PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

IMMIGRATION BILL

Sixth Sitting

Tuesday 27 October 2015

(Afternoon)

CONTENTS

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£6·00

PBC (Bill 074) 2015 - 2016

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 31 October 2015

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The Committee consisted of the following Members:

Chairs: † Mr Peter Bone, Albert Owen

† Blomfield, Paul *(Sheffield Central)* (Lab)
† Brokenshire, James *(Minister for Immigration)*
† Buckland, Robert *(Solicitor General)*
† Champion, Sarah *(Rotherham)* (Lab)
† Davies, Byron *(Gower)* (Con)
† Davies, Mims *(Eastleigh)* (Con)
† Elphicke, Charlie *(Lord Commissioner of Her Majesty's Treasury)*
† Harris, Rebecca *(Castle Point)* (Con)
† Hayman, Sue *(Workington)* (Lab)
† Hoare, Simon *(North Dorset)* (Con)
† Hollern, Kate *(Blackburn)* (Lab)
† Lewell-Buck, Mrs Emma *(South Shields)* (Lab)
† McLaughlin, Anne *(Glasgow North East)* (SNP)
† Newlands, Gavin *(Paisley and Renfrewshire North)* (SNP)
† Smith, Chloe *(Norwich North)* (Con)
† Starmer, Keir *(Holborn and St Pancras)* (Lab)
† Tolhurst, Kelly *(Rochester and Strood)* (Con)
† Whittaker, Craig *(Calder Valley)* (Con)

Marek Kubala, Joanna Welham, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 27 October 2015

(Afternoon)

[Mr Peter Bone *in the Chair*]

Immigration Bill

Clause 2

Labour market enforcement strategy

Amendment proposed (this day): 57, in clause 2, page 2, line 9, at end insert—

'(ia) the threats and obstacles to effective labour market enforcement,

(ib) the remedies secured by victims of non-compliance in the labour market,'—*(Keir Starmer.)*

To ensure that the labour market enforcement strategy sets out an assessment of the threats and obstacles to effective labour market enforcements and the remedies secured by victims of labour rights infringements and labour market offences.

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 58, in clause 2, page 2, line 12, leave out paragraph (b) and insert—

'(b) contains a proposal for the year to which the strategy relates setting out—

(i) how the non-compliance outlined in the assessment required by subsection (2)(a) (i) and (ii) is to be addressed,

(ii) how the threats and obstacles identified under subsection (2)(ia) are to be overcome, and

(iii) how the provision of remedies for victims of non-compliance in the labour market identified under subsection 2(a)(ib) is to be improved.'

To ensure that the functions of the Director of Labour Market Enforcement are exercised for the purpose of enforcing all existing labour market standards, rather than prioritising a limited number of areas, and to link the Director's strategy with his or her assessment of non-compliance with labour market standards.

Amendment 56, in clause 2, page 2, line 24, leave out subsection (3) and insert—

'(3) The proposal mentioned in subsection (2)(b) must set out the resources required to—

(a) address the non-compliance in the labour market,

(b) overcome the threats and obstacles identified under subsection 2(b)(ia),

(c) improve the provision of remedies for victims of non-compliance in the labour market.'

To oblige the Director of Labour Market Enforcement to provide an assessment of the resources required for effective labour market enforcement and remedies for victims, rather than simply to determine how currently available resources should be allocated.

Amendment 59, in clause 2, page 2, line 26, at end insert—

'(3A) Nothing in the strategy shall—

(a) restrict, or

(b) reduce the resources allocated to

the labour market enforcement functions as defined in Section 3(2) of this Act.'

To clarify the relationship between the Director of Labour Market Enforcement and the UK's existing labour inspection agencies, ensuring the current role, remit and resources of labour inspectorates are safeguarded.

Amendment 65, in clause 3, page 3, line 6, at end insert—

'(da) ny function of the Health and Safety Executive and the Health and Safety Executive for Northern Ireland;

(db) any function of local authorities in relation to the "relevant statutory provisions" as defined in Part 1 of the Health and Safety at Work etc. Act 1973;

(dc) any function of local authorities under the Children and Young Persons Act 1933 and by-laws made under that Act, the Management of Health and Safety at Work Regulations 1999, and the Children (Protection at Work) (Scotland) Regulations 2006.'

To include the remit of the Director of Labour Market Enforcement to cover functions relating to health and safety at work and child labour, functions carried out for the most part by local authorities.

Amendment 66, in clause 3, page 3, line 12, at end insert—

'(ca) Part 1 and The Health and Safety at Work etc. Act 1973;

(cb) Sections 3 and 4 and Part 2 of the Children and Young Persons Act 1933.'

This a consequential amendment to amendment 65.

Amendment 63, in clause 3, page 3, line 31, before "in this section", insert "Subject to subsection 6A,"

Amendment 64, in clause 3, page 3, line 33, at end insert—

'(6A) A person is not prevented from being a worker, or a person seeking work, for the purposes of this section by reason of the fact that he has no right to be, or to work, in the United Kingdom.'

To ensure that labour market offences committed against all workers are included within the scope of the Director of Labour Market Enforcement's work, irrespective of immigration status (as under subsection 2 of section 26 of the Gangmasters (Licensing) Act 2004).

Amendment 62, in clause 4, page 3, line 42, leave out paragraph (a) and insert—

'(a) An assessment of the extent to which the strategy developed under section 2 of this Act has—

(i) addressed the non-compliance identified under Section 2 (2)(a)(i),

(ii) improved the provision of remedies for victims of non-compliance in the labour market identified under 2 (2)(a)(ia), and

(iii) overcome the threats and obstacles identified under 2 (2)(a)(ib)".'

To ensure the Director of Labour Market Enforcement's Annual Report links with his or her assessments about non-compliance in the labour market (and assessment of the remedies secured by victims and threats and obstacles to effective enforcement).

The Minister for Immigration (James Brokenshire): When we broke for our short adjournment, we were touching on the use of a particular term: we were looking slightly ahead to the use of the term "worker" in clauses 3 and 9. I want to ensure clarity about where that term is used because that may be informative to the Committee and perhaps help to narrow the debate and argument.

I assure hon. Members that the definition of worker in clause 3(6) applies only in one context, which is in respect of clause 3(4)(e)(i), which relates to sections 2 and 4 of the Modern Slavery Act 2015. The definition of worker in all other Acts in the director's remit is

unaffected. The hon. and learned Member for Holborn and St Pancras may find that and the context in which the definition applies helpful.

The definition of worker in the Employment Agencies Act 1973 is unaffected. The Employment Agency Standards Inspectorate will continue to take action against rogue employment agencies and businesses regardless of whether the worker is here legally or illegally. Similarly, the definition of worker in the Gangmasters (Licensing) Act 2004 is unaffected. The Gangmasters Licensing Authority will continue to take action against rogue gangmasters regardless of whether the worker is here legally or illegally. That matches the concerns raised in contributions this morning.

Furthermore, the definition in the National Minimum Wage Act 1998 is also unaffected. That will continue to apply only to legal workers—that is how it is framed. The provisions are about not extending rights to illegal workers, but bringing strategic oversight together under one person. We do not think it is appropriate to give illegal workers the right to the national minimum wage. Of course, the employer who employs an illegal worker and pays them less than the national minimum wage will still be committing an offence under section 21 of the Immigration, Asylum and Nationality Act 2006, which comes with a higher penalty. The Bill also includes measures to enable us to take a tougher enforcement approach to employers of illegal workers, including increased prison sentences if they employ people whom they know or reasonably suspect are illegal workers.

The definition of worker in clause 3(6) has no effect on section 1 of the Modern Slavery Act 2015. All offences of slavery, servitude and forced or compulsory labour will be within the director of labour market enforcement's remit, because it would be illogical to exclude those forced to work from the director's purview. Indeed, all offences of trafficking under sections 2 and 4 of the Modern Slavery Act that involve slavery, servitude and forced or compulsory labour will also be within the director's remit.

The definition in clause 3(6) also has no effect on the trafficking offences criminalised by sections 2 and 4 of the Modern Slavery Act. The only effect the definition has is on which type of trafficking offences are in the director's remit. Offences involving sexual exploitation, removal of organs, securing services by force and securing services from children and vulnerable persons will be in the director's remit only if they relate to workers or work seekers provided for in the definition—legal workers. It will still be an offence to traffic an illegal worker for any of those purposes, but we do not think it appropriate for that to be in the director's remit. Instead, such offences will be dealt with by the police and the National Crime Agency. All modern slavery offences will be in the Independent Anti-slavery Commissioner's remit.

As I explained before, the definition is not about granting new rights or curtailing offences. It is simply about creating the right remit for the director of labour market enforcement, which I believe the clause does. We are clear that the remit provides the director with the ability to tackle the broad spectrum of labour exploitation, from non-compliance to the most serious harm against workers.

I recall the comment I made earlier about the relationship between the commissioner and director, where the commissioner will effectively have that oversight role. Therefore, we believe that that will lock things together in a clear fashion.

I appreciate that this has drawn us into something more technical than contemplated at first sight by the amendment. I hope, for the sake of clarity, I have spelled out the context in which the definition is used.

Paul Blomfield (Sheffield Central) (Lab): I am grateful to the Minister for giving way and for the statement he has just shared with us. I am not absorbing its detail as quickly as I would wish; perhaps we can find a way to reflect on it before we reach a final view.

Notwithstanding the points the Minister has made, the concern remains that we are in danger of including only offences committed against workers as defined in the Employment Rights Act 1996, that is, those with a valid contract of employment, so by definition, regular migration status. Although we are trying to achieve the same objective here, the provision might risk leaving the director powerless to investigate trafficking in the very sector of the labour market—illegal working—that the Bill is designed to target.

As the Minister indicated, this is about not conferring new rights on workers, whether in relation to the national minimum wage or whatever, but ensuring that the director can cover all the listed offences, no matter against whom they are committed. As it stands, the clause is potentially in violation of article 3 of the European convention on action against trafficking in human beings, which guarantees the provisions of that convention, irrespective of national origin.

I take it that the purpose of clause 3(4)(e)(i) is to narrow the remit of the director so that he or she covers human trafficking offences only for labour exploitation, as opposed to sexual exploitation or organ harvesting. In that case, subject to reaching agreement on the position in our amendment, the Minister would have our support. The way the clause is currently drafted seems to exclude human trafficking of illegal workers from the remit. Further confusion is created by including human trafficking offences committed against "a person seeking work" in the director's remit. We just need a bit of time for reflection on that, if the Minister would agree.

The Chair: Before the Minister answers, these are detailed and complex matters, which is why I am allowing the interventions to be relatively lengthy. I would not normally stand for an intervention that long, but I will because it is on a technicality. Do not think, ladies and gentlemen, that you will get away with it later.

James Brokenshire: I am grateful to you, Mr Bone. It is important on these points of detail where issues have been raised that we try to give clarity in Committee. I entirely understand your ruling; as always, the Chair is entirely sensible.

In response to the hon. Gentleman, when he reads the record of what I said—as I know he will as he is assiduous and focused on getting things right—I hope he will see in the explanation the distinction we are drawing between labour market and what is straying beyond labour market issues, and why we have drawn the provision that way.

[James Brokenshire]

I apologise for straying slightly, but clause 3(6) links to the amendment and it is appropriate to comment on the point now. This definition of "worker" is used only once in the context of clause 3(4). I will reflect on the drafting of that, since we are clear on the intent and how it works through. The intention is not to imply or impute any limiting of that definition into the other provisions listed in clause 3(4). That is not the intent and hence my comments. Without any commitment, I will certainly look at the wording of that to satisfy myself that it does not give any wrong impression. As I have said, that is not the intention.

Keir Starmer (Holborn and St Pancras) (Lab): Thank you, Mr Bone, for your indulgence on this. I want to make sure that we have got the point right, because it may be that the area of dispute is considerably reduced. I am grateful to the Minister and the team that has been behind him over the last hour and a half for this clarification, which really helps. As I understand it, the definition of "worker" in clause 3(6) is limited for the purposes of this measure alone and therefore does not affect anything beyond it.

James Brokenshire: Correct.

Keir Starmer: That removes one concern, so I am grateful for that clarification.

As far as clause 3(4)(e) is concerned, what is being said is that the offence itself is unaffected by any definition; it only goes to the remit of the director. Again, that removes a concern. Therefore, the only remaining concern is that the director has a remit only over certain types of worker for the offences in clause 3(4)(e), as I understand it. The Minister put forward a reason for that—just to make sure I have understood that. I am not sure how it works in a Committee such as this, but I wonder whether it is possible to have that in some written form over and above what the Minister has said already, which I know will be on the record. It is critical to the international obligations and how other people will look at this and understand it. I am grateful for the clarification.

James Brokenshire: I am grateful for the way in which the hon. and learned Gentleman has raised the matter. If it helps the Committee, I will be happy to write to him to set out what I have said and give that clarity in context. I get the sense that the issue on these provisions is perhaps narrower than it may have appeared at first sight. It relates to the way the provision operates within the Modern Slavery Act itself and the way in which the term "worker" is used within that. It is perhaps not even as complete as he was suggesting in that context. Given this is quite a narrow, technical, but important point, I think it will probably be helpful if I write to him to set that out in further detail. It would be open to him to reflect on that as we look towards Report.

The Chair: Could you write to the Committee, too, and we will circulate it? Then every Member will have it.

James Brokenshire: Of course. It is important that all Committee members see that, so I am happy to undertake to do that.

Various comments were made about the Gangmasters Licensing Authority and prosecutions and investigations. Over time, the GLA has undertaken a number of more complex investigations that focused more effectively on serious and organised crime. I think that reflects a targeting and risk-based enforcement approach by the GLA. Only one GLA-initiated prosecution has ever failed to return a conviction. This year alone, the GLA has undertaken 92 investigations—already more than the 72 undertaken in 2014 and its highest since 2011. During that time, the GLA also secured four prosecutions of unlicensed gangmasters, with the same number last year. That demonstrates that the GLA continues to be capable of targeting rogue gangmasters effectively. That is why we see it as an important component of the director's new remit to tackle labour exploitation. We are reflecting further in relation to the GLA as part of the consultation, albeit that that strays wider than the group of amendments we are debating today.

On the labour market consultation, I mentioned this morning that we have announced today that the consultation has been extended. It now closes on 7 December, rather than 9 November. As I said, I hope that that will give further opportunity for interested parties to feed in and ensure that this is understood and well-reflected.

2.15 pm

The hon. Member for Sheffield Central talked about recovering compensation. The GLA does seek recompense for workers when it finds breaches of licensing conditions as part of its negotiations around putting breaches right and the retention of a licence. I have seen figures in the order of £3.5 million that have been provided in recompense through that route.

I reassure the hon. and learned Member for Holborn and St Pancras that the issue of compensation is not ignored. He makes a point around compensation orders, but we hope that, through the new strategy and approaches, compensation will remain a focus of operational activity. I ask him to withdraw the amendment.

Keir Starmer: I am grateful to the Minister for his clarification, not only on the technical point we have just discussed, but more generally on the health and safety and other agencies that are not included in the Bill. I now understand that that is because of the particular function and focus of their activity and, in relation to children, because of the localised knowledge of some authorities that would not otherwise be more generally available.

I am going to withdraw the amendment, so I shall be brief. However, it would be helpful if there could be greater clarity about the sharing of intelligence. Although they are separate functions, there will be a huge overlap between what the health and safety and other agencies are doing, and what the director is trying to pull together in the strategy. The Minister says that there will be a sharing of intelligence, so it would be helpful if we had more clarity about exactly how that will work. I say no more about the strategy in relation to obstacles and resources, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Keir Starmer: I beg to move amendment 60, in clause 2, page 2, line 26, at end insert—

'(3A) The Director must engage with civil society in the development of his or her labour market enforcement strategy."

To expressly require engagement between civil society and the Director of Labour Market Enforcement in the development of the labour market enforcement strategy.

The amendment would require the director of labour market enforcement to engage with civil society in the development of the labour market enforcement strategy. Page 26 of the Government's consultation document "Tackling Exploitation in the Labour Market" states that a director:

"will engage with a wide range of stakeholders to gather insights and perspectives on real world practices, improve detection of exploitation and understand external views of the effectiveness of the enforcement landscape. Stakeholders will include Government departments, the IASC, the police, local authorities and other public bodies; organisations representing employers and employees across the economy and in particular sectors of interest; and a range of third sector bodies that engage with vulnerable/exploited groups."

The amendment would make that explicit in the Bill.

It is important that the voice of organisations working with victims of labour exploitation, trade unions and others are invited to feed their expertise into the director's work, especially at the strategy stage. The absence of any formal engagement strategy will mean that the director may fail to gain the breadth of front-line experience and expertise required to prepare an evidence-based strategy. This is linked to the resource point that was made earlier. With extremely limited resources, it will be very hard for the director to gather the range of information required to complete a comprehensive labour market assessment, so strong engagement mechanisms will be required to ensure that all expertise is integrated into the strategy. The amendment would strengthen the strategy and formalise the involvement of others who have expertise and experience, as is recognised in the consultation document, and ensure that the strategy is as strong as it needs to be, if the approach is to be the step change that we hope it will be.

Chloe Smith (Norwich North) (Con): The hon. and learned Gentleman has tabled an extremely interesting amendment. Has he given more thought as to how "civil society" ought to be defined? If he is going to put that phrase into primary legislation, it should be well defined. Of course, he would expect there to be consequences if the director does not do what the Bill says the director must do. Could the hon. and learned Gentleman better define civil society and explain how he would enforce such a thing?

Keir Starmer: I am grateful to the hon. Lady for that intervention. In a sense, the intent is to formalise what was envisaged in the consultation document, which contained a fairly lengthy list—I read it out a moment ago—of stakeholders, including organisations representing employers and employees, and third sector bodies that engage with vulnerable and exploited groups. It might be helpful to go a bit further than that, but the intention was to formalise what was rightly set out in the consultation document—the bodies with which the director should engage—using the words "civil society". That is what lies behind the amendment.

James Brokenshire: As the hon. and learned Gentleman highlighted, the amendment would require the director of labour market enforcement to engage with civil society in developing the enforcement strategy provided for by the clause. I sympathise with the intention behind the amendment, but it is not necessary or, for the reasons highlighted by my hon. Friend the Member for Norwich North, workable in its current form.

The hon. and learned Gentleman rightly highlighted the consultation that we are undertaking, and he read out the relevant part, about our expectations regarding stakeholder engagement. It is right that the director should speak to a range of people—the widest range of sources—to identify the scale and nature of non-compliance in the labour market. That will include securing information from the information hub we will consider when we reach clause 6, but it will rightly also include engaging non-governmental organisations, bodies representing employers and workers, and other organisations to develop the fullest picture.

The consultation published on 13 October contains more information on how we envisage the relationship working. We will flesh that out further in the light of the views received in response to the consultation. I want to see what the responses look like before we reflect on whether anything further needs to be undertaken.

The director will play a leading role publicly in bringing greater co-ordination and coherence to the enforcement of labour market legislation. The strategy they produce will be public, so I have no difficulty in principle with their consulting civil society in developing it, however that may be framed or defined.

Sometimes, when we go into legislation, we can close things off, rather than opening them up. We need to define things in a very legalistic way, and the issue is how we can properly give effect to the desires in the consultation document. I do not want to risk creating unnecessary scope for legal challenges to be brought against the director or, bearing in mind the legalistic approach we have to take, closing things down.

I do have sympathy with what the hon. and learned Gentleman said, and I will obviously review the responses to the consultation. With that reassurance about how we are approaching the issue, however, I hope he will be minded to withdraw the amendment.

Keir Starmer: I am grateful to the Minister for that reassurance, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

James Brokenshire: I intend to speak only briefly because we have had quite a wide-ranging discussion of the priorities for enforcement and the outcomes required from the enforcement bodies, which the director will be looking for in the strategy, as well as a number of other themes relating to the nature of the director's operations, which we touched on in the group of amendments before last. Crucially, the strategy will be evidence-based. It will contain the director's assessments of non-compliance in the previous year—points were raised about that in previous debates—and predictions for the next two years, based on information drawn from a range of

[James Brokenshire]

sources, including the three enforcement bodies, other Government bodies and civil society organisations. That will allow the plan for the coming year to be based on where non-compliance is most likely to occur and to cause harm. It will be subject to more public involvement, and the strategy will be published in the way I have outlined. I trust that the Committee will support the clause.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

NON-COMPLIANCE IN THE LABOUR MARKET ETC: INTERPRETATION

Question proposed, That the clause stand part of the Bill.

James Brokenshire: We have had a detailed debate on one aspect of the clause, which I will not go back over.

The clause defines certain aspects of the operation of the director, highlighting the three enforcement bodies that fall within their remit. We want that remit—what they consider in their assessment of non-compliance and their strategy for addressing it—to include the work of the three bodies on non-compliance and the offences they enforce, and to capture the most serious end of the exploitation spectrum. We also want the director to inform his or her strategy by consideration of the rate of instances of slavery, servitude, and forced or compulsory labour as defined by the Modern Slavery Act 2015.

We see the director's role as focused on labour market offences and therefore distinct from the role of the Independent Anti-slavery Commissioner, upon which we have touched in preceding debates. We have therefore limited the remit to where offences relate to work. As I have said, I will write to the Committee on that particular point.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

ANNUAL AND OTHER REPORTS

Question proposed, That the clause stand part of the Bill.

James Brokenshire: The clause requires the director to produce an annual report at the end of the year. That complements the director's strategy by requiring them to set out their assessment of how labour market enforcement functions have been carried out during the year and the impact of that activity. It provides accountability for the director and an independent assessment of the enforcement body's work.

The clause also allows the director to make reports throughout the year if needed. That is an important point. Ministers may wish to ask the director to report on the causes of a new, evolving challenge in fighting labour market exploitation—for example, if the rate of phoenix companies perpetrating exploitation were to grow—or to consider an issue in greater depth than the annual strategy permits, such as the effectiveness of penalties as a deterrent to employers. The reports will add to our understanding of how to tackle exploitation and, ultimately, will make us better equipped to stop it.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Clause 5

PUBLICATION OF STRATEGY AND REPORTS

Question proposed, That the clause stand part of the Bill.

James Brokenshire: The clause requires the Secretary of State to lay before Parliament any strategy or report produced by the director, to provide transparency and accountability for the director's role and to inform Members of the House. As I have indicated, we want the director to be a visible leading figure. Laying their reports before Parliament in a very public way will inform debate. It will also allow for greater scrutiny and accountability for Ministers on the performance of the three agencies, and on how the director's function is working and operating, and why it is framed as it is.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

INFORMATION HUB

Keir Starmer: I beg to move amendment 61, in clause 6, page 4, line 31, after "market" insert

"to facilitate the labour market enforcement functions as defined in Section 3 of this Act".

To prompt debate about the information hub proposed in Clause 6 of the Bill.

We have tabled the amendment to prompt a debate exploring how the information hub will work. We welcome the co-ordination and joined-up thinking that the hub will bring about, we hope, for the director of labour market enforcement, as that will lead to better enforcement. We raise the question against the backdrop of concern expressed earlier about the overlap between immigration enforcement and labour market standards enforcement, which brings the information hub into sharp focus. Page 23 of the consultation document states that the information hub

"will gather available data from the labour market enforcement bodies and other sources, such as Immigration Enforcement, the police, NCA, HSE, local authorities and the voluntary sector",

which is a wide range of information.

2.30 pm

Will the Minister allay concerns about the overlap between immigration enforcement and labour market standards enforcement? More specifically, will he indicate whether there will be extra funding for the information hub? If there is not to be, and if funding is coming out of the director's budget, what is the necessary level of resourcing to make the information hub effective?

James Brokenshire: As the hon. and learned Gentleman has highlighted, the amendment seeks to clarify the role of the proposed information hub. In our ongoing

consultation on tackling labour market exploitation, we set out the intention behind our proposal for an information hub, which is to

"inform and support delivery of the Director's strategic plan".

The hon. and learned Gentleman highlighted the relevant section in paragraph 71 of the consultation document. We will continue to reflect on that as we receive submissions in response to the consultation.

I stress that there is already close co-operation between the different labour market enforcement bodies, often in tackling abuses. However, that is sometimes impeded by barriers to sharing data and because the bodies cannot share data. The clause therefore gives the new director the responsibility to lead an information hub, which will form a coherent view of the nature and extent of exploitation and of non-compliance in the labour market.

The director will use the hub to formulate the strategy. The information hub will gather available data from the labour market enforcement bodies and other sources, such as immigration enforcement, the police, the National Crime Agency, the Health and Safety Executive, local authorities and the voluntary sector. The hub will analyse information and develop a much richer picture of the nature, extent and impacts of exploitation in the labour market. It will identify where workers are at risk of abuse and use that information to formulate the enforcement strategy. It will also provide tactical intelligence to the enforcement bodies for use in targeting their enforcement activity. The hub is intended to help strategically and tactically. It will be able to assist in the tasking of operations and to see and understand what practice might inform strategy. It will assist in the promulgation of good practice and in employers fulfilling their duties and responsibilities.

The hon. and learned Gentleman highlighted resourcing. Resources will be provided by the Secretary of State and may include officers from the enforcement agencies, their parent Departments and the wider law enforcement community, so there is that sense of people, as well as of how data are provided and linked. We are giving further consideration to how things would work practically and who would be involved, but in fairness we also want to allow the consultation to inform further development. I am highlighting the nature of what we envisage that the hub will provide—a centre for the sharing of intelligence and data to inform the director and to inform, potentially, the tactical response.

Paul Blomfield: I reassure you, Mr Bone, that this is a brief intervention. I thank you for your indulgence earlier; I thought that that was an important point that needed to be resolved.

On the question of funding, the Minister spoke earlier about the integrity of the budgets of the three separate agencies over which the director of labour market enforcement will have strategic overview. He pointed out that the agencies sit within individual Departments. He is obviously right—we agree—that data sharing and better use of data are critical to the effective development of the role, but that will presumably require, apart from people pooling, some additional resource. Is he saying that that resource will not be drawn from any of the three existing budgets and will, therefore, be found by the Secretary of State as an additional support?

James Brokenshire: Matters of resourcing, and indeed the support that the director will require, are under careful consideration by Ministers. They are working on the recruitment of that individual and how that office will operate and be resourced. I would certainly wish to reflect further on the consultation, given its focus on the role and after hearing views in the debate on this Bill. We have not made final decisions about budgets or staffing—those decisions will be taken once there is agreement on the role and following the spending review. Clearly, the operation hub as part of that activity will be part of the overall examination of what is appropriate.

It is right that the consultation seeks views on the need for powers to share data and intelligence across the enforcement bodies and with other organisations. We are consulting a range of partners within and outside Government to understand what information they hold that might be of use to the director in designing the strategy to tackle performance and non-compliance and building the hub itself. We want to reflect further on how the hub is established, given what I have said about resourcing, the nature of the people who might need to be part of it, who would add the most value, and connections with different agencies. We have set the framework for this and I think that I have clearly set out the intent and what we wish to achieve. In implementation, we will certainly reflect on the further submissions received and the comments that have been made.

Sarah Champion (Rotherham) (Lab): This really is not meant to be a difficult question. The Minister is putting a lot of weight on the consultation, as we are. Is there not the facility to pause proceedings on the Bill so that the findings of the consultation can actually affect the Bill and we achieve the best legislation, which is what we all want?

James Brokenshire: No, the provisions of clause 6 state that the director must gather, store, process, analyse and disseminate information relating to non-compliance in the labour market. It is important that we provide this statutory mechanism. Equally, in terms of further development and implementation, it is not appropriate for us to legislate while constantly taking into account further submissions. I do not think that that cuts across the need for clause 6 or the manner in which the labour market enforcement director would conduct his duties. I do not see them in any respect as being at odds. I hope that in the light of those points the hon. and learned Gentleman will be minded to withdraw his amendment.

Keir Starmer: I am grateful to the Minister. As I said, the aim of the amendment was to enable us to understand better how the hub would work and be resourced. On that basis, I ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 6 ordered to stand part of the Bill.

Clause 7

Restriction on exercising functions in relation to individual cases

Question proposed, That the clause stand part of the Bill.

James Brokenshire: Clause 7 prevents the director getting involved in individual cases. This is to allow the enforcement bodies to preserve their operational independence, a theme that was also highlighted in earlier contributions on the Bill. It is not appropriate for the director to have the power to influence decisions about the enforcement action to be taken against individual businesses. However, the clause allows the director to consider individual cases where these provide useful information in relation to general issues and to inform the director's strategy or other work. Sometimes the individual parable, or the experiences of an individual can be important to understanding the reality of the abuses that take place. It is in that context that the clause has been introduced; we do not seek to encroach on the operational independence of other agencies in pursuing cases against particular employers or in particular circumstances.

Keir Starmer: I have, as it were, a genuine question; perhaps assurance on this will do the trick. At the moment, clause 7(1) would prevent the director making a recommendation after completion of a case, whatever legal proceedings were contemplated. Therefore, it may be over-narrow. In other words, the director may see a completed individual case and want to make a recommendation about whether it was good, bad or indifferent.

I can see the point in a provision that prevents interference in ongoing proceedings or the carrying out of functions by other bodies. A simple assurance or explanation may help, but at the moment the clause may be read as preventing a recommendation after the event about a particularly good way of doing something or a problem that needed to be avoided in future.

James Brokenshire: It will be open to the director, in looking at individual cases, to make broader recommendations on strategy or the manner in which agencies conduct their duties. We have to be careful, which is why we have structured the director role in this way, that there is operational independence for each of the agencies to pursue a case using their expertise and their chosen manner.

The position is more strategic. The director should not be drawn into how an agency should or should not have acted in a specific case. It is still open to the director to look at individual circumstances and cases, hence my earlier comment, and to make recommendations for the future. I do not think that that strays in relation to the language that we have here, into making a recommendation in an individual case; that would be to second guess the operational thinking of the different agencies. That is the intent behind the drafting, and I hope that is helpful.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Clause 8

Offence of illegal working

Keir Starmer: I beg to move amendment 68, in clause 8, page 5, line 6, after "if", insert "without reasonable excuse"

To provide for a defence against the offence of illegal working.

We have reached an area in the Bill on which there is greater disagreement. We welcome the provisions that bear down on employers who exploit employees. That is in keeping with our welcoming of the director of labour market enforcement. However, we have considerable difficulty with the notion of creating an offence that can be committed by employees, which is strict and without any defences.

I begin by drawing the Committee's attention to the baseline evidence from the Migration Advisory Committee 2014 report, which makes a number of comments pertinent to clause 8. It says:

"The combination of non-compliance and insufficient enforcement can lead to instances of severe exploitation, particularly of vulnerable groups such as migrants."

That same 2014 report records the Committee's research on labour market exploitation of migrant workers in particular:

"We were struck on our visits around the country by the amount of concern that was expressed by virtually everyone we spoke to about the exploitation of migrants in low-skilled jobs…The TUC told us that migrants, particularly from lower income EU accession countries, are often likely to take up low-skilled work, partly due to the nature of the labour market but also due to the labour market profile of such migrants."

A little later the report says:

"During our visits to places which had experienced relatively high levels of migrants the point that migrant workers are more likely to be exploited than resident workers as they are not aware of their rights and are afraid they may be sacked/evicted/deported if they complain was raised on a number of occasions."

The Committee cites its meeting with the Equality and Human Rights Commission, which

"expressed the view that migrant workers, and especially agency workers, were more likely than resident workers to put up with poor working conditions and bad treatment by employers because they were not aware of their rights, they do not know who to complain to and are scared that if they do complain they could lose their job. The EHRC said it is often better for a migrant to be in the UK with a job, albeit a low-paid one, than in their home country without a job."

2.45 pm

The background is a general recognition that migrants and vulnerable employees are extremely vulnerable under all current conditions and often feel that they simply cannot come forward, even under current circumstances, to explain to anyone what is happening to them for fear, as that committee set out, of being sacked or deported. Here, for the first time in the Bill, the offence of illegal working applies to employees rather than employers. The great fear is that that will simply mean that those who are the most exploited and vulnerable will become more exploited and vulnerable as they are pushed further and further away from any legal protection.

The offence is one, pretty much, of strict liability, in the sense that it is triggered by not having the right immigration status. There is no mental element in any way; nor is any defence set out in clause 8. Amendment 68 would resolve that issue by inserting a defence of "reasonable excuse". Obviously, that is a fall-back position; the in-principle position is that there should not be an offence for employees. It makes them more exploited and vulnerable, and less likely to come forward. As a general proposition, outside of the immigration context, it has been the thinking for some time that to criminalise

those who are employees or victims is usually a mistake if we want effective enforcement action. The further they are pushed away from law enforcement, the less likely we are to get to the truth. They will not come forward to protect themselves.

James Brokenshire: To understand the hon. and learned Gentleman's logic and thinking, is he arguing that some offences that already exist for people who have entered the country illegally should be done away with? If I follow his line of argument, he is saying that any criminal offence is problematic and should not be there.

Keir Starmer: I am grateful to the Minister for that intervention. No, I am not going that far. Those offences are on the statute book. They are much wider than offences in the working environment. I am starting from the proposition that this group of people has been recognised as the most vulnerable and exploited in the workplace, and the least likely to be able to come forward and explain what has happened to them.

The Minister raises a different point, which is that it is often thought—I certainly think this—that new criminal offences should not be introduced in legislation unless there is a clear need for them and there is a gap in the current enforcement mechanisms that the new offence is intended to fill. For many years, there was criticism of Governments for simply introducing criminal offences as a response to a non-problem when there was no evidence of the need for the offence. This is an example of that. As we heard in evidence last week, the problem is the low likelihood of intervention, inspection or any enforcement action. There is no evidence that this offence, for employees, is needed. There are existing offences with which they can be charged. In those circumstances, the clause fails the fundamental non-immigration test that we should not be legislating to introduce offences when there is no evidence that the offence is needed because there has never been any evidence of a case where action could not be taken because the offence did not exist.

James Brokenshire: Following what the hon. and learned Gentleman is saying about offences, it seems that his principal point is about those who are vulnerable coming forward. That takes us into broader issues on the national referral mechanism and some of the steps we have taken through the Modern Slavery Act to shine a light. Our focus needs to be on those broader issues—if I have followed the line of his argument—on helping people to come forward. This offence would not have the impact that he is suggesting, because of all the other inhibitions about those who may be enslaving people and putting them in fear. Rather, we need to tackle the broader themes and help people to come forward, which is what the Government and Members across the House have rightly focused on.

Keir Starmer: I am grateful to the Minister. Of course, any measures to give people the confidence to come forward should be pursued. There would be general agreement about that—in particular, in relation to some of the offences we have been discussing. However, adding an offence when there is no evidence that it is needed simply makes a bad situation worse. If the Minister has evidence that anybody at all has ever said, "The problem here is that we haven't got an offence for the employees", I have not seen it and it has not been set out in any great detail.

Paul Blomfield: Does my hon. and learned Friend accept that the nub of the Government's argument in relation to this offence, as we understand it, is to reduce pull factors—to create a disincentive for those coming to this country to enter into illegal work? Is he concerned, as I am, that the Government seem to have no evidence that it will work? We have heard substantial evidence that this may be counterproductive, but there is no evidence from the Government that it will work as a deterrent and undermine pull factors.

Keir Starmer: I agree with my hon. Friend and am grateful for his intervention. What is important is that the objective behind the Bill is properly pursued. There is a real risk that introducing an offence against the employee will be counterproductive if it drives underground the very group of people who are the most vulnerable when there is little or no evidence that the offence is needed.

I want to go a little further than that, because this is an offence without any mental element in the Bill. It is strict in the sense that absent the right status, the offence is made out, and then it is an offence without a defence, which is an unusual combination in criminal law. For example, some people will be here working in the belief that they have the right status because they are sponsored by the employer or somebody else. However, unbeknown to them, they may not have status because their employer has not correctly completed all the necessary arrangements for sponsorship. They fall into a category of individuals who are here without the required status, but without any knowledge of that or any intention to be in that position. Given the inflexibility of the offence, they would be immediately criminalised without even the opportunity of raising a defence of reasonable excuse. Their defence would be, "I am working. I had understood that my employer or somebody else had completed all the necessary forms and legalities. It now transpires they haven't, but I had absolutely no reason to think that to be the case." At the very least, if the clause is to stand, such an offence—there could be many other examples—ought to have a reasonable excuse defence, and that argument lies behind the amendment.

Sarah Champion: I speak in support of my hon. and learned Friend. It is fundamentally wrong to make the employee a criminal—it makes no sense. I have not been convinced by any of the witnesses we have heard or any of the evidence that I have seen that this is the right way to achieve the Government's objectives.

My main concern is that the measure will compound exploitation. I would like to quote Caroline Robinson, one of our witnesses, from FLEX—Focus on Labour Exploitation—who put the three issues more succinctly than I can. She said:

"First, we think that people will be fearful of coming forward to be referred into the UK national referral mechanism as victims of trafficking…The second reason is that we know that traffickers use the threat of deportation, removal and reporting to immigration officials in order to abuse and exploit workers…The third reason is something that was raised a lot on Second Reading, namely the criminalisation of trafficked persons. Although the Home Secretary set out the statutory defence, which is in the Modern Slavery Act 2015, it is quite narrow in its terms. The schedules exclude a

[Sarah Champion]

number of offences for the victims of trafficking, such as aggravated criminal damage, but if I was to leave the building in which I was held I would no longer be covered by the statutory defence in the Modern Slavery Act."—[*Official Report, Immigration Public Bill Committee,* 20 October 2015; c. 24-25, Q50.]

My biggest concern is that the measure will stop whistleblowers. How will we identify bad employers if the very people who can give us that evidence are too scared to come forward for fear of being criminalised? It is not only bad employers that could be overlooked, but health and safety risks that could impact on a number of employees.

I am pleased about the Modern Slavery Act, which is a good and strong piece of legislation. I am also very pleased that the Minister has made it clear that people are protected under the Act if they are trafficked into the country. If they are used as a slave, they are exploited. However, I would like clarification from the Minister about how someone will be dealt with if their status shifts. For example, if someone was trafficked into the country and forced into slavery, but then managed to escape and became an illegal worker, would they be protected because at the start of their journey they were protected under the Modern Slavery Act, meaning that they would be treated as a victim, or would they be criminalised because, at the end of their journey, they were an illegal worker? What happens the opposite way round? If a person comes to the UK as an undocumented worker and is then exploited by their employer, at what point would they be protected if, having come to the country illegally as a worker, they were then used as a slave?

Chloe Smith: The hon. Lady and I both served on the Committee that considered the Bill that became the Modern Slavery Act. I looked at the list of exemptions in that Act while we heard the piece of evidence that she quoted. It is worth reminding the Committee that there is a set of defences in the Act, and to that set of defences, there is a set of exemptions. In that set of exemptions—this is rather like a Russian doll, but bear with me—there is an exemption on this point of criminal damage. In other words, an individual might be at risk of being accused of criminal damage only if they had behaved recklessly and endangered somebody's life. That is in the Modern Slavery Act 2015, which the hon. Lady and I debated. Has she reflected on that before trying to advance this line of argument that the provision is all one thing, rather than being nuanced?

3 pm

Sarah Champion: I thank the hon. Lady for her intervention; she is always fantastic on detail. My answer is yes, but I am not a lawyer, so I would like the Minister to lay out, in language that a former charity worker can understand, the protections for people who are exploited. To be honest, I am unclear. A number of our witnesses said they were unclear, although I recall that clarification was sought on this point.

I will give the hypothetical example of a woman who paid a criminal gang for her passage here and came expecting a job. She was given a job, but then told that she had to pay additional costs, which took away all of her income, effectively making her a slave without legal protection under our current system. She could be beholden to that employer for an indefinite period and be too terrified to speak out, because I can guarantee that the employer would use the fact that she would be reported and become a criminal if she did.

I do not see how clause 8 helps that person in any way. I would like clarification from the Minister about how that person could have the confidence to come forward when their employer is telling them that they will be criminalised if they do so. Surely the best approach is to stick with clause 9, under which the employer becomes liable for the actions and will be criminalised for those actions.

We know where the employers are. They will be registered at Companies House and they will be filing their taxes. It will be a lot easier to follow that trail to get the prosecutions, particularly with limited resources, rather than spending an indefinite period trying to track down illegal workers when we do not know who they are, where they are working or their status, just on the off chance that we might catch and criminalise them so that we send out the right message. Surely it is better to go for the employers.

Anne McLaughlin (Glasgow North East) (SNP): I wonder whether there is a misunderstanding, or at least an underestimation, of how vulnerable some of these workers are. Does the Minister realise the extent of their vulnerability? If he does, will he change his mind about criminalising those who work illegally?

I will cite an example of not a young vulnerable woman trafficked here as a sex slave, but someone whom hon. Members might use as an example of why we need to criminalise. On my travels a few years ago, I spent time with a man called Mehdi, who was fit and healthy in his mid-thirties. He was married to Rezi, who was pregnant with their first child. They sought asylum in the UK—I met him some years after all this happened—and ended up in Glasgow where, despite their best efforts, they were refused asylum because they could not prove they were in danger. She had a miscarriage and they were made destitute. They were told they would be deported and they embarked on a terrible downward spiral. They removed themselves from all support mechanisms, so frightened were they of being found and deported to certain danger, but they could not survive here, so Mehdi found a job. He knew he was not allowed to do that, as did his employers, who took advantage of that knowledge and made him work extremely long hours for £3 an hour.

Mehdi was abused, exploited and occasionally beaten. He was worked until he would regularly collapse with exhaustion, but he had no choice. Some Government Members might argue that he did have a choice because he could have gone back to his home country. However, he was not working not just to feed himself and get by in life in Glasgow, but to save money to buy false passports so that the couple could get out of the UK and away from the danger of deportation to his home country. Who among us would not do whatever it took to protect our loved ones and our own lives if we had to?

If the Bill had been in force when Mehdi was doing all that, what might the outcome have been for this loving and protective husband? This kindly but damaged man could very well have ended up in jail, followed by

being deported to the country that he was so afraid of returning to. For him, the worst part would have been leaving his wife—

3.5 pm

Sitting suspended for Divisions in the House.

3.32 pm

On resuming—

The Chair: Before I ask Anne McLaughlin to continue her speech, I thought it might be advisable to take discussion of the clause with the amendment and not have a stand part debate. If anyone wants to make a contribution on the clause, please feel free to do so now.

Anne McLaughlin: It has come to my attention that some Conservative Members did not listen to absolutely every word, so I wondered whether they would like me to recap from the start, or just to summarise where I was.

I was speaking about someone I met on my travels who had sought asylum in the UK and ended up in Glasgow. Mehdi, with his wife Rezi, were refused asylum, were destitute and were threatened with deportation. They were terrified of being returned to their country of origin because of what would happen to them. Mehdi ended up working illegally for £3 an hour, being completely exploited, and he did that because he did not have a choice. The point I was making was that he did not do that just to get by and to be able to buy food and clothes. He was doing it because they were saving up to be smuggled out of the country, not back to their country of origin, but to another country that they would enter illegally because they were so afraid of being sent back to their home country.

I was making the point that if this Bill had been in place then, Mehdi would have faced the additional risk of going to prison. I spent some time with him and he was most certainly not someone who—

Kate Hollern (Blackburn) (Lab): What situation would the family have been in had this legislation been in place then?

Anne McLaughlin: It would depend on whether he had been caught working. He would be prosecuted and could have been imprisoned. Thankfully for Mehdi and Rezi, that did not happen, but there are many other people like them. She was extremely vulnerable. Had the Bill been around and they had been imprisoned, she would have been left destitute, facing deportation without him by her side. With him by her side, she was terrified enough. He would have gone to prison and then, undoubtedly, he would have been deported separately from her.

A fit, healthy married man in his 30s who is working illegally is not someone we typically highlight when trying to attract compassion from those who wish to control illegal working and are also concerned about vulnerable people, but who among us could not feel compassion for Mehdi and Rezi? We should remember that even those who are not the archetypal exploitable worker often have truly heart-breaking stories and are often left with no choices. The Bill would make it even riskier for them. If it is riskier, they will become ever more dependent on their abusive, exploitative employers. They deserve our compassion and support to get out of those situations. They do not deserve the threat of a prison sentence hanging over them.

Paul Blomfield: On amendment 68, I welcome the observations the Minister made in his latter comments. The Bill creates an unreasonable anomaly between the caveats it provides for employers and the absence of any for employees. As I understand it, under clause 9, employers are only guilty of the offence of employing an illegal worker if they do so "knowing" or

"having reasonable cause to believe"

that the person is an illegal worker.

We are saying to employers that there is a test of reasonableness before they are criminalised for the act of wrongful employment. The problem with clause 8 is that there is no such test of reasonableness. With the amendment, we seek to bring some equivalence between the way we approach employers and the way we approach employees by enabling them to be able to demonstrate "reasonable excuse" for the predicament in which they find themselves. Although I have reservations about the entire clause, were the Government successful in retaining it, I hope they would look generously on the amendment, which could provide that equivalence.

I have concerns about clause 8 more generally, as it criminalises the act of illegal working. I take the point made by my hon. and learned Friend the shadow Minister that we might disagree on this matter across the House. However, I do not think we need to. A number of us have said that we are at one on the objectives of the Bill, as we were with the Modern Slavery Act. In seeking to ensure that clause 8 does not stand part of the Bill, we are at one with the Government's policy objectives of achieving effective labour market enforcement and, indeed, of combating modern slavery. Less than two years ago, in November 2013, the Home Secretary made combating modern slavery a priority. I do not have the experience that Conservative Members and, indeed, my hon. Friend the Member for Rotherham have of serving on that Bill Committee but I commend those who were involved on that legislation, just as I commend the Home Secretary on the priority that she placed on combating modern slavery. That aim won wide support, found expression in the Modern Slavery Act, and took us in the right direction. The problem with clause 8 of this Bill is that it risks undoing some of the good of the Modern Slavery Act.

I am sure that the Government do not intend to undermine their own legislation so soon after it has become law so I hope that the Minister will give serious regard to the points that we are raising in suggesting that clause 8 should not stand part of the Bill. I hope he recognises that if it does, slavery is more likely to thrive. I notice that he is shaking his head and I look forward to his response.

I put this to the Minister: what do we know? What is all the evidence clear about? I am happy for him to intervene if he disagrees, but all the evidence is clear on one thing. The more vulnerable workers are, the stronger the hand of the gangmasters or the unscrupulous employers who seek to exploit them. I am sure that the Minister agrees, as I notice he does not wish to intervene. Vulnerability plays into the hands of those who seek to exploit, such as unscrupulous employers. The more vulnerable workers feel, the less likely they are to come

[Paul Blomfield]

forward to report their abusers. Clause 8 increases that vulnerability and strengthens the hands of the gangmasters. I note that the Minister is again shaking his head. I would be happy for him to intervene if he can provide any evidence to suggest that that is not the case. When we took evidence from witnesses, we heard from many experts who said that this was the case; none said that it was not.

The clause, by threatening exploited workers with 12 months in prison if they are deemed to have committed the offence of illegal working, gives another crucial card to the suit of cards that gangmasters can play. It does not only affect those who have committed the offence of illegal working; it changes the psychology and relationship even between the employer and the employees who have not committed an offence. According to the National Crime Agency, in cases that it has taken up, 78% of those who have been exploited for their labour in the UK actually have the right to work here as EEA nationals. Rights awareness among those workers is low and their options are limited, which allows unscrupulous employers to hold the threat of removal over them.

James Brokenshire: I have listened carefully to the hon. Gentleman. In the example he just gave, he said that the individuals concerned had the right to work. How would they be caught under the clause if they would not be working illegally?

Paul Blomfield: I thank the Minister for that intervention because it gives me the opportunity to explain more clearly; I apologise if I did not do so before. The point I am making is that clause 8 affects those who do not have the right to work, because it criminalises them and makes it less likely that they will whistleblow and report their employers. Rights awareness is low, even among those who have the right to work here. We have seen various cases where exploitative practices have been blown apart. Part of the intimidation and the way in which employers were enforcing compliance was by cloaking a series of threats that did not apply in those cases. That is my point.

3.45 pm

James Brokenshire: The hon. Gentleman makes an interesting point, but he seems to be articulating some of the broader issues that we know are redolent around slavery and trafficking, on debt bondage, housing, and physical enslavement. It is those threats and issues and the threat of deportation that might be more redolent in the examples that he has given, rather than law enforcement.

Paul Blomfield: I take the Minister's point, but why give those who exploit yet another card to play? The threat of 12 months' imprisonment and criminalisation is the card that will be exercised both in relation to those who have no right to be here, or to be working, and in relation to those who do.

Sarah Champion: One of our witnesses, Caroline Robinson from Focus on Labour Exploitation, said:

"We know that 78% of those exploited for their labour are, in fact, documented in the UK."—*[Official Report, Immigration Public Bill Committee,* 20 October; c. 28, Q59.]

Paul Blomfield: My hon. Friend makes exactly the point that I was seeking to make. Even where people have rights to work, the lack of rights awareness and the intimidatory relationship between exploiter and exploited make this another card to play. I see the Minister is still shaking his head. Even if we were to restrict the measure simply to those who did not have the right to work, we are still giving the exploiter another card to intimidate and therefore make it less likely that people would be willing to whistleblow. I am happy for the Minister to intervene on me. Perhaps he could illustrate the evidence that suggests the clause will be of assistance—not the intuition, the belief, the view, but the evidence.

James Brokenshire: The hon. Gentleman is encouraging me to intervene. I will take him through the logic as to why we think the clause is necessary. The interesting and thoughtful way in which he always presents his case identifies broader issues, and I do not see this offence changing the situation in the way that he says. The cases that he has enunciated and the evidence that the hon. Member for Rotherham highlighted show that in the majority of cases people did have rights and are not touched by the offence. The area is complex, and I know that the hon. Gentleman understands this. It is about the broader issues and themes that I touched on earlier.

The Chair: Order. Mr Blomfield, I have used that trick a lot of times, but, given that the Minister is going to speak and that some of the responses will have to be lengthy, the matter is not right for an intervention, so it might be better if the Minister deals with some of the issues in his remarks later.

Paul Blomfield: I am pleased to know that I am following in sound footsteps, Chair, but I will take your advice.

Anne McLaughlin: Is the hon. Gentleman aware that it is not only the exploitative employer who can continue to exploit the person who is working illegally? Undocumented workers face threats from all sorts of people. I spoke to somebody who had worked illegally for different reasons to the previous person I talked about. They were not only ruthlessly exploited by the employer, but were blackmailed by colleagues who themselves were working legally, but were aware or at least suspected that this person was working illegally. He faced blackmail, threats and intimidation. Although he said, "Actually, you don't know what my status is", the point that the blackmailers made was, "Are you willing to take that risk?" Of course, such workers are not. The exploitation comes from all around, not just from one employer.

Paul Blomfield: The hon. Lady adds another dimension to my argument that the clause makes those who are already in a precarious situation more vulnerable and open to exploitation. In an earlier intervention, my hon. Friend the Member for Rotherham mentioned the evidence given by Caroline Robinson from Focus on Labour Exploitation, which works directly with

victims of trafficking for labour exploitation and of which I am the trustee along with some Members from other parties.

FLEX has identified three drivers of labour exploitation. The first is the feeling among migrant workers that they deserve less or have fewer rights than UK citizens. The second is a lack of checks on labour standards in the workplace, including everything from health and safety to minimum wage enforcement. The third is a fear of officials, especially of immigration officials. The Bill makes each of those drivers worse, and clause 8 has a particular effect on the first and third factors.

First, on the rights of migrant workers, the clause puts the focus on immigration status as a condition of asserting labour rights. By criminalising the exploited worker, whether they are committing the offence of illegal working or not, they can be treated and threatened by a gangmaster as if they are. On the second driver, we have talked at length about a number of aspects of labour market enforcement. The Bill seems to reflect the Government's desire to move further towards an intelligence-based approach to enforcement. Essential to that intelligence is whistleblowing. We need to ensure that we do nothing in the Bill to discourage exploited workers from coming forward and thereby give gangmasters another card to play. Sadly, the clause risks doing exactly that.

On the third driver of labour exploitation, the problem that we identified earlier—the overlap between labour market enforcement and immigration enforcement—is at the heart of the Bill. The clause gives undocumented workers another reason to be worried. The consequence is that labour exploitation is not rooted out and continues to be a pull factor for migration, which is against the Government's policy objectives.

Mr Bone, I will take your advice. I will not ask the Minister to intervene, but I press him to share evidence from anywhere in the world that shows that the approach of criminalising workers, unlike many other aspects of the Bill with which we agree, assists in the policy objective that he outlined and we share.

Sarah Champion: Will my hon. Friend comment on something else that Caroline Robinson said, which gets to the nub of his point that clause 8 does not meet the Government's objective? She said:

"What we think will prevent people from working here undocumented is to reduce the demand for undocumented workers. To do that, we require enforcement of labour standards across the board. To be clear, the demand for undocumented workers is not because employers prefer undocumented over documented workers; it is because they cannot pay documented workers below minimum wage as easily as they can undocumented workers."—*[Official Report, Immigration Public Bill Committee,* 20 October 2015; c. 28, Q59.]

Paul Blomfield: My hon. Friend will not be surprised to know that I agree. The quotation adds very much to the case that I seek to make; perhaps it makes the point more clearly than I was doing.

I want to move on and talk about international examples. I have challenged the Minister and I am confident that he will come back with examples later. I have challenged him to give comparisons, but let me share one that was shared with me yesterday when I met representatives of the Council of Europe convention on action against trafficking in human beings—GRETA. They shared with me the example of Italy. They had done some work and talked about the amendments made to the Italian Consolidated Immigration Act in 2002, the so-called Bossi Fini law, which was aimed at regulating migrant worker flows by introducing a system of entry quotas, and which was supplemented in 2009 by the criminalisation of irregular entry and stay. Their concern was that the requirements of a formal employment contract in order to obtain a residence permit exposed migrant workers who were already at risk of labour exploitation because of their irregular migration status. They were worried that irregular migrants would be afraid to report cases of exploitation to the authorities because they were concerned about being detained and expelled. The United Nations special rapporteur on trafficking in persons, especially in women and children, reported on the negative consequences of the criminalisation of irregular migration for victims of trafficking.

In response to points made to them by GRETA, the Italian authorities indicated that there were 14 convictions for trafficking in human beings in 2010 and nine in 2011. GRETA was concerned that those conviction rates were very low and urged the Italian authorities to strengthen their efforts to ensure that crimes related to trafficking were proactively investigated and prosecuted promptly and effectively. They asked the Italian authorities to study the implications of their immigration legislation, particularly the offence of illegal entry and stay. As a consequence, in January 2014, the Italian Senate approved Government measures to decriminalise those aspects of illegal immigration. They had recognised that the approach of criminalisation was not only unhelpful and policy-neutral but actively counterproductive.

James Brokenshire: I am interested in what the hon. Gentleman is saying, but does he accept that the approach of immigration enforcement in relation to those who have entered the country illegally and committed an offence is to deport rather than prosecute?

Paul Blomfield: I accept that it is to deport. Clearly, those who are here without rights, having exercised due process to establish whether they have a right to remain, should be deported. There is no disagreement on that, but does the provision of criminalising illegal working in clause 8 assist in that process or not? All the evidence seems to suggest that it will drive people underground, out of sight and make them less likely to whistleblow. That will frustrate the aspirations of the Government, with which we agree, to tackle both illegal working and its exploitation.

James Brokenshire: We have had a wide-ranging debate on clause 8 and the amendment tabled by the hon. and learned Member for Holborn and St Pancras. It is important to take a step back. In all the contributions to date, the focus has been on the victims of trafficking and the effects of it; I will come on to those issues in more detail. There has not been much focus on the impact of illegal working on the rest of the population. For example, an illegal worker in effect takes a job from someone who is here legally—people born in this country, or those who have gone through all the right routes to come to this country.

4 pm

The hon. Member for Glasgow North East made an impassioned contribution about an individual case. I am not familiar with it, obviously, and have to take at face value everything she told me. However, the measure we are debating has equal implications for someone in her constituency who is unemployed and cannot get a job. It is part of a broader strategy that links back to discussions on part 1 of the Bill on labour market enforcement and the role of the director, of enforcement and of doing more and better. There are also the offences that we are coming on to and the separate role of the Gangmasters Licensing Authority and how we can better direct its activity to go after those who are acting inappropriately and contributing to the problem. We need to see things in that broader context of the impact of illegal working on legitimate businesses and those who play by the rules, on wage levels and on the availability of work for British citizens and other lawful residents. It is important to underline that broader context when discussing the intent behind a number of provisions in the Bill, which need to be looked at as a whole, rather than always in isolation.

Sarah Champion: I could have used exactly that point in my argument, because it is the employer who makes the decision whether to employ the legal person or the illegal person. Why are we going after the illegal people when already, under section 24 of the Immigration Act 2014, we have the power to deport them? The Minister has cited other Acts under which we can deport. Why are we not punishing the employer who is wilfully employing illegal workers?

James Brokenshire: The Bill is doing both. It is taking steps in relation to employers and to employees, including with the overall enforcement approach. That is why I put things in that broader context. I will respond later to some of the specific questions on purpose, intent and how things fit in the overall deportation strategy. It is important to contextualise that so that the Committee understands the intent of the Government.

Anne McLaughlin: The argument I was making was not that we should allow people who are not permitted to work in this country to work in this country; my point was that those people are often the most vulnerable. A man who is fit and healthy and in his mid-30s might not appear to be that vulnerable on the face of it, but imprisoning him would not make him less likely to commit the offence—he was left with no choice—nor would it change his situation. My argument was not that it is in some way acceptable for people to lose their jobs because others are working illegally; I was arguing that the imprisonment aspect, the criminalisation, is not necessary and will make no difference.

James Brokenshire: I hear the point that the hon. Lady is making, although I do not want to get into the specifics of the case, as I am not entirely familiar with it, so it would not be appropriate or fair, for her or myself, for me to do so. In many cases, however, there is that choice of leaving the country. She might want to make a broader point about assisted voluntary returns and other means of appropriate removal, but that is the context for my arguments about the purpose of the clause and how it fits with other measures in the Bill to support the approach of discouraging people from coming to this country and to deal with some of the broader impacts of illegal working.

Keir Starmer *rose—*

James Brokenshire: I will give way to the hon. and learned Gentleman, but I hope that the Committee will then allow me to articulate some of the broader issues that will help our debate.

Keir Starmer: I am grateful. The Minister talks about illegal wage undercutting. Professor Metcalf rightly said in his evidence that if more rogue employers were brought to task for exploitation, it would reduce illegal wage undercutting and unlock wealth creation by legitimate business by releasing them from unfair competition from exploitative rivals. We need to bring rogue employers to book for all the reasons that the Minister has set out, but our central point is that if we are to achieve that, it will be important that those who are being exploited feel able to come forward.

The evidence to date is that even for documented individuals, there is a huge problem, which I think is generally accepted. The next proposition—it will be interesting to know whether the Minister disagrees with the proposition—is that while we have a bad situation for documented workers, it is likely to be far worse for undocumented workers. What assurance can the Minister give that the accepted bad situation will not be made worse by these provisions and that, in the end, the goal of bringing more rogue employers to book will not be lost?

James Brokenshire: The hon. and learned Gentleman, perhaps understandably, given his perspective, is fastening on to this issue without looking at the broader context that I outlined. We can have a broader discussion about the national referral mechanism—we had such debates during our consideration of the Modern Slavery Act 2015—and elements that inhibit people from coming forward. More direct control is likely, as the hon. Member for Sheffield Central highlighted, because this is a complex arena. A debt bonder may wish to impose a number of different conditions and restrictions may be put in place. That goes to other issues such as confinement and the challenge of removal, rather than the legal issues that we are highlighting today.

I want to develop a point that I started in interventions on the hon. Member for Sheffield Central. Home Office immigration enforcement's normal response, when it encounters illegal workers with no permission to be here, is to try to remove them from the UK as quickly as possible, which has to be the right approach. Action is also taken against non-compliant employers in the form of civil penalties or prosecution. We will come on to that in the next clause, although a strict liability approach is taken against employers under the civil penalty arrangements, so the prosecution element is added to that. That remains the right approach.

Kate Hollern: Will the Minister give way?

James Brokenshire: If I may, I would like to make a bit of progress.

We are also keen to take action in the Bill to address a genuine gap in the law that currently impedes the Home Office's ability to address the economic incentives behind illegal work and impairs our clear message that those

engaging in such activity should not profit from it. It is already a criminal offence to enter or remain in the UK illegally, as I have highlighted. However, migrants who require permission to be in the UK but do not have it, such as overstayers, may not be committing a separate offence of working illegally if they engage in paid work, including employment and self-employment. That is the gap for overstayers who go on to work. In other words, they have not come into the country illegally, so the courts do not always regard earnings derived from working illegally as the proceeds of crime when considering cash seizure or asset confiscation cases. The new offence tackles for the first time the difficult issue of those in self-employed occupations.

What is important in the context of the Bill is how the offence links to economic incentives and proceeds of crime legislation. As hon. Members will see, there is a specific reference to the Proceeds of Crime Act 2002 in the clause. I would articulate this as focusing on some of the economic benefits that might be derived. We think that there are benefits in how this is framed to assist immigration enforcement officers in their work, because they have identified this specific element in the course of their activities when seeking the removal of people from this country.

Paul Blomfield: It would be helpful if the Minister could tell us how many people fall into the category of those who are working illegally because they are overstayers. I anticipate that the number will be much smaller than the general figures. This is about balancing the impact on one group against the negative impact on another. Will he provide those numbers, both specifically and as a proportion of overall illegal workers?

James Brokenshire: The hon. Gentleman makes an interesting point, but as he will well know, one challenge that we have faced is understanding overstaying, which was why we introduced exit checks at the start of this year to identify more clearly patterns of behaviour, sectors and other elements that are relevant to those who are not overstaying the leave granted to this country. He asks me for information that is not currently held, and it is equally difficult to estimate the size of the population who are working illegally. I am sure that the labour market enforcement director will consider that when he examines the size of the problem in his reports to Ministers, but that does not undercut what immigration enforcement representatives say to me about the gap in the existing legal framework.

We need to ensure that there is an overarching approach on criminal law and, as I have said, there is a criminal aspect of people entering the country illegally. We are creating an additional offence for those who are overstaying, who are not covered by the existing criminal law. That means that they are not subject to proceeds of crime legislation, which is having the negative impact about which we have heard.

I share the concerns of the hon. and learned Member for Holborn and St Pancras about ensuring that an offence is used when circumstances suggest that it is the right approach. However, it is important to remember that individuals with an irregular immigration status will have committed a criminal offence under existing legislation by coming into the UK in the manner that I have described, regardless of whether they are working. Therefore, I do not accept arguments made about how the criminal law, or an extension to it in the form of the offence we are discussing, will make the situation more difficult, as has been suggested. However, there are some important points to which I want to respond, including what the hon. Member for Rotherham said about slavery and existing offences under the Modern Slavery Act 2015. She served on the Modern Slavery Public Bill Committee, so she understands these issues.

Keir Starmer: Will the Minister give way?

James Brokenshire: If I may finish this point, I will be happy to give way to the hon. and learned Gentleman.

The provisions of the Modern Slavery Act aim to encourage victims of modern slavery to come forward and give evidence, and to provide them with the confidence to do so, without fear of being inappropriately prosecuted or convicted. However, section 45 was carefully drawn to avoid inadvertently creating a loophole through which serious criminals could avoid justice, such as if they had been a trafficking victim at one point, but eventually became a member of an organised crime group and, motivated by profit, victimised others. There is always a balance to be struck, as was the case when framing the defence under section 45, and that balance applies to the defences that will operate under the Bill. This issue needs to be seen in that context.

As the hon. Member for Rotherham will understand—I know the hon. and learned Member for Holborn and St Pancras understands this, given his experience—the statutory defence acts as an additional protection on top of guidance from the Director of Public Prosecutions on whether prosecution is in the public interest. It is also in a court's powers to stop an inappropriate prosecution for abuse of process. Although we need to think about the relevant section of the Modern Slavery Act, it is also important to bear in mind the DPP's guidance. The normal decisions that the Crown Prosecution Service takes are equally relevant to these issues.

I said that I would give way to the hon. Member for Blackburn, so I will; I apologise for not doing so sooner.

4.15 pm

Kate Hollern: On economic stability and the creation of unfair competition through what is, to my mind, exploitation, I find it difficult to understand why the penalty for an employee is much harder than that for an employer. We would presume that an employer would be more aware of rules and regulations in this country, yet they have a get out: they did not know or have "reasonable cause to believe". The balance needs to be shifted and more onus should be put on the employer who is exploiting people to the detriment of other businesses within the same field. At the same time, we are criminalising people who, whether here illegally or because of a process of right to stay, will probably be unaware of their situation, and certainly—

The Chair: Order. I apologise for interrupting the hon. Lady, but either I am getting more tired or the interventions are getting longer—perhaps it is a combination of the two. She is making a perfectly fair point, but it might be better if she tries to catch my eye later as her intervention was veering towards a speech.

James Brokenshire: As I have said, the primary response will be to seek to remove people from the UK. We judge that the offence will be helpful in particularly serious cases in which there may be aspects of culpability or links to organised crime, so it gives us an important additional mechanism. Given that the hon. Lady wants additional sanctions against and more punishment of employers, I hope she will welcome clause 9(2), which provides for an increase in the punishment for employers.

Keir Starmer: I have two quick points. As I understand it, the Minister is saying that for the vast majority of cases in which other offences have been committed, the policy will remain as deportation rather than prosecution—that is a pretty long-standing position. For that class of individuals, the Bill therefore adds absolutely nothing, except to the unlikelihood of people coming forward. The new offence is in fact designed to tackle a smaller number of individuals—the numbers are unknown—who might not fit within that category of "deport not prosecute", so as to get to any proceeds. The new offence is being introduced to crack that particular nut. My second point—

The Chair: Order. As we are trying to do this properly through interventions, why not sit down for a minute and then you can intervene again with your second point?

James Brokenshire: To respond to the point on proceeds of crime, the Government are committed to taking robust action to prevent illegal working. In our judgment, the current situation encourages illegal migrants to come to the UK, and those who are already here to overstay their leave and remain in the UK. We are clear that working without permission should be an offence that has consequences for an immigrant's earnings. It is unfair if firms are undercutting their competitors through exploitation and the use of illegal labour. The Government will have the ability to seize cash sums and, as the hon. and learned Gentleman will know from other provisions of the Bill, that may have implications for bank accounts. The way in which powers could be used operationally in various contexts is a thread that goes through the Bill. Some of the unlawful proceeds that are being derived can be actioned through various mechanisms in the Bill.

It is important that we are closing a gap and sending out a clear message on the implications of illegal working. I underline the core element behind the Government's focus, which is to deport and remove those with no entitlement to be here.

Keir Starmer: I want to move on to the question of defences and the guidance that the Director of Public Prosecutions may issue. I am not concerned about the defence under the Modern Slavery Act—we had that exchange earlier and I understand the position—but the wider point of when that defence is unavailable. There is no defence of reasonable excuse in the Bill, so the individual in the example I cited earlier, who may not know that their leave to remain has ceased to have effect but therefore becomes a criminal, has no escape route. Does the Minister accept that in such circumstances it is not right to leave it to the DPP's discretion? In other words, should not the DPP's discretion be exercised according to the known offence and known defences? If there is a case for a defence, that ought to be in the Bill, rather than left to the discretion of the DPP. That is not to suggest that discretion does not operate in many cases, but if there is a proper case for having a defence, it ought to be for Parliament to write that into the Bill and then for the DPP to exercise discretion as to how it operates in individual cases. The alternative is the DPP effectively introducing a back-door defence, which has not been thought to be an appropriate use of guidelines.

James Brokenshire: First and foremost, I underline the point that, for those who are in the country unlawfully, the priority will be to see that they are removed. That is the first line of approach that immigration enforcement would take. Secondly, the use of the DPP's guidance makes it clear that it is generally not in the public interest to prosecute an adult victim of slavery or trafficking where the crime they committed was a direct consequence of their slavery or trafficking situation and they were compelled to commit the crime.

A wide debate took place prior to the Modern Slavery Act as to whether that was sufficient in its own right or whether additional provisions were required. There was an extended debate between the non-governmental organisations, the DPP, the Crown Prosecution Service and policing. On balance, it was judged that the further defence provided in section 45 was appropriate. However, guidance can be provided on what is in the best interests of justice in that determination. Clearly, this will be a matter for individual cases, but, as I have already indicated, the primary approach that we want to take in respect of people who are here unlawfully is to see that they are removed.

The offence is to strengthen the message that the Government and the country send. Also, we want a method of dealing with serious or significant cases where an individual may be seeking to absolutely frustrate the system. The offence can be seen as an appropriate and effective tool in the work of immigration and enforcement in conducting their work. I suspect there will be a point of difference between us on that and it may be for the Committee to express its view on the issues, rather than to try to suggest there is not a difference of opinion when there is.

All victims, regardless of their involvement in criminal activity, are entitled to the same level of protection and support through the national referral mechanism and are assessed against exactly the same criteria. Support is tailored to each individual's need and can include accommodation or outreach support and access to medical, legal and psychological support. As many hon. Members will know, the Government fund the Salvation Army to provide that service through a network of specialist charities across England and Wales.

On the point about whether the measures will strengthen the hands of the exploitative employer, as has been postulated, that is precisely why we are taking tougher action in the rest of the Bill against employers who exploit illegal labour. We are changing the knowledge base required in relation to the subsequent offence, as well as strengthening the approach to enforcement through the creation of the new role of director of labour market enforcement. Where employers repeatedly flout the law, we propose to use new powers to close their business premises and apply special measures as directed by the courts. Again, it is about the broad context.

I know that traffickers and those involved in such criminality are insidious in some of the techniques that they use. They use a wide range of techniques to exploit their victims, including debt bondage, physical force or threats to put victims in fear. There is no way entirely to stop traffickers misleading victims about what will happen if they come forward; they will often use such direct tactics to intimidate. The Government are making identifying and protecting victims of modern slavery, and giving them the confidence to come forward, fundamental to our modern slavery strategy.

That is why the Modern Slavery Act introduced the new statutory defence for victims who commit crimes due to their exploitation. Last year, the Home Office set up a modern slavery helpline and website and ran a national television campaign, with which many people will be familiar, to reach out to victims and encourage the public to report suspected modern slavery. In many cases, it is happening under our noses, in our communities and across our country.

As I have consistently said during my involvement in the initial preparation of the Bill, we must shine a light into those dark places, to see what is there in plain sight but is somehow unseen by us. That is the reason for the practical implementation of the Modern Slavery Act and the work that we are doing through a number of measures through the commissioner. It is about raising awareness and knowledge within law enforcement, so that the signs of slavery can be spotted and victims given the support that they need. That includes setting up specialist teams at the border to identify and protect victims when they enter or leave the UK. We are taking a multi-faceted approach in a way that has not been undertaken before. That is not a partisan view; good work has been done across the House on confronting modern slavery, and I welcome the contribution made to that work by numerous Members over an extended period.

Because of all that complexity and the elements that I have highlighted, I am simply not persuaded that the proposals make the situation worse in the manner postulated. As has been said, it is often those with the right to be in this country who are held here and kept in appalling conditions. We want to shine a light on those dark places from which they cannot escape, often physically, due to the manner in which they have been enslaved. That is precisely the reason for raising understanding in law enforcement and more generally across the population of this country, in order to deal with these issues when they become apparent. I know that I should refer to the contribution that you have made over a number of years, Mr Bone, to get us to a position in which we can have this debate with much greater understanding of the issues concerned. It is significant.

I see the issue in the broader context of what we are seeking to achieve in the Bill in terms of dealing with labour market exploitation, but I do not see that as inconsistent with the important work that we have done and will continue to do to confront slavery, traffickers and exploitation, and to go after those causing human misery in our country. I am proud to be part of a Government who take these issues seriously and are seeking to make a difference in that way.

The Chair: Kate Hollern, would you like to say something now, as I have rather rudely cut you off?

Kate Hollern: No, thank you.

Keir Starmer: In the light of the fact that we have discussed the clause and the amendment together, I do not feel the need to add anything on the amendment, save to say that we will press it to a vote.

4.30 pm

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 2]

AYES

Blomfield, Paul	McLaughlin, Anne
Champion, Sarah	Newlands, Gavin
Hayman, Sue	
Hollern, Kate	Starmer, Keir

NOES

Brokenshire, rh James	Harris, Rebecca
Buckland, Robert	Hoare, Simon
Davies, Byron	Tolhurst, Kelly
Davies, Mims	Whittaker, Craig
Elphicke, Charlie	

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 7.

Division No. 3]

AYES

Brokenshire, rh James	Harris, Rebecca
Buckland, Robert	Hoare, Simon
Davies, Byron	Tolhurst, Kelly
Davies, Mims	Whittaker, Craig
Elphicke, Charlie	

NOES

Blomfield, Paul	McLaughlin, Anne
Champion, Sarah	Newlands, Gavin
Hayman, Sue	
Hollern, Kate	Starmer, Keir

Question accordingly agreed to.

Clause 8 ordered to stand part of the Bill.

Clause 9

Offence of employing illegal worker

Keir Starmer: I beg to move amendment 67, in clause 9, page 7, line 6, leave out subsection 1 and insert—

"(1) In section 21 of the Immigration, Asylum and Nationality Act 2006 (offence of knowingly employing an illegal worker), delete subsection (1) and substitute—

(1) A person commits an offence if he knowingly or recklessly employs an adult subject to immigration control, where—

(a) this adult has not been granted leave to enter or remain in the United Kingdom, or

(b) this adult's leave to enter or remain in the United Kingdom—

(i) is invalid,

(ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or

(iii) is subject to a condition preventing him from accepting the employment."

To adopt a test of recklessness rather than negligence for the offence of employing an illegal worker, so as to avoid discriminatory employment practices by employers.

I can be relatively brief. The extension of the offence has been advanced on the basis of the need to deal with repeat offenders, but there is nothing in the Bill that requires an offender to have already offended before the new test is applied. Therefore, it is applied more generally. In our submission the right approach is to move to a position of recklessness rather than negligence for fear of the default position of employers, which could be discriminatory in its effect.

James Brokenshire: As the hon. and learned Gentleman says, the amendment seeks to avoid discriminatory practices by employers through adopting a test of recklessness for the offence of employing an illegal worker. The Government's intention of using the "reasonable cause to believe" test is to make the current test more objective and easier to prove. It is intended to capture those employers who have wilfully turned a blind eye to someone's immigration status.

It must be emphasised that the test of "reasonable cause to believe" is not the same as negligence, as the hon. and learned Member for Holborn and St Pancras will well understand. The intention is to continue to apply the civil penalty sanction to those employers who are simply negligent; that is to say, those employers who act without reasonable care and skill in terms of not checking a person's right to work, or not doing so correctly.

We judge that introducing a test of recklessness would not assist in increasing the number of prosecutions of those employers who flout the rules on illegal working. It would remain a subjective test and would require proof that the employer foresaw a risk that the person had no right to work, yet went on to take that risk and employ them. It is precisely the difficulties in establishing the state of mind of the employer that the Government are seeking to address in the Bill, by introducing an objective element to the test. Having "reasonable cause to believe" will capture circumstances in which an employer wilfully turns a blind eye to anything that would give them reasonable grounds to believe that the employee has no right to work.

In addition to being more difficult to prove, a test of recklessness would also potentially go too wide and be more likely to lead to discriminatory behaviour, which the amendment seeks to avoid. In our judgment, the Bill's test that the cause to believe must be a "reasonable" one strikes the right balance between making the offence easier to prove and guarding against discriminatory behaviour.

I do not believe that the test of "reasonable cause to believe" will encourage further discriminatory behaviour on the part of employers, because they are already required to undertake prescribed right to work checks to establish a statutory excuse in the event of illegal working. That does not change.

The Secretary of State has published a statutory code of practice on avoiding discrimination while preventing illegal working. If an employer is simply negligent, they will be dealt with under the civil penalty scheme. What we are changing is our ability to prosecute those employers who choose not to undertake the necessary checks because they have reasonable grounds to believe that such checks will reveal that the employee has no right to work. That is in addition to our intention to continue to prosecute those we can show actually know that someone has no right to work— which is where we largely sit currently—as we can do now under the current wording of the offence. Obviously, however, it inhibits and limits that sense of having to prove the knowledge of the employer in those circumstances. That is why the change has been brought forward.

Having given that explanation, I hope that the hon. and learned Gentleman will feel able to withdraw his amendment.

Keir Starmer: I am grateful to the Minister for that explanation and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

James Brokenshire: As part of our drive against illegal working in the UK, the Government intend to toughen their approach to employers who deliberately, cynically or systematically use illegal workers. The Immigration, Asylum and Nationality Act 2006 introduced a civil penalty scheme, under which employers of illegal workers may be liable for a civil penalty of up to £20,000 per worker. That remains the principal means of dealing with cases of non-compliance by businesses that negligently employ illegal workers. In 2014-15, 1,974 civil penalties were issued to employers, with a total value of £29.6 million.

The 2006 Act also introduced a criminal offence of knowingly employing an illegal worker, which provides the appropriate response to those employers who deliberately flout the law. The Government believe that we continue to need both the penalty scheme and the facility to prosecute in order to provide a comprehensive and appropriate response to the whole spectrum of employer non-compliance. However, we have concluded that we should take action in this Bill to strengthen the capability to prosecute where employer non-compliance goes beyond negligence or error.

Some employers are deliberately not checking whether their employees have the right to work. They routinely choose not to know, and so cannot be found to be knowingly employing an illegal worker. The new offence will also capture those employers who should have known that the employment was illegal. In addition, some employers are dissolving their businesses and simply creating a new business, in order to evade civil penalties for illegal working. In such circumstances, it is appropriate to hold an individual employer personally to account in their capacity as a company officer, and that can be done by prosecuting the individual for committing a criminal offence. Clause 9 amends the criminal sanction in the 2006 Act to make it easier to bring prosecutions successfully and to increase the maximum custodial sentence that a Crown court may impose.

Anne McLaughlin: Is the Minister not concerned that making it easier to bring about prosecutions and prove negligence will mean that employers are much more fearful of employing someone who, to them, does not sound, look or seem British? My fear is that people who genuinely intend to do the right thing will steer clear of employing anyone who does not appear to be British because they will be frightened of being prosecuted. They will be taking a big risk.

James Brokenshire: That is why I made the point about negligence and how that is dealt with under the civil penalty regime but not the criminal provisions that I explained earlier. That feeds back into the debate we have had in respect of the bar that needs to be set for bringing prosecutions. That is why I made the comments I did in the previous debate about discrimination. The most serious cases involving the exploitation of illegal labour will continue to be dealt with under legislation that prohibits facilitation and trafficking. It is important to make that point in the broader context of the provision.

Subsection (1) amends section 21(1) of the 2006 Act by inserting, after "knowing",

"or having reasonable cause to believe".

That is the test. It is not negligence. The effect is to amend what is known as the mens rea, the knowledge or intention needed to make out the offence, in order to make the test more objective and the offence easier to prove, but still with that safeguard.

Kate Hollern: My understanding is that for an employer to take on an employee the latter needs a national insurance number. Would that not automatically say that someone had the right to be here?

James Brokenshire: It is rather that the employer has to show the right-to-work check, which is what the provision relates to. There is certain documentation with which employers should be familiar. We still work on the basis of trying to raise awareness of the issues. We are not trying deliberately to catch out employers. I certainly want employers to know the relatively simple steps they have to take to comply. The obligation was introduced into law in 2006, when the civil penalty scheme was put in place by the Labour Government. That is, therefore, what needs to be shown and it is why the negligence piece sits within the civil penalty regime.

The amendment to the definition of the offence—having reasonable cause to believe—is for those who close their eyes and put their fingers in their ears so that they cannot be liable, trying to get around the existing knowledge requirement of the Act. Those employers are, frankly, trying to play the system, and we are making the changes because of the problems that the pre-existing offence presented for our ability to bring prosecutions. I think that hon. Members would want us to be able to bring prosecutions in such circumstances.

Sarah Champion: Building on what the Minister said in response to my hon. Friend, what would be a reasonable defence for an employer?

James Brokenshire: It will depend on the circumstances. It is about the distinction between negligence and having reasonable cause to believe. The legal tests are slightly different, and I do not want to hasten into issues of law as I am sure that the hon. and learned Member for Holborn and St Pancras will be well enough equipped with his knowledge and expertise in those matters to be able to underline the distinction, as will the Solicitor General. I will not hasten to stray into matters of law with such august representatives in the room.

At the moment, if a document that looks legitimate and real is presented to someone, that is often a defence in relation to the negligence argument. The employer has not been negligent. They have checked. We are not trying to make employers, or landlords—we will come on to them, I am sure, under the right to rent—into some sort of extension of immigration enforcement teams. If it is shown that the basic checks have been conducted in good faith, the civil penalty regime would not apply, even on the test of negligence—let alone the criminal sanction in clause 9. On that basis, the measure is an important step forward and fits within the broader enforcement strategy. I hope the clause will stand part of the Bill.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10

Licensing Act 2003: amendments relating to illegal working

Question proposed, That the clause stand part of the Bill.

4.45 pm

James Brokenshire: With clause 10 and schedule 1, we move on to a slightly different provision. We will come to amendments to schedule 1 in the next group. Clause 10 deals with amendments to the Licensing Act 2003 that relate to illegal working. Home Office immigration enforcement officers frequently encounter illegal migrants in premises involved in the sale of alcohol and late-night refreshments. It is clear, on the basis of intelligence, that this is a high-risk sector for illegal working. Accordingly, we want to adapt the licensing regime to prevent illegal working in the sector.

Clause 10 and schedule 1 will prevent illegal migrants and those whose status does not permit them to work here from holding premises and personal licences. They provide a mechanism for the Home Office to object to the issue of such licences when it considers that necessary to prevent illegal working. Immigration officers are provided with the same power to enter a premises as licensing enforcement officers, for the sole purpose of checking whether immigration offences are being committed in connection with a licensable activity—namely, selling alcohol or providing late-night refreshment.

Clause 10 gives effect to schedule 1, which amends the Licensing Act 2003. The Licensing Act applies to England and Wales. We are consulting Northern Ireland and Scotland with a view to making similar amendments to their legislation in the Bill or, if that is not possible, in regulations, for which provision is made in the clause.

The provision links to schedule 1, on which some technical amendments will be moved. I will sit down at this point and move on to schedule 1 when we discuss the next group of amendments. The provisions are interlinked but I am conscious of the separation between them.

Gavin Newlands (Paisley and Renfrewshire North) (SNP): The clause and schedule pertain to the Licensing Act 2003, which is England and Wales legislation, but clause 10(2) empowers the Secretary of State to implement, by regulation, similar changes to Scotland. That is completely unacceptable and goes against the spirit of devolution and the Sewel convention. I am sure that the Minister will argue that it pertains to immigration, which is reserved, but it obviously has a big impact on a devolved matter.

Powers that ride roughshod over primary legislation—whether that is here in Westminster or at Holyrood in Edinburgh—without proper scrutiny by elected Members should be used very sparingly. The measure should be dealt with in primary legislation subject to debate prior to a legislative consent motion. The Government state that a significant proportion of illegal working happens on licensed premises where there is the sale of alcohol and late-night refreshment or the provision of entertainment. I have previously received an answer from the Minister, which confirms that the UK Government have no evidence that suggests that takeaways and off-licences are far more likely to employ illegal migrants compared to other businesses. That rather highlights the lack of evidence base for this part of the Bill. Surely, the starting point for any legislation is the requirement of evidence. To use hearsay or assertion in supporting this or any other legislation makes for neither good politics nor good law. Even if Members accept the premise of the proposal, the very need for this part of the Bill is called into question by John Miley, the chair of the National Association of Licensing and Enforcement Officers, who stated:

"Generally speaking, licensing authorities do not work in silos. They work in the broader scheme of things, and work with the police and the Security Industry Authority and more generally with immigration. Good work is currently going on in quite a lot of cases."—*[Official Report, Immigration Public Bill Committee,* 20 October 2015; c. 32, Q67.]

The most concerning thing about the provision is the new power whereby an immigration officer

who has

"reason to believe that any premises are being used for a licensable activity"

can enter the premises

"with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of the activity."

That terminology is a big concern to my colleagues and me. As framed, it gives immigration officers a very wide power to search any licensed premises. Home Office statistics show that an alarming number of offences pertain to small businesses that serve ethnic cuisines and are therefore likely to be run by ethnic minority owners. Is that because they are the gravest offenders or because they are searched most frequently? Will the same be true of licensed premises? The Migrant Rights Network states:

"These are small businesses who will be less able to deal with the additional burden of carrying out and recording frequent and complex immigration checks."

The Secretary of State is given an additional power, as she can object to the granting of the licence, and that is to be taken into account by the licensing authority. Again, that is a completely devolved area and highlights the need for further reflection by the Government. Unlike other sections of the Bill, the Home Secretary is given leave to appeal against the granting of a licence or refusal to cancel a licence despite her objection. This is additional bureaucracy that most businesses will not welcome and that is surely not in keeping with a long-term economic plan.

Restaurants and bars—especially those serving ethnic cuisines—feature heavily on the list of those given civil penalties for employing illegal workers. Is that because they employ illegal workers more frequently than other employers or because they are targeted more frequently for enforcement activity? If it is the latter, can the Minister tell us why?

In concluding, I should point out to the Committee that if the clause is passed, we will table further amendments on Report to remove the power to extend the provision to Scotland through regulations.

James Brokenshire: As I have indicated, there are ongoing discussions with the Scottish Government about the impact of the clause and the potential for regulations. While the hon. Member for Paisley and Renfrewshire North and I were in agreement this morning, this may be a point on which we are not of the same view.

As the underlying purpose of the clause relates to immigration, our view is that a legislative consent motion is not required. We are in the process of consulting the Scottish Government on any necessary amendments to make provision for Scotland on the face of the Bill, and similarly for Northern Ireland. Management information for 2014-15 highlighted a number of operations from immigration enforcement in Scotland.

The hon. Gentleman asked me for evidence of why we think this is an important area to legislate on by building a mechanism into the licensing provisions—evidence of people with no status in the UK being captured within those sanctions and mechanisms. Of all civil penalties served in the year to June 2015, I am advised that 82% were served on the retail industry or hotel, restaurant and leisure industry, a large proportion of which hold premises or personal alcohol licences. That is why we see this as an issue affecting a particular sector. In building the legislative framework, it seems appropriate to strengthen the mechanisms available and to build the provisions in the Licensing Act and the potential sanctions in this way.

I appreciate the points that the hon. Gentleman makes and the different view he holds, but it is for the purposes I outlined that we view this as a reserved matter and are taking this stance. I assure him that discussions continue with the Scottish Government on how this may be applied within Scotland.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 4]

AYES

Brokenshire, rh James	Harris, Rebecca
Buckland, Robert	Hoare, Simon
Davies, Byron	Tolhurst, Kelly
Davies, Mims	Whittaker, Craig
Elphicke, Charlie	

NOES

McLaughlin, Anne	Newlands, Gavin

Question accordingly agreed to.

Clause 10 ordered to stand part of the Bill.

Schedule 1

LICENSING ACT 2003: AMENDMENTS RELATING TO ILLEGAL WORKING

James Brokenshire: I beg to move amendment 1, in schedule 1, page 49, line 38, leave out sub-paragraph (6) and insert—

'( ) After subsection (5) insert—

(5A) Where an interim authority notice is cancelled under subsection (3)(b)(ii), the licensing authority must also give a copy of the notice under subsection (4) to the Secretary of State.'"

This amendment requires a licensing authority to notify the Secretary of State of its decision to cancel an interim authority notice where the Secretary of State has given notice under section 48(2B) of the Licensing Act 2003 that granting the interim authority notice would be prejudicial to the prevention of illegal working.

The Chair: With this it will be convenient to discuss Government amendments 2 to 10.

James Brokenshire: These minor and technical amendments strengthen and clarify the amendments made by schedule 1 of the Bill to the Licensing Act 2003. The amendments to that Act in general build in additional protections against illegal working in the licensing regime governing the sale of alcohol and late-night refreshments. The amendments must be considered within the context of clause 10 and schedule 1 to the Bill.

Amendment 1 requires a licensing authority to notify the Secretary of State—in effect, the Home Secretary—if the licensing authority decides to cancel an interim authority notice where the Secretary of State had notified the licensing authority that failing to cancel the interim authority notice would be prejudicial to the prevention of illegal working.

Amendment 2 ensures that a chief officer of police may take into account whether an immigration civil penalty, for employing an illegal worker or renting a dwelling to an illegal migrant, would undermine the crime prevention objective when considering whether to object to a personal licence application.

Amendment 3 makes a similar provision to amendment 2 where the chief officer of police is notified, after a personal licence has been granted, that the licence holder was required to pay an immigration penalty in the period between the application being made and its being granted.

Amendments 4, 5 and 6 substitute "licence holder" for "applicant", so that they are consistent with the other amendments to section 124 of the 2003 Act.

Amendment 7 requires a licensing authority to notify the Secretary of State of its decision whether or not to revoke a personal licence where the Secretary of State has served an immigration objection notice under section 124(3B) of the 2003 Act.

Amendment 8 makes consequential amendments to section 10 of the 2003 Act and amendment 9 makes consequential amendments to sections 109 and 111 of the Police Reform and Social Responsibility Act 2011.

Amendment 10 makes transitional provisions, so that the amendments to sections 13, 16, 42, 47 and 120 of the 2003 Act do not apply in relation to applications made, or interim authority notices given, before the commencement of the respective paragraph of schedule 1.

Keir Starmer: On a point of clarification in relation to proposed new section 179(1A) of the Licensing Act 2003, as inserted by paragraph 22(2) of schedule 1, I want to ask the Minister an open question. Why is the test there for an immigration officer to enter premises that they have "reason to believe" the premises are being used, rather than, as I think is the case elsewhere in the Bill, that they have "reasonable grounds" to believe that? It may to be align the Bill with other licensing legislation, but on the face of it, that is a much lower threshold than the usual threshold for entering premises, and it is with a view to seeing whether an offence is being committed. This is a genuine, if probing, question.

James Brokenshire: I think the amendments are being made on the basis of consistency with other legislation. However, in the spirit in which the hon. and learned Gentleman raised that issue, I will have a look at that point of detail in relation to previous legislation and how this is framed in some of the other tests that are being applied. If there is an issue, I will come back to him.

Amendment agreed to.

Amendments made: 2, in schedule 1, page 51, line 27, at end insert—

'( ) In subsection (5)—

(a) omit the "and" at the end of paragraph (a);

(b) at the end of paragraph (b) insert "and

(c) the applicant having been required to pay any immigration penalty,"."

This amendment ensures that a chief officer of police may have regard to an applicant being required to pay an immigration penalty when considering whether granting a personal licence would undermine the crime prevention objective.

Amendment 3, in schedule 1, page 53, line 11, leave out sub-paragraph (3) and insert—

'( ) In subsection (3)—

(a) in paragraph (a)—

(i) for "applicant" substitute "licence holder";

(ii) for ", and" substitute "which occurred before the end of the application period,";

(a) in paragraph (b), after "relevant offence" insert "and which occurred before the end of the application period";

(b) at the end of paragraph (b) insert "and

(c) the licence holder having been required before the end of the application period to pay any immigration penalty,";

(c) in the words after paragraph (b), omit "which occurred before the end of the application period,"."

See the explanatory statement for amendment 2.

Amendment 4, in schedule 1, page 53, line 20, leave out "applicant" and insert "licence holder"

This amendment and amendments 5 and 6 substitute "licence holder" for "applicant" to be consistent with the other amendments to section 124 of the Licensing Act 2003.

Amendment 5, in schedule 1, page 53, line 22, leave out "applicant" and insert "licence holder"

See the explanatory statement for amendment 4.

Amendment 6, in schedule 1, page 53, line 26, leave out "applicant" and insert "licence holder"

See the explanatory statement for amendment 4.

Amendment 7, in schedule 1, page 54, line 7, leave out sub-paragraph (6) and insert—

'( ) After subsection (5) insert—

(5A) Where the authority revokes or decides not to revoke a licence under subsection (4)(b)(ii) it must also notify the Secretary of State of the decision and its reasons for making it.""

This amendment requires a licensing authority to notify the Secretary of State of its decision whether or not to revoke a personal licence where the Secretary of State has served an immigration objection notice under section 124(3B) of the Licensing Act 2003.

Amendment 8, in schedule 1, page 56, line 24, at end insert—

In section 10 of the Licensing Act 2003, (sub-delegation of functions by licensing committee etc), in subsection (4)(a), in sub-paragraphs (v), (vi) and (x), omit "police"."

This amendment makes consequential amendments to section 10 of the Licensing Act 2003.

Amendment 9, in schedule 1, page 57, line 17, at end insert—

In the Police Reform and Social Responsibility Act 2011, omit sections 109(9) and (10) and 111(3) and (5)."

This amendment makes consequential amendments to sections 109 and 111 of the Police Reform and Social Responsibility Act 2011.

Amendment 10, in schedule 1, page 57, line 19, at end insert—

The amendments of sections 13, 16, 42, 47 and 120 of the Licensing Act 2003 made by paragraphs 3, 4, 6, 9 and 15 respectively of this Schedule do not apply in relation to applications made, or interim authority notices given, before the coming into force of the respective paragraph." *—(James Brokenshire.)*

This amendment makes transitional provision to the effect that the amendments to sections 13, 16, 42, 47 and 120 of the Licensing Act 2003 do not apply in relation to applications made, or interim authority notices given, before the coming into force of the respective paragraph of Schedule 1 making the amendment.

Ordered, That further consideration be now adjourned.*—(Charlie Elphicke.)*

5 pm

Adjourned till Thursday 29 October at half-past Eleven o'clock.

Written evidence reported to the House

IB 12 Tai Pawb (housing for all)

IB 13 Country Land & Business Association (CLA)

IB 14 A Immigration Law Practitioners' Association (ILPA) further submission

IB 14 B Immigration Law Practitioners' Association (ILPA) (Part 2)

IB 14 C Immigration Law Practitioners' Association (ILPA) (Part 3)

IB 15 Women for Refugee Women

IB 16 Detention Action

IB 17 Royal College of Nursing

IB 18 Housing Law Practitioners Association

IB 19 British Red Cross

IB 20 Amnesty International UK

IB 21 TUC