



An Overview of Concerns about Part 5 of the Nationality & Borders Bill and Modern Slavery

Executive Summary

The Anti-Slavery sector is aligned in wanting Part 5 removed from the Nationality and Borders Bill.¹ Including modern slavery in an immigration focussed Bill risks causing damage to the individuals the government is intending to protect and threatens to undermine their stated policy objectives.

Part 5 is harmful to victims of modern slavery and will allow serious organised criminals to act with impunity. Part 5 undermines the Modern Slavery Act, children's rights and important obligations towards victims for the following reasons;

- It creates extra barriers to the identification of victims,
- It will exclude significant numbers of victims, including those who are children and/or British, from receiving protection and support,
- It narrows the support victims will receive,
- Risks damaging prosecutions by preventing victims access to protection and support, allowing dangerous criminals to evade justice.

It is not just NGOs who are concerned. The Independent Anti-Slavery Commissioner, senior police officers, chief prosecutors, international organisations and parliamentarians have raised concerns that particular clauses in Part 5 will result in fewer victims of modern slavery accessing support and will be damaging to prosecutions.² Part 5 actively undermines government efforts to tackle slavery, including serious organised criminality, and creates a fertile - rather than hostile - environment for those who exploit and harm individuals. Below we have outlined key concerns:

Harmful Impact on Victims

- Victims of slavery often don't self-identify or reveal their exploitation, often due to the impact of trauma. Reports show it can take up to 2 years for someone to disclose what has happened to them. Clauses 57 and 58 of the Bill expect victims to disclose at the moment of identification or be penalised – this is not realistic and will result in less people being identified and supported.
- Under clause 62, identified victims will be disqualified from protection if they are deemed to be a 'threat to public order'. The definition is far reaching and will see victims having support withdrawn for minor offences that they may have been forced to commit as part of their exploitation, as is often the case with British children in 'county lines' drug trafficking.
- The support being offered to victims both during and post the NRM has been narrowed under the Bill from what is currently available.
- Not only does this mean victims will be offered less support, but it also means they are less likely to act as witnesses, leading to a reduction in prosecutions and fewer traffickers behind bars.
- Only parts of the Council of Europe's Convention on Action against Trafficking have been included in the Bill, and its articles that specifically lay out support entitlements for victims are absent.

Harmful Impact on Children

- Children's organisations have stated that the legislation will damage protection and support for child survivors of trafficking.³

- The Bill does not include specific provisions for children nor does it offer details on how children will be supported within the context of the Bill.⁴
- NRM statistics show that 47% of referrals are for children.⁵

Harmful Conflation of Immigration and Modern Slavery

- The UK is considered a world-leader in the fight against modern slavery and yet this Bill seeks to undo this reputation by viewing modern slavery through an immigration lens (especially pertinent when the largest cohort of victims are British) and stripping back victim support. Modern slavery legislation should be in the Modern Slavery Act 2015.

Lack of Data to Support Claims of Misuse

- The Government claims the NRM is being misused and that the proposed reforms are needed to address this. However, these claims of misuse have been highlighted as unsubstantiated in multiple reports and submissions. The Minister committed to writing to the Bill Committee outlining the numbers of people who are abusing the system and confirming how this is being misused. This was not presented as evidence by the government at committee stages.
- Without this, there is no data to suggest the NRM is being misused.⁶

Overuse of Statutory Guidance and Case-by-case Basis

- Throughout all stages in the Commons, the Government reiterated that detail on identification, protection and support clauses and how these will be practically implemented will be included in guidance and on a case-by-case basis rather than in the Bill itself.
- The Modern Slavery Act 2015 Statutory Guidance was published in 2020. Practitioners are concerned about how decisions will be made in the interim if there is a similar wait for the Nationality & Borders Bill guidance and that not having entitlements of support enshrined on the face of the legislation means that changes can occur without parliamentary scrutiny.
- A case-by-case basis was referred to over twenty times across the debates, in terms of cases being reviewed and decided upon on their own merits and dependent on the grounds of individual cases. However how this promotes a fair and equal system in line with our obligations of identification, assistance and support is unclear.

Further Information

What is Modern Slavery and Human Trafficking?

Modern Slavery is set out in the Modern Slavery Act (2015) and Statutory Guidance and can be thought of as an umbrella term that encompasses human trafficking, slavery, servitude, and forced or compulsory labour.⁷

Human Trafficking consists of three components:

- ✓ the act - *recruitment, transportation, transfer, harbouring and receipt of an individual.*
- ✓ the means - *threat or use of force, abduction, fraud, deception, coercion or the abuse of power and vulnerability.*
- ✓ and the purpose – *the exploitation, such as sexual exploitation, forced labour, criminal exploitation, domestic servitude and organ harvesting.*

For child trafficking, the 'means' is not necessary as there is automatic abuse of vulnerability.

What is the difference between Trafficking and Smuggling?

Trafficking and Smuggling are often used interchangeably. There are instances where they overlap but it's important to know the difference. Smuggling occurs when an individual seeks the help of a facilitator to enter a country illegally, and the relationship between both parties ends once the

transaction ends. In some cases, smuggling may turn into trafficking if the terms change enroute or on arrival and a person finds themselves owing money for their journey and is made to work to pay this off.

Smuggling	Trafficking
Always across international borders	Can be internal, i.e., trafficked within the UK
Crime against the state	Crime against the individual
One-off payment	Ongoing exploitation
Consensual transaction	Deception or coercion

The National Referral Mechanism (NRM)⁸

The NRM is the UK’s framework for identifying and supporting victims of modern slavery. It is the mechanism for ensuring that consenting adult victims receive the necessary support and assistance in the period immediately after their identification as a potential victim.

The NRM is a two-stage process – Reasonable Grounds decision (made on day five) and a Conclusive Grounds final decision (made after day 45). Decisions are made by the Competent Authority (Home Office) on information provided in the referral.

Adults can access specialist support, via the Modern Slavery Victim Care Contract, from day 5, after receiving a positive Reasonable Grounds decision. This support continues until they receive a Conclusive Grounds decision.⁹ Children do not receive this support when referred into the NRM, but instead are meant to be safeguarded and cared for by social services under The Children Act 1989.¹⁰

Did you know?

- **34%** of victims identified via the NRM last year were British.
- An NRM Conclusive Grounds decision should take 45 days. In 2020, the NRM Statistics show that, on average, decisions took **339 days**, meaning victims were kept in limbo.
- **89%** of Conclusive Grounds decisions made in 2020 were positive – which means the Home Office deemed the individuals to be victims of modern slavery.
- **47%** of victims referred to the NRM last year were children.¹¹
- Modern Slavery Statutory Guidance to accompany the Modern Slavery Act was first published in 2020, five years after the Modern Slavery Act was enacted.

To date in the Commons

Amidst the concerns raised and the amendments proposed, the government hold firm in their belief that this Bill will:

- assist early victim identification,
- ensure victims get access to the support they need,
- allow quicker decision-making processes,
- tackle misuse of the system.¹²

Amendments put forward by cross-party MPs were discussed at report stage in the Commons. Only the government’s own amendments to Part 5 were passed. The only concession was the government expressed a commitment to support victims, stating that all survivors conclusively identified and in need of tailored support will receive this for a minimum of 12 months.¹³ What this support will consist of, and what, if anything this means for children, is not included in the Bill and government propose this will be outlined in guidance and not legislation.

Much more needs to be done to amend the Bill to ensure that victims of modern slavery continue to be identified, can access trauma-informed support and traffickers are brought to justice.

Further Reading and Contacts

An Executive Summary outlining the concerns with each clause in Part 5 can be found at:

<https://bit.ly/3qemtvf>

For more information on the concerns of the sector you can read the Rights Lab full report on implications and evidence of impact of Part 5 of the Nationality and Borders Bill at:

<https://bit.ly/3qgA7yh>

Anti-Slavery Sector CEO's letter can be found here: <https://bit.ly/3EbNiVR>

If you have any questions, are interested in supporting an amendment or would like to find out more, contact robyn@humantraffickingfoundation.org.uk

This overview was compiled by Kate Garbers Research Fellow at the Rights Lab and Robyn Phillips from the Human Trafficking Foundation on behalf of the organisations as shown.

¹ Letter from 114 CEOs of NGOs <https://bit.ly/3EbNiVR>

² Statement from Anti-Slavery Leaders and Organisations. 2021.

<https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/61791619ab13bc63b265ff2a/1635325466766/Antislavery+Sector+Statement+updated.pdf>

Caroline Haughey QC concerns, <https://www.independent.co.uk/independentpremium/voices/modern-slavery-borders-bill-prite-patel-b1957431.html>

Dame Sara Thornton, Independent Anti-Slavery Commissioner <https://www.thetimes.co.uk/article/rushed-borders-bill-will-fail-victims-of-modern-slavery-mxzdx8vxf>

Top Police raise concerns <https://www.independent.co.uk/news/uk/home-news/modern-slavery-immigration-bill-tories-b1951648.html>

Karen Bradley MP, <https://www.politicshome.com/thehouse/article/the-nationality-and-borders-bill-risks-letting-down-modern-slavery-victims>

Letter from Special Rapporteurs on trafficking in persons November 2021

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26788>

³ ECPAT. 2021. <https://www.ecpat.org.uk/news/statement-on-the-nationality-and-borders-bill> p.61

⁴ Independent Anti-Slavery Commissioner. 2021. IASC letter to The Rt Hon Priti Patel MP, Home Secretary (September 2021). <https://www.antislaverycommissioner.co.uk/media/1668/iasc-letter-to-the-rt-hon-prite-patel-mp-home-secretary-march-2021.pdf>

⁵ National Referral Mechanism Statistics. 2021 <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2020>

⁶ Rights Lab. 2021. Consideration Paper Nationality and Borders Bill <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/october/consideration-paper-nationality-and-borders-bill.pdf> and Rights Lab. 2021. Submission to National Immigration Plan

⁷ Modern Slavery Act. 2015. <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

⁸ National Referral Mechanism Guidance. 2021 <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>

⁹ Victim Care Contract. 2021. <https://www.salvationarmy.org.uk/modern-slavery/new-victim-care-contract>

¹⁰ Home Office Statutory Guidance. 2021.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031731/modern-slavery-statutory-guidance-ew-non-statutory-guidance-sni-v2.5-final.pdf

¹¹ National Referral Mechanism Statistics. 2020. <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2020>

¹² Tom Pursglove MP Committee Stage Debate 28th October 2021 [https://hansard.parliament.uk/Commons/2021-10-28/debates/66b1e524-3688-4227-86e0-64af2068fee9/NationalityAndBordersBill\(TwelfthSitting\)](https://hansard.parliament.uk/Commons/2021-10-28/debates/66b1e524-3688-4227-86e0-64af2068fee9/NationalityAndBordersBill(TwelfthSitting))

¹³ Rachel Maclean MP Debate 8th December 2021 <https://hansard.parliament.uk/commons/2021-12-08/debates/63B3AE86-2989-449D-97A5-EF78C8DC79CA/NationalityAndBordersBill>