



The Law Society

**The Law Society's Response to the Parliamentary
Joint Committee on Modern Slavery
Call for evidence on the Government's draft Modern
Slavery Bill**

February 2014

Contents

Introduction.....	3
1. Would the draft Bill be effective in reducing the incidence of and preventing modern slavery?	4
2. Are there other provisions which should be included in the draft Bill?.....	8
3. What non-legislative action needs to be taken to ensure effective implementation of the draft Bill?.....	11
4. Does the draft Bill achieve its objectives effectively and fairly?	12
5. Does the draft Bill provide for adequate safeguarding of survivors of slavery and trafficking?	12
6. How could the proposals for the Anti-Slavery Commissioner be improved?	13

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Introduction

- The Law Society of England and Wales (the 'Society') is the professional body representing more than 166,000 solicitors in England and Wales. Its concerns include the independence of the legal profession, the rule of law and human rights throughout the world.
- This submission has been produced by the Society through its Human Rights Committee in consultation with its Legal Policy Department.¹ The Committee is a specialist body of the Society comprised of practitioners and experts in domestic and international human rights law. It is networked with a broad spectrum of international professional legal bodies, inter-governmental organisations, and non-governmental and civil society organisations.
- The Society regularly writes reports and provides specialist submissions on these subjects to UK, international and inter-governmental bodies.

This paper addresses the six specific questions set out in the call for evidence.

¹ The Legal Policy Department at the Society reviews, comments and amends policy affecting the legal profession and the rule of law. It regularly submits evidence to Government. It undertakes its work by consulting with specialist committees. There is a specialist committee for each legal practice area. Committee members are legal practitioners who are experts in their field.

1. Would the draft Bill be effective in reducing the incidence of and preventing modern slavery?

- 1.0 There are about 50-100 million domestic workers globally, mainly women and girls. Their tasks include cooking, cleaning and looking after children and the elderly. Such workers are often poor and employed outside their home country, making them particularly vulnerable to abuse and slavery. The exact figure is not known; in part because this is a hidden condition as they have no real rights, they fall outside mechanisms that could provide scrutiny of their conditions and they fall outside the legal provisions applying to the employment of workers.
- 1.1 The Organization for Security and Co-operation in Europe (OSCE) Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro, in urging progress in the United Kingdom on tackling modern slavery said in December 2013: “When we talk about eradicating slavery, today as in the past, the first imperative is to free people who have been enslaved. In order to strengthen the criminal justice response, we need a multifaceted range of criminal and social measures, which should include strengthening victims’ access to assistance, support and compensation.” She went on to say: “The bill should adopt a comprehensive approach to making anti-trafficking action more effective. This should include seizing and confiscating the proceeds of crime, strengthening prevention efforts by engaging with the private sector, and enabling victims to obtain restitution of unpaid salaries through legal counselling.”²
- 1.2 The draft Bill concentrates on providing for criminal offences. It does not form part of a sufficiently co-ordinated approach that would identify modern slavery, the victims and perpetrators. It also does not formulate any strategies for preventing modern slavery from flourishing, not only in the UK but in the rest of the world. Since most of those who are vulnerable to abuse and slavery come from countries other than the UK, a UK only response cannot deal with the entirety of the problem.
- 1.3 The draft Bill does not provide a specific offence of child trafficking, which represents the exploitation of the most vulnerable and is an extremely serious crime.
- 1.4 The draft Bill should contain a clause to protect victims forced to commit crimes by their traffickers from being themselves prosecuted for those crimes. The draft Bill should also protect victims who may be in breach of immigration laws as a result of the offences defined in the draft Bill.
- 1.5 If the draft Bill is to provide a coherent response it should be based on a number of principles:
 - 1.5.1 The proposed Anti-Slavery Commissioner must be politically independent and have statutory authority to hold officials to account. The proposed Anti-Slavery Commissioner should also have powers

² <http://www.osce.org/cthb/109125>

extending beyond those currently provided in the draft Bill so as to engage with the private sector.

- 1.5.2 Victims should be identified and treated equitably irrespective of the part of the world from which they came.
- 1.5.3 Victims must not be criminalised, imprisoned or detained as a consequence of being a victim of forced labour or human trafficking. Any requirement to investigate the circumstances should in principle avoid detention or imprisonment. There should be an absolute prohibition on imprisonment or detention of child victims.
- 1.5.4 Victims must be assigned a guardian whose responsibility it is to protect them, support them, provide access to medical, legal and other services, ensure that an appropriate interpreter is available at all times whether for the purposes of access to appropriate services or in relation to any investigation being carried out into the circumstances or any crimes committed. Guardians must be financed out of public funds.
- 1.5.5 Victims must have a minimum of 90 days access to legal, health and resettlement services, and if they are to be repatriated, they must be repatriated at public expense and in a manner that does not cause the victim to become stateless or to suffer other human rights abuses. Repatriations must be effected in such a way as to keep the victims safe and provide them with help and assistance to rebuild their lives.
- 1.5.6 Victims must be entitled to compensation. Such compensation must not be tied to, withheld or reduced by allegations that they have participated in criminal or immigration offences.
- 1.5.7 Victims have a right to justice, must be treated with respect and dignity and are entitled to expect that the crimes against them are investigated thoroughly whenever and wherever they took place.

1.6 Domestic Workers:

- 1.6.1 The draft Bill fails to deal with issues that affect domestic workers in particular.
- 1.6.2 The draft Bill needs to provide for domestic workers being recognised as employees under UK law. Without this, domestic workers from abroad who come to this country to work for employers will be unseen, unregulated and inaccessible.

- 1.6.3 The UK has been criticised for failing to ratify the Domestic Workers Convention 2011³. It did not vote for the treaty in 2011, and the Government has since reduced protection for domestic workers by enforcing a tougher visa regime. The Home Secretary announced last year that domestic staff who come to the UK to work in private households will no longer be able to change employer or remain in the country beyond six months. At the time, the Government was warned this would leave vulnerable workers trapped in abusive situations, a claim it denied. A Government spokesman responded to the criticism and said: "But we are clear that domestic workers should have the protection of UK employment law to safeguard their rights." The Law Society believes that this protection does not exist.
- 1.6.4 The Government should incorporate into the draft Bill a right for domestic employees to change employer by amending their visa's terms.
- 1.6.5 The Government should ratify the Domestic Workers Convention 2011 and in so doing would provide a much broader list of rights than those currently in the draft Bill.
- 1.6.6 The draft Bill needs to be drafted in broader terms so that the threshold is as wide as possible because there may be many relationships that you would not wish to encourage. The draft Bill does not give the Government the power to intervene to protect human beings from other kinds of servitude.
- 1.6.7 The draft Bill does not deal with domestic workers in a diplomatic context. Again allowing them to change employer might reduce the risk of abuse. Where, but for diplomatic immunity, criminal charges might be brought, the Director of Public Prosecutions should refer such a case to the Anti-Slavery Commissioner who could report it to the Government who could take the matter up on a diplomatic level. Once a domestic worker of a diplomat escapes abuse, even if they cannot bring charges against their former employer, they should be afforded protection under UK law and the status of victim.
- 1.6.8 There is currently an exclusion so far as the National Minimum Wage is concerned for people who "live as a member of the family" – this definition needs to be clarified for domestic workers who although they may live in a family's home, do not always "live as a member of the family".
- 1.6.9 The Government should consider the re-instatement of the full overseas domestic work visa as it was prior to 2012. There is anecdotal evidence suggesting that the reduction in the visa time to 6 months has driven the problem of abuse underground. The limitation seems unnecessarily short and if the visa was changed to enable the domestic worker to change employers it is unlikely to be practical to do so in such a short period. The requirement for continuous employment and for that requirement not to be undocumented also means that domestic workers are at risk and likely to put up with high levels of abuse.

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http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C189

- 1.6.10 The draft Bill should provide an opportunity to review, clarify and provide a safety net for domestic workers within the context of UK employment law. The draft Bill should bring domestic workers within the ambit of UK employment law.
- 1.6.11 The draft Bill should provide for simple matters that will allow for effective investigation. These would include provisions for domestic workers to be interviewed separately from their employers and given information regarding their rights and provided with an independent interpreter. Employers should not be allowed to act as interpreters in any interviews.
- 1.6.12 The draft Bill does not recognise that there may be an issue under ECHR for a restrictive visa system for domestic workers after the case of *Rantsev v Russia and Cyprus*⁴.
- 1.6.13 The Health & Safety Act 1974 explicitly excludes domestic work from its scope, so that labour inspectors cannot visit private households. Labour inspections could provide a safety net and the draft Bill should be amended to correct these anomalies.

1.7 General Issues:

- 1.7.1 The draft Bill by itself cannot be effective in reducing the incidence or preventing modern slavery because all it does is to provide for criminal penalties for those who are placed before the courts charged with the offences created by the draft Bill. Reducing the incidence of or preventing modern slavery depends on an analysis of the economic factors/functions in the United Kingdom and elsewhere in the world which allow modern slavery to flourish. Examples of this are low business regulation, national policies on labour and work, immigration policies and other economic factors (including the illegality of cannabis which enhances its revenue producing aspect).
- 1.7.2 The draft Bill does not facilitate the identification and protection of those subjected to modern slavery save in so far as there is a potential in the appointment of an Anti-Slavery Commissioner. Therein lies the potential to do the work that is necessary before the provisions of the Act can become effective.
- 1.7.3 The Law Society supports the following view: “We are convinced, that any serious attempt to combat trafficking must be multidimensional, including establishment and implementation of minimum standards for protection and support to trafficked persons, which incorporate the measures outlined in the UN Protocol⁵ and in the High Commissioner’s *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. Secondly, the Society believes that granting the human rights of the victims of trafficking; providing

⁴ The European Court decision in the case of *Rantsev v Cyprus and Russia* allows police forces and others to be held to account for failing to investigate claims of human trafficking. It is an important decision and the implications need to be considered across UK policing.

⁵ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)

effective and real measures for their protection, assistance and possibilities of social inclusion in the destination countries implies as well more possibilities for the law enforcement agencies and the judicial system to fight against the criminal organisations.”⁶

1.7.4 The draft Bill must include the appointment of an Advisory Panel to assist the Anti-Slavery Commissioner. It is vital that those with experience in the various aspects that make up the complexity of modern slavery should be available to the Anti-Slavery Commissioner to assist him or her and guide the Commissioner in the various functions that must be carried out. The present draft Bill simply provides for unspecified staff, who would in all likelihood be civil servants, who might not have any expertise in this field.

1.7.5 The draft Bill should include clear goals for the Commissioner. Such goals should include the identification of the steps that the Government should take to ensure that:

- modern slavery is regulated out of the UK market;
- vulnerable people are not forced into labour and are adequately protected;
- economic policies and regulations do not encourage modern slavery;
- all labour providers involved in the supply of labour at or near the national minimum wage are licensed and regulated;
- pricing does not encourage extreme exploitation (the supply chain issue);
- intermediaries are held accountable where they are involved in subcontracted labour;
- all providers involved in the supply of labour are properly audited and the audit bodies are subject to regulatory oversight;
- individuals subjected to forced labour are identified and treated as victims, offered appropriate protection and facilities to include protection from intimidation, violence and other coercive means to persuade them back into forced labour;
- children who are being or may be exploited in forced labour, whether in the UK or abroad, are treated in an age appropriate way, protected and are always presumed to be victims.

2. Are there other provisions which should be included in the draft Bill?

2.0 The above paragraphs give an indication of the aspects that the Law Society considers should be included in a draft Bill. Additionally:

2.1 In many cases the conditions of domestic workers and those in forced employment amounts to torture or inhuman and degrading treatment and are

⁶ NGOs Statement on Protection Measures for Trafficked Persons in Western Europe:
http://www.antislavery.org/includes/documents/cm_docs/2009/w/wetraffickingngostatement2003.pdf

therefore in breach of the United Nations Convention Against Torture (UNCAT). The Law Society believes that such cases should attract the protections and rights enshrined in the Convention to which the UK is a signatory, and that the victims should have access to as full a rehabilitation as is possible pursuant to Article 14 of UNCAT – to enable a “sustained recovery”⁷. The Law Society recalls that there is currently a complete absence of support beyond the 45 day reflection period and thus no effective assistance that is government funded that allows for full recovery and re-integration of trafficked victims whether or not they have been given leave to remain.

- 2.2 Evidence to date confirms that victims of trafficking are routinely punished (through administrative detention and the imposition of fines amongst other means) and prosecuted for crimes which were committed as a direct consequence of their being victims of trafficking, such as for immigration offences, the use of false documents and drug cultivation. The draft Bill should provide effective implementation of the non-punishment provisions contained in the Report of the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings⁸.
- 2.3 There is no provision in the draft Bill for mandatory individual risk assessments to establish whether trafficking or forced labour is occurring. This allows the practice to escape detection and the victim to be punished. It also deprives the Government of the information that it would need to ensure an effective policy and provisions for combating modern slavery.
- 2.4 The National Referral Mechanism (NRM) (which is not mandatory) contains no minimum standards on safe return or protection against re-trafficking of victims referred to the NRM. The formal appeals procedure in response to NRM decisions or in relation to government funded assistance is biased with preference being shown to victims from EU / EEA. There are also concerns that the decisions are inconsistent. The Law Society believes that the draft Bill should create an independent body with statutory powers to request data / information on suspected traffickers and to oversee First Responders. Such a body could enforce consistent standards, harvest information and data and improve consistency in the responses given by First Responders and the NRM generally. The draft Bill should make the NRM mandatory and oversee its operation.
- 2.5 The draft Bill does not clarify whose job it is to formally identify victims. Those with a European nationality are identified by the UK Human Trafficking Centre based in the National Crime Agency; but those from outside the EU are formally identified by the UK Visa and Immigration Service (UKVI). The Law Society believes UKVI may have a conflict of interest as it is tasked with safeguarding the UK’s borders, which is likely to make the Agency more sceptical in accepting that someone is a victim of trafficking.
- 2.6 The draft Bill does not address the role of business in modern day slavery and does not incorporate the recommendations in relation to business contained in the Report of the Modern Slavery Bill Evidence Review, “Establishing

⁷ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

⁸ <http://www.osce.org/cthb/101002>.

Britain as a World Leader in the Fight Against Modern Slavery” (“the Modern Slavery Report”) .⁹

- 2.7 The Modern Slavery Report noted that “Business has a crucial role to play in ensuring that the UK has a comprehensive response to modern slavery and the Panel believes that the Government has a vital role to play in introducing sensible and effective legislation which will allow businesses to more easily take a lead on this issue”.¹⁰
- 2.8 The role of business is only mentioned in the introduction to the draft Bill which states that, ‘We will continue to work with businesses on a voluntary basis so they can ensure their workforces and supply chains are not exploited.’ As noted in the Modern Slavery Report, voluntary mechanisms are insufficient and legislation is required.
- 2.9 The Modern Slavery Report proposed as an important first step towards transparency in supply chains that:¹¹
- the Government adopt legislation, which should apply to all companies over a certain size that do business in the UK, which ... includes a requirement to disclose the concrete steps a company is taking towards eradicating slavery from their supply and product chains and business practices within annual reports as well as prominently on their websites;.
 - the Government encourage companies to appoint at senior board level a special non-executive director with the responsibility of heading up the company’s anti-slavery business activities;
 - the Department for International Development (DfID) and UK Trade and Investment (UKTI) should be encouraged to assist multinational corporations with advice on the risks of utilising local supply chains, in developing countries where DfID operates, as they undertake business activities abroad, and the sharing of best practice on managing risks.
- 2.9.1 These proposal are absent in the draft Bill. Such provisions would have mirrored and built on the principles of the California Transparency in Supply Chains Act of 2010 (SB 657)¹² which came into force in January 2012 and which is acknowledged as a positive step forward in addressing the global problems of human trafficking, slavery and forced labour.
- 2.10 However, as noted in the Modern Slavery Report, the effectiveness of the California Act is limited and requires enhancement. Transparency and reporting obligations would provide consumers with information about the ethical standards of companies when deciding which products and services to buy. In many sectors, however, consumer pressure is insufficiently

⁹ Report of the Modern Slavery Bill Evidence Review, “Establishing Britain as a World Leader in the Fight Against Modern Slavery” 16 Dec 2013.

¹⁰ Ibid, 46.

¹¹ Ibid, 21, 47-48

¹² See text at <http://www.state.gov/documents/organization/164934.pdf>

determinative to bring about change. Regulation that prohibits the use of modern slavery in supply chains should be developed.

- 2.11 It has been reported¹³ that many manufacturing, agricultural and extractive sectors rely heavily on cost-cutting through arm's-length outsourcing and subcontracting. In labour intensive industries, such price competition can encourage slavery, trafficking and poor working conditions at the lower end of the supply chains the product of which may eventually feed upwards into the top-tier of UK-based businesses.
- 2.12 Consistent with the Government's support of the United Nations Protect, Respect and Remedy Framework on business and human rights, the Law Society urges the Joint Committee to consider measures to prevent modern day slavery in corporate supply chains, including the measures recommended in the Modern Slavery Report.

3. What non-legislative action needs to be taken to ensure effective implementation of the draft Bill?

- 3.0 Increased training, awareness and research in the field of complex trauma.
- 3.1 Guidelines for judges, prosecution etc on links between trafficking and torture.
- 3.2 Training of healthcare professionals on identification of victims.
- 3.3 The creation of an Independent body charged with data collection on trafficking and victims.
- 3.4 The draft Bill provides for the creation of the post of Anti-Slavery Commissioner. The focus is on the Commissioner to advise the Government about the steps that should be taken. The Commissioner must therefore have appropriate and sufficient resources to identify appropriate research and to commission it either by his Advisory Panel or by other bodies/individuals. This necessitates sufficient funds to finance that research. Such research is inevitably going to involve people working in this field in other countries and liaison with them is essential not only in preventing, detecting and prosecuting the crime of forced labour but in tracking trends and conditions which encourage forced labour since many of those in the labour supply chains come from countries other than the United Kingdom.
- 3.5 There should be no limit on the research either by constricting its nature or by underfunding. Without the research, building effective strategies for

¹³ See e.g. Page 13, *Establishing Britain as a world leader in the fight against modern slavery*, Modern Slavery Report by Baroness Butler-Sloss, Frank Field MP (Chair) and Sir John Randall MP, December 2013, <http://www.frankfield.com/upload/docs/PDF%20FINAL.pdf>; *Compliance is Not Enough: Best Practices in Responding to The California Transparency in Supply Chains Act*, Verité, November 2011, http://www.verite.org/sites/default/files/VTE_WhitePaper_California_Bill657FINAL5.pdf; *Lessons from California: why compliance is not enough*, The Guardian, Nicola Phillips, 19 September 2013 at <http://www.theguardian.com/global-development-professionals-network/2013/sep/19/why-compliance-isnt-enough>

eliminating, detecting and prosecuting the crime of forced labour/trafficking will be impossible and the draft Bill will not be a milestone of progress but a monument to the lack of it. The research must in addition identify appropriate means to educate those in business, in the detection of crime, in the prosecution of crime and public awareness generally concerning this evil.

4. Does the draft Bill achieve its objectives effectively and fairly?

- 4.0 The Law Society does not believe that the draft bill achieves its objectives effectively and fairly. The draft Bill focuses on the punishment of offenders but does little to identify them and nothing for the care of the victims. It does not try to tackle the issues about which the Law Society and others have expressed concern. The draft Bill does not comply with some of the UK's international commitments on Human Rights and with safeguards identified in this paper.

5. Does the draft Bill provide for adequate safeguarding of survivors of slavery and trafficking?

- 5.0 The Law Society is concerned that there are inadequate safeguards. The Law Society's concerns are set out above.
- 5.1 Victims are still being criminalised, detained and not identified or treated as victims. Detention or imprisonment causes further trauma and leads to greater likelihood of self harm, suicide and depression. It increases vulnerability, the likelihood of long-term effects such as PTSD and the likelihood of being re-trafficked.
- 5.2 It has been stated that 60% of all trafficked children go missing from care once they have been identified by British authorities. The Law Society believes that the draft Bill should introduce a statutory requirement for a system of independent guardianship with legal authority to act in the best interest of child victims of trafficking and a great deal more must be done to provide the victims of forced Labour and most particularly children with the necessary medical and psychiatric support and with proper care during their stay in the United Kingdom after they have been rescued.
- 5.3 The Law Society is concerned that the advocates that the Government is proposing in its two six-month trials, in which advocates are assigned to trafficked children in care, will be without legal authority to make decisions on behalf of the children and to hold public authorities to account. It is thought the advocates will accompany children to meetings with immigration and welfare officials. It is not yet known how independent of the local authority these advocates will be, how they will be recruited and the exact remit of their role. Without a legal status there is a fear that the advocates will be rendered effectively toothless to challenge failings by social services and others.

6. How could the proposals for the Anti-Slavery Commissioner be improved?

- 6.0 Please see our responses above.
- 6.1 As presently designed the resources for the Anti-Slavery Commissioner and his activities would be controlled by the Home Secretary. The Commissioner needs to be independent as to work and funding.
- 6.2 The Commissioner as envisaged in the draft Bill would be controlled as to appointment, resources and the exercise of functions by the Secretary of State and thus would be measurably less independent than should be the case.
- 6.3 The importance of independent monitoring was recognised in the OSCE Ministerial Decision in 2006 which recommends appointing national rapporteurs or similar independent monitoring mechanisms. As envisaged in the draft Bill the Commissioner's powers would neither provide oversight, reflection nor accountability. The Government has suggested that the existing UK Inter-Departmental Ministerial Group on Human Trafficking (IDMG) is "effective in delivering change and making things happen in practice" and thus would fulfil the function of a national rapporteur. Comparison with other rapporteurs in other jurisdictions demonstrates that the proposed Commissioner is significantly less independent.
- 6.4 The Law Society believes that the establishment of a fully independent Commissioner would fulfil the above national rapporteur function and would provide a huge step forward in combating this evil crime.
- 6.5 The proposed Anti-Slavery Commissioner should also have powers extending beyond those currently provided in the draft Bill so as to engage with the private sector.

The Law Society, February 2014