

NATIONALITY AND BORDERS BILL – BRIEFING AND AMENDMENT FOR CLAUSE 57 AND 58

ACKNOWLEDGING DISCLOSURE TAKES TIME

“I wasn't even aware I had been trafficked until this was explained to me. 5 months was not even close to enough time for me to come forward and share my truth because I was living in fear, I was hiding, I wanted to be invisible and I was scared of laws being used against me (thanks to my trafficker's physiological abuse, threats and manipulation).

This bill hands power to predators and will contribute to an already low prosecution rate amongst modern slavery survivors. Today I am one of multiple woman who will go to trial and seek justice thanks to the freedom to come forward at my pace.”

MODERN SLAVERY SURVIVOR COLLECTIVE

Introduction:

The UK has pioneered ground-breaking anti-trafficking and modern slavery legislation. The introduction of the Modern Slavery Act (2015) marked an important step in the support offered to survivors of modern slavery and trafficking. However, including modern slavery as Part 5 of the Nationality & Borders Bill conflates modern slavery and immigration and risks undoing the progress that has been made by disqualifying victims from support and penalising them for taking time to disclose their traumatic experience. As a result, over 100 CEOs from anti-slavery and human rights organisations have called for Part 5 to be removed from the Bill.ⁱ

One of the main clauses the organisations are concerned about is clause 58, which states that the credibility of victims of modern slavery will be damaged if they fail to disclose their trafficking experience within a set timeframe laid out in clause 57. These clauses fail to consider the barriers the majority of victims face in coming forward to ask for help and penalises them for the trauma they have faced. Failure to properly identify victims risks pushing them away from support, which will strengthen the hands of trafficking gangs.

This briefing sets out the anti-slavery sector's concerns with clause 57 and 58 of the Bill and requests that the threat to discredit victims for not coming forward within a time frame is removed from the Bill so that victims can disclose their experience of exploitation at their own pace.

Clause 57 and 58:

Under clause 57, individuals who are submitting a protection or human rights claim who have also been trafficked (regardless of whether the protection claim relates to trafficking) will be required to complete a Slavery or Trafficking Information Notice. This clause, if enacted, will equate to different processes being in place for different victims based on their nationality. This practice of requiring 'early' or 'extra information' from some victims is discriminatory and directly contravenes the prohibition of discrimination in Article 14 of the ECHR and Article 3 ECAT.

Clause 58 seeks to damage the credibility of victims of modern slavery if they do not disclose that they have been trafficked within a set time frame listed in the Slavery or Trafficking Information Notice introduced in clause 57. Giving victims of modern slavery a deadline in which to disclose does not take into consideration how hard it can be for a victim of modern slavery to identify themselves as a victim, let alone feel confident to disclose this information.

A victim of modern slavery or human trafficking may be prevented from disclosing information for a number of reasons including but not limited to trauma; distrust of authorities; fear of reprisals against them or their family by the trafficker; not recognising themselves as victims of trafficking; and Stockholm syndrome. The government's own Modern Slavery Act Statutory Guidance has a list of barriers to disclosure, stating that '*Victims' early accounts may be affected by the impact of trauma. This can result in delayed disclosure*' and '*Victims may not recognise themselves as a victim of modern slavery or be reluctant to be identified as such.*'ⁱⁱ A GLA Conservatives Report noted that the police said it took on average 2 years for victims of slavery from West Africa, who had been coerced via Jujū, to reveal what had happened to them.ⁱⁱⁱ

One of the organisations speaking out against clause 57 and 58 is The Salvation Army, which has held the Government's Modern Slavery Victim Care contract for over ten years; in that time supporting over 15,000 survivors. The Salvation Army believes there is a very real risk that the number of survivors able to receive much needed support through the National Referral Mechanism (NRM) will be reduced by these clauses. If survivors are unable to enter the NRM, they will not be able to be made safe from traffickers and begin the process of rebuilding their lives, nor help the police with their prosecutions.

It is also key to note that children are not exempt from these clauses so will also have to go through the process of Slavery or Trafficking Information Notices and having their credibility damaged if they fail to disclose within the prescribed timeframe, despite the fact that they may not understand what is happening to them.

In summary, our chief concerns with clause 57 and 58 are as follows:

1. **It will make victims of modern slavery less safe.** Traffickers rely on and feed victims' fears that authorities will not believe or assist them or may take action against them.^{iv} This clause legitimises traffickers' claims, sending a clear message to victims that if they have missed the deadline for revealing their exploitation and seeking help, they won't be believed, therefore risking them remaining in exploitation.
2. **It will significantly reduce the number of successful UK prosecutions against traffickers and leave some of the most dangerous criminals free.** This is why so many senior police and prosecutors are voicing concern^v. If victims are deterred or prevented from coming forward and receiving support, they will not be in a position to support the police with their investigations, in turn leading to less prosecutions and less traffickers behind bars.
3. **It will undermine the UK's reputation as a world leader in combatting human trafficking and violates the UK's international legal obligations.** The UK is seen as a world leader in tackling modern slavery. These clauses risk undermining the achievements of the Modern Slavery Act by starting from a position of disbelieving victims and requiring them to prove otherwise. It also breaches the European Convention on Action against Trafficking (ECAT) by putting the onus on victims to identify themselves and removing the state's obligation to identify trafficking victims and investigate trafficking offences.^{vi}

Amendments:

The anti-slavery sector would like to see both clauses removed from the Bill. We support Lord Coaker who has given notice of his intention to oppose the question that clause 57 and clause 58 stand part of the Bill.

In the House of Commons, both Labour and SNP raised concerns about clause 57 and 58 at Committee stage and introduced amendments, including removing the clauses and adding a list of 'good reasons'

for 'late' disclosure to clause 58, which Lord Coaker has also tabled for Committee stage in the Lords. SNP tabled the removal of both clauses at Report stage; removing clause 58 was pushed to a vote but did not pass.

Additional amendments put forward by the APPG on commercial sexual exploitation also did not pass. These amendments seek to exclude only victims of sexual exploitation from clause 58. This is not supported by NGOs in the anti-slavery sector who believe this will cause a hierarchy of exploitation and that all victims of all forms of exploitation should be excluded from these clauses.

Responses from the Government:

“It will reduce the potential for misuse of the NRM”

- Despite numerous claims, the Government is yet to publish any data that demonstrates people taking advantage of the NRM
- The best way to reduce the misuse of the NRM and its alleged use to 'delay' deportation/imprisonment of hardened criminals, would be to ensure the NRM system itself is improved, e.g., reducing the delays in decision-making by better funding of the NRM.
- Reducing the *potential* for misuse is not reason in itself to change an entire system
- The Government has not published any evidence to suggest that someone wishing to misuse the NRM would disclose after a set timeframe and a real victim would disclose straight away.

“It will ensure victims are identified as early as possible to receive appropriate support”

- NGOs welcome the Government's desire to increase efficiency in the NRM. However, this can be more effectively done by improving the existing system. Adding Slavery or Trafficking Information Notices as another layer to the complex NRM process is likely to add further delays, rather than speed it up, especially as it is not clear how individuals will be able to present evidence of 'good reasons' for failing to provide information by the deadline
- At Committee stage in the Commons, the Minister offered to provide information on how the Slavery and Trafficking Information Notices will work in practice but this has not been published^{vii}

“On a 'Case by Case' Basis”

- The Minister says the concerns will be able to be resolved on a 'case by case' basis. But we know from experience that safeguarding requires clear procedures to avoid tragedy
- Data from FOI requests showed that 81% of all negative reasonable grounds decisions made by the Home Office were overturned upon appeal.^{viii} This is evidence that we cannot rely on the discretion of the competent authority and a 'case by case' basis

“It will be laid out in Guidance”

- Statutory Guidance for Modern Slavery in England and Wales, as required under section 49 of the Modern Slavery Act (2015) was first published in 2020, five years after the Act. If the same is found to be true for the Nationality & Borders Bill, what information should victims and decision makers rely on in the meantime?
- Guidance can be changed quickly and without notice, which happened in November 2021 with the creation of an Immigration Enforcement Competent Authority to make NRM decisions for foreign national offenders. No member of the Home Office's Statutory Guidance group had been consulted and no meeting to discuss these changes or seek input before publication convened

Supporting Statements:

‘The bill not only undermines a legal principle, but it goes against the experience of anyone working with victims of modern slavery that it takes time for people to disclose exploitation... The government’s bill profoundly impacts genuine victims of slavery and, in doing so, creates an environment in which traffickers will flourish. It will catastrophically undo all that has been achieved in the 10 years since the first modern slavery prosecution.’^{ix} **Caroline Haughey QC, who co-drafted the Modern Slavery Act 2015**

‘Traumatised victims cannot disclose their suffering to order – it takes time to build trust and confidence. I cannot imagine that we would contemplate asking victims of sexual assault or child abuse to respond within a set period.’^x **Dame Sara Thornton, Independent Anti-Slavery Commissioner**

‘If we are to stop modern slavery, we must ensure that we catch the perpetrators, which requires victims to be able to come forward with evidence. She is outlining certain elements of the Bill that she fears will restrict victims’ ability to come forward, and I am concerned that the public order disqualification threshold and the time period on slavery and trafficking information notices will also have that effect.’^{xi} **Theresa May, who introduced the Modern Slavery Act as Home Secretary**

‘Under the new legislation, victims who miss the deadline for providing information about what happened to them would be seen as less credible. The Joint Committee finds that this would be unfair and risks the UK failing to meet its obligations to combat slavery and human trafficking.’^{xii} **Joint Committee on Human Rights**

‘We are concerned that the requirement stated in Clause 58(2), to view the late provision of status information as, “damaging to credibility”, would fail to acknowledge the positive obligation on the State to identify victims of trafficking and contemporary forms of slavery, and would fail to recognize the impact of trauma on the provision of information relating to the status of being a victim, including for child victims.’^{xiii} **Special Rapporteurs, United Nations**

ⁱ Letter to MPs 2021 <https://bit.ly/3u2g21W>

ⁱⁱ Modern Slavery Act Statutory Guidance <https://bit.ly/3tW6mGm>

ⁱⁱⁱ GLA Conservatives report, Shadow City 2013 <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Shadow-City.pdf>

^{iv} *Seeking Effective Remedies for Criminalized Trafficking Victims*, International Women’s Human Rights Clinic at City University of New York <https://ncjtc-static.fvtc.edu/Resources/RS00002861.pdf>.

^v [Top police warn Patel’s immigration bill will make life easier for traffickers | The Independent](#)

^{vi} Rights Lab, Nottingham University, *Consideration Paper; Nationality and Borders Bill*, 18 October 2021, para.

<https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/october/consideration-paper-nationality-and-borders-bill.pdf>

^{vii} Committee stage Hansard, column 482 [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))

^{viii} After Exploitation. New data: Majority of trafficking claims found to be ‘positive’ after reconsideration. July 2021. [New data: Majority of trafficking claims found to be ‘positive’ after reconsideration \(afterexploitation.com\)](#)

^{ix} To trample over the intentions of the Modern Slavery Act is reprehensible, 2021

<https://www.independent.co.uk/independentpremium/voices/modern-slavery-borders-bill-priti-patel-b1957431.html>

^x Rushed borders bill will fail victims of modern slavery, 2021 <https://www.thetimes.co.uk/article/rushed-borders-bill-will-fail-victims-of-modern-slavery-mxzd8vxf>

^{xi} Report Stage Hansard, 2021 <https://hansard.parliament.uk/commons/2021-12-08/debates/63B3AE86-2989-449D-97A5-EF78C8DC79CA/NationalityAndBordersBill>

^{xiii} Nationalities and Borders Bill risks failing victims of modern slavery, 2021 <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/160035/nationalities-and-borders-bill-risks-failing-victims-of-modern-slavery/>

^{xiii} Nationality and Borders Bill undermines rights of victims of trafficking and modern slavery, UN experts say, 2022 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28027&LangID=E>