolved Administrations. I understand absolutely why the hon. Member for Foyle tabled the amendment and I am sympathetic with the intention behind it. Since the inception of the Bill, we have been working collaboratively with our colleagues in Scotland and Northern Ireland, recognising that there could be real benefits of a UK-wide commissioner. Those discussions are continuing and I hope that we may, at some point—soon, I hope—reach an agreement that results in the commissioner's having a remit that covers the whole UK. That would be the best outcome for all concerned. However, I am of course committed to respecting the devolution settlements and to not legislating for the devolved Administrations in circumstances where their agreement is, by convention, needed first.

Given that we have an ongoing commitment to working with Scotland and Northern Ireland on establishing whether the commissioner could be UK-wide, I hope the hon. Gentleman will ask leave to withdraw his amendment and that we can at some point bring forward changes to the Bill that will allow for what he is intending through his amendment.

**Mark Durkan:** I make it clear that, contrary to what the Minister said, my amendment would not include the authorities, but would allow for the inclusion of authorities in the devolved area under devolved choice. So the point that she made about the principle of choice, and not transgressing on choice or the rightful locus of devolved authorities, is taken care of in the amendment.

**Karen Bradley:** Absolutely. I was just making clear again the point about the devolved Administrations. However, the fact that the commissioner is able to work with organisations, both in England and Wales and outside, means that that power is already there, even though it is not specified absolutely in relation to devolved Administrations; it obviously relates to those bodies outside England and Wales.

**Mark Durkan:** The Minister's intervention assists my amendment, because it is right that, if the commissioner is potentially going to be working with devolved agencies, there is a clear trigger point and clear designation consistent with devolved responsibilities and with relevant procedures; and that also allows choice about the determination of relevant procedures for specifying to be a matter for the devolved authorities as well. So the due locus of the devolved authorities is being respected on a number of levels here.

Although I do not accept the Minister's arguments, I am encouraged by her anticipation that aspects of the Bill may be re-pointed in future to take account of understandings that will be devolved, which hopefully can be expressed in relation to the work of the commissioner as well. For that reason, as indicated, I am happy to park the amendment for now rather than driving it to a Division.

*Amendment, by leave, withdrawn.*

*Question proposed,* That clause 37 stand part of the Bill.

**Karen Bradley:** The clause provides that the commissioner may request that a public authority co-operate with the commissioner in any way that he or she thinks necessary for the purposes of the commissioner's functions. Specified public authorities must co-operate, where it is reasonably practicable to do so, with the commissioner's request. The public authorities to which this will apply will be specified in regulations. In practice, we intend this to include the police, local authorities, the NHS, Border Force and immigration.

In complying with the commissioner, public authorities that disclose information will not breach any obligation of confidence owed by the public authority. However, public authorities are not required to disclose information where it would breach any other restriction of information, however that is imposed.

It is important for the commissioner, in carrying out his or her functions effectively, to work closely with public authorities to build their trust and confidence, so that they are better able to support victim identification and the effective prosecution of offenders. That is an important part of the commissioner's role. We have talked at length in Committee about the need to raise awareness and ensure that all public bodies that could come into contact with victims work together so that victims can be identified as soon as possible.

**Michael Connarty** (Linlithgow and East Falkirk) (Lab): The Minister is going to quite some lengths to try to describe the methodology. She commented in earlier debates about not wanting to cross over the responsibilities of various commissioners that are already in England and Wales. Perhaps she could say a word about how the commissioner is expected to relate to, for example, the Children's Commissioner for Scotland, Tam Baillie, and people who are already in post in Scotland? There may be people who end up in post through Jenny Marra's Bill, which looks as if it will go on to the statute book in Scotland, even in a devolved Assembly forum. How might they work together in the way that the police are now working, with the Serious Organised Crime Agency and the Scottish Serious Organised Crime Taskforce working together on other matters?

**Karen Bradley:** Clearly that is something the commissioner will have to work with. It is also part of our continuing discussions with the devolved Administrations, to ensure that we have the right understanding between the Scottish Parliament, the Northern Ireland Assembly and Westminster, so that we can get the right and appropriate relationship and the result we all want—to find the victims as quickly as possible.

**Michael Connarty:** For example, the Children's Commissioner has given some very good evidence to the Joint Committee, and some of it has been read into the record here. We also have a Children's Commissioner for Scotland, Tam Baillie. Is there practice that the Minister might exhibit to the Committee, that is already being looked at, which works in that area and might be a form that would work across the wider scale of human trafficking? I am sure there must be a relationship.

**Karen Bradley:** The hon. Gentleman makes an interesting point and I will endeavour, at some point before the end of our discussions today, to deal with it—or perhaps I will write to him if I cannot find the right sort of

*[Karen Bradley]*

examples before then—and explain how the two Children's Commissioners work together. It is important that the Committee should understand how existing commissioners work and how, therefore, we would see the anti-slavery commissioner fitting into the jigsaw, for want of a better word, of commissioners and bodies with responsibility for protecting the most vulnerable in society.

We have talked about the rapporteur-type function and it is worth pointing out that the anti-slavery commissioner will not be the UK national rapporteur. That role remains with the interdepartmental ministerial group. The commissioner has a specific role and remit in strengthening our law enforcement response, but the role of the rapporteur, as set out in the EU directive, is fulfilled by that group, and it is important for that to be clear and for the Committee to be aware of it.

**Diana Johnson:** The Minister talked about the disclosure of information under clause 37(4), which provides that

"subsection (2) does not require or authorise any disclosure of information which contravenes any other restriction on the disclosure of information".

Will she give an example, so that the Committee can understand what kind of information a public authority would not have to disclose?

**Karen Bradley:** Yes. As to specific examples, perhaps it would be better for me to respond to the hon. Lady later, or write to her. I think the information will help the Committee, and we should look into it.

I hope the Committee feels able to support the clause on the basis of the discussion we have had.

*Question put and agreed to.*

*Clause 37 accordingly ordered to stand part of the Bill.*

## Clause 38

### Restriction on exercise of functions

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

2.15 pm

**Karen Bradley:** Clause 38 sets out a restriction that applies to the commissioner in the exercise of his or her functions. The commissioner must not exercise his or her functions in relation to an individual case. That is to ensure that he or she maintains a strategic perspective and is not drawn into issues relating to individual cases. It would not be appropriate for the commissioner to become personally involved in individual cases when their remit is to transform and strengthen our overall approach to tackling modern slavery by encouraging good practice in the prevention, detection, investigation and prosecution of these terrible offences, and for victim identification.

I am sure that some hon. Members will feel that the commissioner should champion individual cases but I think that would be a dangerous path to go down. The role is to strengthen our collective response to modern slavery, working closely with law enforcement agencies. Of course, individual cases will help to drive that but it would be dangerous for the commissioner to intervene. While their cases inform the commissioner's work in this regard it would not be right for the commissioner to be an advocate for individual victims.

**Diana Johnson:** I was just thinking then of the case of "L" that Nadine Finch referred to when she gave evidence to the Committee. She had represented the Children's Commissioner, who got involved because of her particular interest in that case. Would the clause prevent the anti-slavery commissioner from ever being able to exercise that right of being joined to a case where they might have an interest of policy? Does it preclude that altogether, whereas the Children's Commissioner has that option?

**Karen Bradley:** The clause does not prevent the commissioner from considering individual cases in order to draw conclusions about a general case. Perhaps I could go back to our previous debate, in which the hon. Lady asked about the type of information that authorities would not be allowed to give to the commissioner; I wanted to put that on the record. It would be information prohibited by court order or under statutory restrictions—for example, under the Regulation of Investigatory Powers Act 2000 in relation to intercept evidence. I am sure she understands why we expect that such information would not be disclosed.

The question of the differences and similarities between the commissioners and their ability to be involved in cases is interesting and a good point for the Committee to consider. I am sure the hon. Member for Linlithgow and East Falkirk is delighted that he will not be receiving another piece of correspondence, as I would like to clarify the point about working with other commissioners and current practice. We expect the commissioner to work collaboratively with all other commissioners. That may be informally or more formally where both parties agree, such as a joint agreement of understanding. We will need to consider the relationship with devolved Administrations, and we have concluded discussions on the extent of the commissioner's dealings with them. We are continuing such discussions. I will get back to him on his question about how the two Children's Commissioners currently work, and to the hon. Lady on her specific question. I hope the Committee agrees that the clause should stand part of the Bill.

*Clause 38 ordered to stand part of the Bill.*

## Clause 39

### Defence of slavery or trafficking victims compelled to commit an offence

**Mark Durkan:** I beg to move amendment 71, in clause 39, page 27, line 9, after "act", insert

"or the person is a child"

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

Amendment 72, in clause 39, page 27, line 10, after "compulsion", insert

"or, in the case of a child, the illegal act"

Amendment 74, in clause 39, page 27, line 11, leave out paragraph (c)

Amendment 88, in clause 39, page 27, line 14, leave out from "characteristics" to end of line 15 and insert

"shall include, but not be limited to, age, family relationships, disability, position of dependency, language skills, ethnicity, national origin, religious background, and any mental or physical illness."

Amendment 73, in clause 39, page 27, line 18, after "compulsion", insert "or in the case of a child, the illegal act"

New clause 30—*"Prosecutions of victims of human trafficking*

'(1) The Director of Public Prosecutions shall issue guidance as to the charging of known or suspected victims of human trafficking.

(2) Before issuing guidance under subsection (1) the Director of Public Prosecutions must consult with the Anti-Slavery Commissioner.

(3) New guidance provided under subsection (1), must be published within 12 months of the appointment of the Anti-Slavery Commissioner.

(4) A prosecution of a trafficked, enslaved or exploited person must be reviewed by the Director of Public Prosecutions before going to trial.

(5) For the purpose of this section, a person (A) is taken to be trafficked, enslaved or exploited if—

(a) a decision has been made under the National Referral Mechanism that A is a trafficked, enslaved or exploited person; or

(b) no such decision has been made under the National Referral Mechanism but the court determines, based on the evidence before it, that A is a trafficked, enslaved or exploited person; or

(c) a decision was made under the National Referral Mechanism that A is not a trafficked, enslaved or exploited person, but the court is satisfied that the evidence is adduced by the defence establishes that A was a trafficked, enslaved or exploited person."

**Mark Durkan:** The common purpose of these amendments is to ensure that a child is not prosecuted for any crime committed as a direct consequence of having been trafficked. Nor would that child be required to establish that they were compelled to commit the offence before being able to access the protection of the statutory defence provided in the Bill. On Second Reading, I was among those who acknowledged that the provision of a statutory defence was welcome, but not adequate to the task when set against some principles of international law and practice. It is an accepted principle under international law and global anti-trafficking responses and practices that trafficking victims should not be prosecuted for crimes committed as a direct consequence of their trafficking or exploitation.

That principle forms part of the UK's anti-trafficking response, as we have always been told, and is meant to be reflected in Crown Prosecution Service guidance for prosecutors, going back to 2011. The EU trafficking directive, which has legal force in the UK, provides in article 8 for the importance of the non-prosecution and non-application of penalties for trafficking victims. It provides, inter alia, that

"Member States shall…take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit."

That directive also recognises the need for the best interests of the child to be a primary consideration in the application of the directive. In saying that, I do not wish to pre-empt the discussions we are to have on subsequent clauses and some of the terms in proposed amendments.

It has become clear through individual cases of trafficked children that victims are still being prosecuted for crimes committed as a direct result of trafficking, despite the 2011 CPS guidance I mentioned and the stated position of the Government on the non-prosecution of victims. That has been the case with children exploited on cannabis farms, for instance. We have already heard about the case of "L" and others from last year where the Court of Appeal found that it would be an abuse of process to prosecute a trafficked child for crimes that were a direct result of their trafficking or exploitation.

The spirit of the amendments is to reflect what we have heard of the court assessment of what would be an abuse of process. Having been subjected to so much abuse, the last thing these children should be subjected to is an abuse of process. Even if the courts find that they have been subjected to an abuse of process, the system subjecting them to one more abuse on that basis should not be tolerated in the Bill.

The starting point of looking at clause 39 from a child's perspective is the protection it provides for their rights and welfare. One challenge to the idea of the statutory defence is that it does not prevent prosecutions from being brought against child trafficking victims in the first place. Yes, it importantly raises a defence that can be used in the face of such a prosecution, but it still means that the child victim potentially has the onus of mounting that defence.

The fact that the prosecution can be made may mean that it is used in ways that are coercive or manipulative within the process. It may be made to help secure and leverage evidence against others, but children should not find themselves vulnerable to such tactics.

**Fiona Bruce** (Congleton) (Con): Does the hon. Gentleman think it might be helpful if the Minister considered guidance for prosecutors and the judiciary on the issue of the compulsion of children?

**Mark Durkan:** I take the point the hon. Lady has made so cogently and positively. That is an area in which we can perhaps seek reassurance as the Bill progresses. We will be hearing about the new clause tabled by my hon. Friend the Member for Kingston upon Hull North, which, usefully, would give some statutory underpinning to that idea. I anticipate that the Minister will not accept the amendments that the hon. Member for Brent Central and I have tabled, but I hope that consideration will be given to moving in the direction suggested by the hon. Member for Congleton. I am sure that argument will be articulately posited by my hon. Friend the Member for Kingston upon Hull North, as well.

No member of the Committee would disagree with the principle that it would be inappropriate to prosecute an already traumatised child. If we want to avoid that at all costs, we have an opportunity as legislators to make sure that we provide for that in law and do not allow such children, having already been victimised in so many ways, to become victims or pawns in other games and manipulations within the system.

On the statutory defence for victims, it is important that we recognise the limitations; it has many exceptions. I do not wish to anticipate discussions about the schedule, but this issue is pertinent. Although it is not directly addressed by the amendments, I wish to make that point now, on the record, about the limitations of the broader statutory defence.

I have listened to the arguments that have been aired already—not in Committee—as to why the Bill is cast in these terms. We are told that the statutory defence as

*[Mark Durkan]*

provided will certainly reduce the number of cases that will be prosecuted. Although it might reduce the number of cases referred to the Crown Prosecution Service by the police, and the number taken on by the CPS, it still leaves that vulnerability. It still means that we rely on the decisions taken within that system and by the police service and the CPS. If, as we will discuss in relation to other parts of the Bill, we are meant to make sure that the best interests of the child are at the heart of any decisions, we should try to prevent them from being brought into the criminal justice system as defendants when they have come to the system's attention as victims.

**Mr David Burrowes** (Enfield, Southgate) (Con): The hon. Gentleman is making a good case, and we heard about the concerns of Peter Carter and Nadine Finch in an evidence session. The process and timing are important. If we get this wrong and there are gaps in the statutory defence, the impact on a child could be considerable. They could spend time being processed through the criminal justice system, in a young offenders' institution and appearing in court, which could be considered victimisation in itself.

2.30 pm

**Mark Durkan:** I fully accept the hon. Gentleman's point. It is about not just having to go through a prosecution, but, as he says, the time and uncertainty involved. It would be trauma enough for anyone to face that, but we are talking about children who have been victims of slavery, trafficking or exploitation. They will not understand many aspects of these systems and, depending on their background, education and linguistic challenges, that could be truly perplexing and not just wrong, but a travesty of the justice process.

There are concerns that a provision in legislation for non-prosecution could, conversely, lead to further exploitation and manipulation of those children by traffickers and result in increased use of children to commit illegal acts on the basis that they would be immune from prosecution or whatever. If the Government are to rest on that argument, that would give rise to concerns about how much the onus might be on children in trying to rely on that statutory defence. We are trying to avoid a situation where children, courtesy of the criminal justice system, find themselves still in a position where they are being manipulated by those who had victimised, trafficked and enslaved them in any way. The potential operation of the statutory defence would have as many problems in relation to ongoing manipulation by the culprits in the trafficking and enslavement as would apply in respect of the non-prosecution provision. The hon. Member for Brent Central and I are aiming to address that through these amendments.

We all recognise that traffickers will always look to exploit the most vulnerable children and that they will use any means under the law or outside of it to do so. It is our duty to ensure that the Government provide mechanisms through the law to protect them on as many levels as possible.

There is, of course, no silver bullet to provide adequate protection for child victims of trafficking. Well defined criminal defences alongside an accepted non-prosecution principle and strong statutory defences can act as an essential safety net as well as advocates for child trafficking victims with legal powers to act in the child's best interests and the kind of non-legislative measures we have already discussed, such as training and awareness-raising, and a strong network of safe accommodation for trafficked children are all necessary elements that need to mesh together to give children the protection they need from traffickers. I do not pretend that the amendments I propose would provide the only—or core—protection, but, at a significant and sensitive point in the victim's journey away from being a victim, they should not find themselves being victimised again in such a perverse way.

It has been argued that removing the reasonable person test would allow the statutory defence to be exploited. The statutory defence as drafted, which requires that the person has been compelled to commit the act as a direct consequence of their exploitation, is difficult to prove. However, the test goes against the internationally agreed definition of child trafficking by essentially reintroducing consent, which is not a relevant consideration for children. That point was made in our debates on earlier clauses, so I do not want to rehearse it. I have touched on the limitations to the statutory defence that are listed in schedule 3.

The point of the amendments is to give us an opportunity to discuss what we mean and what we intend the experience of children to be when they are identified as victims. They need to know that the processes will work in their best interests, not against them, even if the underlying motive is to get at somebody else.

**Sarah Teather** (Brent Central) (LD): I rise to make a few remarks about amendment 88 and those tabled by the hon. Member for Foyle, to which I added my name. Clause 39 is to be welcomed as an important addition to the Bill. The creation of a statutory defence for the victims of modern slavery will help to protect them, and I hope encouraging witnesses who may have been involved in illegal acts to come forward will lead to more prosecutions. The statutory defence will help to ensure that the UK fulfils its international obligations, which the CPS guidance has so far failed to do. However, I have a number of concerns about the way in which the defence is drafted and about the list of offences in schedule 3 that the defence will not apply to, which we will debate later.

A number of the organisations that submitted evidence to the Committee raised concerns about how the defence is formulated, one of which is about the reasonable person test. For the defence to hold,

"a reasonable person in the same situation as the person"—

the defendant—

"and having the person's relevant characteristics would have no realistic alternative to doing that act."

Subsection (2) states:

"'Relevant characteristics' means age, sex and any physical or mental illness or disability."

Amendment 88 is intended to probe why the characteristics are defined so narrowly. It would make that list non-exhaustive, and it specifies characteristics such as language skills, religious background and family relationships, which are obviously relevant to this issue. The omission of those characteristics from the clause as drafted, particularly given that the list is closed, fails to

allow for a victim's particular vulnerabilities to be taken into account. For example, victims who feel compelled to commit offences due to cultural or religious pressures would not be treated as being subject to compulsion, and so may be prosecuted.

Amendments 71, 72 and 73, which are in the name of the hon. Member for Foyle, and which I have supported, seek to address the organisations' concerns about whether the defence would apply to children. That issue was mentioned in other debates, particularly on Second Reading. The hon. Gentleman spoke about the victims of child trafficking who often end up in cannabis farms, and the Refugee Children's Consortium gave details of the case of a 16-year-old who came to the UK on his own. He ran into debt and loan sharks put him into contact with agents who said they could arrange his journey to the UK. The agents arranged false travel documents for him, and he left Vietnam with a group of other people going abroad to work. When he got to the UK, he was put into what turned out to be a cannabis farm and told to take care of plants. After five weeks, the police raided the house and arrested him. He was charged with drug offences and sentenced in court to an 18-month custodial sentence in a young offenders institution.

As my hon. Friend the Member for Enfield, Southgate said, the point about that case is that this is not just a question of who ends up being prosecuted; it is about the effect of falling into the criminal justice system. There can sometimes be quite a long period of doubt between being identified and ending up in a young offenders institution. All the evidence says that this has a very detrimental effect on young people, particularly if they are already extremely vulnerable and on their own.

The concern about the current drafting of the clause on defence relates to the question of compulsion and whether it even applies in the case of a child. For example, in its written evidence, the Immigration Law Practitioners' Association stated that

"A child does not have to prove "compulsion" in the way that an adult must. A separate defence is needed to reflect that children should not be prosecuted for any crimes that they have committed as a consequence of their exploitation."

That is reflected in the current CPS guidance on prosecuting victims of trafficking, which states that considerations regarding whether a victim has been "compelled" to commit a crime only apply to adults. It adds that

"When considering whether to prosecute a child victim of trafficking, prosecutors will only need to consider whether or not the offence is committed as a direct consequence of, or in the course of trafficking."

**Mr Burrowes:** In her evidence, Nadine Finch took this further than the issue of the discretion of prosecutors. Her charge was a very serious one; she said that the clause

"will be used by traffickers to evade prosecution and used to make a mockery of the child's defence, so in my view, unless the word "compelled" is removed for children, there is no defence for children."—[*Official Report, Modern Slavery Public Bill Committee,* 21 July 2014; c. 36, Q69.]

That is a very serious charge to make against this part of the Bill, and we need to properly rebut and debate that.

**Sarah Teather:** My hon. Friend makes that point extremely well. It concerns me that the clause does not currently do what it sets out to do, which is to protect the most vulnerable victims that the hon. Member for Foyle spoke about. I am concerned that the clause, as drafted, is flawed and I hope the Minister can offer us some reassurance on that.

**Diana Johnson:** I would like to speak briefly to amendments 71 to 73, which appear to close a loophole in the Bill in terms of exploited children. As I have already argued, exploited children seem to have largely been left out of the Bill. They are not provided for in part 1 and do not seem to have been properly considered here in the clause dealing with statutory defence. This is an issue of consent and compulsion. The principle is that children cannot consent to their own exploitation. It is a settled question in international law but not one recognised in the Bill—particularly not in clause 39, which will only cover children who can prove they were "compelled" to do something by their traffickers.

The hon. Member for Enfield, Southgate referred to the evidence from Nadine Finch, who also stated that

"as it is currently formulated, the defence does not actually protect children, because the word "compelled" has been used and, as one knows, the definition of trafficking accepted both in this Bill and in the EU directive and the Council of Europe convention means that children do not have to show the means. If you are prosecuting somebody for trafficking a child, you do not have to show the means; you do not have to show that the child has been compelled…It means that you have the ridiculous situation in which you do not have to prove means to show that the child was trafficked, but you have to prove means to show that the child is entitled to a defence."—[*Official Report, Modern Slavery Public Bill Committee,* 21 July 2014; c. 36, Q69.]

The EU directive does give that protection, and the Bill thus leaves us in a very odd situation where a prosecuted child may try to use the doctrine of direct effect to give them the immunity from prosecution not offered by the Bill. This is a legal mess, and I hope the Minister will reflect on that.

**Mr Burrowes:** In terms of the legal mess, the reference made by Nadine Finch, and also in the subsequent note, suggests a mess in relation to the EU directive. There is a conflicting approach with article 8 referring

"to non-punishment for involvement in criminal activities which individuals have been ″compelled″ to commit."

The word "compelled" is therefore in those articles and the issue is whether this is an opportunity to provide the clarification that is not necessarily within the directives, although no doubt case law seeks to sort it out.

2.45 pm

**Diana Johnson:** I know that the hon. Gentleman speaks with a great deal of practical knowledge and experience of the law. I hope that that point about how we can make the clause work most effectively and achieve what we all want to see, which is children getting the protection they deserve, can be addressed when the Minister responds at the end.

It is a bit of a legal mess at the moment, but much more important than that is that children are going to prison because the Bill does not and give them the protection it should. That is best explained if we go back to the cases of exploitation given in evidence to the Committee and the draft Bill Committee where children are trafficked into the country, they manage to escape, but then fall back in with another group or gang

*[Diana Johnson]*

who exploit them. An example that has been used before is the case of a child who is trafficked into the UK to assist in cannabis farming. They escape, but then get in with another drugs gang. They have not been compelled to get in with the new gang, but that is not relevant in terms of exploitation because they are a child. Let us make no mistake; those children are being prosecuted in the courts now. It was helpful that the hon. Member for Brent Central referred to the case of Lam, which I know UNICEF have sent details of to hon. Members. That is an important case to reflect on. The hon. Lady went through the details of that case, but there was also a quote from that young man. Having gone through that ordeal and being sentenced to 18 months' custodial sentence in a young offenders institute, he said, I wanted to go back home but I knew that the money that I owed to the agents and loan sharks meant that my life was in danger. I was worried about my mum, but I couldn't contact or help her from prison. The entire time was scary and confusing." It is a 16-year-old child we talking about.

I want to refer to the case of Dung who was helped by the organisation ECPAT UK. They said that Dung was a child when he was trafficked to the UK. He was forced to act as a gardener in a cannabis factory. He was in debt to the agents who had smuggled him to Europe from Vietnam. When the police raided the house, Dung was arrested and eventually prosecuted for cannabis cultivation. After serving nearly a year in prison, he was released. Those are the types of case that will not be covered by the Bill and those children are being prosecuted.

In the Anti-Trafficking Monitoring Group's report, *In the Dock: Examining the UK's Criminal Justice Response to Trafficking* it carried out an examination of UK news articles reporting particularly on Vietnamese cannabis cultivation cases between January 2011 and March 2013. They revealed some 80 cases that had several trafficking indicators. In one of the reported cases the judge said,

"I accept that you were threatened and intimidated. You had people taking you about and deciding which locations you should be in."

However, despite all of the evidence that this person had been exploited, the defendant was sentenced to 24 months imprisonment. I think it is the view of many of us that judges would still make the same kind of comments and decision within the criminal justice system under clause 39 as they have been making previously. That is why it is important that we support amendments 71 to 74 and amendment 88.

While those particular amendments are looking at making the statutory defence workable for children in court, new clause 30 is about reducing the number of children and other trafficking victims who get to court in the first place. The first part of the new clause calls for new guidance from the Director of Public Prosecutions on the prosecution of trafficking victims. We want the model for that guidance to be the DPP's guidance on assisted suicide—high profile, high quality guidance that will clear up a lot of the current uncertainty about when victims are prosecuted and will reflect changes in the law following the case of R *v.* L and others, and clause 39. In the DPP's evidence to the Committee at the start of our deliberations, even she struggled to explain exactly how the CPS deals with the public interest test when looking at victims of trafficking, and she is not the only one; ECPAT UK, the Anti-Trafficking Monitoring Group and the Helen Bamber Foundation presented evidence to the Joint Committee about problems in the current CPS guidelines being applied. It is clear that guidance needs to be redone and put on a much more serious footing that can be relied on.

The second part of new clause 30 would increase the authorisation for a trafficking prosecution. The cases are complex and, as we have seen, there is often much mishandling. We want to establish the principle that prosecutions of trafficking victims should only happen in exceptional circumstances, which is why we want prosecutions of those who have had an NRM decision or are awaiting one to be authorised by the most senior level—the DPP. We have to remember that trafficking victims are incredibly damaged and vulnerable. Many wait 12 months in remand before a trial goes ahead and that compounds their problems enormously. The whole process is hugely stressful, as evidence from the Helen Bamber Foundation to the Joint Committee showed. On women who have been detained it said:

"Those women needed to feel supported and that they were going to be believed and that they would not be prosecuted for anything…we are almost colluding with the trafficker in allowing these prosecutions to go ahead, because this is what the trafficker says to his victim: 'You will be prosecuted. The Border Agency will come after you. You will be deported if you do not stay with me. You are better with me. I am your friend. The authorities are not your friend.'"

In similar evidence to the Joint Committee, the POPPY project discussed the 55 women that it has helped in the past year who were only identified as trafficking victims once they were in prison, usually on remand. There will be cases in which new guidance from the DPP would stop prosecutions, even when we cannot rely on using clause 39. Another example from the POPPY project—I think it was one of the cases taken up by the Court of Appeal in R *v.* L and others—involved an adult woman who had been underground for 11 years in a brothel. When she escaped, she used a passport that her trafficker gave her and that she thought was legal. She ended up being imprisoned for immigration offences. She was not the one who had committed the crime but the CPS fought that all the way. No one bothered to investigate the trafficker who had given her the passport and who was able to carry on recruiting and procuring more victims with impunity.

That crime was not committed during enslavement, so that woman would have difficulty using the defence of clause 39, but the crime undoubtedly resulted from her trafficking. I do not think that anyone—in fact, the Court of Appeal said this—thinks that that woman should have been prosecuted. It is almost certain that more trafficking victims have been prosecuted in the UK than traffickers. New clause 30 is about readdressing the balance. It does not need changes to a statute. I am happy to withdraw it if the Minister can assure the Committee that the Government will ask the DPP to publish new guidance and a new structure for charging trafficked individuals.

Finally, on amendment 88, the hon. Member for Brent Central raised important concerns about the closed list of relevant characteristics in clause 39(2), and I hope the Minister will address those, because they are very valid.

**Michael Connarty:** The hon. Member for Foyle and my hon. Friend the Member for Kingston upon Hull North, on the Labour party Front Bench, have set out a good case, but I want to go back slightly and to talk about principles.

In November 2013, we received a submission from the Office of the Children's Commissioner. We are talking just about a directive, but the attitude of any Government to children should be underpinned by the UN convention on the rights of the child. The Children's Commissioner reminded us of the key elements of the convention that would be relevant to the Bill. She said that article 40 provides that a

"child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to help from a lawyer and a fair trial that takes account of their age or station. The child's privacy must be respected at all times."

That clearly singles out the situation in which a child is in breach of the law—they are not even just accused of something. It does not mention particular circumstances. That informed the submission made in paragraph 3.2 of the same document, which said:

"In addition, children should be protected from prosecution or punishment for criminal offences (including amongst others those relating to immigration, prostitution and drugs) that they have been compelled to commit as a direct consequence of being subject to trafficking or other forms of modern slavery."

It is interesting that a Government who accept the importance of the Children's Commissioner and of her good work should completely ignore the words "child" and "children" in the clause. Clearly, something is going wrong, with one part of the Home Office, which has championed these issues, not talking to the other part, which is informing the Minister and the Home Secretary about what should be in the Bill and particularly in this clause.

Clearly, there should be specific references to "child" or "children", and all the provisions in this group are relevant to that omission. I hope the Minister will take this back and discuss it with the Home Secretary, so that the amendments can be, if not accepted today, written into the Bill later.

A lot of the people we talk about have been subject to particularly terrible labour exploitation. They may have been trafficked into a country and locked in a house to be a farmer for cannabis growers. A lot of these people are young. As I have said, I have evidence relating to three Vietnamese young men in the young offenders institution at Polmont in my constituency.

Focus on Labour Exploitation submitted a number of basic points, which should have informed the way the clause was drawn up. At paragraph 4.1 of its key recommendations, it says:

"A non-punishment provision should be included in the Modern Slavery Bill."

Paragraph 4.2 says:

"Law enforcement officials should seek advice from the UKHTC"—

the UK Human Trafficking Centre—

"in any case in which they believe the accused may have been compelled to commit a criminal act."

Paragraph 4.3 says the Bill should oblige

"the Competent Authorities to notify police and prosecutors when a person arrested or charged with a crime is or has been referred to the NRM"—

the national referral mechanism—

"or is determined to be a victim of trafficking."

We should be talking about not prosecuting, not about not finding guilty or about using a defence in court. To prosecute someone who is trafficked and victimised is to put them through terrible traumas. I mentioned the people we met with POPPY. We went to meet people who had been trafficked from non-EU countries. There were in prostitution. In some cases, they were released, or they fled, and they made their way to what they thought was a place of safety—a British police station. They were then treated in a way they said was worse than being compelled into prostitution. There was constant repetition of accusations, the denial of freedom and the harassment that goes on when the police are trying to break somebody down to get an admission so they can get to court. That has to stop. That is the greatest offence of all. That is often more of a trauma than being brought to a country under false pretences and being made to work in terrible conditions, even being a farmer in a cannabis factory, where someone locks them in and turns up every night or every couple of nights with a bag of food. I watched the person coming to the house in the same street as me, getting out of a taxi with a bag from a supermarket and going into the house. When they unfortunately did not break that one up correctly, the woman was spirited away to somewhere else to be locked up again.

3 pm

In that situation the fourth recommendation is

"A specific training programme should be developed and implemented for all criminal justice actors to ensure that potential victims are identified and not punished".

We are working here on the basis that this is to provide defences in court. But I would argue that if people are trafficked and identified as being trafficked by the authorities the DPP should not prosecute. They should not be taken to court. The fifth recommendation is:

"Provisions criminalising human trafficking, forced labour, slavery and servitude should be contained in a single piece of legislation."

It is clear that we want to say that there are times when the individual should not be criminalised.

I hope the Minister takes on board the amendment because no child should go through this when it is found that they are exploited, moved about, pressurised, duped or cajoled into doing criminal acts by their family or their so-called friends, criminals who are knowingly using children in large numbers as has happened. Anthony Steen became involved in this because of the Roma children who were brought in large numbers to this country, and were trained to steal on south-east trains and on the underground. There was a major scooping up of these children and more than 190 were returned to their own country. They had been brought in and trained to do that. It was Oliver Twist all over again, but using Roma children. I think those children were simply sent back home. If those children had been taken individually to a police cell, locked up, sent to a remand home or whatever they do with children these days imagine how their trauma would have increased. We have to avoid that.

I hope that whatever we draft there will be some way of getting them out of that criminal system early enough. Let us be frank. We can then use the resources to chase

the real criminals. So much time is spent now chasing, harassing, criminalising and traumatising the victims. That has to be avoided or we will not be doing what we should be doing in terms of the UN convention on the rights of the child. As for adults, we must ensure that we do not add to their trauma either. There is talk now of large numbers of people who may be allowed to remain in the country who have post-traumatic stress disorder and all the rest of it. How much of that came from their trafficking and how much came from them being slammed up and taken to court and having to find legal reasons for not being put in prison we will never really know. If we got rid of one, we might do better in the other.

**Karen Bradley:** It is an honour to follow the hon. Gentleman in this debate because he spoke with such passion and knowledge. I am grateful to hon. Members for tabling these amendments which raise some crucial issues about the way in which this new statutory defence for victims will work in practice, particularly in the case of children. I think the creation of a statutory defence for victims of slavery and trafficking is an incredibly important step in our collective fight to stamp out modern slavery in this country. It is vital for all the reasons the hon. Gentleman set out, and as other hon. Members have said, that victims are encouraged to come forward and give evidence without the fear of being inappropriately prosecuted or convicted. We need to make sure that it is not victims who are being prosecuted but the real bad guys. We must catch them and make sure that they are prosecuted and justice is served.

Although the Director of Public Prosecutions issued revised guidance to prosecutors earlier this year to set out more clearly the policy on non-prosecution of victims, the pre-legislative scrutiny Committee heard significant evidence that victims, including child victims, were being prosecuted for crimes committed while being trafficked or enslaved. That Committee recommended the creation of a statutory defence.

Creating a new statutory defence of that type is very unusual in English law and should not be done lightly. However, as this Committee has reflected, we need to be open to new tactics to ensure that we protect victims of modern slavery and catch and convict the perpetrators. Given the importance that the Government place on the protection of victims and supporting effective prosecution, we agree with the Committee that we should provide this further important safeguard for victims.

It is clearly a difficult and complex issue. It is plain that the pre-legislative scrutiny Committee thought hard about the competing arguments and recognised the difficult balance involved. It is worth reminding ourselves of what that Committee said in paragraph 62 of its report.

"Our evidence revealed mixed opinions on whether there should be a statutory defence of being a victim of modern slavery, with those who did not support a statutory solution, or who favoured the prosecutorial discretion status quo, raising the following arguments:

a) That the scope of the defence would be difficult to define;

b) That the temporal link between the commission of the offence and the enslavement of the victim would be difficult to define and use in practice;

c) That there is a potential for unintended consequences, for example, an increase in the use of victims of trafficking for the commission of serious offences."

That point was made by the hon. Member for Foyle.

"d) That the defence could be open to abuse by perpetrators of modern slavery who are inventive as to the defences they adopt and the arguments they advance in attempting to avoid or frustrate prosecution;

e) That persons who are or have been trafficked can and do commit serious crimes. They may kill their exploiters. More commonly they may traffick or exploit others;

f) That no such statutory defence is available for drug mules, or, in relation to terrorism, for those who assist in terrorist offences through fear, threat or coercion;

g) That the real issue is not statutory protection from prosecution, but improved identification of victims."

It is important to bear those points in mind when we discuss the matter. The Committee continued in paragraphs 63 and 64,

"In contrast, the evidence we received in favour of a statutory defence made a moral and practical case for statutory reform, highlighting the failure of guidance (since the first guidance was issued in 2004, it has been updated 12 times, mostly to reflect changes in legislation or updates in case law), while victims continue to be prosecuted, and the importance of legislation as an educational tool to create a ripple effect of knowledge through all levels of law enforcement.

"64. The arguments presented by this group of witnesses suggested problems in relying solely upon an abuse of process approach, because it has traditionally been seen as a form of judicial review of a prosecutor's decision-making process, and not as a consideration of the merits of the substantive decision. They told us that, while the Court of Appeal in R v L had suggested that 'the court will reach its own decision on the basis of the material advanced in support of and against the continuation of the prosecution', it is not clear whether this statement expands the grounds for applications beyond the traditional abuse of process review. This confusion has been reflected in the current CPS Guidance, which focuses first upon whether there is 'clear evidence of credible common law defence of duress' and if there is not, as a second stage of whether 'the public interest lies in proceeding to prosecute or not'. We note that there is no mention of R v L in the CPS guidance until the document discusses age assessment of children."

We will come later to that very important case. Paragraph 65 states,

"Those in favour of a statutory defence also told us that the existing defence of duress was insufficiently nuanced to recognise the complexities of human trafficking. It also sets a very high threshold, requiring proof that the victim was compelled to commit the crime: 'that the victim has effectively lost the ability to consent to their actions or to act with free will'. Few thought that a victim of modern slavery could meet that threshold and we do not think they should have to."

I absolutely agree with that view. Paragraph 66 goes on,

"The crux of their argument was that by legislating rather than relying upon guidance, the need not to prosecute victims of modern slavery was made clear and easily found. It would also ensure that victimhood was considered earlier in the decision-making process, namely at the evidential stage of the CPS Full Code test in the Code for Crown Prosecutors, rather than in 'addition to applying the Full Code Test' through a separate three-stage assessment. This approach recognises that the question is not whether the victim of slavery has committed the offence, but whether they should be prosecuted and, if not, the best way to prevent prosecution.

We have borne in mind that the guidance provided in the case of R *v.* L has only been in place since June 2013, and that the latest CPS guidance was only published in February 2014. We also bore in mind that obligations at international level are not prescriptive, and are met by the UK's system of prosecutorial discretion and sentencing practice. None the less, we note that there are existing statutory defences for other crimes.

In coming to our conclusion we have considered not only the most obvious cases, one end of the spectrum, where prosecution should not have commenced, let alone proceeded to conviction—for example, the child cannabis farmers in R *v.* L—but also hypothetical cases at the other extreme where, for example, a victim is forced to commit theft and in doing so inflicts serious physical injuries on or kills a member of the public."

I will skip to paragraph 73:

"In essence we think that it enacts a test of sympathetic reasonableness, while providing a simple and clear guide to the CPS and other prosecutors as to the test they should apply in deciding whether the evidence justifies prosecution. A prosecutor would still be able to apply the interests of justice test where, for example, the defence would not apply but the circumstances of the accused were such that a merely nominal penalty is likely."

Those points from the pre-legislative scrutiny Committee's report were important in assisting the Government in our work on the defence and on the clause. I commend the Committee on its hard work and dedication to that cause, which helped enormously and will make an amazing difference for the victims.

We have worked closely with the Crown Prosecution Service to devise the detail of the defence. It is crucial that we provide effective protection for genuine victims, but we must not inadvertently create loopholes that allow serious criminals to escape justice as that would undermine public confidence and support for this important measure in the fight against modern slavery. None of us wants to see headlines that suggest that the defence is being abused, because that would undermine all the work that everyone is doing to stamp out modern slavery.

Therefore, in creating a defence, a careful balance has to be struck. That is why the defence will not apply in the case of certain serious offences: often, serious sexual or violent offences. We will debate that later when we cover the schedule 3, but I make clear at this stage that, even if the defence does not apply, the CPS will still not bring a prosecution if that is not in the public interest; its guidance is clear on that. The defence has been carefully designed to cover the crimes that, in practice, victims of modern slavery have been found to be made to commit.

**Diana Johnson:** The Minister says that the guidance is clear, but the evidence that we heard—the DPP said this in oral evidence at the outset—is that it is not. Would she be minded to look again to see if that can be made clearer so that prosecutors can understand when it is appropriate to bring a prosecution?

**Karen Bradley:** I will come on to the guidance shortly, if the hon. Lady will permit me. The clause has been drafted so that a person is not guilty of an offence if they commit it because they are compelled to do so. The compulsion is attributable to slavery or relevant exploitation and a reasonable person with relevant characteristics in the same situation as that person would have no realistic alternative to committing the offence.

**Michael Connarty:** I am slightly concerned. Why did the drafting not take the very simple terms recommended by the Joint Committee? They were that,

"a person of the same sex and age as the accused, with a normal degree of tolerance and self-restraint and in the circumstances of the accused, might have reacted in the same or a similar way."

That seems to sum up what we are trying to say, but the wording in the clause seems somewhat tortuous and clinical. I do not know whether that is just Home Office speak or whether there is some genuine reason why that is put down as it is.

**Karen Bradley:** I will come on to the wording of the clause in more detail as we progress through this group of amendments and the next two, but I assure the hon. Gentleman that that was carefully considered and drafted so that we can ensure that all the pre-legislative Committee's concerns, which were the arguments against a defence, are addressed. As I have said, the risk of a negative headline that turns public opinion against this defence, and makes people see it as a loophole, is one that none of us wants to see, because it will absolutely undermine the good work that we have done. It will make a mockery of those victims and all that they have suffered if public opinion moves against them, and if this defence is seen as a loophole so that those who should face justice are not facing it. I will come on to the detail later.

3.15 pm

**Sarah Teather:** I am a little uncomfortable about the direction of travel here. We need to be careful that we are not so concerned about the impact of headlines that we are not prepared to take the right decision. I understand some of the points that the Minister is making and that the wrong type of publicity will encourage the wrong type of behaviour, which will also affect victims. I understand that, but I do not like the tone of the direction of travel. I want to be sure that the reason she is taking these decisions and arguing that we should not press the amendments to a vote is genuinely about the interests of victims.

**Karen Bradley:** I thank my hon. Friend for her contribution and I thank her also for allowing me to put on the record that my comments about headlines are perhaps a trite example of how we could undermine public confidence. I was simply trying to make a point, but absolutely the key point is victim protection and making sure that victims have the confidence that they can come forward. I did an interview this morning with a radio channel that was concerned about that very point. How can people feel confident that they can come forward, whether they are a victim or a witness who is worried about intimidation? What can we do to give people the reassurance that they need? If that reassurance is not there, and if we are not legislating for the victims, we are doing a disservice to all.

I appreciate my hon. Friend's comments, and I want to assure her that by talking about headlines I am not in any way trying to undermine any of the work. That is not the driving factor behind the defence sought; I am merely making the point so that the Committee will understand there is a balance to be struck and there are pros and cons. Indeed, we saw from the evidence to the pre-legislative Committee how the provision could be abused if it is applied in the wrong way.

**Mr Burrowes:** On the issue of abuse, I come back to the evidence from Nadine Finch. She made what could be described as a headline by effectively saying there is no defence for children. I would not want that headline to be attached to this Bill, and I look forward to the Minister's assurance that that is not the case.

**Karen Bradley:** I thank my hon. Friend for his comments. I will come on to discuss children, because we have considered their position very carefully in the drafting of the Bill, but I simply want to make the point that we have debated this at length. It is an unusual step to have a statutory defence within UK law. There are some examples, but it is not the norm. Some may consider other offences to be comparable, although I do not think there is anything comparable to this. As I have said, in the case of drug mules there is no statutory defence, and it is therefore incredibly important that we get this right so that the principle of a statutory defence has credibility and is perceived by all to be the right approach to give the victim the protection that we are looking to provide.

Clause 39 has been drafted so that a person is not guilty of an offence if they commit it because they are compelled to do so; the compulsion is attributable to slavery or relevant exploitation; and a reasonable person with relevant characteristics in the same situation as the person in question would have no realistic alternative to committing the offence.

**Michael Connarty:** If someone is not locked in a house—they are an adult who is not supervised or overlooked and they have the ability to walk away—the arguments are very strong that that person had a reasonable alternative to staying in that house. My worry is that it would take a long process, and it is clearly one that has not worked, to keep that person out of jail on this basis.

**Karen Bradley:** I will come on to further points about the realistic alternative, but we think it is an important protection to ensure that the defence is used to help the victim.

Amendments 71 to 73 make changes to ensure it would no longer be necessary to show that a child was compelled to commit an offence as part of their slavery or trafficking experience. It would be enough to argue that a child committed the illegal act as a direct consequence of their exploitation. I share all Members' concern to ensure that child victims are protected by this defence and I accept that children are often not in the same position as adults. They will often do what they are told by adults, especially when brought to a strange country. Law enforcement agencies, prosecuting authorities and the courts should see child victims of modern slavery as victims. I assure Members that the defence has been designed with the needs of children in mind.

I accept that the reference to compulsion might appear difficult in cases involving children. However, I will explain to the Committee what that test will mean in practice. Compulsion, as drafted in the clause, is a subjective test. The question is whether the child felt they had to commit the offence. There is no requirement of force, threats or any other type of outward action that might typically be associated with compulsion. That means the court can consider the more subtle ways in which children might feel compelled to do something. Children often feel they must do what they are told by an adult, and the requirement for compulsion in the clause covers that. There does not have to be active resistance to demonstrate compulsion. We believe that the reference to compulsion in the clause does work in cases involving children and will not prevent the defence from being relied on in the cases that the Committee are concerned about.

**Sarah Teather:** I cannot understand why we are leaving this reference in the clause. I must say that I am more concerned after hearing the Minister's answer than I was before. The wording is incredibly torturous. Why do we not just remove the reference, out of respect for children? We have already heard from a number of Members that this is not the norm for a child.

**Karen Bradley:** If my hon. Friend will forgive me, I will respond to that point in a moment.

Concerns have been raised that the reference to compulsion may not be compatible with the relevant international instruments. Even without a statutory defence, we are already fully compatible with our international obligations on non-prosecution. That point was accepted in the pre-legislative scrutiny Committee's report:

"obligations at international level are not prescriptive, and are met by the UK's system of prosecutorial discretion and sentencing practice."

Our clear view is that the reference to compulsion in the defence is wholly consistent with those international obligations. In particular, the EU directive and the Council of Europe convention explicitly state that victims of trafficking should be protected from prosecution or punishment when compelled to commit crimes.

Including compulsion in the defence in relation to children also helps to strike the right balance and ensure appropriate safeguards, so that the defence does not provide a loophole in the law for serious criminals. It is right, as a matter of principle, that the defence should not be available where someone did not in fact feel they had to commit the crime but chose to do so nevertheless. We do not consider the fact that such a person was under 18—which encompasses older children who are close to their 18th birthday—alters that reasonable position. Put another way, it is always right that a slavery or trafficking victim aged under 18 is absolved of responsibility for criminal conduct, even where they did not feel they had to commit the crime.

In the case of L and others, the court explicitly said:

"It has not, however, and could not have been argued that if and when victims of trafficking participate or become involved in criminal activities, a trafficked individual should be given some kind of immunity from prosecution, just because he or she was or has been trafficked, nor for that reason alone, that a substantive defence to a criminal charge is available to a victim of trafficking."

We agree with that statement.

Amendment 74 seeks to remove the "reasonable person" test from the defence, which is a critical safeguard.

**Mr Burrowes:** I want to be sure we are clear, because this is a very important point. There seems to be an issue with what must be proved, in terms of liability and evidence. The means to show that the child was trafficked do not have to be proved, but certain means do have to be proved in order to come within the defence. We need to be clear about that inconsistency. If the Minister is saying that the statutory defence does not lead to a child having to prove those means to come within the defence, that helps.

**Karen Bradley:** There is an important point here. It is slightly confusing. The provisions and international legal instruments that highlight that children cannot consent to trafficking mean that compulsion should not be relevant to the defence. That argument has been

used. The provisions relate to the definition of the human trafficking offence. In the international convention and instruments it says that children cannot consent in relation to trafficking. The defence covers a separate issue—non-prosecution of victims for offences they commit as a direct consequence of being a human trafficking victim. The EU directive specifies that there should not be a prosecution when a victim has been compelled to commit the offence—no consent for the trafficking—but there should be a prosecution when they have not been compelled to commit an offence, reflecting that nobody should have immunity from the criminal law, even if they have been trafficked. We need to ensure that safeguards are built in.

I will come to more detail about children shortly. It is highly possible that a child victim of trafficking could come to Britain and then escape from their traffickers, go and do other things and, entirely unrelated to the trafficking, could end up committing crime. We need to look at compulsion: was the child forced into doing the crime? That is compulsion. It is important to ensure that there are safeguards within the criminal law so that justice is served through all levels of the justice system, for all victims, and that children have the protection that they need so that the defence can apply to them. However, we must ensure that we do no create loopholes that would drive the behaviour that the hon. Member for Foyle and the pre-legislative scrutiny Committee talked about—the defence being used to force victims into acts that they would not have done, except because they know that they will no longer be subject to prosecution.

**Sarah Teather:** I want to take the Minister back because I am still worried by the wording she used. She tried to outline the differences between what "compelled" would mean for an adult and for a child. It seems extremely vague; I do not know how anybody is going to prove whether they felt that they had to do something or not. It seems an awful lot of trouble and more likely to lead to children being prosecuted. I would have thought that the number of children who might have been trafficked and later go on to commit a crime must be relatively small. What is the risk?

**Karen Bradley:** If I might continue with my argument—

**Sarah Teather:** As long as the Minister comes back to it.

**Karen Bradley:** I will endeavour to address those specific points. I share the desire of all to ensure that the defence can be used by vulnerable and exploited victims, who have been forced into criminality. I do not want to see them convicted and punished for crimes that they were compelled to commit just because the legal tests to meet were too complex. However, clause (39)(1)(c) is not such a complexity, but a critical aspect of the defence that helps to ensure that it will protect genuine victims of modern slavery without opening up a loophole for criminals, including organised criminals, to escape justice.

The reasonable person test is an objective test that allows the court to consider what a reasonable person would have done in the same situation with the same relevant characteristics. A purely subjective test would allow the defence to be raised in tenuous circumstances because the defendant could argue that they felt compelled by circumstances that any normal person could conclude were not enough to justify committing the offence. It would be hard to discount that argument and prove how the person concerned felt. Without the objective test in clause (39)(1)(c), the overall threshold for the defence would be unacceptably low.

I will give an example of a real case from the CPS. There was a brothel in which there were women who were

"performing dangerous and degrading sex acts for clients which left them with horrendous injuries."

They had been trafficked and were therefore victims of trafficking and slavery, servitude and forced compulsory labour. It transpired that the three women running the brothel were also victims of trafficking, so there was a question about whether they should be subject to some form of defence, be it statutory or within the guidance. The CPS felt they should not because, despite their having been trafficked, they used excessive force—violence, sexual abuse and threats—on the two victims, who had mental health issues and were described as "child-like", to compel them to perform sex acts.

3.30 pm

We would all agree the women who ran the brothel should not escape prosecution simply because they were victims of trafficking. What they did to force the women to perform the acts was above and beyond what any reasonable person would have done in those circumstances, so the victims at the bottom of the chain, for want of a better description, deserve justice. Clearly, we want to catch the really bad guys at the top who put all those women in that situation, but the women who ran the brothel and used violence, threats and sexual abuse against the prostitutes to make them carry out those acts should face justice. That is why it is important that we have a reasonable person test.

Including an objective test means that a jury can put itself in the position of the defendant and consider whether there really was not a realistic alternative to committing the offence. Members of the Committee will recall that the concept of "no realistic alternative" was explicitly mentioned by the court in R *v.* L and others, which we have heard so much about in the debate. The Lord Chief Justice of England and Wales said in his judgment:

"This vile trade in people has different manifestations. Women and children, usually girls, are trafficked into prostitution: others, usually teenage boys, but sometimes young adults, are trafficked into cannabis farming: yet others are trafficked to commit a wide range of further offences. Sometimes they are trafficked into this country from the other side of the world: sometimes they enter into this country unlawfully, and are trafficked after their arrival: sometimes they are trafficked within the towns or cities in this country where they live. Whether trafficked from home or overseas, they are all victims of crime. That is how they must be treated and, in the vast majority of cases they are: but not always."

The Lord Chief Justice then goes on to talk about the Director of Public Prosecutions shortly presenting guidance—this is clearly an historic case. He continues:

"Despite suggestions in the submissions to the contrary, the court cannot become involved either in the investigation of the case or the prosecutorial decision whether it is in the public interest for the prosecution to proceed. Nevertheless we propose to offer guidance to courts (not, we emphasise, to the Director of Public Prosecutions) about how the interests of those who are or may be victims of human trafficking, and in particular child

victims, who become enmeshed in criminal activities in consequence, should be approached after criminal proceedings against them have begun.

Beyond the individual and specific circumstances involved in each of these separate appeals…we have sought assistance on the broader issues to which the appeals give rise. We have examined the decisions of this court in R *v.* M(L), B(M) and G(D) [2011] 1 Cr. App. R 12 and R *v.* N; R *v.* L [2013] QB 379—

I am sure *Hansard* will get the right names—

"in the light of EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, (the EU Directive) which came into effect on 6 April 2013…

Recital 8 of the EU Directive underlines: 'Children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings. In the application of this Directive, the child's best interest must be of primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child'.

Recital 14 provides: 'Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities…that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. The safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.'"

**Sarah Teather:** I have a further thought about the point the Minister made of the scenario where the person was trafficked, escaped from traffickers and went on to commit myriad crimes. I want to remind her that the amendment tabled by the hon. Member for Foyle does not allow for that. The wording leaves in that the illegal act has to be "attributable to slavery". What the Minister said is simply not true and I have not been reassured.

Although that was not the main point I wished to make when I stood up, I am now much more worried about it than the subject of my amendment, and if the hon. Gentleman wishes to push his proposal to the vote I will support him.

**Karen Bradley:** I thank my hon. Friend for her comments, but I would like to finish this point because it is important in the context of defence. I will then come to her point.

"Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to trafficking."

These are all important points that have come from cases that we have seen. We are now looking at how we can refine the legal system to provide additional protection to victims.

My hon. Friend the Member for Brent Central asked why compulsion seems to be a tougher requirement for adults than children. The reference to compulsion in clause 39(1)(a) and (b) is a subjective test. It is about what a person felt. Of course, a court will look differently at a child who says they did a criminal act because an adult told them—the court might often accept that—than at an adult who says they did something because another adult said so. The court would be less likely to accept that the adult was compelled in that circumstance.

Let us take a practical example of why the objective test is needed. Let us say that a person was trafficked into this country four years ago. They were exploited initially by the organised crime gang to commit petty theft. However, over time they took on increasing responsibility and gradually became a full member of the gang, planning offences, committing offences, and using others to commit a range of offences.

Let us say the individual was trusted and had plenty of opportunities over a long period to leave or go to the authorities. However, the individual genuinely felt compelled throughout because he worried he might have been under threat from the organised crime gang if he left unless he went to the authorities, who might deport or prosecute him.

The objective test allows the jury to look at the circumstances carefully. It gives the jury the option of concluding that this person was initially a victim and the defence should apply, but that after a period of full membership of an organised crime group with considerable independence, there was an alternative to carrying on as a career criminal. So perhaps the defence should not apply to later offences. The reasonable person test therefore provides an important safeguard against this defence being abused and allows all the circumstances of the case to be carefully considered.

With reference to case raised by my hon. Friend the Member for Brent Central about the Refugee Children's Consortium, we think it would fall within the statutory defence of clause 39. In that case it seemed that the child did feel compelled to commit the offence and a jury would be entitled to conclude that they had no realistic alternative but to commit the offence.

I also refer to the point made by the hon. Member for Linlithgow and East Falkirk, who talked about the UN convention on the rights of the child. We gave active consideration to relevant rights of the child under the UNCRC when setting the Bill. Our ECHR memorandum explicitly analyses the provisions of the Bill both against ECHR rights and those set out in the UNCRC. I commend that analysis to the Committee.

**Mr Burrowes:** The examples the Minister puts forward are particularly compelling in relation to subsection (1)(c) which mentions scenarios where there is

"no realistic alternative to doing that act".

That has to be made out for the statutory defence to bite. The issue still is why it is necessary to prove the element of compulsion, given the other articles and directives that have not been relied on so much, do make it clear that there is not a requirement to show compulsion when a child has been trafficked.

That needs to be bottomed out to see where the Minister can justify compulsion in relation to the child. Subsection (1)(c) makes a clear objective test for dealing with a situation when there is "no realistic alternative".

**Karen Bradley:** I thank my hon. Friend for that point. I was coming to it, but let me cover it now. As I indicated in relation to children, the requirement for compulsion is not inconsistent with international instruments, because those talk about being forced to commit a crime. To repeat, the question is whether the child felt they had to commit the offence. The CPS guidance does, indeed, say that compulsion should be ignored in cases involving

children, but we are talking about different things. The CPS guidance is about prosecutorial discretion and the public interest in prosecution; the Bill's provision is about a new, additional statutory defence. Even if the defence does not apply, the CPS will still have to consider the public interest in deciding whether to prosecute in accordance with its guidance. I repeat that it will be open to the court to conclude a child felt they had to commit the offence simply because an adult told them to; it is not a high threshold.

**Diana Johnson:** Just to be clear, compulsion is not an issue in terms of establishing whether a child has been trafficked, and it is not an issue in terms of a decision whether to prosecute—it is ignored as not relevant—but when someone gets into court, it becomes an issue. It does not seem very logical to ignore compulsion for the other two steps, when people have to show compulsion when they get into court.

**Karen Bradley:** I thank the shadow Minister.

**Mr Burrowes** *rose—*

**Karen Bradley:** I see my hon. Friend is trying to get in.

**Mr Burrowes:** Let me try to help. Is the answer not that it is relevant to how the child felt in terms of subsection (1)(c) and the issue of whether there was a realistic alternative to doing that act? However, the issue remains that compulsion does not need to be proved in terms of the issue of the child being trafficked.

**Karen Bradley:** My hon. Friend sums it up far better than I can, so I will leave it at that.

**Mr Burrowes:** The sting in the tail is that that still raises the question why it is necessary to apply the word "compulsion" in paragraphs (a) and (b) to children.

**Karen Bradley:** I thank my hon. Friend for that point. I thank him for his explanation of the clause, which was very helpful. I will come shortly to the point about compulsion in relation to the defence and to children.

Amendment 88 would change the list of relevant characteristics a court should consider when applying the reasonable person test. The person applying the test will take into account those relevant characteristics when deciding whether the defendant had a realistic alternative to committing the offence.

I share the concern of all hon. Members to ensure that we do not ignore someone's characteristics where those are vital to the situation. I also want to ensure that that defence fits appropriately into the wider body of our criminal law and does not create loopholes or inexplicable differences from other, similar defences.

To get the balance right, we have looked at existing defences and consulted the CPS. The most similar defence in English law is the common-law defence of duress. Case law has established for that defence that the characteristics relevant to determining a reasonable person's view are age, sex and any physical or mental disability.

Duress is also the defence that allows the widest range of characteristics to be taken into account when applying an objective test. Those characteristics are all relevant to a slavery or trafficking situation, so we have included them all, replicating the most generous and far-reaching defence currently in place.

Broadening the range of relevant characteristics makes the defence more akin to a subjective test, which creates a loophole for serious criminals to exploit as a defence to serious charges.

When considering the amendments, it is important to remember that, where the defence does not apply, but other relevant factors mean that prosecution would not be in the public interest, the CPS will still be able to decide not to prosecute. That is clearly set out in its guidance.

We all want the defence to apply when vulnerable, abused and exploited individuals are forced into criminality. I am confident that the defence, as drafted, will protect those people, while ensuring that criminals acting on their own volition cannot use a protection for the most vulnerable to get away with their crimes.

**Sarah Teather:** I accept the Minister's point about not wanting to provide legal loopholes. However, on her next point, about whether it is in the public interest to prosecute, I wonder whether there might be a compromise solution on the wider interest. It is blatantly obvious that issues of culture and religion will be relevant to whether somebody feels compelled. I would be more reassured if she could place some of those characteristics into the guidance to the CPS, even if it is not in the Bill.

3.45 pm

**Karen Bradley:** I will come on to the guidance shortly.

New clause 30 deals with DPP guidance on the non-prosecution of victims. The defence will help here but we cannot simply rely on legislation. The CPS has dealt with a number of cases in which the fact that the defendant was a victim was not known until they started serving their sentence. At no point did the defendant disclose that they were a victim of trafficking. That came out much later. We need to raise the awareness of the police, prosecutors and judges that the defendant may be a victim and that the defence of the public interest test not to prosecute is available, and should be applied.

We need to ensure—this is a role for the commissioner—that everyone in the criminal justice system is aware of the possibility that someone could be a victim of trafficking. When I visited the Great Yarmouth custody suite recently I asked how they would ensure that when custody officers locked somebody up for the night they knew that that person might be a victim of trafficking. They should be able to identify them and therefore get the information that we need to help that victim and to ensure that they have the support they need.

**Diana Johnson:** In new clause 30 we say that the DPP should consult with the anti-slavery commissioner before any guidance is issued, which would pick up those points. The new clause not only refers to people who have been recognised by the national referral mechanism, but it gives the court the opportunity, if it is satisfied that the evidence is produced by the defence, to establish

*[Diana Johnson]*

that the person was trafficked, enslaved or exploited. We recognise that it is not always obvious at the start, but there is an opportunity for the court to make that finding. The reference to the anti-slavery commissioner is very important.

**Karen Bradley:** I will come on to that point in a short while.

The code for crown prosecutors is issued by the Director of Public Prosecutions; it gives guidance to prosecutors on general principles to be applied when making decisions about prosecutions. The code is supplemented by a body of legal and policy guidance on specific offences and procedures. That includes guidance on suspects in a criminal case who might be victims of trafficking or slavery. This is updated on a regular basis to reflect case law, or any other changes and is published on the CPS website.

This new clause would place the guidance on a statutory footing, require that it be published only after consultation with the anti-slavery commissioner and require the Director of Public Prosecutions to review any prosecution involving a victim of slavery, trafficking or exploitation. I should say first that the Director of Public Prosecutions has already revised the relevant guidance this year, a point that was made in the pre-legislative scrutiny Committee report. My hon. Friend the Member for Congleton asked whether there would be guidance to the CPS and the judiciary on how the defence should operate.

The CPS recently issued updated guidance in relation to human trafficking and slavery, servitude and forced labour. We are also working closely with the CPS on this Bill and it has been crucial to the development of the statutory defence. Therefore the statutory defence and how it should operate is very much on the CPS's radar. It is a matter for the DPP to decide how best to disseminate training guidance and we shall certainly speak to the CPS and the DPP about this issue. We fully expect the CPS to update the guidance following the passage of the Bill. It would not be appropriate for the Government to seek to direct the judiciary in relation to the defence. I am sure my hon. Friend the Member for Brent Central will understand that.

There is no need for a statutory duty to ensure that this important guidance remains in place. It would be unusual for the Director of Public Prosecutions to have a statutory duty to consult with a particular person before developing or issuing guidance, and we suggest it is unnecessary to legislate in this way. The Director of Public Prosecutions operates independently, under the superintendence of the Attorney-General who is accountable to Parliament for the work of the CPS. The need for, and content of, any new guidance should be determined by the CPS and not by an independent individual. However the CPS often consults either formally or informally with stakeholders on the development of new guidance and sometimes consults more widely with the public via its website. I will commit to ensure that the DPP is aware of the strong feelings from the Committee that she should consult with the anti-slavery commissioner before the relevant guidance is revised further.

**Mr Burrowes:** Would it possible to have some correspondence with the DPP that the Committee can see? Statutory defence is a complicated area of law, but it is also an important one, particularly in dealing with the issue of compulsion and how it relates to the child. It would be helpful and reassuring to receive the DPP's view of the debate today.

**Karen Bradley:** I thank my hon. Friend for his comments, not least because they coincided with my needing a drink of water. I am not sure what correspondence could be made public because correspondence between the Department and the DPP is often private, but I will look into that.

**Mr Burrowes:** As the guidance is being developed, it may be helpful to provide an opportunity before the Report stage to make the Committee aware of the Government's—and particularly the DPP's—position in relation to the challenges that have been described. That would be reassuring as we approach the drawing up of guidance.

**Karen Bradley:** As I said, I shall go away and look at what might be appropriate to put in the public domain.

**Diana Johnson:** I just want to emphasise that in my remarks I referred to the guidance that was issued by the DPP relating to assisted suicide because that was seen to be of interest to many people, and clear guidance was very welcome. It was in that spirit that we were looking to get the DPP involved.

**Karen Bradley:** I understand, and I appreciate the hon. Lady's comments. She is helping the Government enormously in our work.

Returning to the point made by my hon. Friend the Member for Brent Central regarding the relevance of culture and religion and whether that should be in the guidance, the DPP is heavily involved in the development of the future operation of the defence. That is something we will certainly discuss following the debate. A person's culture or religion are already facts that the CPS may consider relevant. However, I take my hon. Friend's point that there may be a case to make that more explicit in the guidance and I commit to discuss that.

Going back to the point of compulsion, it is right that there should be a test of compulsion in all cases. It is not a high threshold for children, but without it, even in children's cases, we are providing a defence that people can rely on, even if they have proactively chosen to commit crimes and even if they did not feel that their trafficking or slave situation meant they needed to do so. We would have to look at the facts of each case, but we are talking about children being forced to do something and that is compulsion. To take that test out, even with a very low threshold, means that we would potentially create a loophole that could undermine the other work that we all care so desperately about.

**Sarah Teather:** The problem is that situations can become so normalised for children that they have no idea whether they are forced to do something or not. If interviewed and questioned about what they thought, the chances are that they would not give the right answer to allow that defence to take place. When we discuss some of the later amendments, I will want to quote from a particular case where somebody called

their trafficker "daddy". We know that kind of scenario is common and so I worry that the clause will not provide the defence that the Minister thinks it will.

**Karen Bradley:** I understand the concerns that my hon. Friend has, and I have heard of cases where children think of their abuser as their uncle or other family member and they trust and rely completely on them. I have heard horrendous stories about some of the abuse that they have suffered at the hands of that abuser, and what they believe about it, particularly in witchcraft-type scenarios, so I do understand. However, it is important to see the defence as we envisage it working. We envisage that the defence is there to stop the prosecution coming forward in the first place wherever possible. It is also there, if a prosecution is going through, for the victim to say "Actually, I am a victim in this, I should not be being prosecuted," although we hope that it will never come to prosecution in the first place.

At that point, the combination of CPS guidance and education of the CPS working with the anti-slavery commissioner—I do not mean education in that it does not know what it is doing; I mean awareness training for the CPS—and the statutory defence provides the necessary safeguards to ensure that child victims who are forced into committing a crime should not then be prosecuted. Even if they are, we would have that defence that can be used by the defence barrister to ensure that that victim is not convicted.

**Sarah Teather:** Without making it clear that children cannot be compelled in the same way and that the test should be very different—the Bill does not make that clear—I cannot see how it will prevent children from being prosecuted.

I return to the point that my hon. Friend the Member for Enfield, Southgate made that we must avoid children going into the criminal justice system in the first place. I know that that is what the Minister wants, but I am not convinced that the clause as drafted will achieve that. I am not convinced by her answers.

**Karen Bradley:** I thank my hon. Friend for her comment, but I think we need the protection in the clause. In all discussions about children being forced into doing something, even if they do not believe that they have been forced, we must ensure that the guidance is clear. Working with the DPP and others, I know that this debate will be examined closely to ensure that the guidance is very clear that the threshold for compulsion is very low for children. I take my hon. Friend's point exactly about children thinking that because the person involved is a family or parental figure, they are not being forced to do something by that person, but ultimately they are being forced. At some point, there is force, and it is important to ensure that there are safeguards in the defence.

We do not want the defence to be abused or misused. We also do not want it to result in more children being forced to commit criminal acts because the slave masters say it is fine because there is no way they will be prosecuted. We must ensure that there is some form of protection for the victims of the crimes—because there will be victims of the crimes that children commit. We must ensure that children are not forced or driven to behaviour that is even worse as a result of this defence being on the statute book. Unintended consequences are a concern for all of us.

I return to the CPS's decision on whether to prosecute. It has procedures in place to ensure careful review of cases involving trafficking victims. In all cases with evidence or information suggesting that a suspect might be the victim of trafficking, the case will be reviewed by a designated prosecutor in the light of that information. However, in nearly all cases that are referred to the Court of Appeal, information about the defendant's trafficked status has not come to light until they are already serving a sentence. That is why the commissioner has such a key role to play in ensuring that all agencies and organisations can identify victims effectively and promptly.

The new clause seeks to set out how the CPS should identify a potential victim. I have concerns about this. The evidence on which the CPS bases a decision is not the same as the evidence adduced in court, which is ultimately a matter for the judge and jury, having regard to all the evidence. The suggested subsections 5(b) and (c) relate to court proceedings and do not seem to be relevant to what we want: early identification of victims before prosecutions are brought.

With those assurances, I hope that hon. Members will feel able to withdraw the amendment.

**Mark Durkan:** I have listened intently to the Minister but sought not to intervene as often as I had done on her previous contributions because I know that the issue has many layers and that it would not have been in our best interests to intercept on one point or another before the case was thoroughly made. However, I appreciate that others made telling interventions and asked telling questions during the Minister's remarks.

I do not feel sufficiently assured or enlightened by what the Minister said in her substantive response to the amendments and the new clause or by her specific responses to questions.

4 pm

The amendments are about the basic issue of whether we, as legislators, are making it clear that specific considerations apply in the case of child victims who, as part of their victimisation, were forced to commit criminal acts. We must remember that the trauma of that stays with them afterwards.

Along the corridor from here last week I was at a meeting—the hon. Member for Congleton was there as well—where we heard a distinguished expert talk about what happens in people's early years. He made the point that the old adage, "What happens in Vegas stays in Vegas," does not apply to a child's early years. Let us remember that being forced to commit a crime is exploitation and the trauma of that will remain with the child. The amendments are about not just sparing them the inconvenience or added trauma of a prosecution, but recognising what having been asked to commit that crime meant to them. The nature of that crime may well continue to haunt them, as well as their victimhood.

We, as legislators, should not fail to give guidance and leave it to chance that prosecutors will make the right judgment. As we hear in difficult cases where there are a number of considerations, including victim sensitivities,

decisions on prosecutions have to be made. A prosecution may be mounted against a child because in such circumstances it is felt that that would assist the prosecution of someone else. The clause as drafted leaves the door open for that and, if that does happen, the adult perpetrator—the slave master or whatever we want to call them—as part of their legal case may try to challenge any statutory defence that the child offers. As a result, not only is the child prosecuted by the justice system, but their defence is ruthlessly challenged by an adult defendant. We should not expose anyone to that situation; nor should we put prosecutors in a position where, because a child defendant might be exposed to that, they have to go for a lesser charge or not prosecute an adult defendant because they would otherwise challenge the statutory defence with their lawyers.

That is the syndrome we have been advised about for some other offences. The right hon. Member for Hazel Grove made that point last week in relation to consent. Such issues arise in rape, sexual assault or abuse crimes: the consent issue comes in in a vexed way and prosecutors often end up explaining that they have to take decisions on charges owing to the vulnerability of witnesses. It is one consideration to talk about children being vulnerable as witnesses, but if they are potentially vulnerable not just as witnesses but as defendants and have their own defence challenged, that creates a serious difficulty.

That is why it is right that we, as legislators, consider the issues reflected in new clause 30, tabled by the hon. Member for Kingston upon Hull North. The new clause would mean that what we hope, and the Minister expects, will be the position of the Crown Prosecution Service would have a statutory underpinning that would be clear to any court or anyone in the CPS. It would also be a clear statutory light for the anti-slavery commissioner when they are doing their job and reviewing all aspects, performances and practices that they might consider. They could look at those things under a clear statutory light provided by Parliament, rather than us simply saying, "We trust their light"—that is not good enough when it comes to our duty to children.

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

It would also mean that, to establish that the child is entitled to a defence as a trafficked child, they would have to provide evidence about the means used to traffic them, even though the internationally accepted definition of child trafficking explicitly omits the need to prove those means—and other considerations as well. It would be a dereliction of our duties not to use the corrective step offered by amendment 71.

I note that the Minister said that the statutory defence does not have a high threshold of proof, but it could be a high threshold for a small child who may or may not understand much of what is going on around them. They should not find themselves caught in such a situation.

**Karen Bradley:** I do not really disagree in principle with anything the hon. Gentleman is saying, but we are still talking about an act a child is forced to do as a result of their situation. The fact that they are forced to do it, albeit that they do not believe that, is still important. It is important to have a safeguard to ensure that there is no abuse of the defence. We need to bear in mind throughout that we are talking about a child that has been forced to do the act. Somebody along the line has forced them and that compulsion is a fact of the case. That is important. In addition, the threshold of proof for a child has to be low.

**Mark Durkan:** The Minister says the threshold for a child has to be low, but the onus is still on the child. It is not clear to me what in the clause as it stands makes the threshold any lower for a child. That is precisely why we have tabled the amendments—to make sure that a child in that situation will never be treated as though they were an adult, whatever calculations, or miscalculations, might arise.

**Karen Bradley:** A subjective test involves the child feeling that they had to do it. We are not talking about that here. They cannot know they are being compelled, but they are being compelled. We have to bear that in mind. They are being forced, and we are talking about an objective test.

**Mark Durkan:** The Minister seems to have been told that there is an objective test. Let us be clear. We could be talking about situations in which it is somebody else's defence in relation to charges against them; that there was not that compulsion; and that they were not compelling that minor in that way to do what that minor did. Let us set aside the issue of crimes that children might be asked to commit. Let us deal with the circumstances in which issues of compulsion arise, when all of us would end up using the defence of compulsion if we had to. Yes, we are agents of free will, but we feel compelled to do things.

MPs often feel compelled to follow their Whip, even though they may fundamentally disagree. We are agents of our own free will. We stand and promise to serve our constituents and give our best judgment or whatever, but often we find that MPs are explaining to their constituents or others that, although they agree with them on an issue, that was not how they voted or how they spoke; or if it was how they spoke, it certainly was not how they voted, because they were compelled. They might be people who in other instances do not always follow their Whip, but perhaps ration the number of times they rebel or defy the Whip, or do not follow their own conscience or their own judgment. There are degrees of compulsion. Some of us will find ourselves saying that political circumstances compelled us one way, and in similar circumstances we will say that the issue and the context was such that we were freer to do something slightly different.

Let us remember that once there is a test around compulsion, we are talking about that test being around very young children who find themselves, as victims, being taken into the courts as defendants, and perhaps

as defendants being put up against other victims who will employ all sorts of legal capacities to help or assist them. One way for somebody else trying to keep themselves out of prison or defending themselves is to challenge the statutory defence that a child or a minor is using. They will do that. We should not expose children to that last line of exploitation and abuse at the hands of their slave master, which is what will happen if we keep the Bill as it stands. The Minister said it will not be a high threshold.

The Minister sought to assure us about the things a jury could conclude if something happened and somebody went to court. The fact that she relied on the scenario of what a jury could conclude shows that she is even prepared to entertain that a child could find themselves in court as a defendant relying on the statutory defence. The fact that she talks about how a jury would make a judgment in relation to a statutory defence should ring alarm bells for all members of the Committee.

**Karen Bradley:** We all have to accept that there will be cases where, for whatever reason, a victim of slavery or trafficking finds themselves in court for a crime they have committed. Perhaps they were too scared to come forward at the beginning to say they were a victim. I have met victims who happily went to jail several times on behalf of their slave masters, because they felt their slave master was the only person who gave them sanctuary and a home. They happily went to jail despite everything it was doing to them. We have to accept that that is the case.

The whole work that we in government are doing is about finding the victims as soon as possible and, when we find them, encouraging them to be identified as victims. That is the commissioner role, but we have to accept that there will be cases where, through nobody's fault, a victim ends up in court, and it is important that we have the defence. Sadly, we are not in a perfect world. I wish we were.

**Mark Durkan:** If the people the Minister is talking about did that as minors—she talked about people who willingly went to prison because of the relationship they have with the slave master—they would then willingly not use the statutory defence, which is why they should be protected. The protections must be there so that defendants do not find themselves under a double duress; they should be free from that at that stage of their journey. It should be a journey out of victimhood and not one where, as victims of crime, they are treated as criminals, with all the jeopardy and implications that come with that.

4.15 pm

**Mr Burrowes:** The hon. Gentleman says that he is not willing to provide blanket protection, for example, for a child victim of trafficking who finds themselves prosecuted. There is still a need to show that there is no realistic alternative to committing that act, and that is important.

**Mark Durkan:** The hon. Gentleman makes an important point, one stressed by the hon. Member for Brent Central. Amendment 71 does not dispose of the other relevant conditions. While it gives due and proper weight to the victim's young age, it is not an ouster for all other considerations or conditions in relation to the nature of the crime or what conditioned it.

We sometimes hear of jurors being particularly distressed by the case they have heard. Their distress comes not just from hearing the evidence for the original crime but from how the case has had to be conducted and the position that witnesses are put in. A child and their representatives might end up having to rely vigorously on a statutory defence, which may then be subject to hostile challenge from the prosecution or from an adult defendant on a related charge. As legislators, we should not leave the law in a state which invites such an experience for jurors. We would not want it for ourselves if we were serving as jurors, and we would certainly not want that experience for any child victim we knew.

We are all motivated by our concern for children whom we do not know and have not met, but whose circumstances we know about. Through all-party groups and other efforts in Parliament and beyond, we have all been moved to address this issue. This is one point on which we cannot just hope for the best or assume that things will be all right on the night because other people out there will have enough consideration for children. We should not leave children at hazard.

I therefore seek to press amendment 71. Unlike some of the previous issues, which I was happy to park, it falls to all of us to deal cogently with the issue of the position children might find themselves in. The statutory defence, as it stands, has welcome steps and standards in it, but it remains clearly deficient and risky in respect of children.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 7, Noes 8.

**Division No. 9|**

**AYES**

| | |
|---|---|
| Connarty, Michael | Kane, Mike |
| Durkan, Mark | Teather, Sarah |
| Hanson, rh Mr David | |
| Johnson, Diana | Wilson, Phil |

**NOES**

| | |
|---|---|
| Bradley, Karen | Hinds, Damian |
| Bruce, Fiona | Lumley, Karen |
| Burns, Conor | Nokes, Caroline |
| Burrowes, Mr David | Pincher, Christopher |

*Question accordingly negatived.*

**Diana Johnson:** I beg to move amendment 53, in clause 39, page 27, line 13, at end insert—

'(9) Once the defence set out in subsection (1) is raised by the accused or on his or her behalf, or the court of its own volition or on hearing submissions from any party decides that such a defence should be considered by the court, the burden of proving that the offence was not committed as a direct and immediate response of him or her being a victim as set out in subsection (1) shall lie upon the prosecution."

We are still dealing with clause 39 and statutory defence. The amendment, which I move on behalf of myself, my right hon. Friend the Member for Delyn and my hon. Friend the Member for Sedgefield, puts it beyond doubt that the onus is on the prosecution to show that an individual has not been trafficked, rather than for the trafficking victim to show that they were trafficked. That was the recommendation of the Joint Committee, which the Opposition support.

*[Diana Johnson]*

There are several advantages to that approach. It prevents the trafficking victim having to meet an evidential burden when they do not have the means. As we have discussed many times, trafficking victims are extremely vulnerable. They are normally confused and extremely wary of law enforcement. In cases such as that of Craig Kinsella or the children in cannabis factories we have been discussing today, they cannot easily produce evidence that they were trafficked because they may not have understood what was going on. That will be common in the case of children in particular who do not even know how they were trafficked or where from.

I want to give an example from the "Still at Risk" report by the Refugee Council and the Children's Society that relates to the commission of immigration offences:

"For seven of the children in this review, their first contact with public authorities was either with the police because brothels were raided, or with immigration officers at borders who became suspicious of their documentation when they were being moved out of the UK by their traffickers. In some of these cases, officials and solicitors did not recognise the two key factors in their situations—that they were children and that they were potential victims of trafficking—which resulted in them being caught up in the adult criminal justice or asylum system. Three girls were sent to adult prison—two for documentation offences where they had been advised by solicitors to plead guilty, and one for an offence she still does not understand where again the advice given was to plead guilty",

but she did not understand what it was she was supposed to have done.

"Two others were treated as adults and put into Yarl's Wood Immigration Removal Centre. One of the girls who became caught up in the criminal justice system was entirely unclear about what she was being told to do and the potential implications."

She was quoted in the report as saying:

"I don't understand why, I don't know, I don't know what guilty means".

She said she did not know anything about a passport—that she did not know about anything—but that she was being told to plead guilty. She also said:

"So then the solicitor asked me to plead guilty I pleaded guilty and I don't understand what guilty means, I don't know what they are speaking…about".

That sets the scene for how difficult it is for trafficked victims to fully understand and appreciate what they are being accused of, and what they are being asked to do by their legal representatives.

This goes back to the point I made earlier about changing the attitude of the prosecuting authorities—the Crown Prosecution Service—which was one of the key points the Joint Committee raised. At present, it appears that the CPS's default position is to prosecute. Its aim and purpose is to get as many prosecutions as possible—I guess the clue is in the title, "Crown Prosecution", is it not? Its consideration of the rights of trafficking victims seems to be secondary. However, if we can remind the CPS that it will be able to get a prosecution only if it can disprove the suggestion that someone was a trafficking victim, we can discourage the CPS from prosecuting in cases where to do so would not be appropriate. That would change the CPS's calculation from "Do we have evidence that they have committed a crime," to "Did they commit the crime, and can we show that they have not been trafficked?" I believe that the amendment would start to change behaviour. It would remind other agencies that trafficking victims cannot be prosecuted. We have talked about problems with CPS decisions to prosecute. The CPS ultimately makes decisions about prosecution, and it has a duty to look at all the evidence and decide the best course of action on the balance of that evidence.

Defence lawyers may also benefit from the amendment. The Joint Committee took evidence about cases in which we know that lawyers advised victims to plead guilty when it was not appropriate to do so. We want to remind defence lawyers that if their clients have been trafficked, they should not be prosecuted in the first place. The amendment would reinforce the point that the CPS must consider its evidence, and if it does not have the evidence to rebut a trafficking claim, it should be persuaded to drop the case.

I reiterate, as the hon. Member for Enfield, Southgate has said several times during our debate, that clause 39 does not simply demand that an individual be trafficked. There are three stages to a statutory defence under clause 39, so for the majority of cases, the CPS will be able easily to rebut any attempt to use the statutory defence if there are not proper grounds for the claim that an individual has been trafficked. The amendment would move the onus on to the prosecution, which I believe would assist the courts.

**Mr Burrowes:** I declare an interested as a former defence solicitor. I hope the Minister will respond that the amendment is not necessary, and that the usual provisions in the law in respect of statutory defences will apply. Once the defence has been raised—indeed, it could be raised in the police station at interview—that on the balance of probabilities, it is more likely than not that a person has trafficked, it will be for the prosecution to prove otherwise beyond reasonable doubt. That burden is part of criminal law, and that will be the case for this statutory defence.

The same is true of the relevant civil law. That burden of proof applies not only when the matter comes to court, but in the police station. Once the defence has been raised, the prosecutor—or, indeed, the police officer in the case, when they talk to the CPS about whether there is a realistic prospect of conviction—will need to satisfy themselves that they can secure the conviction by being able to prove beyond reasonable doubt that the defence does not stand. That is important, because it means that at an early stage, with the proper application of the statutory defence, victims whom we do not want to go through the court process do not need to do so. That burden of proof will apply in the normal way, as with any statutory defence or in cases of self-defence.

4.30 pm

**Karen Bradley:** I am grateful to the hon. Member for Kingston upon Hull North and other Opposition Members for tabling amendment 53, and to my hon. Friend the Member for Enfield, Southgate for his contribution. The hon. Lady raised an important issue. I know that all Committee members are determined to ensure that our defence works as effectively as possible to protect victims. Victims of the heinous crimes we are discussing must be confident that if they come forward, they will be treated as victims and not inappropriately prosecuted or convicted as criminals. Amendment 53 is clearly designed with that aim in mind, and I am grateful for

that. The Bill will strengthen protections for victims so they can be confident they can come forward and support prosecutions. The defence means that victims of modern slavery who have been compelled to commit a relevant offence as a direct consequence of being enslaved or trafficked can be confident that they will not be treated as criminals. It is absolutely essential that people who are forced to commit crimes as part of their slavery or trafficking experience are not punished if they had no realistic alternative to committing the crime. The real criminals are those who coerced them into criminality, and it is vital that they are brought to justice.

We all know the kinds of criminality we are talking about. For example, law enforcement officials tell us time and again about Vietnamese children who are locked in cannabis farms and forced to live in the same room as the plants, which they cultivate day and night. Those children are clearly victims and should be treated as such by the criminal justice system. The hon. Member for Linlithgow and East Falkirk has left the room, but I know he has personal experience of cannabis farms—*[Interruption.]* I meant from the street he lives on, nothing more than that.

I understand that the intention behind the amendment is to ensure that, however the defence gets brought up, it is for the prosecution to prove it does not apply. In other words, only the evidential burden should apply, and evidence should be called simply to raise the issue of whether the statutory defence applies. I agree that that should be the case. However, the amendment is not necessary to achieve that important aim. It has been long established by case law that, as a basic principle of criminal law, once a defence is raised the burden of proof lies on the prosecution unless statute makes clear otherwise. Clause 39 does not suggest otherwise, so the evidential burden applies to the defence and, where there is sufficient evidence to the raise the defence, the burden of proof is already on the prosecution.

Similarly, if the court sees sufficient evidence that the defence might be relevant in a particular case, but the issue of the new defence for victims has not yet been raised by the defence, the court can invite submissions from both the prosecution and defence and put the defence to the jury to consider. Therefore, the court already has the necessary power to ensure that the defence is considered, even in cases in which the defence does not immediately raise it.

I thank the hon. Lady for tabling the amendment and raising this important issue. I hope that, with those reassurances, she will feel able to withdraw the amendment.

**Diana Johnson:** On the basis of what I have heard, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Mark Durkan:** I beg to move amendment 75, in clause 39, page 27, line 27, leave out subsection (7).

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

Amendment 125, in clause 39, page 27, line 28, at end insert—

'(9) The Anti-Slavery Commissioner shall in their annual report produced under section 36, include a review of the offences listed in Schedule 3."

Amendment 89, page 38, line 15, in Schedule 3, leave out paragraph 14.

Amendment 90, page 38, line 30, in Schedule 3, leave out paragraphs 16 and 17.

**Mark Durkan:** Amendment 75 obviously seeks to deal with the widely framed schedule 3, which covers the offences to which the statutory defence will not apply. It covers a significant range of offences, which clearly limits the standing and scope of the statutory defence, not only for children but for adult victims.

The Minister will say that the schedule is needed to limit the application of the statutory defence. However, as we heard in the previous debate, the statutory defence is already limited by its restriction to crimes committed by trafficking victims that are a direct result of their trafficking or exploitation. Schedule 3 includes 134 different offences—it is not a small list—many of which could be argued to have been committed by victims of trafficking as a direct result of exploitation. There is much evidence about the patterns and practices of trafficking and the experience of victims to underpin that.

I will give a couple of examples. Section 48 of the Sexual Offences Act 2003 deals with causing or inciting child prostitution or pornography. UNICEF's research shows that some cases involve people under 18 trafficking close relatives after having been exploited themselves. We know that those who are exploited or abused can become abusers themselves. We also have section 25 of the Immigration Act 1971. That deals with the assisting of unlawful immigration to a member state whereby child victims are likely to be provided with false passports by traffickers.

International law and standards envisage no exceptions to a non-prosecution directive, but this schedule creates wholesale exceptions. The Joint Committee, whose work is helping and informing us so much and has helped the Government to make some adjustments to the Bill already, took an approach that greatly qualified the limitation on the statutory defence by retaining the exception only for murder, but stipulating that the lesser charge of manslaughter would be applied. We therefore have significant pointers in relation to this issue.

We also have evidence from those who know these issues—for instance, the Children's Society and the Refugee Council. They have recently provided evidence that shows, in relation to the 1971 Act, that the offence referred to is exactly the kind of offence likely to be committed by a child victim, so that is shown transparently. It is exactly the kind of offence for which a defence is required by victims. Again, of course, that is specifically mentioned in international standards. I come back to the great strapline claim that the Government have for the Bill that it is world-beating legislation. The fact is that it lags behind international standards on this point as it does on others.

I know that amendment 75, which would remove the schedule, perhaps goes further than hon. Members might want in dealing with some of these issues. I am conscious that other amendments are more targeted in the changes and deletions that they would make in relation to the schedule. I am prepared, with the rest of the Committee, to hear the case that might be made for those other amendments in this group.

**Sarah Teather:** My remarks will be brief, as amendments 89 and 90 are probing amendments. They are designed to clarify exactly what the Government intend in terms of the purpose of schedule 3 and its relationship with the statutory defence. As the hon. Member for Foyle said, the schedule contains a very long list of offences for which the defence created in clause 39(1) will not apply. There are 134 different offences. The explanatory notes to the Bill state that the defence

"will not apply in the case of certain serious offences",

mainly serious sexual or violent offences, and that is reiterated in the Home Office's impact assessment. However, along with offences such as murder, kidnapping, terrorism and rape, which people would expect to be listed, there are immigration offences, customs offences and theft-related offences. That is the nub of my concern. Those are the types of offences that research shows victims of modern slavery often become embroiled in.

The paper published by the UK chapter of RACE in Europe earlier this year suggests that vulnerable people and children, especially those from Roma communities, are trafficked into the UK and forced to commit acts of theft in particular. Worryingly, the exclusion of certain offences under the Theft Act 1968 from the operation of the defence created by the Bill fails to reflect that reality and it does not quite reflect the comments that the Minister made at the start, when she was speaking on clause 39. She said that it had been crafted specifically to deal with the kind of offences that victims of modern slavery are likely to get caught up in.

I am aware that the impact assessment says that where the defence is not applicable, the CPS will still have the responsibility to consider whether it should prosecute or not—a point that the Minister made repeatedly in response to the earlier groupings of amendments. However, as that is not in the Bill, what bothers me is that, with the offences listed in schedule 3, it is as if prosecution should follow. I worry that the mere presence of these listed offences in schedule 3 might make prosecution a near certainty, as if it is an encouragement to prosecute regardless.

The impact assessment tells us that the list of offences in schedule 3 draws on schedule 15 to the Criminal Justice Act 2003, which specifies violent offences that carry heavy penalties and non-custodial sentences. Nowhere in schedule 15 to that Act do immigration offences appear, yet they do in paragraph 16 of schedule 3.

Will the Minister explain why immigration offences have been specifically included, and why that list has been changed? It would have made more sense if the Home Office had simply lifted a whole list from a previous Act but the contents have been specifically amended here. It is not difficult to imagine circumstances where somebody who is a victim of modern slavery might well become involved in the facilitation of unlawful immigration.

I accept that there is a balance to be made between the rights of victims of future crimes and the rights of somebody caught up in modern slavery. However, I am unclear why those extra offences have been drawn into schedule 3.

**Diana Johnson:** Amendment 125 would insert that

"The Anti-Slavery Commissioner shall in their annual report produced under section 36, include a review of the offences listed in Schedule 3."

Briefly, we know that the offences in schedule 3 will not attract the statutory defence, as set out in clause 39. We do not have a problem with schedule 3 including serious offences, although we have some sympathy with the comments made by the hon. Member for Brent Central, particularly in terms of some of the immigration offences. We think it very unlikely that most trafficking victims would understand UK laws or customs, in particular immigration rules.

There are 134 offences listed in schedule 3. We will not have time to go through them individually, but there are concerns particularly about section 48 of the Sexual Offences Act 2003, which relates to causing or inciting child prostitution or pornography. Unicef's research shows that in some cases traffickers are under 18, and have involved close relatives, after being exploited themselves. There is a range of things there that we would like to discuss.

We think the best way to deal with the matter is for the anti-slavery commissioner to review the schedule 3 list as part of their annual report, to ensure that it is appropriate that all the offences currently listed stay as listed. In future there may be other offences that should be added to the list. At the moment forced begging and cannabis growing are some of the big offences being committed in relation to human trafficking and slavery, but that may well change quickly.

**Mr Burrowes:** The justification for schedule 3 is to avoid creating a legal loophole for serious criminals to escape justice. I am concerned about that but also concerned about serious victims who could be serious criminals. If the statutory defence does not apply, they would still be able to use the current law of duress. They would be able to seek that defence. I am concerned that we are unduly complicating matters. Peter Carter told the Committee,

"I think legislating by list of exceptions is a recipe for disaster and confusion."—[*Official Report, Modern Slavery Public Bill Committee,* 21 July 2014; c. 36, Q69.]

Although there is an enabling power for further amendments, I am concerned that we might be over-complicating matters. We cannot have true confidence that the reasonable person test will apply to all types of offences and individuals. I know from the application of the law of duress that the more serious the offence, it is understandably harder to convince a court or jury that actions are justified, or whether a reasonable person would regard them as justified. We can rely on that and on subsection (3) to apply properly, so can the Minister tell us whether there are any other statutory defences that have limited and excluded serious offences?

4.45 pm

**Michael Connarty:** I can see why there might be very serious offences that were not thought of by the Joint Committee, and clearly some of those offences should be included. Paragraph 7 of schedule 3 is a catch-all that includes section 38 of the Offences Against the Person Act 1861, which covers assault with intent to resist arrest. That is a standard reason for the police arresting anyone whom they want to get slammed up, basically. If they cannot get them on anything else, they accuse them of resisting arrest and assaulting a police officer. I have worked with the Scottish Council for Civil Liberties for many years, and people have been dragged into court

on that basis because the police basically did not like their face. If there is a melee on a Saturday night and someone speaks back, the next thing they know they are in court for resisting arrest and, of course, assaulting a police officer because they said, "What are you lifting me for? I've done nothing." The next thing they know, they are in the High Court in Glasgow.

A problem is created by such a simple thing. Nobody gets off with schedule 3. It is such a minor offence, yet paragraph 7 of schedule 3 says that the statutory defence of being compelled to commit the offence as an enslaved child does not apply to section 38 of the 1861 Act. How could anyone possibly allow that to remain in the schedule and say that it is a serious matter under which someone should lose their statutory defence of having been compelled to commit a crime while being trafficked? That makes a mockery of things, and it makes me worry about the Home Office's logic in this process. That is the most offensive thing in the schedule because it is so trivial. How can we deny someone's right to the major statutory defence that they were compelled to commit a crime if they are going to be taken to court for resisting arrest?

**Karen Bradley:** I am grateful to the hon. Member for Foyle for moving amendment 75, to my hon. Friend the Member for Brent Central for tabling amendments 89 and 90, and to the hon. Member for Kingston upon Hull North for tabling amendment 125. The amendments raise important issues on how the statutory defence will be applied.

The statutory defence for victims will provide some of the most vulnerable people in our society with the protection and support that they need to come forward and support prosecutions in the knowledge that they will not be unnecessarily criminalised for offences that they may have been compelled to commit as a direct consequence of their slavery situation. However, there is also a need for appropriate safeguards to ensure that the new defence is effectively applied, and not abused by the very people whom we are trying to catch and lock up for these despicable crimes. Whenever any statutory defence is created, we must be careful to ensure that the line is drawn in the right place so that the people who need the defence can access it, and so that unfairness or injustice to potential victims of serious crime are avoided. That requires a careful balance to be struck. People who have been enslaved or trafficked may commit criminal offences in a wide variety of circumstances, and the defence may not be justified in every case. In some cases, for example, people who have been trafficked may become involved with an organised crime group and later, as full members of an organised crime group, commit very serious offences. I do not want to create a loophole that allows very serious criminals to escape justice in serious cases, as that would undermine everything that the Committee is trying to achieve.

Amendment 75 seeks to remove schedule 3 from the Bill, which would mean that the defence could apply to any offence, including serious sexual and violent offences, such as murder and rape. Amendments 89 and 90 seek to remove certain offences from the list of excluded offences. Those offences include a number of serious and often violent offences under the Theft Act 1968, including the offences of robbery or assault with intent to rob, burglary, aggravated burglary, aggravated vehicle-taking and blackmail. The current position in relation to the Theft Act is more appropriate as it ensures that the defence can be used for pickpocketing and ordinary theft but not for much more serious offences that often involve violence. The amendments would also exclude the offence under section 25 of the Immigration Act 1971 of assisting unlawful immigration to a member state and the offence under section 170 of the Customs and Excise Management Act 1979 in relation to importation of prohibited, indecent or obscene articles. Such offences can be undertaken by serious organised criminals, and we do not have evidence that victims of modern slavery have been forced to commit them.

I reassure my hon. Friend the Member for Brent Central that we have consulted the CPS at length, and it is clear that the offences that are not excluded are the ones that it commonly sees in trafficking cases, so we are trying to target the cases that commonly arise. The CPS said that it is not aware of the offence under section 25 of the Immigration Act 1971 or section 170 of the Customs and Excise Management Act ever having been relevant in a trafficking case or ever having been something that a victim of trafficking was involved in. I hope that will reassure her. The immigration offence in paragraph 16 of schedule 2 is a facilitation offence, often committed by organised criminals for profit. I have sought advice from the CPS to confirm that it has no cases of a child or adult slavery or trafficking victim committing a facilitation offence under section 25 of the Immigration Act 1971. Immigration offences are not excluded from the ambit of the offence. When a person has been compelled to commit an immigration offence, the compulsion is attributable to slavery or relevant exploitation and a reasonable person in the same situation would have no realistic alternative to committing an immigration offence, the defence will apply. We do not want to give loopholes to serious, organised criminals, but to ensure that the offences in cases of victims of trafficking and slavery are covered by the defence.

**Diana Johnson:** The schedule 3 list might give rise to a perverse incentive for trafficking victims to be charged with more serious offences so that they could not rely on the clause 39 statutory defence. Does the Minister think that might happen?

**Karen Bradley:** I would certainly hope that that would not be the case. I am sure that the CPS and others, when listening to these debates, will be clear that that is not the intention. We are trying to catch the bad guys. That is what the Bill is about. We want to ensure that the really bad guys who force people into these acts are the ones being targeted, not just easy targets. We are not setting target-achieving measures that would see victims being prosecuted. I do not intend that and I do not believe that that would be the case.

**Michael Connarty:** People who are charged with aiding and abetting in a group offence are mentioned under paragraph 8(3) of schedule 2, which says that

"where the offence (or one of the offences) which the person in question intends or believes would be committed".

That is often attached to people who did not the commit the crime but were seen driving the car or were in the café when they discussed doing the crime. The ability to detach the victim from the criminal, if we have this list in the schedule—which will deny somebody their statutory right of defence under clause 39—just does not make sense.

**Karen Bradley:** We have not discussed schedule 3 at length but the crimes set out in schedule 3 are ones that Parliament has decided are within the category of more serious offences. That is not to belittle the offences that are not in schedule 3, which are also serious offences, but these are offences that Parliament has considered over many years and believes should be there. The guidance and other measures should all work together to try to stop non-prosecution in the first place. We are looking to the CPS to ensure that prosecutions are only brought for genuine criminals, not for victims.

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

When the defence does not apply because it is too serious, the CPS will still be able to decide not to prosecute if it would not be in the public interest to do so. The CPS already considers whether to bring a prosecution in cases in which a slavery or trafficking victim may have committed an offence as a direct consequence of their trafficking or slavery situation, having regard to its specific guidance on the issue. We discussed that earlier. This is the appropriate way to deal with violent and sexual crimes. We must consider the interests of the victim of such crimes, and the situation of the person who committed that crime but who has been victimised through a modern slavery situation.

These are unusual and difficult circumstances and justice will be best served by the individual circumstances of the case being carefully considered. Case law has established that the criminal courts can stop a prosecution as an abuse of process where they take the view that, where they take the view that, having regard to our international obligations relating to trafficking, the prosecution should not have been brought.

Amendment 125 seeks to require the anti-slavery commissioner to review, in their annual report, the list of excluded offences in schedule 3 relating to the statutory defence. While I fully understand the intention behind this amendment, it is not necessary. We have discussed at length the role and functions of the commissioner. They will have a role to play in ensuring that victims feel confident and supported to come forward and give evidence. That includes where victims may have committed an offence as a direct consequence of their slavery experience. I have been absolutely clear that the commissioner will have the freedom and autonomy to look at all issues in their broad remit. Where they believe that the statutory defence is not working properly for victims who can effectively support an investigation, they will of course have the ability to consider making recommendations about its effectiveness. That is why we have included a power in the Bill to amend schedule 3—to have flexibility to look at the relevant offences as our understanding of modern slavery and how it manifests itself improves.

I believe that the statutory defence included in the Bill is appropriate and protects genuine victims of modern slavery, while avoiding creating a loophole for very serious offenders to escape justice. I of course want to ensure that such an important and groundbreaking provision really does give the right level of protection and support to victims. That is why I am keen to listen to members of the Committee, and, indeed, the voluntary sector, to get this important provision right. That is why it is absolutely essential that we maintain the flexibility to change the list of excluded offences by statutory instrument.

Therefore, I would like to thank hon. Members for raising these important issues, and I hope they will feel able to withdraw their amendments.

**Mark Durkan:** I have no wish to press the amendment to remove subsection (7). I have noted what has been said by other hon. Members on taking a more selective and targeted approach to reducing the amendment's sweeping nature. I stand by my point, but I do not see the need for a Division on this. It is a matter that will have to be considered further. The points made by the hon. Member for Kingston upon Hull North and those made by others will be relevant as we take the Bill forward. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 39 ordered to stand part of the Bill.*

*Schedule 3 agreed to.*

*Ordered,* That further consideration be now adjourned. —*(Damian Hinds.)*

4.58 pm

*Adjourned till Tuesday 14 October at twenty-five minutes past Nine o'clock.*

## Written evidence reported to the House

MS 20 Christine Beddoe

MS 21 Homeworkers Worldwide

MS 22 UK Network of Sex Work Projects