

Written Evidence submitted by Focus on Labour Exploitation (FLEX) to the Joint Committee on the draft Modern Slavery Bill

Executive Summary

1. FLEX welcomes the opportunity to submit evidence to the Joint Committee on the draft Modern Slavery Bill. As a victim-centred organisation that promotes effective responses to human trafficking for labour exploitation FLEX is led by the international legal definition of trafficking established in the UN Human Trafficking Protocol (2003). The Protocol sets out the ‘three P’ approach to trafficking, which establishes prevention, protection and prosecution as central to efforts to combat human trafficking. Effective labour inspection and regulation is key to the prevention of trafficking for labour exploitation. Strong human rights standards for victim assistance and support should inform statutory protection of trafficked persons. Finally, effective oversight, through a truly independent, expert anti-slavery commissioner, ensures that anti-trafficking responses are meeting their stated aims.

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

Summary

2. The draft Bill’s consolidation of existing human trafficking legislation may eliminate some of the confusion demonstrated in the implementation of current legislation and serve to increase prosecutions in this area. The stronger penalties for offences in the Bill could act as a deterrent to those seeking to commit crimes of slavery, servitude, forced labour or trafficking. However, the Bill will not prevent modern slavery because it does not adhere to nor apply the ‘three p’ approach to human trafficking: prevention, protection and prosecution. Without victim protection it is extremely difficult to secure prosecutions and without adequate prevention measures, prosecutions alone are not deterrent enough to prevent modern slavery.
3. **Without an integrated ‘three P’ approach the Bill will not reduce the incidence of nor prevent modern slavery.**

Confused definitions

4. While consolidating existing legislation on human trafficking, The Modern Slavery Bill continues the preoccupation of current UK legislation with trafficking as movement - a conception of human trafficking that is at odds with international law.¹ Unlike the international definition of human trafficking,

¹ The European Commission has said that: “interpretations of the Trafficking Protocol that concentrate

the Modern Slavery Bill does not criminalise the ‘harbouring’, ‘reception’, ‘exchange or transfer of control’ of victims, or even the ‘recruitment’ of victims, where these acts do not involve the arrangement or facilitation of travel. This will be a problem in cases involving large criminal networks where different people carry out different roles in the trafficking process. It is also problematic in cases where victims arrange their own travel into and around the UK, and to the site of exploitation, as often occurs when victims are deceived as to the conditions of work.

5. Section 1 of the Modern Slavery Bill replicates section 71 of the Coroners and Justice Act 2009 and provides for an offence of holding another person in slavery or servitude, or requiring a person to perform forced or compulsory labour. This section does not require the arrangement or facilitation of travel, and so will apply in cases where the perpetrator either has not been or cannot be proved to be involved in moving the victim. However the forms of exploitation covered by Section 1 (slavery, servitude and forced labour) are much narrower than those covered by the human trafficking offence in Section 2, which includes sexual exploitation and the removal of organs. Further, there were no convictions under Section 71 of the Coroners and Justice Act from 2009 – 2011, and only two convictions in 2012, following 35 prosecutions,² suggesting that ‘slavery, servitude and forced labour’ may be a more difficult offence to prove.

Forced labour and consent

6. FLEX understands that the Committee is concerned with the issue of consent, and the ‘tipping point’ between infringement of workers rights and forced labour. While workers may consent to enter a situation of employment, and may continue to work in that employment situation, international law is clear that the use of threats, force, deception, violence or coercion nullifies such consent.³ Under the Forced Labour Convention, if work is performed because the worker otherwise faces violence, threats, or the non-payment of owed wages, and the worker is unable to leave the employment situation, then this is a situation of forced labour.⁴ The USA trafficking legislation takes an

on the process of bringing a person into exploitation, rather than the final forced exploitation that they face, are in their nature flawed and limited.” European Commission, *Report of the Experts Group on Trafficking in Human Beings* (December 2004), p. 46.

² Inter-Departmental Ministerial Group on Trafficking, *Second Report of the Inter-Departmental Ministerial Group on Trafficking*, (October 2013), p. 26.

³ Article 2, *Forced Labour Convention*; Article 3, *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons*.

⁴ The international definition of forced labour is any work or service exacted from a person under the menace of a penalty and for which he has not offered himself voluntarily. The menace of penalty can include both direct and indirect threats and the non-payment of owed wages. The term “offered voluntarily” means the free and informed consent of the worker to enter the employment relationship and, crucially, their freedom to leave their employment at any time. See International Labour Office, *Strengthening action to end forced labour*, International Labour Conference, 103rd Session 2014, Report IV(1).

elemental approach to defining forced labour, that makes clear that the use of physical or non-physical threats to compel a person to work is forced labour.⁵

- 7. The Modern Slavery Bill's human trafficking provisions should criminalise not only the arrangement or facilitation of travel, but also the recruitment, transportation, transfer, harbouring or receipt of victims for the purpose of all forms of exploitation.**
- 8. Human trafficking, forced labour, slavery and servitude provisions in the Bill should be consistent with the definitions of these terms in international law.**

Narrow focus on prosecution

9. Experts in the field of human trafficking recognise the importance of the 'three P's' laid out in the UN Human Trafficking Protocol (2003): prevention, protection and prosecution. The UN Office on Drugs and Crime (UNODC), that provides the secretariat for the Protocol, has produced numerous operational guides that centre on the importance of addressing the 'three P's' together in order to effectively combat trafficking. In addition the ILO Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, states clearly that 'of all the measures to eliminate forced labour, prevention should be systematically considered by national authorities and social partners' highlighting 'the preventive role of labour administration and inspection'.⁶ Many international expert bodies have underlined the key role for protection of victims in recovery, restitution, avoiding re-trafficking and to ensure prosecutions are possible. The UN General Assembly, for example, has stated that 'the protection of the victims and cooperation for the prosecution of traffickers are two intrinsically linked elements of an anti-trafficking policy'⁷.

- 10. Without giving prevention and protection at least equivalent weight to prosecution then this Draft Modern Slavery Bill will make little progress in bringing an end to Modern Slavery**

⁵ *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (US)*: "Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means— "(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person; "(2) by means of serious harm or threats of serious harm to that person or another person; "(3) by means of the abuse or threatened abuse of law or legal process; or "(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint". Serious harm is defined to include psychological, financial, or reputational harm.

⁶ Final report: Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, Geneva, 11–15 February 2013, p.40. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_207312.pdf

⁷ UN, 2008, General Assembly Thematic Debate on Human Trafficking, p. 5. Available at <http://www.un.org/ga/president/62/letters/htraffickingsummary280708.pdf>

Anti-slavery commissioner controlled by the Home Secretary

11. The EU Directive on Trafficking (2011/36/EU) Article 19 provides that 'Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms' including functions such as 'the gathering of statistics in close cooperation with relevant civil society organisations'.⁸ FLEX believes that any UK National Rapporteur post should take its direction from established positions elsewhere in Europe, ie the Netherlands and Finland. The Dutch National Rapporteur's (NR) role was established in 2000 and updated in 2013 legislation. The Dutch NR and has strong independent powers of inquiry, independence of operations and is resourced by five different government departments – limiting the control of any one department over the NR's activities. Both the initiation of investigations and the reporting on such investigations are independent activities conducted by the NR without intervention from the Minister. Importantly the Dutch NR has the right to information on pending investigations, which inform thematic rather than specific remarks. Annual reports are provided to the Government for their response one week in advance of publication and then placed before parliament for discussion. The Dutch NR recruitment and appointment process is led by the Head of the NR's Office and approved by the Minister for Security and Justice. Critically the legislation that established the NR provided mandatory conditions for the post-holder's expertise and experience.

12. The Anti-Slavery Commissioner position should follow successful examples elsewhere in Europe, specifically the post should have:

- a. Expressly independent powers of inquiry, to initiate investigations and publish reports without censorship;**
- b. Multi-departmental resourcing, to limit the power of any one ministry over the post-holders operations;**
- c. The right to require information on pending cases to inform thematic inquiries, whilst adhering to *sub-judice* rules;**
- d. Reports placed before Parliament by Government for discussion;**
- e. An appointment procedure led by the office of the Commissioner, signed off by the Secretary of State; and**
- f. Clear provisions for the strong expertise and experience of the post-holder set out in law.**

Failure to provide for the protection of victims

13. The protection of victims is an integral part of the human trafficking response. Whilst the Home Secretary acknowledges the suffering of victims and the centrality of victims in crimes of human trafficking and modern slavery in her introduction to the White Paper, victims are only mentioned in the Bill in relation to data collection. Victims of human trafficking who have been through the National Referral Mechanism report feelings of dissatisfaction, distress or

⁸ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

disappointment at the manner in which they were treated during the identification and assistance process. Such negative impressions act as strong deterrents to victim engagement with the UK anti-trafficking framework.

14. Without a strong focus on protection, victim standards, support and remedies then few victims will cooperate in prosecutions, making it difficult to prosecute crimes of modern slavery

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

Prevention & the Gangmasters' Licensing Authority (GLA)

15. The UK Human Trafficking Centre states that 'Prevention efforts are [...] a key component of the UKHTC's proactive strategy to reduce harm and protect victims of human trafficking'⁹ However prevention is omitted from the Draft Modern Slavery Bill. The International Labour Organisation notes that 'labour inspectors in particular are well placed to provide early warnings before instances of forced labour and trafficking become entrenched practices of abuse'.¹⁰ Labour inspectors can monitor, access and engage with workplaces on labour standards and labour rights in a way that law enforcement and immigration officials cannot. The success of the Gangmasters' Licensing Authority (GLA) in preventing and identifying trafficking for labour exploitation in the UK demonstrates the effectiveness of pro-active labour inspections as a core prevention measure.

Reduced funding

16. For the first time since its establishment the GLA had its funding reduced in the 2010 Spending Review from '£4.7m in 2010-11[...] to £3.9m in 2014-15'¹¹. In its Strategy for 2013-2016 the GLA noted that 'for 2014-15 the situation is more challenging with an estimated £100,000 budget gap and further reductions in staffing being required'¹². The GLA's annual reports in the same period show a progressive reduction in operations identifying 'serious non-compliance' and financial assets for recovery. Unless the GLA is adequately resourced then it will its scope, operations & success rates will reduce annually rendering it less effective in preventing and combating modern slavery.

⁹ See <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/prevention-protecting-victims-and-prosecution>

¹⁰ ILO, 2010, Labour Inspection in Europe: undeclared work, migration, trafficking. p.31. Available at http://www.ilo.org/labadmin/info/pubs/WCMS_120319/lang-en/index.htm

¹¹ GLA, 2013, *Strategy for Protecting Vulnerable and Exploited Workers 2013-2016*. P.5. Available at <http://gla.defra.gov.uk/PageFiles/1491/Gangmasters%20Licensing%20Authority%20Strategic%20Plan%20F.pdf>

¹² Ibid

Limited sectors

17. Sectors such as construction, cleaning, care and hospitality are rendered 'high-risk' because of a high presence of key risk elements including:

- Subcontracting / agency labour
- migrant labour
- isolated working conditions
- accommodation on site
- flexible or insecure arrangements
- seasonal work
- low wages
- limited power because of ease of replacement
- lack of unionisation
- formal and informal economies.

The importance of extending GLA operations in to high-risk sectors beyond food and food-processing has been recognised by many civil society organisations and parliamentarians for some time.¹³ The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) supported this position in its 2012 report on the UK which advised that the GLA's 'scope of competence could be further extended to other sectors such as hospitality (including catering companies and hotels) and construction.'¹⁴ An expanded GLA should be re-situated as a Non-Departmental Public Body under the Department for Work and Pensions (DWP) where it would be best placed to exercise its primary role to protect vulnerable workers by upholding labour rights and UK employment law. It would also enable the GLA to coordinate with the Health and Safety Executive (HSE).

Core licence monitoring function

18. The Gangmasters Licensing Authority's (GLA) main aim is to 'protect vulnerable and exploited workers'.¹⁵ Accordingly, the GLA is able to observe the application of labour rights in practice, by monitoring adherence to its key licensing conditions. Its eight licence standards set the GLA apart from the HSE or National Minimum Wage Inspectorate with respect to the scope of its investigations: Standard two addresses payment of wages; Standard three the prevention of forced labour; Standard five working hours; and Standard seven recruitment arrangements, including fee charges. The GLA's role as an inspectorate and regulator has traditionally been supported by its strong intelligence and enforcement activity. Such activity is threatened both by heavy cuts to its resources since the 2010 Spending Review and a possible

¹³ See for example, Commission on Vulnerable Employment, 2008, *Hard Work Hidden Lives: Short Report*. P.4. Available at: <http://www.vulnerableworkers.org.uk/cove-report/short-report/>

¹⁴ CoE, 2012, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: First evaluation round*. P.30. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf

¹⁵ See GLA Mission Statement: <http://gla.defra.gov.uk/Who-We-Are/Mission-Statement/>

diversion of its focus towards increasing criminal operations as suggested in its 2013-2016 Strategy for Protecting Vulnerable and Exploited Workers¹⁶

Compensation of workers

19. In relation to additional powers required by the GLA to effectively prevent trafficking for labour exploitation, FLEX believes that there should be a power to impose 'repayment orders'. Currently, the GLA only has the power to advise employers to repay wages in cases involving underpayment/non-payment of workers which are then referred to other government departments to pursue - the GLA is unable to ensure that action is taken and no data is collected on the number of cases in which wages are repaid.¹⁷ Furthermore, the Government states that the 'GLA secured no compensation payments' through criminal compensation orders between 2010-2013.¹⁸ There is no provision within the UK Government's Human Trafficking Strategy that tasks other relevant governmental agencies with responsibility for recovery of unpaid wages.¹⁹ In 2012, the Government announced that the remit of the GLA would be reviewed, including the introduction of a power to impose a 'Repayment Order'.²⁰ However, this measure has not materialised. Extension of the GLA's power to enforce reimbursement of unpaid wages and other payments due to exploited workers will greatly enhance its mission to prevent exploitation and protect vulnerable people.

20. The Gangmasters' Licensing Authority should be:

- a. Adequately resourced and staffed to be able to operate effectively;**
- b. Extended to high-risk sectors including construction, cleaning, care and hospitality and situated within the Department for Work and Pensions;**
- c. Protected in the fulfilment of its primary function to ensure that license conditions are met, retaining its distinct function from the National crime Agency or Home Office.**
- d. Endowed extended powers to order repayment of wages denied to exploited workers.**

¹⁶ See

<http://gla.defra.gov.uk/PageFiles/1027/Gangmasters%20Licensing%20Authority%20Strategic%20Plan%20F.pdf>

¹⁷ See, for example, parliamentary answer HC Deb, 17 January 2014, c729W, HC Deb, 6 January 2014, c157W

¹⁸ See HC Deb, 4 February 2014, Official Record, Column 151W

¹⁹ Home Office, 2011, *Human Trafficking: The Government's Strategy*. available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97845/human-trafficking-strategy.pdf

²⁰ DEFRA, 2012, *Written Ministerial Statement, Gangmasters Licensing Authority: Outcome of the Red Tape Challenge*. Available at www.parliament.uk/documents/commons-vote-office/May_2012/24-05-12/11-DEFRA-Outcome-of-Red-Tape-Challenge.pdf

Protection

21. FLEX detailed minimum standards for protection of victims of trafficking in its Modern Slavery Bill Evidence Review submission. Without a statutory basis for the national referral mechanism (NRM) then there is no means of ensuring transparency and accountability of its operations. Recent parliamentary written answers with respect to the functions of the NRM have highlighted that its modes of operation are loosely defined, particularly with respect to key issues such as the training of those that engage in the NRM and the appointment of First Responders²¹. This ad-hoc structure is borne out in the experiences of victims some of whom, particularly men, find the support and assistance offered during the recovery and reflection period at best patchy and at worst seriously inadequate.
22. If the Government wishes to prosecute more cases of human trafficking then the NRM must be transparent, accountable and victim-centred. The draft Human Trafficking (Scotland) Bill, presents a good example of an alternative system to the NRM and a set of standards for 'survivors'. The Standards set out the forms of assistance to be provided to all victims as a minimum, including information relating to their legal rights.²²
- 23. The NRM should be provided a statutory basis in the Bill and Minimum Standards for victims of trafficking should be included, that draw on 'survivors standards' outlined in the Human Trafficking (Scotland) Bill.**

Access to Justice: Compensation

24. A victim of human trafficking can receive compensation through four possible civil or criminal legal processes. However, no data is collected by the government on the number of victims of trafficking who receive compensation through any of the possible compensation channels for victims in the UK, nor the sums awarded.²³ In its 2012 report on the UK, GRETA noted the limited numbers of applications for compensation orders or civil remedies sought by victims.²⁴ This report and evidence from front line responders shows that the UK is seriously failing victims in this regard. Data on compensation received by victims in the UK would enable accurate reflection on whether or not it is meeting its obligations to victims of trafficking.

²¹ See for example: HC Deb, 23 January 2014, c282W.

²² See Jenny Marra MSP, 2013, Human Trafficking (Scotland) Bill Consultation. P.33. Available at: http://www.scottish.parliament.uk/S4_MembersBills/20130909_Human_Trafficking_Consultation_final_version.pdf

²³ See for example, parliamentary answers: a) HC Deb, 9 January 2014, c277W & b) HL Deb, 18 January 2012, c129W.

²⁴ CoE, 2012, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: First evaluation round. P.67. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf

25. A centralised data system on the number of victims of trafficking receiving compensation and value of compensation awards should be established.

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

Training

26. During the course of 2013-14 FLEX has undertaken a series of training events for police, local authority representatives, migrant support and community organisations and lawyers. Many training participants spoke of limited awareness of key elements of the UK anti-trafficking framework, which impeded their ability to engage with the response to modern slavery. Recent parliamentary answers on training for First Responders demonstrate that there is no system in place for the delivery of a coherent training package and that the trainings in place for Competent Authorities contain limited instruction on victim trauma.²⁵

27. FLEX repeats its recommendations for training to be delivered to First Responders and Competent Authorities as submitted to the Modern Slavery Bill Evidence Review

Does the draft Bill achieve its objectives effectively and fairly?

28. FLEX repeats submissions made in para 1 above. Furthermore, with respect to the legal duty to report potential victims of trafficking to the NCA, FLEX is concerned that whilst the White Paper, suggests guidance would be issued to 'First Responders' on victim anonymity, this is not included in the Bill. FLEX does not believe this measure is fair and is concerned that it has the potential to do harm to victims of trafficking. As a victim-centred organisation, FLEX is fundamentally opposed to a statutory obligation to refer victims against their will – we feel that this provision will deter victims from contacting authorities and potentially also First Responders, acting as a deterrent to reporting.

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

29. No. There are no survivor safeguarding measures in the Bill.

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

30. See paras 10 & 11

²⁵ See HC Deb, 8 January 2014, Official Record, Column 233W; HC Deb 7 January 2014, Official Record, Column 187W; HC Deb, 6 January 2014, Official Record, Column 27W