

## ILPA Evidence to Public Bill Committee, House of Commons Modern Slavery Bill August 2014

### Summary

- i. The Immigration Law Practitioners' Association (ILPA) is a professional membership association. The majority of members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous government, including Home Office and other consultative and advisory groups and has worked with parliamentarians of all parties since its inception. ILPA has previously given evidence to Parliament and Government on trafficking and slavery on a number of occasions. In the last Parliament ILPA gave written<sup>1</sup> and oral<sup>2</sup> evidence to the Joint Committee on the Draft Modern Slavery Bill.
- ii. We are happy to provide further explanations, information or commentary on request. **Please get in touch with Shauna Gillan, Legal Officer, [Shauna.Gillan@ilpa.org.uk](mailto:Shauna.Gillan@ilpa.org.uk) or Alison Harvey, Legal Director, [Alison.Harvey@ilpa.org.uk](mailto:Alison.Harvey@ilpa.org.uk)**
- iii. In this evidence we address omissions from the Bill: legal aid and overseas domestic workers.
- iv. We then provide general comments on Part 1: Offences and detailed comments on all clauses in Part 4: Protection of Victims with the exception of s. 40.
- v. ILPA is a member of the Refugee Children's Consortium and endorses, without repeating, the evidence of the consortium<sup>3</sup>.
- vi. Suggested amendments are annexed to this evidence together. We have given some indications of ILPA's support for amendments published as of 29 August 2014 but no inference should be drawn from support for an amendment not being indicated: we have only just seen the list.

### Omissions from the Bill: legal aid and overseas domestic workers

- I. The Bill fails to reflect the wider legislative context, in particular the cuts to legal aid. These cuts have left many trafficked and enslaved persons bereft of the legal assistance and support they need to gain the courage to approach the authorities. Legal assistance at the earliest possible stage is vital to ensure that trafficking comes to light and its prevalence is

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<sup>1</sup> Written evidence submitted by The Immigration Law Practitioners' Association 28 February 2014, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/draft-modern-slavery-bill-committee/draft-modern-slavery-bill/written/6072.html> [accessed 29 August 2014].

<sup>2</sup> Joint Committee on the draft Modern Slavery Bill, Tuesday 11 March 2014, Zofia Duszyńska, Legal Director, Immigration Law Practitioners' Association, Executive Committee, and Shauna Gillan, Legal Officer, Immigration Law Practitioners' Association <http://www.parliamentlive.tv/main/Player.aspx?meetingId=15064> [accessed 29.08.14].

<sup>3</sup> To be published at <http://www.refugeechildrenconsortium.org.uk/index.php/briefings>

reduced. It fails to address the situation of overseas domestic workers, a group of persons within the UK particularly vulnerable to exploitation and enslavement.

2. The Bill must enhance protections for trafficked persons and slaves if its aims of prevention and prosecution of offenders are to be realised; it is only with strong support measures that those exploited by traffickers or enslaved will have the requisite confidence to be able to assist the State in bringing those who exploited them to justice.

### **Legal Aid**

3. In recent years, immigration legal aid has been cut, resulting in gaps in protection for many groups<sup>4</sup>. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed immigration cases from the scope of legal aid with only narrow exceptions<sup>5</sup>. While there is an exception for trafficking<sup>6</sup>, it does not cover all trafficked persons: it is limited to those who have (a) entered the National Referral Mechanism; and (b) been given a positive “reasonable grounds” decision with a “conclusive grounds” decision pending or given in their favour. Should the residence test for legal aid<sup>7</sup>, currently put on hold following the Government’s defeat in *R(PLP) v Secretary of State for Justice* [2014] EWHC 2365 (Admin) be reintroduced in its original form, trafficked persons would also be denied legal aid to challenge a negative “reasonable grounds” decision or otherwise to bring a judicial review<sup>8</sup>.
4. Only a subset of trafficked persons goes through the National Referral Mechanism<sup>9</sup>, a problematic mechanism which does not adequately meet the needs of those it is intended to assist<sup>10</sup>. The National Referral Mechanism is currently the subject of a review with a report due this autumn. Whatever the outcome of the review, **a positive “reasonable grounds” decision should not be the gateway to legal aid; legal assistance is needed at the earliest possible stage. The Bill should provide for free legal aid for potential victims of trafficking from the first point of contact with a legal advisor.**

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<sup>4</sup> See further, *ILPA Response to Questions from Lord Warner during the Joint Committee on the Draft Modern Slavery Bill evidence session 11 March 2014* available at: <http://www.ilpa.org.uk/resource/26302/legal-aid-ilpa-response-to-questions-asked-by-lord-warner-during-ilpas-11-march-2014-oral-evidence-o> [accessed 29 August 2014].

<sup>5</sup> Such as, for example, asylum cases or cases involving a risk of serious human rights violations; however many trafficked persons do not fall within either of these categories.

<sup>6</sup> Section 32 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012

<sup>7</sup> *Update on civil legal aid residence test: MoJ to appeal JR judgment – test no longer being introduced on 4 August 2014*, Ministry of Justice 17 July 2014, available at <https://www.justice.gov.uk/legal-aid/newstestupdates/civil-news/update-on-civil-legal-aid-residence-test> [accessed 28 August 2014].

<sup>8</sup> See ILPA’s briefing for 1 July 2014 Fifth Delegated Legislation Committee scrutiny of the Draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2014, available at <http://www.ilpa.org.uk/resources.php/29010/ilpa-briefing-for-1-july-fifth-delegated-legislation-committee-scrutiny-of-the-draft-legal-aid-sente> [accessed 28 August 2014]

<sup>9</sup> The Anti-Trafficking Monitoring Group collected information about more than 130 persons in a 12-month period who were not referred to the National Referral Mechanism despite being identified by a support agency as a victim of trafficking: *Wrong Kind of Victim? One year on: an analysis of UK measures to protect trafficked persons* (2010), p.2.

<sup>10</sup> See further, ILPA’s evidence to the Review of the National Referral Mechanism, 31 July 2014 (endorsed by the Anti-Trafficking Legal Project), available from: <http://www.ilpa.org.uk/resource/29120/ilpa-submission-to-the-review-of-the-national-referral-mechanism-endorsed-by-the-anti-trafficking-le> [accessed 29 August 2014].

5. Ensuring access to a lawyer is a means of both starting the necessary work to ensure their protection and increasing reporting by trafficked and enslaved persons.
6. Access to free legal advice on immigration, in particular, is a vital protection measure. People are regularly taken to the UK against their will (or duped by false promises) by traffickers utilising irregular means of border-crossing with the result that these trafficked persons do not have lawful immigration status in the UK. Traffickers often use this as a means of keeping their victims in check<sup>11</sup>, by threatening them that if they seek help they will be arrested, detained, prosecuted and removed from the UK. This is no empty threat; too often trafficked persons are charged with immigration or other offences directly related to their trafficking, in clear breach of the UK's international obligations to shield them from such prosecutions<sup>12</sup>. **Access to free immigration legal advice is essential to empower trafficked or enslaved persons by making them aware of their legal rights and helping to ensure that they are not inappropriately subjected to immigration enforcement powers.**
7. Restoring legal aid for all trafficked persons does not require primary legislation. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 the Lord Chancellor is empowered by s. 9(2)(a) to make orders in respect of classes of people who may benefit from legal aid. This power could be used to ensure that all victims of trafficking and slavery get the legal assistance they need from the first point of contact with a legal advisor.
8. **ILPA proposes as a vehicle for acknowledging this on the face of the Bill that Clause 50 Commencement be amended to provide that Clause 38 Restriction on Exercise of Functions, which prevents the Anti-Slavery commissioner from examining individual cases, cannot come into force until the Lord Chancellor makes an order under s. 9 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to widen access to legal aid for trafficked and enslaved persons.** We do not suggest that the commissioner's examination of individual cases would be a substitute for legal aid, but linking the two highlights the importance of legal aid for the individual who has been trafficked or enslaved. **Our draft amendment is at Annex I.**

### **Overseas Domestic Workers**

9. Domestic workers who come from overseas must be protected from exploitation. Previously, a person who had come from overseas to work in the domestic environment was able to apply to change their employer, and had a route to settlement<sup>13</sup>. Thus there was a chance that they could escape from exploitation. On 6 April 2012 the right of these workers to change employer was removed by changes to the immigration rules<sup>14</sup>. Now

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<sup>11</sup> Serious and Organised Crime Agency Intelligence Assessment *UKHTC: A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012*, August 2013, paragraph 34.

<sup>12</sup> *R v L and Others* [2013] EWCA Crim 991

<sup>13</sup> Under provisions that operated as concessions outside the immigration rules and were incorporated into the rules by Statement of Changes in Immigration Rules Cm 5597 of 22 August 2002. As of 5 April 2012 the rules on overseas domestic workers in private households were contained in paragraphs 159 to 159G of Statement of Changes in Immigration Rules HC 395

<sup>14</sup> Statement of Changes in Immigration Rules HC 1888.

these workers are tied to one employer for the duration (maximum six months)<sup>15</sup> of their leave. This effectively ties domestic workers to one employee. Workers who are tied to their employer are at higher risk<sup>16</sup>. A domestic worker may not have the money to remove him/herself from an do, Many domestic workers also have financial obligations, for example, to provide for children in their home country; these pressures are such that they may feel compelled remain in a situation of abuse<sup>17</sup>. Some do not have the money to leave the UK as a means of leaving their situation, including if part of the abuse involves underpayment or the withholding of wages and they may not have control of their passports. The pre-2012 situation should be restored. The Joint Committee on the Draft Modern Slavery Bill called for change as a matter of urgency:

*In the case of the domestic worker's visa, policy changes have unintentionally strengthened the hand of the slave master against the victim of slavery. The moral case for revisiting this issue is urgent and overwhelming. Protecting these victims does not require primary legislation and we call on the Government to take immediate action<sup>18</sup>.*

*Tying migrant domestic workers to their employer institutionalises their abuse; it is slavery and is therefore incongruous with our aim to act decisively to protect the victims of modern slavery.<sup>19</sup>*

**10. ILPA endorses the briefings of Kalayaan<sup>20</sup> on this topic and recommends the adoption of the clause proposed in the Anti-Trafficking and Monitoring Group's alternative Bill<sup>21</sup>, reproduced at Annex I.**

## **Comments on the text of the Bill**

11. Our particular expertise is in representing and supporting non-EEA national trafficked persons before, during and after the process of identification by the UK authorities as well as in any related (or unrelated) immigration matters.

### **Part I: Offences**

**12. The drafting of criminal offences is outside our specific expertise and we do not comment on it, save that we consider that in section 1(4), in the definition of the offence of holding a person in slavery or servitude, the list of personal circumstances which**

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<sup>15</sup> HC 395, Paragraph 159B.

<sup>16</sup> See *Still enslaved: The migrant domestic workers who are trapped by the immigration rules* Kalayaan, (April 2014) <http://www.kalayaan.org.uk/documents/tied%20visa%202014.pdf> [accessed

<sup>17</sup> *Ibid.*

<sup>18</sup> Paragraph 5, Introduction, Report of the Joint Committee on the Draft Modern Slavery Bill, Session 2013-2014, HL Paper 166, HC 1019.

<sup>19</sup> *Ibid.*, paragraph 225

<sup>20</sup> *Still enslaved, op. cit.* See also Kalayaan's *Response to Draft Modern Slavery Bill*, December 2013 available at <http://www.kalayaan.org.uk/documents/Draft%20Modern%20Slavery%20Bill%20Response.pdf> [accessed 29.08.14]

<sup>21</sup> Anti-Trafficking Monitoring Group Draft Modern Slavery, Human Trafficking and Human Exploitation Bill, 2014 [http://www.antislavery.org/includes/documents/cm\\_docs/2014/a/atmg\\_modern\\_slavery\\_human\\_trafficking\\_and\\_hu\\_man\\_exploitation\\_bill.pdf](http://www.antislavery.org/includes/documents/cm_docs/2014/a/atmg_modern_slavery_human_trafficking_and_hu_man_exploitation_bill.pdf) [accessed 29 August 2014].

**should be taken into account should include disability<sup>22</sup>. ILPA therefore supports amendment 40 in the name of Mr David Burrowes.**

13. The offences clauses 1 and 2 are used as the basis for the victim protection measures in Part 4 of the Bill (via the interpretation provisions in clause 45). We consider that this is inappropriate. The (uncontroversial) international definitions<sup>23</sup> should be the basis for the definitions used in Part 4. Trafficked and enslaved persons should not be defined by way of a refraction of the terms of the criminal offence, or indeed *vice versa*.

#### **Part 4: Protection of Victims**

14. We address the different sections contained within Part 4 in turn with the exception of s 40 which is outside our expertise.

15. The phrase “*reason to believe a person may be a victim of trafficking*”: it is repeated in clauses 41, 42, 43 and 44. Assurances should be sought that this encompasses any person who might be trafficked, akin to the threshold for a ‘reasonable grounds’ decision in the (albeit highly problematic) National Referral Mechanism which is ‘I suspect but I cannot prove’. The threshold in this Bill should be set at the same level as, or below, the threshold used for a reasonable grounds decision so that the Bill’s measures can protect potentially trafficked persons without, or prior to, any “reasonable grounds” decision under the National Referral Mechanism from the earliest possible stage

#### **Section 39: Defence for Slavery or Trafficking Victims compelled to commit an offence**

16. Trafficked and enslaved persons who have been compelled to commit crimes in the course of their exploitation should not be prosecuted. This principle is embedded in the Trafficking Directive by Recital 14 and Article 8 and constitutes a binding obligation on the UK. The Crown Prosecution Service has internal guidance which specifies that such victims should not be prosecuted; however in ILPA’s experience this guidance is not properly applied in practice, as the courts have observed<sup>24</sup>. Trafficked persons continue to be inappropriately prosecuted for crimes which are part and parcel of their exploitation. A statutory defence cannot be a replacement for proper administrative procedures within the Crown Prosecution Service, police, and other enforcement agencies.

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<sup>22</sup> As is done, for example, in the list of the relevant characteristics listed in clause 39(2) of the Bill.

<sup>23</sup> As to which see Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (United Nations, Treaty Series, vol. 2237, p. 319; Doc. A/55/383, New York 15 November 2000, the ‘Palermo Protocol’) to the UN Convention against Transnational Organised Crime (adopted by General Assembly resolution 55/25 of 15 November 2000), Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings (2005), CETS No. 197, opened for signature 16 May 2005, into force 1 February 2008, Article 2 of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and Article 4 of the European Convention on Human Rights.

<sup>24</sup> See *L & Ors v The Children's Commissioner for England & Anor* [2013] EWCA Crim 991 (21 June 2013) in which the convictions of four victims of trafficking who had been inappropriately prosecuted were quashed.

17. The defence in its current form is unworkable and will not achieve what it purports to. The defence has three elements, as per clause 39(1). A person must show that they were “compelled” to do the act (clause 39(1)(a)), that the compulsion is attributable to slavery or relevant exploitation (as defined) (clause 39(2)(b)), and that a reasonable person in the same situation as the person with their characteristics would have no realistic alternative but to do the act (clause 39(1)(c)).
18. The requirement in clause 39(1)(c) is an attempt to import an objective element, that of the “reasonable person”, but with a subjective twist – the reasonable person must have the same characteristics as the victim in question. This is an unusual approach, and appears highly problematic – we suggest that Ministers be asked whether there are other examples in legislation and how these have worked. We are concerned that a judge would have real difficulty in directing a jury as to the correct approach. Moreover, clause 39(1)(c) is unnecessary; the jury will already have had to consider the personal circumstances and background of the person when considering the first part of the defence, i.e., whether the person chose to do the act, or whether they were compelled to do so. Personal characteristics and background are highly relevant to this analysis.
19. The effectiveness of the defence is further lessened in practice by the exclusion of a very large number of offences from its operation. These are listed in Schedule 3 to the Bill. Further, clause 39(8) gives the Secretary of State an open-ended power to add to this list. For the defence to apply at all, the person must have been “compelled” to commit the act, as a direct consequence of their slavery or exploitation. Why then is the gravity of the offence relevant at all? The person had no choice.
20. The Explanatory Notes state (at paragraph 146) that the defence will not apply to “*certain serious offences*”. This is reiterated (at paragraph 153), where it is stated “*The defence will not apply to certain serious offences, mainly serious sexual or violence offences...*” However Schedule 3 includes a long list of a wide range of offences. For example, the list of 134 different offences for which the defence is barred includes:
- Offences under s.1 and 2 of the Modern Slavery Act are themselves (ironically) excluded from the operation of the offence. If a victim has been exploited and “compelled” to assist in the exploitation of others by the trafficker, then there is no reason why they should not avail of the defence;
  - Assault with intent to resist arrest, s. 38 of the Offences Against the Person Act 1861 – even minor struggling in the course of a police raid or similar is sufficient for this offence to be made out. No injury is required.
21. The defence is silent as to the standard of proof required for it to operate. We seek assurances that the offence has a standard of proof akin to that used for the defence of duress. The common law defence of duress operates as follows: the defendant raises duress to the evidential standard, that is, showing that there is a prima facie basis for it. The burden

then shifts to the prosecution to demonstrate that it does not apply, which must be done to the standard of beyond reasonable doubt. If the jury thinks that there may have been duress, then the person is entitled to be acquitted. ILPA therefore supports **amendment 53** in the names of Diana Johnson, Mr David Hanson and Phil Wilson. ILPA proposes the amendments to this clause described in the annex.

22. We consider that the special position of children should be reflected in a separate defence. 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.

### **Section 41: Child trafficking advocates**

23. The advocates described in this section fall far short of the legal guardians that ILPA and many others have been calling for during the course of the pre-legislative scrutiny on this Bill (and indeed for many years prior to this)<sup>25</sup>. We remain of the view that legal guardians are vital for trafficked children.
24. The provision for advocates in this Bill would be ineffective in ensuring that trafficked children are properly represented and supported. An advocate or guardian – whichever name is used – must hold legal responsibility in order to provide any real and tangible assistance to the child they represent. Where a separated child (i.e. a child without a guardian or parent in the UK) has an immigration case, there frequently will be no one with the legal competence to make the difficult decisions involved in litigation on behalf of the child. Until the case reaches the higher courts, where is the possibility of the official solicitor getting involved, lawyers can only take instructions from the child client him/herself. This creates myriad problems, not least where the child’s instructions may be in conflict with his or her best interests. For example, we have had experience of situations where the child client is convinced that the person responsible for exploiting him / her is in fact acting in their best interests. The only way to ensure that such a child’s welfare is safeguarded is by the appointment of legal guardians with full authority who can provide legal representatives with clear instructions upon which to act as the debates<sup>26</sup> (and vote) in the House of Lords during the passage of the Immigration Act 2014 made clear<sup>27</sup>.

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<sup>25</sup> See calls for guardianship in, e.g., Joint Committee on Human Rights, *Human Rights of unaccompanied migrant children and young people in the UK*, First report of session 2013-2014, HL Paper 9, HC 196. The Children’s Society, Press Release, *The Children’s Society welcomes draft Modern Day Slavery Bill* (13 December 2013), available at: [www.childrensociety.org.uk/news-views/press-release/childrens-society-welcomes-draft-modern-day-slavery-bill](http://www.childrensociety.org.uk/news-views/press-release/childrens-society-welcomes-draft-modern-day-slavery-bill); ECPAT UK, Press Release, *Protection needs of child victims overlooked in draft Modern Slavery Bill* (13 December 2013), available at: [www.ecpat.org.uk/media/protection-needs-child-victims-overlooked-draft-modern-slavery-bill-0](http://www.ecpat.org.uk/media/protection-needs-child-victims-overlooked-draft-modern-slavery-bill-0)

<sup>26</sup> See HL Report, 7 Apr 2014: Column 1139 [www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140407-0001.htm#14040716000863](http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140407-0001.htm#14040716000863) and HoL Ping Pong, 12 May 2014: Column 1654ff

<sup>27</sup> At House of Lords’ Report on the Immigration Bill the government was defeated and an amendment inserted making provision for guardians for trafficked children. This was removed after parliament was promised an “enabling provision” in the Modern Slavery Bill, under which a scheme of guardians for trafficked children could be set up. HoC, 7 May 2014, Column 219.

25. This is a mere enabling provision. There is no proper description of the role these advocates would play, their ethical duties, their appointment, their supervision, or their training. The arrangement is thus inadequately outlined to be able to be considered and approved by Parliament. One starting point for exploring a model for such advocates is that of the Children’s Guardian. These appointed officers are available to represent the child and his/her interests in family proceedings. The arrangements for such advocates are set down in both the Children Act 1989 sections 41 and 42 and in the Family Procedure Rules 2010 (Chapter 16).
26. The weakness of the provision is further underscored by the omission of any requirement to ensure that there is an advocate all – the word “may” instead of “must” is used, meaning that there would be no requirement for the Secretary of State to appoint advocates at all. **ILPA supports amendment 42 in the name of Mr David Burrowes which addresses this.**
- 27. ILPA supports amendments 59 to 64 in the name of Mr Mark Durkan which address the concerns described above and supports other amendments to this clause proposed by the Refugee Children’s Consortium as described in the Annex.**

***Clause 42: Guidance about identifying and supporting victims***

28. This provision creates an obligation on the Secretary of State to issue guidance, including to public authorities on indicators of trafficking, support and assistance to possible victims and decision-making on whether persons are trafficked or victims of slavery. It is unclear which Secretary of State it is intended to take on the responsibility for this or whether more than one should do so. Trafficking and slavery cut across the competence of several government departments and different departments should issue guidance on areas within their competence.

***Clause 43: Presumption about age***

29. This provision introduces a statutory presumption whereby if a public authority (a) has reason to believe that a person may be a victim of trafficking, and (b) is not certain of their age but has reason to believe the person may be under 18, the public authority must assume they are a child until an age assessment is carried out by a local authority. This is an attempt to transpose the UK’s international obligations, per Article 10(3) of the Trafficking Convention<sup>28</sup> and Recital 22 and Article 13(2) of the Trafficking Directive<sup>29</sup>. We consider that it is inadequate to do so, but with changes could be rendered effective:
- the presumption should also be extended to child victims of slavery;

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<sup>28</sup> Council of Europe Convention on Action against Trafficking in Human Beings (2005)

<sup>29</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA



- it should be applied to all functions of all local authorities or public bodies (so as to avoid differences in treatment across different State functions);
- the presumption should remain in place until the final determination of the age dispute (including any litigation on the matter).

30. Clause 41(2) appears to assume that an age assessment will be carried out by a local authority. There is no obligation to carry out such assessments and one should not be imposed by this legislation. If a child states that they are a certain age, this should be accepted absent strong evidence to the contrary, instead of putting the child through a formal assessment, which may lead to a dispute, litigation and stress for the child<sup>30</sup>.

#### **Section 44: data collection**

31. This section creates a duty for specified public authorities to notify the National Crime Agency if they have reason to believe a person may be a victim of trafficking. We support the provision for this data to be anonymised, to protect the privacy of the individuals concerned. Under-reporting is a feature of the crimes of trafficking and slavery and this provision may result in a better understanding of its prevalence in future.

ILPA

29 August 2014

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<sup>30</sup> See further ILPA's report, *When is a Child not a Child?* (2007) <http://www.ilpa.org.uk/data/resources/13266/ILPA-Age-Dispute-Report.pdf>

## **Annex I Amendments**

### **Clause I Slavery, Servitude and forced or compulsory labour**

ILPA supports amendment 40 in the name of Mr David Burrows.

### **Clause 39: Defence for slavery or trafficking victims compelled to commit an offence**

Amendment 1

Page 27 line 9 after “act” insert “or the person is a child”

Amendment 2

Page 27 line 10 after compulsion insert, “or, in the case of a child, the act”

Amendment 3

Page 27, line 18 insert after compulsion “or in the case of a child, the illegal act

#### **Purpose**

To ensure that there is no requirement for a child to have been compelled to commit a criminal act to benefit from a defence to crimes s/he commits because of trafficking/slavery and thus reflect the UK’s obligations under international law.

ILPA supports **amendment 53** in the names of Diana Johnson, Mr David Hanson and Phil Wilson.

### **Clause 41: Child trafficking advocates**

ILPA supports **amendment 42** in the name of Mr David Burrows.

ILPA supports **amendments 59 to 63** in the name of Mark Durkan.

#### **Purpose of amendments 59 to 63**

To ensure that child trafficking advocates are independent and can act as legal guardians for trafficked children. Amendment 59 places a duty on the child trafficking advocate to act for the child where the child lacks legal capacity and also to ensure that others act in the best interests of a child across all the UK’s responsibilities under the Council of Europe Convention. Amendment 63 makes provision for an independent Child Trafficking Advocacy Service and amendment 60 is consequential upon this. Amendment 61 ensures that child trafficking advocates either work for an independent statutory body or for a non-Governmental organisation. Amendment 62 requires a Secretary of State (not specified) to publish guidance about and for child trafficking advocates.

### **Clause 41: Child trafficking advocates**

Amendment 1

Page 28, line 1, after “Child trafficking advocates” insert “and separated children advocates”

Amendment 2

Page 28, line 4, after “victims of human trafficking” insert “and all separated children”

#### Amendment 3

Page 28, line 11, after “The Secretary of State may make regulations about child trafficking advocates” insert “and separated children advocates”

#### Amendment 4

Page 28, line 14, after “a person may act as a child trafficking advocate” insert “or separated children advocate”

#### Amendment 5

Page 28, line 15, after “of a person as a child trafficking advocate”, insert “or separated children advocate”

#### Amendment 5

Page 28, line 17, after “about the functions of child trafficking advocates”, insert “or separated children advocates”

#### Amendment 6

Page 28, line 19, after “and provide information to, child trafficking advocates” insert “or separated children advocates”

### **Purpose**

To provide for guardians for all separated children, not just for trafficked children, thus increasing the likelihood of the detection of trafficked children. The amendments ensure that all functions of the child trafficking advocates are replicated for separated children advocates and are supported by the Refugee Children’s Consortium of which ILPA is a member.

### **Clause 43: Presumption about age**

#### Amendment 1

Page 28, line 40, delete “with functions under relevant arrangements”

#### Amendment 2

Page 29 line 3, delete “for the purposes of its functions under relevant arrangements”

#### Amendment 3

Page 29, delete 43(3)

### **Purpose**

These amendments, taken together, extend the scope of the presumption of age introduced by this clause. The presumption is that where a person’s age is uncertain and there are reasons to believe that s/he is a child, the person shall be presumed a child. The first amendment and extends the duty to apply the presumption of age to all public authorities in their dealings with trafficked/enslaved persons, not just

those to be specified in guidance under Clause 42. The second amendment ensures that public authorities apply the presumption across all of their functions, not just functions to be specified in the guidance. The third amendment deletes reference to “specified functions” and is consequential upon the first and second amendments.

#### Amendment 4

Page 28, line 41, after “trafficking” insert “or slavery”.

#### **Purpose**

Extends the provisions as to the presumption of age from trafficking to slavery.

#### Amendment 5

Page 29, line 1, before “Until an assessment” insert “Unless and”

#### **Purpose**

Ensures that the statute does not require age to be assessed in every case so that where there is no strong reason to doubt the child their evidence as to age is accepted.

#### Amendment 6

Page 29, line 2, after “determined” insert “and no challenges to that determination are pending”

#### **Purpose**

Ensures that a person continues to be treated as a child until age is finally resolved, including while any judicial review of an age assessment is pending.

### **Clause 50: commencement**

Clause 50, page 31, line 16, leave out “and 3” and replace with “3 and 4”

Clause 50, page 31 line 18 at end insert:

3) Section 38 shall come into force on a day to be appointed, that day being no earlier than the day on which an order made by the Lord Chancellor under section 9(2)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in respect of civil legal services for victims of slavery and victims of human trafficking comes into effect.

Renumber accordingly.

#### **Purpose**

Provides that Clause 50, which prevents the Anti-Slavery Commissioner from examining individual cases, cannot come into force until an order has been made dealing with legal aid for trafficked persons and victims of slavery as defined. The nature of the order is not addressed in the amendment save that it will be for these groups and that legal aid will be extended, not reduced.

## **New clauses**

ILPA supports **NC18 in the names of** Diana Johnson, Phil Wilson, David Hanson

### **Purpose**

Ensure that persons can be prosecuted for what constitutes exploitation, including trafficking, of children under international law. It does not create a new, stand-alone offence of child exploitation.

### **Briefing note**

As a matter of international law, a child cannot consent to his/her exploitation and the movement of children for their exploitation constitutes trafficking whether or not threats or coercion have been used. This amendment is supported by the Refugee Children's Consortium of which ILPA is a member.

## **Suggested new clause: Rights of overseas domestic workers**

Insert the following new clause

### **( ) *Rights of overseas domestic workers***

(1) Overseas domestic workers including diplomatic domestic workers shall be entitled to:

- (a) change their employer (but not work sector) while in the United Kingdom, without any adverse consequences for their immigration status;
- (b) renew their domestic worker visa or diplomatic domestic worker visa for as long as the worker is in employment;
- (c) be joined in the United Kingdom by their spouse or civil partner and any of their children who are under the age of 18;
- (d) apply for indefinite leave to remain after five continuous years of residence in the United Kingdom and where they continue to be required for employment as a domestic worker.

### **Purpose**

To make provision as described to protect migrant domestic workers so that they do not remain in situations of exploitation and abuse.