



Home Office

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Peter Bone MP and Albert Owen MP  
Chairs, Public Bill Committee considering Immigration Bill  
House of Commons  
London  
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28 October 2015

Dear Peter and Albert,

Following consideration of the Bill by the Committee on 27 October 2015, I undertook to write on two points; firstly to provide more information on a technical point on clause 3 of the Bill relating to the effect of the definition of 'worker', and secondly to set out the rationale for the test of 'reason to believe' in relation to powers of entry under licensing provisions in paragraph 22(2) of schedule 1.

**Definition of 'worker'**

As I said yesterday, the definition in clause 3(6), which amendments 63 and 64 sought to change, only defines worker in relation to one aspect of the Director's remit. Specifically, it only defines worker in relation to offences committed under sections 2 and 4 of the Modern Slavery Act 2015 i.e. clause 3(4)(e). The definition of worker in all the other Acts within the Director's remit is unaffected.

This definition is not about granting new rights or about curtailing offences; it is simply about creating the right remit for the Director of Labour Market Enforcement, which I believe the clause does. We are clear that this remit will give the Director the ability to tackle the broad spectrum of labour exploitation from non-compliance to the most serious harm against workers.

The definition of worker in the Employment Agencies Act 1973 is unaffected and the Employment Agencies Standard Inspectorate will continue to take action against rogue employment agencies and businesses regardless of whether the worker is here legally or illegally.

Similarly, the definition of worker in the Gangmasters (Licensing) Act 2004 is unaffected. The GLA will continue to take action against rogue gangmasters regardless of whether the worker is here legally or illegally. This matches the concerns raised by during debate about targeting rogue and exploitative employers.

Furthermore, the definition in the National Minimum Wage Act 1998 is also unaffected. This will continue to apply only to legal workers. These provisions are not about extending rights to illegal workers, but about bringing together strategic oversight under one person. We do not think it is appropriate to give illegal workers

the right to national minimum wage. Of course, the employer who employs an illegal worker and pays them less than the national minimum wage, will still be committing an offence under section 21 of the Immigration, Asylum and Nationality Act 2006, which comes with a higher penalty. The Bill also includes measures to enable us to take a tougher enforcement approach to employers of illegal workers, including increased prison sentences if they employ people whom they know or reasonably suspect are illegal workers.

The definition of worker in clause 3(6) also has no effect on section 1 of the Modern Slavery Act 2015. All offences of slavery, servitude and forced or compulsory labour will be within the remit of the Director, whether or not the victims had the right to work in the UK. This is because we think it would be illogical to exclude those who are forced to work from the purview of the Director of Labour Market Enforcement. Indeed all of the offences of trafficking, under sections 2 and 4 of the Modern Slavery Act 2015, that involve slavery, servitude and forced or compulsory labour will also be within the remit of the Director, again this is whether or not the victims had the right to work in the UK (this is the effect of clause 3(4)(e)(ii)).

The definition in clause 3(6) also has no effect on the trafficking offences that are criminalised by sections 2 and 4 of the Modern Slavery Act. The only effect the definition has is on which types of trafficking offences are within the remit of the Director of Labour Market Enforcement, so as to focus the Director's remit on the labour market. In relation to offences that involve sexual exploitation, removal of organs, securing services etc. by force, threats or deception, and securing services etc. from children and vulnerable persons, they will only be within the Director's remit if they relate to workers or work seekers, which the definition provides, means legal workers. While we feel it would be useful for the Director's remit to include measures to tackle these aspects of modern slavery, we do not think that other types of trafficking are best dealt with by the Director.

The Government is committed to tackling all forms of modern slavery, regardless of the status of the victim. We have set out in the Modern Slavery Strategy and the Modern Slavery Act 2015 enhanced powers and an improved approach. The lead responsibility for tackling modern slavery offences operationally is held by the National Crime Agency and the police. It is a very serious offence, carrying a maximum sentence of life imprisonment, to traffic an illegal worker for any form of exploitation. However, we do not think it is appropriate that such offences are within the remit of the Director of Labour Market Enforcement. Instead they will be dealt with operationally by the police and the National Crime Agency. As with all modern slavery offences, they will be within the remit of the Independent Anti-slavery Commissioner who will encourage good practice and drive improvements in the public sector's response.

During the debate, the honourable Member for Sheffield Central asked whether limiting the remit of the Director of Labour Market Enforcement to only certain types of trafficking would leave the UK in breach of article 3 of the Council of Europe Convention against Trafficking in Human Beings as it would amount to discrimination on the basis of nationality. I do not believe that this would be the case.

Article 3 focuses on ensuring that the implementation of the Convention's provisions and, in particular, measures to protect and promote the rights of victims are not applied in a discriminatory fashion. That is why identification and support for victims

of human trafficking is undertaken through the National Referral Mechanism, with the same tests applying and the same rights to support, regardless of immigration status or nationality. In addition, protections for victims such as the statutory defence in section 45 of the Modern Slavery Act 2015 and the Director of Public Prosecution's guidance on non-prosecution also apply regardless of immigration status. The law enforcement response to modern slavery is led by the National Crime Agency and the National Policing Lead, with the Independent Anti-slavery Commissioner encouraging good practice and improvement in that response; helping to ensure modern slavery offences are treated as a heinous crime regardless of the victim's immigration status of the victim.

I do not consider that defining the Director's remit not to include all forms of trafficking or modern slavery is a breach of the Convention, particularly given the strong measures we are taking to tackle modern slavery, whatever the status or characteristics of the victim. I am concerned that this line of argument leads to the perverse conclusion that a Director with a primary focus on the labour market should have no role in tackling modern slavery, to avoid any suggestion of discrimination, which I do not believe is the intention or the result sought by the honourable Member. The drafting of the clause achieves the right balance in giving the Director a remit that is focussed on the labour market, but able to look at modern slavery where appropriate. To go wider would risk weakening that focus and encroaching on matters best addressed by the Independent Anti-slavery Commissioner.

I hope that this explanation will give Committee members the necessary reassurance that the clause, as drafted, does not in any way undermine the UK's efforts to prevent trafficking; neither does it reduce the protections available to vulnerable people who fall victim to this crime.

#### **Test of 'reason to believe'**

Under existing section 179 of the Licensing Act 2003, a constable or authorised person may enter premises if they have 'reason to believe' they are being used for a licensable activity to see whether the activity is being carried out in accordance with any issued licence. Paragraph 22 amends that section to also enable an immigration officer to enter premises which he has 'reason to believe' are being used for a licensable activity, but only with a view to seeing whether immigration offences are being committed in connection with that activity. The effect of the amendment is simply to align the powers of immigration officers to enter a premises with those of constables and other authorised persons already contained in the Licensing Act, specifically the wording used in paragraph 22 ensures that the wording in the new section 179(1A) is consistent with that used in paragraph 179(1). This will facilitate joint operational working on licensed premises and provide the flexibility for immigration officers to enter licensed premises without a warrant. That is why this test is framed slightly differently to the 'reasonable grounds' test that appears elsewhere in the Bill.

Finally, I have sought to ensure that Parliament is equipped with adequate supporting materials when considering the Immigration Bill. I am writing to draw the Committee's attention to two additional documents we published yesterday that may assist in further discussion. The first is a Policy Equality Statement for Part 2 of the Bill, and the second is an impact assessment of the provisions on illegal working in licensed premises. Both are available on our website:

<https://www.gov.uk/government/collections/immigration-bill-2015-16>.

I am copying this letter to members of the Committee and I will place a copy of this letter in the House library.

A handwritten signature in blue ink, appearing to read 'James Brokenshire', written in a cursive style.

**Rt Hon James Brokenshire**