



Amendments to Part 5 of the Nationality & Borders Bill from the House of Lords

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,
- It 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 all 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 Amendments to all clauses in Part 5 have been tabled throughout the parliamentary process and peers from across the House of Lords expressed a strong objection to Part 5 of the Bill. Peers from all parties voted through four amendments to Part 5 at Report Stage.

‘everybody who knows a bit about it [modern slavery] does not agree with the Government.’

Lord Deben (Conservative Peer)

Successful Amendments in the House of Lords

Amendment 24: Removal of Clause 58 (Late compliance with slavery or trafficking information notice: damage to credibility)

- The House of Lords voted to remove clause 58, which required victims to disclose their trafficking experiences within a set time frame or risk having their credibility damaged.
- The stated aim of clause 58 is to speed up the identification process and ensure those who have ‘credible’ trafficking claims are supported. However, evidence shows disclosure of traumatic events does not occur within prescribed timeframes.
- Clause 58 punishes delayed disclosure and is contrary to the government’s acceptance that victims may be unable to provide disclosure of their experiences of trafficking and/or may not recognise themselves as victims. The government’s own Modern Slavery Act Statutory Guidance

states that 'Victims' early accounts may be affected by the impact of trauma. This can result in delayed disclosure.³

- Damaging an individual's credibility will instead penalise victims for the time it takes to process their experience of modern slavery and mean they are not able to act as witnesses, which would damage an already low prosecution rate for modern slavery.
- The Anti-Slavery Sector believe MPs should support the removal of this clause and would be happy to work with the Government to discuss alternative ways to speed up the identification process, as this remains a shared aim. Please find a further briefing [here](#).

'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.'

Survivor of Modern Slavery

Amendment 25: Leave out Clause 62 and insert new clause (Identified potential victims etc: disqualification from protection)

- Clause 62 outlines a 'public order exemption' enabling the Government to refuse support and deny victims of trafficking the right to have their trafficking investigated if they have convictions.
- The clause is far reaching so that victims who are children or have been forced to commit crimes as part of their exploitation can be disqualified from protection. This is concerning as 48% of all cases last year involved criminal exploitation.
- The House of Lords voted through an amendment which preserves the Government's power to remove individuals from the UK who pose a threat to public order, whilst exempting children and ensuring that the threat is immediate, genuine, present and serious.
- Without this amendment, the Government risks playing into the hands of traffickers who know they can target people who have a criminal record, or force victims to commit crimes with impunity. Disqualifying victims from protection means they are less likely to act as witnesses, leading to a reduction in prosecutions and fewer traffickers behind bars.
- The Anti-Slavery Sector believes MPs should support this amendment, which enables the Government to remove genuine threats, protect citizens and ensure vulnerable victims are not inadvertently impacted. Please find a further briefing [here](#).

'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.'

Rt. Hon. Theresa May MP, who introduced the Modern Slavery Act

Amendment 26: Leave out clause 64 and insert new clause (Conclusive grounds: support and leave to remain for victims of slavery or human trafficking)

- This new clause introduces 12 months leave to remain and tailored support for all individuals who have been found to be confirmed victims of modern slavery. This is to ensure victims are provided with protection, support, security and stability. From this position victims will be able to better recover and reintegrate – part of which may be engaging with police and prosecutors

to bring perpetrators to justice. The new clause replaces previous clause 64 which committed to providing leave to remain but did not specify how long this would be for.

- The Anti-Slavery Sector believes MPs should support this amendment, which ensures stability to help victims fully recover and assist with bringing criminals and perpetrators to justice.

[Part 5 is...] 'contrary to the Modern Slavery Act'

Baroness Butler-Sloss (Cross-Bench Peer)

Amendment 27: After Clause 64 insert new clause (Slavery and human trafficking: victims aged under 18 years)

- This new clause will protect child victims of trafficking by exempting them from certain clauses in Part 5 and ensuring that all decisions about them are made in line with their best interests, including decisions about granting leave to remain in the UK.
- Without this clause, children's credibility may be questioned and they may be disqualified from protection which is not in line with protection under the Children's Act.
- **43% of victims identified last year were children** and the Government's own Modern Slavery Act Statutory Guidance states that *'Whatever form it takes, modern slavery and child trafficking is child abuse and relevant child protection procedures must be followed if modern slavery or trafficking is suspected.'* This new clause ensures this is upheld.
- The Anti-Slavery Sector believes MPs should support this new clause to ensure that children continue to be safeguarded and have decisions made in their best interest. Please find a further briefing [here](#).

[re. clause 58] 'Most worryingly, children are not exempt. That will be a significant setback for the achievements of the Modern Slavery Act and child protection legislation.'

Baroness Prashar (Cross-Bench Peer)

Government Arguments

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 data the Government provided pointed to the "*clear rise in the number of referrals to the national referral mechanism*" from detention, from 3% (501) in 2017 to 16% (1,767) in 2019.⁴ These figures do not show *misuse* of the system – rather they reflect the fact that more survivors of trafficking are being identified in immigration detention due to recent government investment in training of immigration officers in the last few years. Figures show an overwhelming majority of individuals identified and referred to the NRM from detention are found at the first stage of the identification process to have been trafficked (83.2%).⁵

- Furthermore, 47% of potential victims identified in the UK last year did not consent to an NRM referral, suggesting that on the contrary to the NRM being misused, more people are choosing not to enter.

Overuse of Statutory Guidance

- Throughout the Parliamentary process, 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.
- 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, a whole five years after the Act. Practitioners are concerned about how decisions will be made in the interim if there is a similar long 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.

Discretion and on a Case-by-case Basis

- Decision makers using their discretion and the legislation being implemented on a case-by-case basis was a key argument for the Government throughout the debates. However how this promotes a fair and equal system in line with our obligations of identification, assistance and support is unclear. Using discretion for other principles such as the provision of leave after a positive NRM decision have not worked in the favour of victims (only 2% of trafficked children were granted leave to remain in 2019-20 post NRM⁶).
- Making decisions on a case-by-case basis having gathered 'good reasons' for late disclosure and information about victims' criminal records from overseas, is likely to cause huge delays when speeding up the process is one of the Government's stated aims. This places victims at risk of re-exploitation given the current considerable delays in the system (it already takes an average of 448 days to reach a Conclusive Grounds decision in 2021.⁷ When it is supposed to take 45 days).

'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.'

Dame Sara Thornton, Independent Anti-Slavery Commissioner

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.⁸

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)⁹

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.¹⁰ 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 1989.¹¹

Did you know?

- **43%** of victims referred to the NRM last year were children.
- **31%** of victims identified via the NRM last year were British.
- An NRM Conclusive Grounds decision should take 45 days. In 2021, the NRM Statistics show that, on average, decisions took **448 days**, meaning victims were kept in limbo.
- **91%** of Conclusive Grounds decisions made in 2021 were positive – which means the Home Office deemed the individuals to be victims of modern slavery.¹²

'[this Bill] will catastrophically undo all that has been achieved in the 10 years since the first modern slavery prosecution.'

Caroline Haughey QC

Reading and Contacts

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

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

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>

For further information, please contact robyn@humantraffickingfoundation.org

This overview was compiled by Robyn Phillips from the Human Trafficking Foundation and Kate Garbers, Research Fellow at the Rights Lab, 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-mxzd8vxf>

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 [Modern Slavery Act Statutory Guidance](#)

⁴ [Nationality and Borders Bill - Hansard - UK Parliament](#). In March 2021, the Government published a report on the [issues raised by individuals in detention](#). It shows that 16% of people detained within the UK following immigration offences in 2019 were referred as potential victims of modern slavery (up from 3% in 2017), and that 99% of these detentions ended in release.

⁵ FOI reference 64607 submitted by FLEX. The same FOI shows data for a total of only 43 Conclusive Grounds decisions during 2020. Despite the low overall number of decisions the indication is that these are overwhelmingly positive with just over 81% (or 35 of the 43 decisions shown as granted) being positive.

⁶ <https://www.ecpat.org.uk/News/new-data-obtained-from-the-home-office-shows-only-2-of-child-victims-of-trafficking-are-given-discretionary-leave-to-remain-in-the-uk>

⁷ <https://www.gov.uk/government/collections/national-referral-mechanism-statistics>

⁸ Modern Slavery Act. 2015. <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

⁹ 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>

¹⁰ Victim Care Contract. 2021. <https://www.salvationarmy.org.uk/modern-slavery/new-victim-care-contract>

¹¹ 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

¹² [NRM Statistics 2021](#)