

**Modern Slavery Bill
Report Stage – House of Lords
February 2015**

PART 4: Independent Anti-slavery Commissioner

Introduction:

We welcome the amendment tabled by the Government to Clause 41, extending the remit of the Independent Anti-slavery Commissioner to encouraging good practice in the provision of assistance and support to victims of slavery and human trafficking. Whilst we consider the overall remit remains modest, allowing the Commissioner to have oversight of victim protection is a significant step. Insight into victims' experiences will provide for a more holistic understanding of modern slavery and will inform all other aspects of the Commissioner's work.

We further note with appreciation the amendment made to Clause 40 that allows the Commissioner to appoint his/her own staff. However, unnecessary restrictions on the Commissioner's independence remain. The Commissioner must still seek prior approval from the Home Secretary, the Scottish Ministers and the Department of Justice in Northern Ireland on his/her activities and areas of focus, and annual reports may also be subject to redaction before they are laid before Parliament and published. The timeframes in which these consultations are to take place are not made clear, potentially allowing for unacceptable delays in the publication of reports. The Bill is also silent on the status of the Commissioner's reports and the recommendations contained within them, as well as recommendations made directly to public authorities. Presently no response nor action is required by those they address.

We consider that the independence of the Commissioner ought to be further extended to enable the office to operate as a fully autonomous body which has the power to direct authorities to take action and drive change.

Briefing

This briefing focuses on two key points: the independence of the Commissioner and the status of the reports published by the Commissioner.

Prior approval of Commissioner's strategic plans

Clause 42(2), (6) and (7) necessitates that the Commissioner must prepare and seek approval of strategic plans from the Secretary of State, in consultation with Scottish Ministers and the Department of Justice in Northern Ireland. These strategic plans, to detail the Commissioner's planned activities and areas of focus, may be subject to modifications agreed with the Commissioner.

Such a requirement undermines the Commissioner's independence. The Bill leaves the Commissioner's actions open to interference by those who have the power to do so as to facilitate more favourable reporting. The Commissioner may be moved to automatically temper his strategic plan, to omit contentious activities, so as to avoid such a situation and mitigate potential conflict. The Commissioner should be trusted to undertake activities and look at any issue he/she considers to be of importance to fulfil the role's mandate. To draw comparisons with similar UK bodies, the Chief Inspector of Borders and Immigration, John Vine, when asked by a member of the Joint Committee on the draft Modern Slavery Bill about the extent to which he could choose and initiate the topics of his thematic reports, stated; 'I feel totally free to do so...I have been appointed to bring my experience and judgment to bear on what I should look at'¹. The Independent Anti-slavery Commissioner should be appointed in the same spirit and allowed the same freedom.

Redaction of annual and other reports

The Commissioner's annual reports, before being laid before Parliament, may be redacted by the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland (Clause 40 (14)-(17)). Reports may be redacted on the grounds that material may jeopardise the safety of an individual, prejudice an investigation or, in the view of the Secretary of State, be against the interests of national security. Whilst the Lord Bates was keen to point out in the Committee debates², that such redaction is standard practice amongst comparable bodies, it is interesting to note that the Independent Reviewer of Terrorism, whose reports have the potential to contain material of the highest security concern, is not fettered in statute to this extent. The report of the Independent Reviewer of Terrorism must be laid by the Secretary of State directly before Parliament upon receipt³.

To draw comparisons to one of the Commissioner's overseas counterparts, the Dutch National Rapporteur's reports are first sent to the government to allow the Minister to provide their remarks, before being sent, with these comments included, on to the Parliament. It is then for the Parliament to decide 'whether or not the comments are valuable or contradictory to the reports'⁴. The reports themselves are not altered by the Government. This provides for an open and transparent reporting process, one in which all parties can have confidence.

Allowing the Commissioner to have a more direct relationship with the Parliament would undoubtedly raise the profile of the work of the office, enabling the Commissioner to have a wider reach and a greater impact.

Timing of publication

Additionally, the Bill is remains silent to the length of time the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland are allowed to spend reviewing

¹ Oral evidence from John Vine: Draft Modern Slavery Bill, HC [1019], Q1063, Thursday 6 March 2014
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/draft-modern-slavery-bill-committee/draft-modern-slavery-bill/oral/7544.html>

² 8 Dec 2014 : Column 1635 <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141208-0001.htm#1412087000316>

³ *Supra note 1*, Q1063

⁴ Oral evidence from Corinne Dettmeijer-Vermeulen, Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children: Draft Modern Slavery Bill, HC [1019], Tuesday 4 March 2014

and redacting the report before it must be laid before parliament. The Bill merely states that this must take place 'as soon as is reasonably practical'. Without clear timeframes, there is a risk that the publication of the Commissioner's reports will be subject to the same delays experienced by the incumbent Independent Reviewer of Terrorism, David Anderson QC⁵, and more recently, by the Chief Inspector of Borders and Immigration, John Vine⁶. The latter noted that "lengthy delays in publishing reports risk reducing the effectiveness of independent inspection, which depends to a large extent on timely publication of findings, and it is contributing to a sense that the independence of my role is being compromised." Providing greater clarity in the reporting timetable in this Bill would mitigate for this potential eventuality.

The status of the Commissioner's reports and recommendations

One of the stated functions of the Commissioner is to make recommendations to any public authority, in the context of encouraging good practice as set out in the areas listed in Clause 41 (1). However, the Bill is silent as to the status of these recommendations and whether public authorities are obliged to respond to them and/or obliged to take action to address them. Moreover, no response or action is currently required by the government and other relevant bodies following the publication of the Commissioner's annual reports. As such, there is a danger that the Commissioner's recommendations will go unheeded and fail to result into practical change. The Bill must clearly obligate the government, and any public authorities who are the subject of the Commissioner's recommendations, to respond, within a specified time period, to the Commissioner's findings and recommendations and state what action they propose to take to address them. A similar clause can be found within the legislation underpinning the Office of the Children's Commissioner⁷.

Questions to the Minister

- Can the Minister clarify how the Commissioner will effectively work across the UK and its devolved administrations, particularly where there is different legislation, policy and practice and ensure consistency in the UK's approach to modern slavery?
- What steps will the Commissioner take to ensure that the views and interests of the devolved administrations are equally represented in his work?
- Will the Minister clarify whether there will be a review of the Commissioner's remit, and the potential to extend it in future?
- Can the Minister explain why the Commissioner's reports need to be reviewed by the Government before being laid before the Parliament, and provide a guarantee that this will not result in delays in their publication?
- Will the Minister share with the House the reasons as to why an Independent Anti-slavery Commissioner can not independently set decide upon his/her activities and areas of focus?
- Can the Minister confirm whether public authorities will be obliged to respond to the Commissioner with regard to the recommendations he makes to them, in a specified timeframe, including reporting on the action they propose to take to address them?

⁵ *Supra* note 1, Q1070

⁶ Guardian, 26th November 2014, 'Theresa May accused of personally delaying critical reports on immigration', <http://www.theguardian.com/uk-news/2014/nov/26/theresa-may-accused-delaying-immigration-reports>

⁷ Children and Families Act 2014, Part 6, Section 107