

PARLIAMENTARY DEBATES

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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

IMMIGRATION BILL

Fifth Sitting

Tuesday 27 October 2015

(Morning)

CONTENTS

CLAUSE 1 agreed to.

CLAUSE 2 under consideration when the Committee adjourned till this day
at Two o'clock.

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chairs: † MR PETER BONE, ALBERT OWEN

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

Public Bill Committee

Tuesday 27 October 2015

(Morning)

[MR PETER BONE *in the Chair*]

Immigration Bill

9.30 am

The Chair: We now begin line-by-line consideration of the Bill. May I congratulate members of the Committee on how enthusiastically they took part in the evidence sessions.

Before we begin, I remind Members that they may remove their jackets during Committee sittings. Everyone should also ensure that all electronic devices are switched off or to silent mode. Tea and coffee are not allowed in our sittings.

The selection list for today's sitting is available in the room. It shows how the selected amendments have been grouped for debate. Grouped amendments are generally on the same or a similar issue. The Member who puts their name to the lead amendment in the group is called first. Other Members are then free to catch my eye to speak on all or any of the amendments in the group. A Member may speak more than once in a debate.

I work on the assumption that the Minister wishes the Committee to reach a decision on all Government amendments. Decisions on amendments take place not in the order in which they are debated but in the order in which they appear on the amendment paper. In other words, debate occurs according to the selection and grouping, and decisions are taken when we reach the clause that the amendment affects. Therefore, Members sometimes debate things and think they are going to vote on them then, but they vote on them later. I hope that that explanation is helpful.

I will use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules following debate on the relevant amendments.

Clause 1

DIRECTOR OF LABOUR MARKET ENFORCEMENT

Keir Starmer (Holborn and St Pancras) (Lab): I beg to move amendment 55, in clause 1, page 1, line 6, after subsection (1) insert—

‘(1A) The primary purpose of the Director of Labour Market Enforcement is to secure the enforcement of labour market legislation, as defined in Section 3(3) of this Act.’

To ensure that the functions of the Director of Labour Market Enforcement are exercised for the purpose of protecting those vulnerable to labour market exploitation and to make this explicit on the face of the Bill.

I preface my remarks on amendment 55 by indicating that Labour supports a director of labour market enforcement, provided that the purpose of the director is effective enforcement of labour standards and that the relevant agencies are properly resourced to that end.

That is the in principle position. With that, there should be no overlap with or merging into inspectorate or immigration enforcement functions. Part of the Bill and the Government's associated consultation document suggests that the role is a director of labour market enforcement in name but not in design. The aim of amendment 55 is to resolve that issue.

The purpose of the amendment is to ensure that the functions of the director of labour market enforcement are exercised for the purpose of protecting those vulnerable to labour market exploitation and to make that explicit in the Bill. I will not go through the wording unless that is necessary. It is proposed that the director will report to the Home Secretary and to the Secretary of State for Business, Innovation and Skills. That is welcome, but the position is being created via an Immigration Bill sponsored by the Home Office. Therefore, that concern, and particularly the overlap between immigration enforcement and labour market enforcement, gives rise to the amendment.

Immigration enforcement threatens the success of labour inspection. A better approach to reducing illegal working is effectively to enforce labour standards, thereby reducing the demand for illegal workers, who are more vulnerable to being exploited due to their irregular immigration status. The OSCE has said:

“A rising challenge to effective labour inspection is an increasingly widespread imposition of measures that compel labour inspectors to conduct immigration enforcement activity as part of their workplace inspection agenda.”

That is the concern that we have about the Bill—hence, amendment 55.

The International Labour Organisation said:

“the primary duty of labour inspectors is to protect workers and not to enforce immigration law.”

Other countries have experienced the dangers of merging those two functions. For example, research in the Netherlands shows that dual labour inspection priorities to identify, on the one hand, undocumented workers, and, on the other hand, victims of trafficking have negative impacts on the uncovering of trafficking cases. There are two reasons for that. One is that victims of trafficking are too scared to come forward and the second is that labour inspectors fail to identify them. In the Dutch research, there is a classic example of that, involving an individual who was trafficked into commercial cleaning in the Netherlands. Labour inspectors came to his workplace on many occasions, but he did not come forward; in fact, he claimed not to work in the establishment rather than come forward and be identified as an employee. For that reason, he was missed by the inspectors. As I say, this is a classic example of its type.

It is not just in the Netherlands where there is such evidence. In the USA, there is now a memorandum of understanding between the Department of Labor and the Department of Homeland Security, the purpose of which is to ensure that immigration control does not interfere with the protection of workers' rights. For example, when the Wages and Hours Directorate investigates a case of unpaid wages, its officials must not ask for immigration documents. So there is a clear separation of roles, and the fact that workers' rights are protected in the USA regardless of immigration status prevents retaliation and intimidation by employers, who could otherwise threaten to report undocumented workers if they exercised their labour rights. Our position is that in order to tackle labour exploitation effectively, there

must be a strict firewall between immigration control and labour inspection. That offers the best prospect of success for this director of labour market enforcement.

We have some questions for the Minister, and I will just run quickly through them; he may be able to pick up on them in his remarks. First, how will the director of labour market enforcement prioritise non-compliance in the labour market when non-compliance constitutes a range of offences in relation to requirements set out under the labour market legislation, and what assurances are in place to ensure that the work of the director will prioritise the protection of vulnerable workers from abuse and exploitation? Secondly, what overlap will the director's consideration of non-compliance have with the work of the Home Office to control immigration and identify undocumented workers? Thirdly, what is the intended overlap between the twin aims of tackling the undercutting of British workers by undocumented workers and addressing worker exploitation, and how does the Minister see those two aims being achieved in union?

I have set out the principal reasons why we have tabled the amendment. It may be helpful at this stage, Mr Bone, if I indicate that although we will not push a number of amendments to a vote, we will push this one to a vote. I hope that is helpful.

Mrs Emma Lewell-Buck (South Shields) (Lab): It is a pleasure to serve under your chairmanship, Mr Bone.

I will speak briefly about amendment 55, which has the modest aim of making it explicit that the new director of labour market enforcement should have a duty to stand up for those who are at risk of exploitation. This amendment has been tabled because Labour Members believe that if such a position is going to exist, whoever holds it should be responsible for enforcing all aspects of labour market law and not just some of them.

If they accept this amendment, the Government will signal that part 1 of the Bill is truly about improving labour market enforcement and not simply about grabbing headlines to bolster their credentials of being tough on immigration. If the Government are willing to make that commitment, I think we will all welcome the creation of the new director.

The amendment is important because without it there would be a worrying ambiguity in the new role of the director, which could see the resources allocated to the director directed primarily at illegal migrants in work rather than at those who employ them.

There is a tonal shift in the Bill towards criminalising the employee over the employer, which is concerning because it seems to focus on the symptom rather than the cause; the focus appears to be on the workers rather than on the organised gangs who traffic and exploit them. That approach will not have a lasting impact on illegal labour market activity in Britain. The reason is simple: if workers are arrested and deported, employers will find others to take their place. If you strike at employers, however, that market soon disappears. There is even a risk, as witnesses told us last week, that an emphasis on criminalising workers will actually be counterproductive in fighting illegal working. If people fear that they will be harshly punished if their immigration status is discovered, that can be used by their employers as a threat, driving them even further underground and opening them up to worse forms of exploitation.

The Government therefore need to make it explicit that the new director will have powers and duties that allow them to act in all areas of the labour market and that the role will be used to tackle exploitation at its source. Without that commitment, the director is unlikely to be an effective office because it will be limited to clearing up the symptoms, rather than the root causes, of labour market exploitation. Such an approach might bring some great headlines for the Home Secretary, but it will do little to prevent trafficking and abuse or to reduce the number of illegal migrants working in this country. I am sure that the Minister will agree that if public money is going to be spent establishing a new agency, we need to be sure that it is going to get results, and that is why he and his colleagues should back this amendment today.

Paul Blomfield (Sheffield Central) (Lab): It is a pleasure to serve on the Committee with you in the Chair, Mr Bone. I echo the comments made by my hon. Friends, save that I have one caveat in relation to the point made by my hon. and learned Friend the shadow Minister. I hope that we do not need to push the amendment to the vote. I hope that there can be agreement, because we are on the same page on several of these issues, in the wider sense in relation to an effectively managed immigration system, and particularly on labour market enforcement. Many Opposition Members commended the Government on their work on the Modern Slavery Act 2015. We had differences on points of detail, but very much agreed with the main thrust of that legislation. There is strong support for the principle of more effective labour market enforcement. The Prime Minister spoke powerfully about that when he spoke, at that stage, not about a director but about the establishment of a labour market enforcement agency. Clearly, the Bill has a slightly different, but nevertheless welcome, approach to seek to co-ordinate the efforts of those agencies dealing with more effective enforcement in the labour market.

However, it does not sit comfortably that our debate about labour market enforcement is in the context of an immigration Bill—so there is perhaps a point of confusion. At the heart of this clarificatory amendment is the desire to be absolutely clear on the role of the director of labour market enforcement. The post—the function—should do what it says on the tin: it should be focused on labour market enforcement. My hon. and learned Friend the shadow Minister has cited international examples. It is useful to learn from other countries, though we do not do it as often as we might. There are powerful examples of where confusion between labour market enforcement and immigration control and enforcement is counterproductive. It neither supports effective immigration enforcement—because it drives undocumented workers underground and out of the way of the authorities—and does not help with labour market enforcement either.

9.45 am

Sarah Champion (Rotherham) (Lab): It is a pleasure to serve under your chairmanship. If I may add to what my hon. Friend is saying, Caroline Robinson, the policy director of Focus on Labour Exploitation, said in her witness statement,

[Sarah Champion]

“The point about the protective purpose of the director is very important. For us, the core purpose of that role should be the protection of vulnerable workers and the prevention of exploitation.”—[*Official Report, Immigration Public Bill Committee*, 20 October 2015; c. 27, Q54.]

That is what the amendment is trying to get at.

Paul Blomfield: I thank my hon. Friend for her helpful intervention. Throughout our deliberations, we should seek to draw on the evidence that we heard. The evidence cited by her and by my hon. and learned Friend the shadow Minister has powerfully made the case that the confusion of immigration functions and labour market enforcement is damaging and counterproductive to our objectives for the labour market and for immigration. The amendment seeks to provide absolute clarity. I hope that the Government will accept it.

Anne McLaughlin (Glasgow North East) (SNP): The Scottish National party tabled the amendment with Labour because we believe that the primary purpose of the director of labour market enforcement should be to enforce the rights of workers and protect people from exploitation. Indeed, the Government’s background briefing states that the new labour market enforcement agency will be established to protect people against being exploited or coerced into work. The Immigration Law Practitioners’ Association has said:

“Where those working or living in very poor conditions are deterred from accessing assistance because of their immigration status”—

this will clearly make it harder for them—

“or because of their vulnerability to threats by unscrupulous employers in relation to their immigration status, agencies will be restricted in their ability to gather the intelligence needed to exercise their regulatory functions and protect against labour market exploitation. A lack of clarity over the protective function of the labour market enforcement agency may therefore undermine its aims.”

It would be good to have a little more clarity.

Last week, one of the Conservative Members really shocked me with a statement about illegal workers. On reflection, I wonder whether there is a genuine, fundamental misunderstanding about some of these people that might need to be addressed. The comment was that if people knew that the Bill was being introduced and that it was going to be so much harder to work here illegally, they would be less likely to allow themselves to be trafficked. That really shocked me. We are talking about the most vulnerable people, who are taken from other countries against their will. They do not choose or allow themselves to be trafficked. They are used and abused. The Bill will make it so much worse for them. Does the Minister believe that people are trafficked here because they choose to be or not? If there is a belief that there is an element of choice to trafficking, I understand where the measures come from. I would like to know that the Minister intends to protect the most vulnerable people.

Simon Hoare (North Dorset) (Con): If the hon. Lady accepts the premise that the trafficker is the conduit for the individual to go from A to B, does she accept that if the individual understands that entry to B is now harder and tougher, it is likely that they will not be sought to be

trafficked in the first place or that they will ask the traffickers to traffic them elsewhere? It is all about signal and message.

Anne McLaughlin: So there is the answer to my question. I really would love the Minister to respond and to understand that people do not choose to be trafficked. They do not say, “Please kidnap me, tie me up, bundle me into a van, and take me to a country that I’ve never been to where I can’t speak the language.”

Simon Hoare: That is kidnapping; it is not trafficking. Trafficking, in my judgment, is when somebody goes to somebody else who is providing that service and says, “I want to get from A to B. Will you get me there?” That might be in a private motorcraft, an aeroplane or whatever it might happen to be. When I talk about trafficking, that is what I am talking about, not about kidnap, which is illegal.

Anne McLaughlin: In legal terms, the hon. Gentleman is wrong. That is not what trafficking is. He needs to look up the legal definition of trafficking because trafficking happens against somebody’s will. We have to protect those people. Now that the hon. Gentleman understands, perhaps he will support this amendment.

Byron Davies (Gower) (Con): Does the hon. Lady accept that when I worked as a police officer in Romania, young ladies who wanted to come to the UK through Spain would look for a trafficker to facilitate that journey to Spain and the UK? That is trafficking, contrary to what the hon. Lady is suggesting.

Anne McLaughlin: I think the hon. Gentleman is making the decision to do what a lot of today’s media do, which is to focus on people who have an element of choice. Most people who are trafficked—well maybe not most people, but a significant number—are trafficked against their will. They are the most vulnerable people and the people we have to protect. This amendment is asking only that the new director pays attention to the rights of the most vulnerable people. We cannot say that one person has had an element of choice but another person has not, so we will not protect the second person. So no, I do not accept what the hon. Gentleman says.

Craig Whittaker (Calder Valley) (Con): The premise of the amendment is:

“To ensure that the functions of the Director of Labour Market Enforcement are exercised for the purpose of protecting those vulnerable to labour market exploitation and to make this explicit on the face of the Bill”—

Where in the Bill is that purpose not explicit? Clause 3 refers to non-compliance and the interpretation of it. It specifically refers to the Employment Agencies Act 1973, the National Minimum Wage Act 1998, the Gangmasters (Licensing) Act 2004 and anything else prescribed by the Secretary of State.

Anne McLaughlin: If the hon. Gentleman thinks that it is already explicitly stated, surely he will have no problem supporting this amendment.

Paul Blomfield: I wanted to develop the point, because I think that some of the discussion about trafficking is a diversion. Does the hon. Lady agree that the primary purpose of this amendment is simply to clarify the role of the labour market enforcement director and make it clear that there is no disagreement on either side of the House that such a director should focus on preventing those vulnerable to exploitation in the labour market?

Anne McLaughlin: If the hon. Gentleman was asking me to agree with him then I agree with him.

Sarah Champion: It is a clarification, courtesy of Google. The UN defines trafficking as

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability”.

As my colleague has just said, this gets to the nub of the problem. My understanding, and perhaps the Minister could provide clarity, is that when we are talking about trafficked people, the legislation is in place already so it can be enforced. What we are saying here is that a large number of people are in a grey area. They might, as in the example given by the hon. Member for Gower, have paid to come into this country to work but then, very quickly, find themselves in an exploitative situation.

We need clarity about the role of the labour market enforcement director. Is he very clear that he is responsible for enforcing good labour practice? Does he have the resources to do that and can he work collaboratively with the other agencies to make sure that when something like the Modern Slavery Act 2015 is enforced, that vulnerable person is taken care of?

The Chair: Just before we move on, I want to say that I have allowed the debate to go fairly wide of the mark on trafficking as it does indeed go to the heart of the Bill. If you recall, I did ask for one of the witnesses to define trafficking. I myself was none the wiser after she had finished speaking, unfortunately.

The Minister for Immigration (James Brokenshire): I welcome you to the Chair, Mr Bone, and other members of the Committee to our consideration of part 1 of the Bill, which deals with labour market enforcement. I look forward to the debates that we will have in the coming sittings to, I hope, improve the Bill and to reflect on significant issues relating to labour market enforcement and immigration more generally. I look forward to debate that I am sure will be wide ranging and well informed and that I hope will be good natured. These Committees are about scrutiny of the detail of the legislation. There will be strong views on certain issues, but the approach that I always take on Bill Committees is to listen and to reflect, and I hope to be able to inform and provide evidence and further background to the Committee during the detailed consideration of this Bill. With those words of introduction, I will move on to clause 1 and the amendment tabled by the hon. and learned Member for Holborn and St Pancras.

The effect of the amendment would be to specify the primary purpose of the director of labour market enforcement in clause 1. Although I appreciate the desire to include a strong statement up front on the

director’s remit, I believe, for reasons that I will explain, that the amendment is unnecessary. The director’s role and remit are already clearly set out in clauses 1 to 7. When we look at the provisions in clauses 2 and 3, which we will debate in the course of this morning, and the specific definitions of “labour market enforcement functions” and “labour market legislation”, we see that that provides a clear framework as to the intent behind the creation of the director, but I will explain this a little further.

We are creating the director of labour market enforcement to lead efforts to tackle abuse and non-compliance in the labour market. As we will explain in the debates on later clauses, that will include setting the strategy for the Government’s work to tackle all types of labour market exploitation and creating an information hub to facilitate better sharing of tactical and operational intelligence. I think that that is equally important. On some of the issues of vulnerability that have already been flagged in terms of identification, it is important to be able to share that information and get it to the right agencies so that they are able to act. I think that that goes beyond the remit specifically of the director, but I certainly understand and respect the points that have been made.

Paul Blomfield: I want to push the Minister on that point. As I said, the confusion arises because a director of labour market enforcement is being proposed in the context of an immigration Bill and it is a post that will report to the Home Secretary. Were the director of labour market enforcement sitting in a different Department, reporting perhaps to the Secretary of State for Business, Innovation and Skills, the necessity for this absolute clarity might be diminished. Does the Minister agree that the fact that the labour market enforcement function is within an immigration Bill and the post reports to the Home Secretary means that it would be helpful to have absolute clarity on the purpose, so that this post holder is not distracted by other—quite legitimate but other—considerations of Government?

James Brokenshire: I welcome the hon. Gentleman’s welcome for the creation of the director of labour market enforcement and what he said about the way in which it is framed and the intent behind it. I will go on to respond to his direct point, but let me address the issue about whom the director reports to. It is to the director of business and to the Home Secretary. Let us look at the agencies in relation to which the director has a remit. One of those is the Gangmasters Licensing Authority. That sits within the Home Office and therefore it is appropriate for the director to report to the Home Secretary in respect of the overarching work; the GLA is a Home Office-sponsored and led agency. The hon. Gentleman may want to engage in a broader debate as to whether he thinks that that is appropriate, but it is important that it is structured in that way.

10 am

Keir Starmer: Obviously, one of the concerns is where the director reports to. I understand the point about the need to report to the Home Secretary as some of the other agencies do. I am trying to explore where we have common ground. The experience in other countries is that merging labour market enforcement with immigration is counterproductive. There is a concern that this is an

[*Keir Starmer*]

immigration Bill and therefore there is the potential for that merger. Other countries have experienced a practical problem in exercising the primary function because it has been merged with immigration control and enforcement. Does the Minister accept that there are real examples in other countries of action which started with a good intention but went wrong because it morphed into what was, in truth, immigration control and enforcement?

James Brokenshire: I would point to the fact that immigration enforcement—the directorate within the Home Office that is responsible for the enforcement of immigration rules—is not one of the structures that the director has responsibility for. I will cover in turn the point about remit because there is an important aspect to this. When hon. Members have heard what I have to say, I hope that they will understand that the hon. and learned Gentleman’s concern about some sort of merger is not what this is about. We intend the director’s remit to cover labour market breaches, not immigration offences. The director and the enforcement bodies will work closely with Home Office immigration enforcement wherever labour market breaches are linked to illegal immigrants or people working in breach of their visa conditions, but that is an adjunct and not the purpose of the director.

I was asked why this measure was in an immigration Bill. There are two reasons. First, immigrant workers can be particularly vulnerable to exploitation by rogue employers, a point that has been flagged by hon. Members already this morning. I am sure that that will be a continuing theme during our consideration of the Bill. Secondly, by ensuring that workers are treated fairly, we are preventing businesses bringing in cheap labour that illegally undercuts the wages of people already in this country. Good labour market enforcement has knock-on effects.

Modern slavery has been a theme of some of the contributions this morning. With the Modern Slavery Act, Britain is once again at the forefront of the fight against the inhuman crimes of slavery and forced labour—the hon. Member for Sheffield Central and others made comments on this—but it is important to understand that exploitation occurs in many forms and can start with abuse of employment law. We must step in to protect not just the vulnerable—I will address the point about vulnerability—but also local workers and responsible businesses affected by those who are prepared to exploit cheap labour. That is why there is the need for this strategic approach and for the director to work with the different organisations that are in place. This is not a merger, as the hon. Member for Sheffield Central highlighted in his contribution, but rather we have an over-arching strategy of looking at ways in which we can promote good practice.

I would direct hon. Members to the consultation published alongside the Bill to set out some of those details. It says that:

“The Director will lead and co-ordinate work to promote compliance by employers and labour providers with labour market legislation, and to encourage and enable people to report infringements and exploitation.”

We are conducting a consultation at the moment around the director. We look forward to receiving feedback and input so that we are able to reflect fairly and appropriately.

Our employment law framework guarantees decent minimum rights for workers, including from next April the national living wage for over-25s, and promotes fair competition between businesses. The majority of employment law is enforced by individuals taking their employer to an employment tribunal to seek redress if they believe they have been wronged. State enforcement bodies step in to enforce legislation where there is a higher risk of exploitation or vulnerability.

As I have indicated, clause 3 already defines the director’s role by reference to the legislation and enforcement functions that will be within his remit. It makes it clear that the three enforcement bodies for which the director will set the strategy are the Employment Agency Standards Inspectorate, HMRC’s national minimum wage team and the Gangmasters Licensing Authority. We want the director to bring co-ordination across the whole spectrum of breaches of employment law—from employers who do not know the rules right through to organised, criminal exploitation of workers. That will be the director’s broad remit. However, I am concerned about some of the pictures we see of organised immigration crime and organised criminality more generally that seeks to exploit labour markets and uses the front of employment. We are dealing with a broad spectrum, which ranges from vulnerability all the way to good practice and compliance. It is right that the director should have that remit—setting up strategy, commenting on the balance of resources across each of the three agencies and reporting to the relevant Secretary of State.

Sarah Champion: Could the Minister give clarity on how the director would work in collaboration with the Independent Commissioner for Modern Day Slavery? Whether it is in guidance or within the Bill, it would help if the two roles could be clarified, because there is a grey area.

James Brokenshire: It is important to stress that they are separate roles. We make that point clearly in the consultation document, where we say that the director will have a role that is distinct from the commissioner’s role. Obviously, the commissioner looks at all types of modern slavery, whereas the focus of the director will be on labour market exploitation and enforcement. The practical roles are equally different:

“The Director will set the strategic plan, priorities for targeted action and overall approach”,

whereas

“the Commissioner has a broad role to look at the effectiveness of all the bodies engaged in the fight against modern slavery, encourage best practice, and make recommendations for improvements. That role will in future include looking at the effectiveness of the new Director and the reformed GLA”,

which we are consulting on now. I hope that is helpful and explains that these are complementary roles. I think that the commissioner, Kevin Hyland, is doing an excellent job. He has a great deal of practical experience from his time in law enforcement. I remember a couple of years ago going out with Mr Hyland on an enforcement raid to do with trafficking, so I know the real passion he has for that job. I think that he will use and work with the new director in a very positive way to continue to confront the appalling evil that is slavery and trafficking,

with people being horribly exploited and enslaved for gain. We continue to need to shine a light on this, so that it is seen for what it is.

Paul Blomfield: I endorse the points that the Minister made on enforcement, but I want to come to the issue he raised about the review of the Gangmasters Licensing Authority. I agree that effective enforcement is important. The opportunity for exploitation in the labour market is growing. Can he reassure us that the review of the GLA will not mean that we will be moving to voluntary licensing?

James Brokenshire: I think that the hon. Gentleman may be straying a little from the specific amendment. He will have seen the clear manner in which the consultation document is set out and the various questions that are being asked about the licensing function in ensuring that that is conducted appropriately, is evidence-based and is used as a tool to prevent exploitation in the highest-risk sectors. I direct right hon. and hon. Members to the relevant sections on pages 40 and 41 of the consultation document, which set that out. Obviously, we will reflect carefully in the context of the feedback we receive around the consultation.

Keir Starmer: Before the Minister moves on from that point, he has understandably set out the functions in clause 3(3) that are of primary relevance. I understand that. The purpose of the amendment is to say that, among those purposes or functions, this is the primary one and it is protective. That is the sole purpose of the amendment. His point is that it is not needed in the light of clause 3(3). The concern is that there is no clear reference in the Bill to the primary purpose. The measure comes in an Immigration Bill that, a few clauses on, includes offences of illegal working. Does he understand that, although we do not quarrel with the functions or why he has chosen them, we want to underline what I think is common ground, that the primary purpose is protective? In this environment, and given other international examples, it is helpful for all concerned to have that included in the Bill.

James Brokenshire: I think I have already explained that the functions of the director of labour market enforcement are by their nature framed within the context of the various pieces of legislation that the hon. and learned Gentleman set out. I have also explained, as set out in the consultation document, that the measure is about promoting good practice and highlighting issues where employers can equally comply. That is why I responded as I did to a number of hon. Members about the spectrum of activity engaged here.

We are very clear that the purpose of the director of labour market enforcement is to tackle labour market exploitation across the field. We believe this measure will give the stronger drive to deliver that step change in tackling exploitation. The director will have that purpose set out in terms of appointment and, in delivering that, will be accountable to the Home Secretary and Secretary of State for Business, Innovation and Skills.

We also believe that the requirement to publish the strategy and annual report—it will not be a private document but will be visible according to the legislative

framework—will demonstrate the clear commitment to protecting the vulnerable and tackling exploitation. That is again why we are clear on the remit, role and function. From a tactical operational perspective—I am sure we will come on to the information hub—that will support the activity.

Paul Blomfield: I am grateful to the Minister for being generous with his time. I have listened carefully to his comments and there is little in them that I can disagree with. Given that we are seeking to be on the same page as far as we can on all these issues, will the Minister explain why he feels that the Bill would be diminished by the amendment?

James Brokenshire: As I have already indicated, I simply do not think it is necessary, because the Bill is already framed so as to cover the points hon. Members are highlighting. I have always taken the approach in legislation that, if the situation is clear through other mechanisms, adding provisions that are not needed is not appropriate. I had hoped in my comments to assure the Committee why the amendment is not necessary, the purpose of the provisions and the intent of the Government. Transparency will be provided through the annual reporting to see what is happening in practice, and therefore the amendment as expressed is not needed. The director's strategy will be evidence-based, which will allow the plan to be from year to year, based on where non-compliance is most likely to cause harm. That will be reflected in the plan.

10.15 am

Mrs Lewell-Buck: I have also listened carefully to the Minister, but I am confused and puzzled. If the purpose of the measure is to tackle labour market exploitation across the board, why did the Government see fit to include it in the Immigration Bill?

James Brokenshire: I have already responded to that point by mentioning the vulnerability faced by people who are here through immigration. Equally, the measure can be a means of ensuring that we have a good, regulated labour market that therefore does not add to exploitation, nor encourages people to come here illegally or through trafficking, which is why it sits in the overall framework of an immigration Bill. I hope that I have explained that the purpose and remit of the director is labour market enforcement. The provision is not intended to stray into the separate issues of immigration enforcement, but if cases of people who are here illegally are highlighted, the director would be duty-bound to report that and to pass on intelligence through the hub that is being created. We will no doubt have a separate debate about that when we reach the relevant provisions.

Keir Starmer: I am sorry for intervening again. Although I disagree with very little of what the Minister is saying, that last point is a cause for concern. Of course it makes sense for the director to have these primary functions and to co-ordinate with other action on immigration, but the concern is that when we put the two functions together and do not clarify the primary purpose, there will be a misunderstanding about how this works.

[Keir Starmer]

We support this good initiative of having a director, but the good work—the head of steam—will be lost if the primary purpose is not clear. People will feel that the measure is, on the face of it, about labour market enforcement, but it carries with it immigration checks and it is in an immigration Bill. What the Minister says makes perfect sense, but that concern is the cause of our discomfort and the reason behind the amendment, which would make the provision much more powerful.

James Brokenshire: In many ways, the purpose of a Bill's Committee stage is to tease out some of these issues, and to get the Minister—in this case, me—to set out and clarify the purpose and intent of a Bill's provisions. We strongly believe that the Bill gives certainty and clarity about how the director will provide co-ordination.

The measure is about existing agencies that are already carrying out functions. If intelligence is already discovered by those agencies, sharing will already take place. This does not change anything about operational practice; rather, the director will provide strategy, co-ordination and an overarching response. We need good work on enforcement between agencies so that we do not—I do not think we have this, but the provision ensures that that is the case—have a silo-based approach, given that there is an overlap and that we need to look at this as an overall market. Those are the reasons why we do not believe the amendment is required, so I ask the hon. and learned Gentleman to withdraw it.

Keir Starmer: As I have already indicated, I am grateful to the Minister for setting out so clearly the purpose behind the director of labour market enforcement. In one sense, there is nothing between us on that. Our concern is clear: this positive development comes in an immigration Bill, yet there is clear evidence from other countries that unless we are clear about the primary purpose of such a measure, we run the risk of losing everything that we have tried to gain.

As I have said, the offences of illegal working in relation to employers and employees are set out just a few clauses later in the Bill. When such measures are together in one Bill, a clear explanation of the primary purpose of the director would cut through a lot of the concern and help that person to devise a strategy that focuses on that primary purpose, rather than other possible purposes. I welcome the comments of the Minister and other members of the Committee, but I will not withdraw the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 1]

AYES

Blomfield, Paul	Lewell-Buck, Mrs Emma
Champion, Sarah	McLaughlin, Anne
Hayman, Sue	Newlands, Gavin
Hollern, Kate	Starmer, Keir

NOES

Brokenshire, rh James	Davies, Mims
Buckland, Robert	Elphicke, Charlie
Davies, Byron	Harris, Rebecca

Hoare, Simon
Smith, Chloe

Tolhurst, Kelly
Whittaker, Craig

Question accordingly negated.

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

James Brokenshire: I shall be brief, given that we have had quite a wide-ranging debate about the purpose of clause 1. I underline that the purpose of and the rationale behind the appointment of the labour market enforcement director is that the three main enforcement agencies work together. They are well respected, with distinct expertise, knowledge and skills, and collectively they span the spectrum of infringement from the simplest forms of non-compliance to exploitation that may include some form of slavery. There has been a shift in the nature of such exploitation from individual abuses of employment regulation towards organised criminal activity, which is why it is important that we have an overarching response that ensures that we join the work of the bodies together.

To enable the enforcement bodies to address the problem collectively, we have determined that there is a need for greater co-ordination among them, as well as the need for a single set of priorities. We want to ensure that there is strong, effective co-ordination of the three enforcement bodies, but we also want to achieve that with minimal disruption and while avoiding significant structural change.

We believe that the key lies in establishing effective overarching leadership and co-ordination of the enforcement bodies, so the clause creates the position of director of labour market enforcement. The director will lead efforts to tackle abuse and non-compliance in the labour market. As we will debate later, that work will involve setting the strategy for the Government's work to tackle all types of labour market exploitation, and heading an information hub to enable better sharing of tactical and operational intelligence, as well as to build a stronger evidence base to inform future interventions.

Creating a director provides the greatest scope for achieving the strategic integration of the three enforcement bodies without losing their different specialist skills. It is vital that those skills are retained to deal with not only day-to-day compliance issues, but serious criminality. If the system focused exclusively on either serious exploitation or lower-level breaches, it would not provide the necessary protection for vulnerable workers, which is why we have drafted the Bill in such a way.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

LABOUR MARKET ENFORCEMENT STRATEGY

Keir Starmer: I beg to move amendment 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.”

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.

The Chair: With this, it will be convenient to discuss 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) any 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).

Keir Starmer: I should have said earlier that it is, of course, a privilege to serve under your chairmanship, Mr Bone—better late than never. If it is convenient for hon. Members, I will deal with all the amendments in one go. On the other hand, if that is not the best way forward, I hope that somebody will indicate that.

The amendments address the strategy that it is envisaged that the director will set out. Amendment 57 would ensure that the labour market enforcement strategy would include an assessment of the threats and obstacles to effective labour market enforcement, and the remedies secured by victims of labour rights infringements and labour market offences.

The Bill requires the director to make an assessment of non-compliance in the labour market, but does not require him or her to assess the threats or obstacles to effective enforcement, including, for example, powers and resources, or to examine remedies secured by victims of non-compliance in the labour market. The amendment would oblige the director to incorporate those considerations into his or her strategy—in other words, to add value to what the labour inspectorate is already doing. The director needs to look at how enforcement could be done better, as well as the extent of non-compliance.

We want to build on the victim-focused legacy of the Modern Slavery Act, so we suggest that the director should look at the remedies for victims of labour exploitation as part of his or her strategy. Let me point to some gaps in the data. Recorded data on compensation for infringements of labour market standards are limited. For example, HMRC does not keep data in a format that enables the provision of statistics on the amount of arrears paid or not paid to workers. Data on civil claims brought by victims of trafficking and damages awarded are not available.

During the financial years 2010-11 to 2012-13, no prosecutions by the Gangmasters Licensing Authority resulted in compensation orders for victims of human

[Keir Starmer]

trafficking. Data on compensation secured through the criminal injuries compensation scheme for victims of human trafficking for non-sexual exploitation, forced labour, slavery and servitude are not being recorded, so there are clear gaps. Why does not the Bill make provision for the director to assess why non-compliance is at its current level, as well as an assessment of non-compliance within the labour standards? How can the Government know whether they are making progress on meeting the needs of victims of exploitation if they are not collecting data on remedies?

Craig Whittaker: The hon. and learned Gentleman and I both had lives outside this place before we were elected, and I know that he had a high-profile role. Has he written a strategy for any job he has held that did not take account of threats and obstacles relating to the strategy that he was trying to write?

Keir Starmer: The straight answer is no; of course that would be within the strategy. The purpose of the amendment is to make it clear that that has to be part of the strategy for this director. I am sure that members of the Committee share concerns about resources. The amendment is an attempt to ensure that this step forward is as effective as possible, and that touches on strategy and resources. While my answer to the hon. Gentleman is no, I do not think that that is a good enough reason not to support the amendment.

10.30 am

Amendment 58 would ensure that the functions of the director were exercised for the purpose of enforcing all existing labour market standards, rather than prioritising a limited number of areas. It would link the director's strategy with his or her assessment of non-compliance with labour market standards. The Bill proposes that there is an assessment of compliance in the labour market, as well as a strategy to address the situation. I anticipate the point that a strategy would necessarily address as well as assess, but we think that our amendment would clarify in the Bill what the strategy should include. That would strengthen the strategy which, in the end, is all important. We need the post and we need the strategy, and it is putting the two together that will make the approach truly effective.

Paul Blomfield: Is my hon. and learned Friend, like me, keen for the Minister to give us a bit more clarity about what seems to be a shift in narrative towards more serious issues of exploitation, which has not been defined? Our hope is that we are seeking to enforce all standards for all workers.

Keir Starmer: Yes, I thank my hon. Friend for his contribution. I will come later to where the director will put his or her emphasis—on what might be called the higher end breaches, or on more routine breaches. I welcome that contribution and I ask the Minister to deal with it if he can in his comments.

Amendment 59 is intended to clarify the relationship between the director of labour market enforcement and the UK's existing labour inspection agencies, ensuring

that the current role, remit and resources of labour inspectorates are safeguarded. By way of background, I give an example, because practical realities follow from what we hope is a very good initiative. This year we saw the pay and work rights helpline merge with the Advisory, Conciliation and Arbitration Service. The pay and work rights helpline used to provide vital advice; it was a service with an annual cost of £500,000, yet, when it was merged, the money did not go with it, which has led to a strain on the service. As a result, ACAS struggles to meet extra demand with no extra resources. There is some evidence that representatives have been asked not to use it. By making explicit the resource implications in the strategy, we hope to avoid this sort of implication. Where there is a merger of various functions and enforcement without the resources, it becomes ineffective.

Sarah Champion: I give another example. During the witness session, I asked Professor Metcalf whether he believed that there were sufficient resources and he said,

“Probably not, but in the consultation document and, I think, in the Bill, it does not actually set out quite what the resources are.”

I went on to ask him what he thought they should be and he said:

“One understands the difficulties with the public finances, but we probably do not have sufficient resources. In the low-skilled report, we calculated that you would get an inspection from HMRC once every 250 years and you would get a prosecution once in a million years. That suggests that we do not have enough resources. In turn, that takes you to the potential trade-off between the resources and the punishments.”—[*Official Report, Immigration Public Bill Committee*, 20 October 2015; c. 19-20, Q36-37.]

Keir Starmer: I am grateful for that intervention, which is another example from the evidence that we heard last week about resources. Unless we tackle the resources issue head on, all that will be achieved is the creation of a director without any real powers to carry out the functions, which I think everybody accepts need to be enforced and enhanced. In a sense, if we try to do more with less, services are jeopardised and, in truth, the vulnerable workers suffer and we will not succeed in reducing the pull factor for illegal migration because exploitation will not be uncovered and penalised.

By way of example, the number of Gangmasters Licensing Authority investigations into the illegal activities of gangmasters dropped from 134 in 2011 to 68 in 2014, and prosecutions were down from 19 in 2010 to three in 2014. I accept that underlying this reduction will be some intelligence-led work, but those figures are stark and they underline the general point made by the witnesses last week, namely, that the concern about labour market enforcement is not so much about the agencies and the enforcement powers as about the fact that the resources are simply not there to allow for investigations and action to be taken very frequently. Unless that problem is addressed head-on, there is the danger that all we will create is a director who does not actually carry out the enhanced functions that it is hoped will be carried out.

Sticking with the GLA itself, its budget, of course, has been cut by 20% since 2010, so we are in an environment where the enforcement agencies are already suffering quite significant cuts. It means that the GLA regulates labour in a £100 billion sector with a budget of 0.004% of that figure.

I have some questions that I hope the Minister will be able to address in his reply. On page 8 of the Government's consultation document, "Labour market exploitation: improving enforcement", it states that there has been "a shift from abuses of employment regulation towards increasingly organised criminal activity engaged in labour market exploitation." That shift has occurred during the past 10 years. But what is the evidential basis for that assertion? In other words, that is the shift of abuse from, as it were, lower-level routine abuse to increasingly organised criminal activity. Linked to that is another question. Does the Minister agree that if we do not enforce employment legislation effectively at the lower end of abuse—if you like, minimum wage, health and safety and so on—we will create conditions for higher levels of abuse to develop. So, as I say, where is the evidence to support that assertion? And if we abandon the lower end or do not put resource into it, do we not run the risk of creating conditions in which unscrupulous employers will get away with whatever they want?

Amendments 65 and 66 would include the functions relating to health and safety at work and child labour within the remit of the director. May I just be clear about the spirit in which amendment 65 was tabled? It aims to explore the thinking behind the division of functions here, and to understand why all the functions are not brought together under this director, while also recognising—as we do—the work that the Health and Safety Executive is currently undertaking. So, amendment 65 was tabled in that spirit of properly understanding the Bill's limited remit. The health and safety at work aspects of the Bill speak for themselves; I think that the child labour functions are enforced by local authorities.

Earlier this morning, the Minister said that the purpose of the Bill was to cover the whole spectrum of labour market enforcement, and therefore the ownership of the HSE and of the legislation to deal with child labour were obvious. There may have been a good deal of thinking behind that, but it would be useful through this exercise to understand that thinking properly, because the exclusion of those functions from the remit of the director of labour market enforcement could have an influence on the issue addressed by amendment 55, namely, the primary purpose of the director. Why is the HSE excluded and what is the thinking behind that exclusion?

Of course, there is also a budgetary consideration. The budget of the three labour inspection agencies covered in part 1 amounts to just over £14 million. That is compared with the £81 million for the Health and Safety Executive, which adopts a cross-labour market role. If the aim is to cover the whole spectrum and there are already resource considerations—of course there are—why do these provisions not cover the whole spectrum and leave out the health and safety and child labour aspects?

Amendments 63 and 64 aim 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. I will try to explain our concern clearly. Trafficking offences, as we understand it, are outside the remit of the Bill, save where they touch on the role of workers. That makes sense on one level because we would not expect the director of labour market enforcement to be looking at trafficking offences outside the employment

or labour context. The problem as we see it—which may simply require clarification or may require amendment—is that the definition of "worker" within the Bill is then not wide enough to cover all those who may be in the labour market, including undocumented victims of trafficking. Perhaps there is a clear explanation; there may be a simple amendment. We follow the logic of the scheme, but we are concerned that the definition of "worker" is in fact too narrow and will leave some who it is probably the intention of the Government to include outside the scope of the protection. The amendment is put forward in that spirit.

Sarah Champion: On that point, I wonder if the Minister could also clarify why clauses 3 and 9 use two different pieces of legislation relating to workers? It seems to be a bit of an anomaly. Some clarity on that would be welcome.

Keir Starmer: Finally, amendment 62 touches on the annual report and is intended to ensure that the director of labour market enforcement's annual report links with his or her assessment about non-compliance in the labour market and the remedies secured by victims and threats and obstacles to effective enforcement. The bullet point is this: as drafted, the director's strategy does not link with his or her assessment of non-compliance in the labour market and his or her annual report does not link back to the assessment of non-compliance as a baseline. The amendment aims to ensure that the strategy covers everything that it should and that the annual report is tied into the same process.

Mrs Lewell-Buck: I rise to support the Opposition amendments, which will be helpful in clarifying the role and duties of the director of labour market enforcement. I will also echo some of the comments made by my hon. and learned Friend the Member for Holborn and St Pancras.

The creation of the role is welcome, as my hon. Friends have said, but if the director is to have real influence and impact, they need to be involved across enforcement of labour market standards and not confined to a narrow area. The director should be able to take the lead on issues of labour market enforcement, to command respect from employers and be a strong advocate for compliance and tougher enforcement. The Opposition amendments are designed to make that happen. Amendment 56, for example, would require the new director to set out the resources that are needed for effective labour market enforcement.

Witnesses told the Committee that the problems with the immigration system are due not to a lack of powers but to a lack of resources, which undermines enforcement. The Government can introduce all the legislation they like, but criminal employers will not bat an eyelid unless they believe that there is an actual chance of their door being kicked down. That chance is incredibly low right now. The UK has less than one inspector per 100,000 workers, which is one of the worst ratios in Europe. The director should be able to tell the Government when they are not doing enough, and amendment 57 would introduce a clear duty to examine and identify where enforcement is failing and where there are obstacles to effective enforcement, thereby helping to identify where further resources are needed. There are currently

[Mrs Lewell-Buck]

too few data on the scale of labour market exploitation, and the director could and should be able to fill that gap.

10.45 am

I am also concerned that, as currently defined, the director's focus appears too targeted on illegal workers, rather than on the people who exploit them. As I mentioned earlier, that is a rather counterproductive approach that addresses the symptoms rather than the causes of exploitation. The Modern Slavery Act 2015, as we can all agree, had a welcome focus on victims. Unfortunately, that is not the focus in this Bill. We should never forget that many illegal workers face violence and extortion and that, no matter what their immigration status, these people are victims. That is why amendments 56 and 57 would specify that the director's remit should include remedies for victims and amendment 64 would guarantee that all labour market offences committed against workers were within the director's remit.

Without those amendments, there is a danger that the director's role will come to be seen as that of an inquisitor, rather than one that leads in driving up labour market standards and addressing systemic problems in the market, thereby undermining the director's potential to influence change. I hope that the Minister agrees that our amendments would give the director the remit and the stature necessary to be effective. I look forward to hearing his comments.

Gavin Newlands (Paisley and Renfrewshire North) (SNP): It is a pleasure to serve under your chairmanship, Mr Bone. I rise to support amendments 56 to 58 and 62 to 64, but I will focus on the first three of those amendments lest I test the Committee's patience.

Clause 2 is perhaps the only clause that my Scottish National party colleagues and I fully support. I wish that were the case for the remainder of the Bill, but I am afraid it is downhill from here. It is an outrage that we are talking about modern day slavery. The director of labour market enforcement, first and foremost, should be used to take action against exploitative employers and to protect workers from being abused and taken advantage of. Nice chap though he is, there is not much on which I agree with the Minister for Immigration on this Bill—or anything else for that matter. However, I find myself in the unusual position of agreeing with him that it is unacceptable for any employer to recruit staff whom they think they can exploit because those employees are less likely or less able to complain about working conditions. It is a scandal that we still have to talk about slavery and exploitation in modern-day Britain. However, that is the experience facing many workers, particularly migrant workers, when they clock in each morning. I am sure that we have all been appalled, upset and angered by the frequent newspaper reports on the level of exploitation that some migrant workers have faced and, truth be told, we could possibly be accused of not responding appropriately or quickly enough.

I hope that the recruitment of a new director of labour market enforcement is the first step in addressing the plight of many migrant workers. It should be welcomed that we have already started to talk about the work that the director will undertake, and the strategy in clause 2

outlines the action that will be taken to eradicate modern day slavery and exploitation in the workplace. There is currently a worrying lack of information on the level of exploitation faced by migrant workers. We do not know how many are being exploited. We have little evidence of the physical exploitation that they face, and we have little insight into the activities of gangmasters.

Therefore, amendment 57, which is supported by Focus on Labour Exploitation among others, would allow us to gain a greater understanding of the challenges to operating successful, fair and effective labour market enforcement. An assessment of the risks will allow us to gain the appropriate level of evidence so that we can take action against rogue employers. The amendment details our vision for addressing the exploitation that can arise from illegal migrant working and the steps that should be taken to gather the required level of evidence. Amendment 58 would ensure that we can use the evidence that has been gathered to take an evidence-based approach to addressing worker exploitation. That is important, as it prevents any prejudice-based opinions or judgments from influencing what action should be taken.

During our evidence sessions last week, Caroline Robinson of Focus on Labour Exploitation said:

"The point about the protective purpose of the director is very important. For us, the core purpose of that role should be the protection of vulnerable workers and the prevention of exploitation. That has been at the centre of the work of the Gangmasters Licensing Authority and has been part of its success. That authority, as we know, operates on a limited budget, so the resources are also of critical importance. On the role of the director of labour market enforcement and the labour market enforcement strategy, what most concerns us is the power of the director to hold control of the budgets, governance of those labour inspectorates and shifting budgets according to the strategy."—[*Official Report, Immigration Public Bill Committee*, 20 October 2015; c. 27, Q54.]

She also raised the point that, along with the director, the inspectorate needs further resources to ensure that our position is comparable to that of other EU countries. At the moment we have just 0.9 inspectors per 100,000 workers.

Anne McLaughlin: Other hon. Members have mentioned that figure; I will give a bit more information to put it into perspective. As the hon. Member for South Shields said, that figure compares very unfavourably with figures for the rest of Europe. In Ireland, for instance, there are 4.6 inspectors per 100,000 workers, Belgium has 12.5 and France has 18.9. I got that information from a policy blueprint published by FLEX in the past couple of weeks. FLEX has said:

"Enforcement of employment law... is at desperate levels, creating the perfect conditions for modern slavery to take place."

I agree that there must be proper funding for inspection, otherwise it is pointless.

Gavin Newlands: My hon. Friend has highlighted the paucity of resources in this area, something that we will come back to time and again throughout this debate.

The resources question, raised by amendment 56, was also a cause of concern for Professor Sir David Metcalf, the chair of the Migration Advisory Committee. During our evidence session last Tuesday, Professor Metcalf raised concerns about the resources required to enforce measures and punish rogue employers who are

failing to abide by labour market enforcement. After we have gathered evidence on labour market enforcement, we cannot be put in a position where we cannot use that evidence effectively because of a lack of resources. Professor Metcalf stated that, as things stand, he does not believe that the director will have the resources to be able to effectively deal with the problem of worker exploitation.

Professor Metcalf also stated that when working on the implementation and enforcement of the minimum wage he estimated that an employer would get a visit from HMRC once every 250 years and there would be a prosecution once in 1 million years. Quite frankly, that is a ridiculous position for us to find ourselves in, and we cannot allow ourselves to be put in it when it comes to tackling the issue of workers who are being exploited. Amendment 56 would require that the resources required to tackle the problem should be set out and calculated.

As I have said, we broadly support the clause, but clarification is required on a few matters, not least resourcing for the position of director. In our evidence session last week, Professor Metcalf said

“I suspect we just do not have the public finances for sufficient enforcement”

before going on to say that

“in the Bill, it does not actually set out quite what the resources are.”—[*Official Report, Immigration Public Bill Committee, 20 October 2015; c. 18-19, Q33-36.*]

I hope the Minister will go some way to answering that point today or else will support amendment 56, which would allow the new director the opportunity to assess the required resources.

Paul Blomfield: I will speak to a number of the amendments in the group, starting with amendment 14. Following on from our earlier discussion, it is important—

The Chair: Order. Which amendment?

Paul Blomfield: I meant amendment 57, Mr Bone. I apologise—I do not know where I got 14 from; you ought to see my notes!

It is important that the director has a broad oversight and is able to inform Government and the agencies, when they are taking work forward, of all the issues that are a challenge for us, in government and in this place, when trying to ensure effective labour market enforcement.

It is worth mapping out the scale of change within our labour market, as that causes some of the difficulties. For example, according to the Office for National Statistics labour force survey, from 2010 to 2014 jobs paying below the national minimum wage went up 14.8%, zero-hours contracts were up 343%, the number of agency workers went up 20% and bogus self-employment rose substantially.

We all celebrate the entrepreneurial spirit that leads to genuine self-employment, but the level of self-employment in the construction industry is of particular concern—66.7% of workers are now self-employed, which compares with 9% in the finance and insurance sector and 8% in manufacturing. There is concern in the construction industry, where we know that exploitation is rife, that about half those in self-employment are bogusly self-employed.

That sets part of the context for the need to ensure that we have a proper and comprehensive assessment. Kevin Hyland, the independent anti-slavery commissioner, who has been mentioned already this morning, talked about the scale of the problem in the *Daily Mail*, which I was reading last week—I note the Minister’s surprise, because that is not my habit, but I happened to be catching up with the paper last week. The article stated:

“Up to 13,000 people in Britain are forced to work in factories...sold for sex...or kept in domestic servitude, among other forms of slavery...But in 2014 only 2,340 potential victims were referred to the National Referral Mechanism...And there were only 39 convictions”.

The commissioner made the point that many people have fled from countries where confidence in the rule of law and in the authorities is low, which makes them reluctant to come forward in Britain. He said:

“Victims who come here with a promise of a better life and then become exploited, they’re going to be fearful of going to the authorities through previous experience.”

Such barriers and issues are precisely those that ought to be within the scope of the consideration of the director of labour market enforcement.

The amendment also relates to the remedies secured by victims. Compensation is of enormous importance. Earlier this year I asked the Secretary of State a written question about compensation for victims of trafficking identified by the Gangmasters Licensing Authority. The answer on 17 September was:

“During the financial years 2010/11 to 2012/13, no prosecutions”—
no prosecutions—

“by the Gangmasters’ Licensing Authority resulted in compensation orders for victims.”

I find that shocking. Again, that sort of issue ought to be within the scope of the director of labour market enforcement and within the strategy. Amendment 57—not, indeed, 14—provides that clarity.

On amendment 59, the whole purpose of the director of labour market enforcement is to provide co-ordination, but we need greater clarity. I am interested in the Minister’s response about the relationship between strategic planning, co-ordination and line management. For example, the Gangmasters Licensing Authority is a non-departmental public body and has its own board, which sets its budget and defines its priorities. We want to see an overall strategy, but a number of us would be concerned if the integrity of the GLA as originally constituted was in any way undermined. Amendment 59 will, I hope, draw clarification from the Minister.

Amendment 65 is on the Health and Safety Executive. As the shadow Minister pointed out, we are seeking clarity. Why has the HSE, among others, been excluded from the director’s remit? The Minister will recall from the evidence we received from the chair of the Migration Advisory Committee that there is a real case to include the HSE, local authorities and, potentially, sections of DWP. When we look at the scale of labour market enforcement between different agencies, the Employment Agency Standards Inspectorate has nine inspectors, the GLA has 69, the national minimum wage inspectorate has 232, and the HSE has 1,047 staff, of whom 972 are front-line inspectors. If we are to have a coherent approach to labour market enforcement, it would be useful to have a clearer understanding of the Government’s thinking on why at this stage the HSE is excluded.

[Paul Blomfield]

I am not sure whether this is an oversight on the Government's part—again, clarification would be helpful—but amendment 64 is seeking simply to ensure that labour market offences committed against all workers are included, because the current definition of “worker” suggests that it would not include—

11 am

Craig Whittaker: Not just amendment 64, which I shall come to, but all these amendments were perhaps summed up best by the hon. Member for Glasgow North East, who said that they are about the enforcement of employment law. Is not that amendment asking employers to specifically break employment law, which currently excludes them from employing anybody who is not legally allowed to work in this country anyway?

Paul Blomfield: No. I thank the hon. Gentleman for his intervention because it allows me the opportunity to clarify that the amendment is seeking to ensure that labour market offences by employers committed against all workers be included within the scope of the director of labour market enforcement's work. The point is that, as currently drafted—unless the Minister can provide contrary clarification—the measure suggests that undocumented workers will be excluded. Clearly, it is nonsense that a labour market enforcement director who is seeking to challenge all abuse in all parts of the labour market would have excluded from his terms of reference that part of the labour market which, by definition, is most likely to be subject to substantial abuse and exploitation. The Minister might be able to provide clarification that makes the amendment unnecessary.

James Brokenshire: I thank all hon. Members for their contributions in this mini-debate. Equally, I should celebrate and recognise the contribution from the hon. Member for Paisley and Renfrewshire North. I appreciate that this may be a rare moment in the consideration of the Bill—he is supportive of the measures—but, in good spirits, I welcome his comments and the support he has given. I think that there is a shared recognition that we need to deal with exploitation and to achieve better co-ordination, and that we need the strategic response that is provided by the Bill. I welcome his comments in the spirit in which they were made.

The hon. and learned Member for Holborn and St Pancras asked me at the outset about organised criminal activity and the evidence base. It is feedback from enforcement officers that tells us that the incidence of forced labour may be growing at a faster rate than other types of exploitation. It appears to be due to criminal gangs infiltrating the supply chain, which I know is a broader issue that was debated during the passage of the Modern Slavery Act. I will not stray widely, but perhaps that will give him a sense of what we have been looking at.

Amendments 57 and 58 relate to the contents of the director's annual strategy to address non-compliance in the labour market in the forthcoming financial year. Although I agree entirely with the intention behind the amendments, they are unnecessary because it is the

Government's expectation that the director will feed information of that nature into the planning and reporting cycle. Page 24 of the consultation document says of the strategy:

“It will set out, for the financial year ahead: the priorities for enforcement; the outcomes required from the enforcement bodies; and the budgets for the enforcement bodies, within the total envelope of available funding.”

So we have been quite clear about our expectations.

The issue of how non-compliance in the labour market should be addressed is at the heart of the strategy, which is why clause 2(2)(b)(i) requires the director to propose how labour market enforcement functions should be exercised, or, to put it another way, how the three enforcement agencies under the director's remit should operate to address non-compliance.

The Government would not consider the strategy to be effective if it did not identify the threats and obstacles to effective labour market enforcement. We expect the director to turn over stones to tell us where the gaps are and to propose how they can be addressed. That is a crucial and valuable aspect of the role. Similarly, the Government would not consider any strategy or report to be effective if it did not examine the important issue of securing remedies for victims, which would naturally include recovering wages owed to workers and sanctions against employers for labour market offences.

Sarah Champion: Therefore, will the Minister confirm that, as in amendment 62, non-compliance will be reported on and used as a baseline for forthcoming reports?

James Brokenshire: As the hon. Lady will note from the consultation document, the strategy is about setting out information and issues concerning the work of different bodies and agencies, including some themes of non-compliance. How that feeds into communication, good practice and sharing information is at the heart of the matter and needs to be reflected in the strategy.

Amendments 56 and 59 bring me to the director's role in setting the resources of the enforcement bodies. It is the Government's intention not that the director of labour market enforcement decides the budgets of the three enforcement bodies, but that the director should recommend how resources should be allocated within the total envelope of available funding. Hon. Members will be aware that the Gangmasters Licensing Authority is funded by the Home Office, and the Employment Agencies Standards Inspectorate and HMRC's national minimum wage enforcement teams are funded by the Department for Business, Innovation and Skills. Funding for those agencies is secured via the usual departmental bidding process. While the Government intend that the relevant Secretaries of State will take the director's proposals on resources into account during the preparation of those bids, it is right that the Government set the overall level of resources devoted to labour market enforcement in the context of the totality of pressures on public spending. I point out that HMRC has increased its budget for enforcing the national minimum wage; for 2015-16, that has increased by £4 million, meaning that the total budget has increased to £13.2 million.

Keir Starmer: I do not want to lose the central concern—a concern that gives rise to the amendment and that was in all the evidence, both written and oral evidence given to us last week. The existing agencies

have their budgets and their funding. Funding streams will be set by different parts of the Government and different bodies. Although HMRC is an example of where there has been an increase, budgets are being cut. The real concern being expressed across the board is that the resources at the moment for the existing agencies are such that the likelihood of any inspection or action being taken is very low. I am the first to accept that some of the statistics about one visit every 250 years and a prosecution once every million years have to be put into proper context; if it is intelligence-led, that gives a different perspective. I completely understand that, but the point made by independent body after independent body is that the likelihood of inspection and enforcement action is so low that it does not operate as much of a deterrent for most of those who may be involved in abuse of the market. That is a real concern. The Migrant Advisory Committee has been mentioned, but plenty of others charged with overseeing some of these issues are extremely concerned about the resources.

In that context, and understanding that it will not be the director's role to require resources to be used in a particular way, what assurance can we be given that there will be a shift—a step change—in approach? Without providing the resources necessary to give some assurance to the many people, including Opposition Members, who have raised their voices on this issue, it is difficult to see how the strategy will achieve the desired objective and be the positive step forward that it needs to be. Accepting the constraints and the framework in the Bill, what assurance can be given in response to the powerful evidence about the lack of resources and the limited likelihood of inspection and enforcement action being the real problem, rather than the penalties after the event?

James Brokenshire: I would point to what Professor Metcalf said during the evidence session about checks taking place every 250 years. He said:

“I am exaggerating when I say once every 250 years for a visit. Of course, they will do it based on risk.”—[*Official Report, Immigration Public Bill Committee, 20 October 2015; c. 21, Q40.*]

Our reforms are about enabling better targeting of enforcement activity, to make best use of the resources available and, therefore, to best protect vulnerable workers.

I return to my point about the additional support that HMRC is providing in terms of the national minimum wage. Where the director feels that the overall level of resources available has had an impact on delivery of the strategy, he or she will be able to say so in the annual report, which is laid before Parliament. That report can be redacted only for reasons of national security or the safety of any person in the UK, or if an investigation may be prejudiced, so it would be open to the director to make any comments.

It is right that, overall, the director is able to prioritise between the different agencies, while the envelope must reside within Government. We are having to make savings, and that is well recognised across the House. We have to deal with the deficit and a number of other issues, which I will not rehearse in this Committee. This is about being more effective and about using collaboration and co-ordination to step up our response. Amendment 59

is therefore unnecessary, as the director would be unable to restrict or reduce the resources allocated to labour market enforcement functions overall.

Amendments 65 and 66 would extend the director's remit. The enforcement bodies and pieces of legislation that should be included are those relating to workers who are most at risk of infringement of their labour market rights—workers on low pay, those engaged through agencies or those working in sectors deemed at high risk. They are most likely to be vulnerable to abuse by unscrupulous employers. The amendments would include other areas of state enforcement—namely, health and safety and the protection of child workers. We do not agree that those should be within the director's remit, and I will explain why.

The Health and Safety Executive, the Health and Safety Executive for Northern Ireland and the health and safety functions of local authorities play an important role in ensuring that risks to health and safety are properly managed in a worker's place of work. That is a wide responsibility; some of the requirements that those bodies enforce relate to labour market and employment rights, and others to different types of risk, from the storing of chemicals to the training necessary to operate machinery.

We want the director to remain focused on enforcement of the most relevant employment rights. The current way in which the Health and Safety Executive and the Health and Safety Executive for Northern Ireland use their specialist expertise to set their strategy is best placed to protect workers from workplace hazards. However, we are consulting on information-sharing powers for the director. Those will include the ability to share information with other enforcement bodies, including the Health and Safety Executive and local authorities. That will enable all enforcement bodies to take a shared view of risk, and that is the right way to approach the issue.

Similarly, the Children and Young Persons Act 1933 provides protections for those younger than 18 who work. It covers a range of scenarios, from very young children who may act or model, to older children who take a job in the school holidays. While the protections that it affords can be seen as employment rights, they are fundamentally about protecting children and their health, wellbeing and education. That naturally fits with local authorities' other responsibilities towards children and young people. We do not believe it would be in the child's best interest to separate this piece of legislation and enforcement and have it within the remit of the director. We think that local authorities are best placed to know the particular risks in their areas. As I have indicated, the sharing of information and intelligence is the most effective way in which the provisions in the Bill can contribute to that important work.

11.15 am

Paul Blomfield: Will the Minister elaborate a little on how he sees that information sharing developing? Given the scale of the HSE inspectorate's opportunity to identify, for example in the construction industry, wider labour market abuses, that is clearly significant. I am keen to hear how the Minister anticipates HSE inspectors being briefed, trained and supported on those wider potential labour market infringements, in a way that

[Paul Blomfield]

would inform and guide the other three agencies under the jurisdiction of the director of labour market enforcement.

James Brokenshire: The hon. Gentleman will be aware that information sharing is a specific point in our consultation. There are barriers—legal and otherwise—to sharing data between enforcement bodies. That is why we are consulting on that point, and some suggestions have been highlighted in the consultation document.

We are reflecting carefully on that and have put it out to consultation to consider the most effective and appropriate ways to do so. We want these gateways to information sharing, which we have in other enforcement spheres. I want to reflect on the responses to the consultation on that point to ensure that we act appropriately.

I hope I have set out why we think this role is different in character and nature, in terms of workplace safety and the best interests of the child, and why we do not think it would be appropriate to include the proposal in this part.

Sarah Champion: Does the Minister believe the consultation will be complete by Third Reading and able to influence the Bill?

James Brokenshire: We have today announced an extension to the consultation period. It was originally due to close at the beginning of November, and it has been extended by about four weeks—I can come back to confirm that. I want to ensure that we get the provisions right on some of these detailed points. The consultation may inform later parts of the Bill. Our judgment is that we should ensure that the consultation is framed to get the right responses from those actively engaged at the front end. That is why we have announced a time extension, which I believe will be welcomed by the different sectors.

There were comments about redefining the term “worker”. The clause and the proposed amendment do not redefine “worker” for the purposes of the Employment Agencies Act 1973, the National Minimum Wage Act 1998 or the Gangmasters (Licensing) Act 2004. The coverage of those respective Acts continues to apply. That means that the Employment Agency Standards Inspectorate and the GLA will still tackle non-compliance by employment agencies, businesses and gangmasters, regardless of whether the affected workers have the right to be or to work in the UK.

We see the director as being focused on improving the way we enforce labour market and employment law rules. The Bill is not about extending labour protections to illegal workers, and we think that the director’s focus should be on making sure that workers who are properly here are better protected.

However, we are committed to tackling serious crimes against individuals, whatever their status. We have set out in the modern slavery strategy and the Modern Slavery Act 2015 enhanced powers and an improved approach to tackling slavery and human trafficking, whether victims are trafficked for sexual exploitation, exploitation involving criminal activity or indeed labour exploitation.

That is why we have implemented life sentences for modern slavery offences, new preventive orders to stop harm before it takes place and improved protections for victims such as a statutory defence. We see an important but specific role for the director in supporting this crucial work. The director’s remit includes modern slavery offences where they are committed against a worker or person seeking work, or where a person is subject to slavery, servitude or forced or compulsory labour. We are also consulting on additional powers for the Gangmasters Licensing Authority to include tackling such offences in their proposed enhanced enforcement role. I draw Members’ attention to that.

We think the balance is right. The director’s role is focused on workers who are here legally, although he can include in his plans action against forced labour as well. Trafficking people from around the world to work in brothels in the UK is an absolutely unacceptable crime, but we judge it is right for the director of labour market enforcement to tackle those aspects that are within the remit outlined in the Bill.

Keir Starmer: I wish to understand what the Minister has just said, because it is a concern in relation to the amendment. Is the Minister saying that an amendment along the lines of amendment 64 is simply unnecessary because the individuals will be fully included within the protection, or that, contrariwise, they are not fully included, but that hopefully the strategy will include action that would protect all workers in the broader sense? To be specific, is it that amendment 64 is simply not required and is a misunderstanding of the definition or limitation, or is there a broader point? It is quite important.

James Brokenshire: I think it is the latter of the two points that the hon. and learned Gentleman has articulated. We think it is covered by other means, but, for the purposes of defining the specific role, it is about lawful entitlement to be within the UK. For the reasons that I have outlined, there are other mechanisms and ways in which the issue is being addressed. It is about labour market enforcement and the lawful upholding of existing legislation. The amendment appears to take us in a direction that would apply new rights to those who are here illegally, whereas there are other mechanisms through the linkages, through the rights that the Gangmasters Licensing Authority will have, and through the consultation. It is about the extension of those aspects through other means. That is why I made the point about the specific role for the director in supporting this crucial work through a different mechanism, through the work that the Gangmasters Licensing Authority will take forward. The role concerns the lawful upholding of existing labour rights, rather than the extension of those rights, which the amendment appears to suggest. That is why we have not found the amendment attractive.

The director’s role that we have proposed supports our wider strategy on modern slavery, enhancing the response to labour exploitation. Crucially, it should not confuse or undermine the responsibility of the National Crime Agency and the national policing lead to lead the operational law enforcement response to modern slavery, overseen by the independent anti-slavery commissioner. Where an illegal worker is a victim of modern slavery, appropriate support mechanisms are available to them

via the national referral mechanism. Their status as a victim will be reflected in how they are subsequently treated by the immigration system, including the relevant reflection periods during which the person will be granted leave to remain. There are also crucial protections within the criminal justice system, which we will come to later.

Amendment 62 seeks to specify the content of the director's annual report in the same way as amendments 57 and 58 did for the director's strategy. I do not propose to repeat the same arguments that I made in respect of the earlier amendments, but I want to be clear that this amendment is unnecessary.

Clause 4 as drafted states that the annual report must include:

“an assessment of the extent to which labour market enforcement functions were exercised in accordance with the strategy”.

As we expect the director's strategy to propose how the enforcement bodies should tackle non-compliance, seek remedies for victims and overcome obstacles to compliance,

it follows that the director's annual report will set out how successful the enforcement bodies were at doing exactly these things.

Paul Blomfield: I am still puzzled by the Minister's comments on amendment 64 and how the director of labour market enforcement would be able to consider all workers irrespective of their immigration status. If I understood him correctly, undocumented victims of trafficking would not be covered by the work of the director. If that was the case, would that not hinder his or her work?

James Brokenshire: No. It is complementary to the work of the National Crime Agency and the independent commissioner, so the Bill provides clarity in that regard.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.

