

A Statement from Leading Organisations in the Anti-Slavery Sector

Protect the UK's reputation as world leader in the fight against modern slavery

Amend Part 4 on 'Modern Slavery' of the Nationality & Borders Bill

The UK has a proud history since the days of Wilberforce of combatting slavery and human trafficking. In the last decade it has upheld this tradition and its Modern Slavery Act 2015 and current victim identification and support provisions are recognised as world renowned. We write to you now asking for your help to ensure that the UK's legacy and status as a world leader in this fight against slavery continues.

The Government has an electoral mandate to look at immigration and is doing so via its Nationality and Borders Bill. However, the Anti-Slavery sector fears that consequences of various clauses of the Bill, particularly under Part 4, will have a disastrous impact on the UK's response to modern slavery and negatively impact public order and national security as well.¹

Many in the sector fear that no amount of safeguards can successfully mitigate against all risks posed to the victims of modern slavery by this Bill and so would welcome removal of certain clauses. However, if this is not possible it still believes amendments can be made to mitigate some of the concerns about the Bill: -

1. Non-Compliance with International Obligations - part 4 as it is currently drafted in the sector's view is not compliant with established international law, policy and practice on the identification, safeguarding and support of victims of human trafficking, rights of children and rights of victims of crime².

2. Convolution of Modern Slavery and Immigration - Modern Slavery is a serious human rights violation and serious crime. The Conservative Government and Home Office itself have repeatedly recognised the need to treat it as such in the last decade, and have recognised that, while in some cases immigration status or rules can be used by exploiters, it is vital that addressing slavery is dealt with independently of immigration matters. This includes recommendations on this very point in Home Office³ reports, or by working to separate the two in the NRM via the creations of the Single Competent Authority.⁴ In addition, the majority of modern slavery victims identified in the UK are British nationals, yet several of the clauses on slavery in this immigration bill will also significantly impact this large cohort of British cases. The Modern Slavery Act (sections 49-50) provides for the Secretary of State to issue Statutory Guidance and Regulations on identification and

¹ 2019 UN report [IDENTIFYING AND EXPLORING THE NEXUS BETWEEN HUMAN TRAFFICKING, TERRORISM, AND TERRORISM FINANCING \(un.org\)](#)

² There is further discussion on this in reports including - <https://www.freedomfromtorture.org/sites/default/files/2021-10/Joint%20Opinion%2C%20Nationality%20and%20Borders%20Bill%2C%20October%202021.pdf>

³ See Home Office Oppenheim [review](#), 2014

⁴ For example the Government took the slavery decision making process away from UKVI and created a new body called the [Single Competent Authority](#)

support, and this would be the appropriate place for Modern Slavery Clauses developed in consultation with survivors and the sector to prevent unintended harm.

3. Penalising victims for how they enter the country and previous vulnerabilities and creating extra barriers to identification, safeguarding, support and access to criminal justice - Clauses earlier in the Bill mean that a victim of human trafficking will be penalised for how they come to the country; this will be compounded by Part 4, as this will penalise them for not self-identifying or disclosing their exploitation early on and for a vulnerable background which may include previous potentially minor offending behaviour, contravenes everything we know about modern slavery, such as that they may have little to no control over how they enter the country, let alone immediately self-identify or disclose such traumatic experiences. This appears to attempt to transfer the states internationally defined duty to identify victims of slavery to the individual victim, undermining the Modern Slavery Act (MSA), and raises the question of how this Bill will interact with the Modern Slavery Act's definition and our international commitments and legal obligations on this. It would be more consistent for revisions to be made directly in the MSA rather than have amendments in a totally separate bill about immigration.

The impact of this is that, rather than make the UK a more hostile place to traffickers and organised criminality, the Bill will make the UK fertile ground for traffickers and a haven for criminal gangs running 'county lines' drug running across the UK. It will do so by providing them with a new large supply of vulnerable British and foreign national potential victims, barred from any means of escape, with criminals safe in the knowledge they can no longer be held accountable. The upshot of which is the number of victims is likely to increase, while the number identified and rescued will reduce, leading to a decline in prosecutions and so provide a gaol-free card for some of the most cruel and dangerous armed groups and organised criminals. Not only does this have a human cost, but a report by the Home Office estimates the total cost of modern slavery in the UK in the year ending March 2017 to be between £3.3 billion and £4.3 billion.

In particular we wish to highlight in more detail: -

The Bill's clauses on identification (clauses 46-48)

Extra Barriers to Identification, Penalisation for Late Disclosure and Lack of Trauma Informed Practice: Clause 46 – 48

The Bill: plans to enact a system whereby foreign national victims of slavery will have their credibility assessed via the timeliness of their disclosure of their exploitation.

The Bill's stated aim: to encourage early identification, reduce costly delays, and protect the system from abuse by false claims of slavery to avoid deportation.

In practice: this section of the Bill features a complete disconnect with all the gains made in the last decade under this very Government and contradicts everything we know about exploitation. As the Independent Anti-Slavery Commissioner states, these clauses in the Bill effectively “conflate unmeritorious claims with late claims.” As we have seen with recent historic child sexual exploitation revelations, traumatic events can take years before being disclosed. Significant evidence exists, which demonstrates that victims of modern slavery similarly suffer trauma leading to delayed disclosure and troubles with memory recall – indeed this is in the Government’s own modern slavery statutory guidance⁵ and the Care Standards⁶ used to monitor the Government’s safe houses.

In fact, a delayed disclosure is a regular feature if not indicator of slavery. Repeated research, including in Conservative Party reports⁷ and police evidence⁸ suggest victims can take approximately two years of support before they feel safe enough to reveal what happened to them. Reasons for this recurring delay include trauma, fear for themselves or their families from attacks by traffickers, fear of the authorities if they have been forced to commit crimes as part of their exploitation or are migrants, Stockholm syndrome, guilt and shame, or lack of awareness of their rights or what is slavery is. For, similar to domestic abuse, it is not a self-evident crime like burglary, where the victim immediately knows what they have suffered. When British victims were rescued from a traveller site where they had been forced to work long hours with no pay, had experienced severe violence and had untreated broken bones and scurvy, some victims didn’t want to leave and refused to cooperate with police.⁹

The result: Many victims are unlikely to self-identify or even if they do, are unlikely to disclose their exploitation early on. They then risk being penalised for so-called ‘late’ disclosure which may also put some survivors off from opening up, and either way will mean a reduction in identifying victims. This will likely lead to many victims of trafficking being entirely overlooked and treated as non-victims with the consequence that victims are likely to fall into exploitation again, and our efforts to prosecute the perpetrators of the crime will be further undermined, as we will be unable to secure either key intelligence or essential witness evidence as victims will not be engaged or able to cooperate with the police.

Furthermore, rather than speed up the process, creating ‘Trafficking information notices’ is more likely to create further delays to the system, which, in turn, would have significant impact on victims’ recovery and increase costs to the public purse.

Recommendation: The clause should be deleted. If this is not done there should be an amendment to clause 47 including adding that any trafficking notice is served with an assessment and awareness of risks and needs so that survivors have access to legal aid, the correct translator, are aware of any disabilities etc. and that there will be certain reasonable circumstances in which a notice period will not have to be complied with. Children, it should also be stated, should be entirely removed from this clause in keeping with the legal duty to prioritise the best interests of the child.

⁵ Modern Slavery Act Statutory [Guidance](#)

⁶ Slavery and Trafficking Survivor Care [Standards](#) – announcement of adoption by Government [here](#)

⁷ GLA Conservatives report, [Shadow City](#) 2013

⁸ Police inspectorate HMICFRS [Report](#), 2017

⁹ [My brother was held as a slave for 26 years](#) - The Guardian “Psychological testing revealed that Alan also had Stockholm syndrome. He saw his captors as “nice blokes, who looked after me and stuck up for me””

The Bill's clauses on disqualification (clause 51)

Disqualification of Victims from Safeguarding and Support – (clause 51)

The Bill: creates a 'Disqualification from Protection' in the national referral mechanism (the system for identifying victims and providing them with a minimum of 45 days of support as part of a 'recovery and reflection' period) for any victim of modern slavery who is considered a 'threat to public order or has claimed to be a victim of slavery or human trafficking in bad faith.' It should be noted that the government advised in the Immigration Plan that they would *"therefore consult on a definition of "public order grounds" to enable protections of the NRM to be withheld in certain cases and allow removal to occur."* But this provision is presently drafted in primary legislation without any impact assessment or consultation on the definition of public order grounds or "bad faith."

The Bill's stated aim: "Identify victims as quickly as possible and enhance the support they receive, while distinguishing more effectively between genuine and vexatious accounts of modern slavery and enabling the removal of serious criminals and people who are a threat to the public and UK national security.

In practice: Whilst on the surface this may not appear problematic, the consequences are damaging. The definition of "bad faith" is unclear. The definition of threat to public order casts a very wide net, and despite being immigration legislation, will negatively impact victims of modern slavery, including British victims who currently make up the majority of victims protected in the UK. Under this clause, a threat to public order can include anyone who has been convicted of an offence listed in schedule 4¹⁰ of the Modern Slavery Act, (for example, robbery or damage to property) or a foreign national who has been sentenced to 12 months. The definition also includes offences committed under duress, as well as petty offences committed abroad and possibly from many years before. Yet [NRM statistics](#) show that 48% of all identified victims in 2020 had elements of criminal exploitation in their cases and the largest government care provider to victims of slavery, Hestia, published data¹¹ on male victims in their service which showed that 50% of male victims had spent time in prison or in detention.

Furthermore, by including offences under schedule 4 of MSA,¹² it fails to take into recognition that at the time of drafting of the MSA, schedule 4 was thought to be too wide by many in the CPS as it included many of the offences victims are compelled to commit as a result of their trafficking experience. So, while it was also designed to exclude people from raising the statutory defence under section 45, the CPS have always still looked at other defences such as duress and considered whether any decision is in compliance with the non-punishment principles in ECAT whether it is in the public interest to prosecute or not prosecute, considering the full circumstances of the case not just at the type or even seriousness of the offence.

¹⁰ A provision designed specifically to deny access to the statutory defence (a defence in the Modern Slavery Act for people who were forced to commit offences under duress) for certain offences, not to access to safeguarding and support.

¹¹ Hestia [report](#) on male victims of modern slavery 2018, Underground lives

¹² Schedule 4 of Modern Slavery Act 2015 lists 140 offences which are exempt from the statutory defence, many of which are common in trafficking cases

We know that prison leavers are often targeted by exploiters due to their vulnerability - as we saw with Operation Fort, the dismantling of the UK's biggest modern slavery network where traffickers 'targeted the most desperate from their homeland, including the homeless, ex-prisoners and alcoholics.'¹³ This will create a two-tier system of a deserving and undeserving victim based on past history of vulnerability. This clause will also lead to an increase of this type of targeting of vulnerable adults, if traffickers know the victims are already automatically disqualified from receiving support. Similarly, we know that victims of modern slavery often receive a criminal record as a result of their exploitation (for example through county lines drug running) and this clause denies them the protection they require, the ability to access support to examine such things as the statutory defence and will trap them in their criminal exploitation for life.

The result: This sends a clear message to traffickers that they are free to exploit people with criminal records, including those with convictions for more minor offences. It also creates a worrying moral and legal precedent that where a person has been convicted of one crime, they are not considered a deserving victim of another. There are strong policy arguments against this: a person who has in the past been convicted of shoplifting, should still be recognised as a victim of crime when he is later attacked and mugged. Not only is it in society's interests that a violent perpetrator be caught and brought to justice, but it is a fundamental principle of a democratic society that the rule of law be applied to all equally, due to entitlements as a victim of crime. Lastly, this clause will further reduce the low rate of modern slavery prosecutions. Police have been seeking ways to encourage more victims to come forward to improve conviction rates and this Bill currently risks doing the opposite - deterring victims from coming forward in the first place, receiving safeguarding and support and the ability to provide evidence as they will not give witness testimonies without protection.

Recommendations: The clause should be removed, as the statutory guidance already has the public order provision within it and therefore further clarification could be in this guidance. The issue of definition of "public order" and what would constitute "bad faith" should be put out to public consultation with a full impact assessment conducted on the implications of this provision including compliance with international obligations including but not limited to ECHR and ECAT, UN Convention on the Rights of the Child and rights of Victims of Crime such as under the Victim Directive and Code. It should also be noted that much of Part 4 of the Bill is inconsistent with the MSA, yet the MSA went through many reviews and much parliamentary scrutiny and it would be a mistake to undermine, with limited to no assessment, the expert structures and guidance related to this work.

If the decision is not taken to remove this clause it is vital that (1) children are removed completely from this provision (2) the clause needs to be amended so that it serves the intended purpose of the public order exemption, which is to exclude victims or fraudulent victims who are dangerous offenders and/or a threat to national security – to do this the threshold should be high, applied in exceptional circumstances and take into account all the circumstances of the case (3) the term 'bad faith' should be translated more precisely and such provisions should be limited to cases which are found to be fraudulent and meet a criminal threshold of fraud (4) there should be a requirement to make a conclusive grounds decision. Also, the focus on credibility highlights the Government's ostensible broader lack of

¹³ UK slavery network 'had 400 victims', BBC, 2019 - [link](#)

trust in the decision-making process – of which the sector sympathises. This could be improved with more investment in training of first responders and decision makers and facilitating better access to lawyers.

Sajid Javid when he was Home Secretary described slavery as a ‘sickening form of inhumane exploitation that has absolutely no place in society.’ The Bill may seek to get tough on criminals, but if we go down the present route, we will not succeed in deporting or putting the real lawbreakers behind bars. Instead, we should bring it in line with our international obligations and build on present Government policies, guidance and strategies on modern slavery, to ensure victims continue to be identified and supported, as evidence demonstrates that we get considerably more convictions when victims of modern slavery are supported.

Please find a [link](#) to a Research and evidence Consideration Paper relating to all the clauses in Part 4 of the Nationality and Borders Bill.

The paper has been prepared by Kate Garbers (Rights Lab Research Fellow in Policy Evidence and Survivor Support) with input from Catherine Meredith (Barrister at Doughty Street Chambers), Dr Katarina Schwarz (Rights Lab Associate Director), the Human Trafficking Foundation (HTF) and contributions from anti-slavery sector practitioners and partners who were part of the HTF Research and Evidence Group and contains contributions from partners across the anti-slavery sector as well as academic and grey literature sources. It is intended as a resource and information source and we hope you find this paper useful as a point of reference as the Bill progresses through committee stages.

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