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Nationality and Borders Bill: Part 5, Child victims Consideration of Lords Amendments

Amendment 27

After Clause 64, Insert the following new Clause—

“Slavery and human trafficking: victims aged under 18 years

(1) Where a competent authority is making a decision in relation to a person who is aged under 18 years, the best interests of the child must be a primary consideration. (2) The Secretary of State may not serve a slavery or trafficking information notice on a person in respect of an incident or incidents which occurred when the person was aged under 18 years. (3) Section 61 of this Act does not apply in cases where either the first reasonable grounds decision or a further reasonable grounds decision made in relation to a person relates to an incident or incidents which occurred when the person was aged under 18 years. (4) Section 62 of this Act does not apply in cases where a positive reasonable grounds decision has been made in respect of a person which relates to an incident or incidents which occurred when the person was aged under 18 years. (5) The Secretary of State must grant a person leave to remain in the United Kingdom where a positive conclusive grounds decision is made in respect of a person who— (a) is under 18 years, or (b) was under 18 years at the time of the incident or incidents to which the positive reasonable grounds decision relates. (6) Guidance issued under section 49(1)(c) of the Modern Slavery Act 2015 on determining whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking must provide that, where the determination relates to an incident or incidents which occurred when the person was aged under 18 years, the determination must be made on the standard of “suspect but not prove”.

Summary

Part 5 of the Nationality and Borders Bill seeks to reform modern slavery legislation, alongside its reforms of the asylum and immigration system. We are concerned that Part 5 will most severely impact on children who are at risk and vulnerable to exploitation, including unaccompanied and separated children. This amendment therefore seeks to exempt child victims from the most damaging provisions in this part of the Bill and to ensure that all decisions are made in their best interests. **Identifying victims of modern slavery or human trafficking is a safeguarding, not an immigration matter.**

Children make up almost 25% of those seeking asylum in the UK¹ and almost half of all identified potential victims in the National Referral Mechanism² with increasing numbers year on year. The Bill will have a significant impact on all child victims of trafficking – this includes British children as well as children and young people subject to immigration control.

¹ Pinter, I. (2021) ‘Children and Families Seeking Asylum in the UK’. CASEbrief/41. Centre for Analysis of Social Exclusion, LSE, p.1. Available at: <https://sticerd.lse.ac.uk/dps/case/cb/casebrief41.pdf>. Specifically, children made up 23% of UK asylum applicants and dependants between 2010 and 2020. This includes unaccompanied children or those within asylum seeking families.

² In 2021, 43% of referrals to the NRM (for potential victims of modern slavery) were for people exploited as children.

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

Statutory guidance sets out very clearly: “*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.***”³ Despite this explicit direction, the provisions in Part 5 seriously risk the safety and wellbeing of both British and foreign national children. These include penalising victims for providing late evidence, disqualification from protection, denial of additional recovery periods and exceptions to grants of leave for victims. **This new amendment seeks to protect child victims from these proposals – it is crucial it is supported into law.**

Protecting Children and respecting their best interests

The government’s stated aim for the Nationality and Borders Bill is to make the immigration system fairer and more efficient, while being strict on illegal immigration and tackling people smuggling. And yet, it fails to protect those most in need of protection – children. In fact it makes things much worse – removing protections and putting children at greater risk of abuse.

In debates on the Bill to date, the government has repeatedly stated that child victims do not need additional protections and that they do not want to create a ‘two-tier’ approach, contrary to international and domestic law. Child victims of trafficking have rights to protection under the United Nations Convention on the Rights of the Child (UNCRC) and Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) to ensure they can recover from exploitation and transition to adulthood in safety and stability. Furthermore both the UNCRC and ECAT place the responsibility on states and authorities to ensure that in all decisions and actions about children their best interests is the paramount consideration.

The Joint Committee on Human Rights scrutiny report on Part 5 of the Bill has raised significant concerns about this in relation to part 5.⁴ In its recently published factsheet on children the Home Office has reiterated this obligation.⁵ Additionally, there are statutory obligations in relation to asylum and immigration matters under section 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the wellbeing of all children in the UK as well as the specific duties in The Children Act 1989⁶ to safeguard, provide for and look after children in need.

Repeatedly the Government has stated it will rely on guidance and case-by-case determinations, but we do not understand why the government does not seek to be compliant with protecting children on the face of the Bill to ensure the legal protection vulnerable children desperately need. Nor for that matter do many others, including four UN Special Rapporteurs who in no uncertain terms set out that under the Palermo Protocol, State Parties “*are required to take into account, ‘the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children’.* **We are concerned that the Nationality and Borders Bill, as it stands now, does not distinguish between adult and child victims of trafficking.**”⁷ This amendment seeks to address these concerns.

The protection of child victims can not be left to chance. As highlighted in the recent inspection report of Asylum Casework, guidance is often neither followed nor implemented by Home Office

³ See Home Office, Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland Version 2.4, p.70

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1023711/DRAFT_-_Modern_Slavery_Statutory_Guidance__EW__Non-Statutory_Guidance__SNI__v2.4_.pdf.

⁴ <https://committees.parliament.uk/publications/8328/documents/84688/default/>

⁵ See <https://www.gov.uk/government/publications/nationality-and-borders-bill-children-factsheet/nationality-and-borders-bill-children-factsheet>

⁶ And equivalent devolved legislation

⁷ Letter UN Special Rapporteurs to UK Government, dated 5 November 2021, [Microsoft Word - OL GBR \(11.2021\).docx \(ohchr.org\)](#)

caseworkers.⁸ Home Office staff themselves stressed “they did not have time to consider each case on its own merits, contrary to the guidance they receive.”⁹ Nor do they have the specialist knowledge of child victims of trafficking to make such determinations.

Leaving the provisions in Part 5 to be determined on a case-by-case basis would risk re-trafficking, abuse and scenarios such as where a child victim of criminal exploitation, who had been exploited through the ‘county lines model’ for example, would not be adequately protected from further exploitation and in turn would be unable to give evidence against those who exploited them.

Amendment 27 therefore seeks to explicitly protect children on the face of the Bill, exempting them from the most devastating provisions of Part 5 and ensuring decisions are made in their best interests.

Provisions at issue:

Late evidence

- Clause 57 creates a new slavery or trafficking information notice to be issued only to potential victims claiming asylum or human rights protection to disclose evidence of their abuse before a specified date. Clause 58 would penalise and damage credibility for providing such ‘status information’.¹⁰

These clauses add an additional burden for victims due to their immigration status. This is discriminatory and in breach of Article 3 of ECAT, Article 14 of The Equality Act 2010 and, for child victims, Article 2 of the UNCRC. These clauses will disproportionately and unjustly affect children and young people, who we know are often unable to disclose evidence because of the trauma of their journeys, abuse or due to inadequate legal representation.² They will reduce identification of child victims and increase the ability of traffickers to act with impunity.

Child trafficking is a form of child abuse, and victims may be unable to provide effective disclosure even in adulthood.¹¹ The Government’s own statutory guidance recognises the significant impact trauma has on the ability to disclose exploitation, particularly early disclosure.¹² Home Office guidance sets out that children are at particular risk of modern slavery and may find it more difficult to disclose abuse than adults due to: (i) their developmental stage, (ii) the on-going nature of abuse throughout childhood and/or grooming; (iii) loyalty or perceived friendships with exploiters; or (iv) fear of traffickers or exploiters, violence, or witchcraft.¹³

Clause 57 and 58 are an affront to the Home Office’s safeguarding duties and the heightened vulnerabilities of children, setting an additional hurdle to disclosure which the Government has implicitly acknowledged young victims will be unable to meet.¹⁴ They also establish a two-tiered system for victim identification whereby British children who are exploited are able to report the

⁸ Independent Chief Inspector of Borders and Immigration, An inspection of asylum casework (August 2020-May 2021), published November 2021, available at: [An inspection of asylum casework \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

⁹ Id., p. 53.

¹⁰ We also support Amendment 24 to delete Clause 58

¹¹ J.J. Pearce, P. Hynes and S. Bovarnick, Breaking the wall of silence: practitioners’ responses to trafficked children and young people, 2009.

¹² See Home Office, Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland Version 2.4, ¶13.1 “Victims’ early accounts may be affected by the impact of trauma. This can result in delayed disclosure, difficulty recalling facts, or symptoms of post-traumatic stress disorder.”

¹³ Id., ‘Child victims as a vulnerable group’ ¶13.38, ¶13.56.

¹⁴ Id.

crime into adulthood while young asylum-seeking victims or children making human rights claims will be unable to.

Amendment 27 exempts child victims from these provisions, to ensure children are not penalised for the late disclosure of any ‘relevant status information’.

Reasonable Grounds Threshold

- Clause 59 sets out the threshold to be set out in guidance for identifying a victim of modern slavery through the National Referral Mechanism at the conclusive grounds stage but doesn't set out the threshold for reasonable grounds.

The New Plan for Immigration makes clear the government's intention to raise the reasonable grounds threshold significantly to require objective evidence at this early stage.¹⁵ Raising the reasonable grounds threshold – the first decision making stage of trafficking and modern slavery claims – which had been set since the onset of the NRM as ‘I suspect but cannot prove’ will see children forced to meet an even higher threshold of evidence immediately, before they have even accessed an independent child trafficking guardian, lawyer, and interpreter to help support disclosure of abuse.

In most cases at this early stage, children are too traumatised or unwilling to provide details of their exploitation – a low threshold gives professionals supporting children time to gather further information to support decision makers at the conclusive grounds stage. Increasing the threshold will block child victims from accessing support, including consideration of their exploitation within safeguarding arrangements often informed by the reasonable grounds decision, re-trafficking and criminalisation for offences committed as a result of their exploitation. The proposal in this clause will have an impact on all victims, including British children as well as children seeking asylum or with irregular immigration status.

Amendment 27 seeks to retain the current reasonable grounds threshold for child victims.

No entitlement to additional recovery period etc

- Clause 61 seeks to ensure that only one period of supported recovery is provided to a potential victim via the National Referral Mechanism (NRM).

This clause will potentially preclude trafficked children and young people from being identified again following re-trafficking, and deny them entitlement to support and protection regarding the new period of exploitation. This may severely impact child trafficking survivors who are at high risk of going missing and being re-trafficked, particularly when transitioning into adulthood and requiring access to support and protection through the NRM.

Disqualification

- Clause 62 proposes precluding child victims who have served custodial sentences of over a year – as well as those prosecuted for particular offences – from being identified as victims.

We are seriously concerned about the impact this clause will have on both British and foreign national children, particularly children who are victims of child criminal exploitation (CCE) given that

¹⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972472/CCS207_CCS0820091708-001_Sovereign_Borders_FULL_v13_1_.pdf

it is the most commonly reported form of child abuse into the NRM.¹⁶ For victims of child criminal exploitation, the boundaries are often blurred between being a victim and a perpetrator of crimes (committed in a period of exploitation), and this can lead them to fall into cycles of exploitation.¹⁷ In addition, many children experience different types of exploitation at the same time, for example criminal and sexual exploitation. The recent Independent Inquiry Child Sexual Abuse report into sexual abuse by organised network highlights experiences of children who were sexually exploited and criminalised for behaviours that were the result of their exploitation, for example: “CS-A12 received a number of criminal convictions. One related to possession of a bladed article... She felt that the police, prosecutors and judges failed to see that her behaviour was a result of her exploitation.”¹⁸

No child victim should be disqualified from accessing protection and children who are victims of exploitation and abuse should be protected, not prosecuted. Denying children from being recognised as victims of modern slavery and trafficking will also reduce investigations and prosecutions of those who have exploited children. **Amendment 27 therefore seeks to ensure that no child victim of trafficking or modern slavery is denied protection.**

Immigration leave

- Clause 64 seeks to create statutory leave provisions for victims of trafficking and modern slavery, which requires the Secretary of State to grant leave in particular circumstances if a person receives a positive conclusive grounds decision and deny leave in particular circumstances. Eligibility is contingent on long-term recovery needs and helping with prosecutions to bring exploiters to justice.

The standards in the government’s proposals for granting leave are not adequate for child victims and do not fulfil their obligations. All child victims must be granted immigration leave in line with their best interests as the only standard, per international law and UK guidance¹⁹.

Article 14 of ECAT sets out how member states should issue renewable residence permits to victims when required (for example owing to their personal situation, to pursue compensation and ongoing cooperation with law enforcement). Article 14(2) clarifies that for children such residence permits should be ‘issued in accordance with the best interests of the child’ as the only standard.²⁰

Amendment 27 ensures that all decisions made regarding child victims are taken in line with their best interests as a primary consideration.²¹

¹⁶ In 2020, 47% of referrals to the NRM (for potential victims of modern slavery) were for people exploited as children – criminal exploitation accounted for the majority of these referrals (51%). [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2020 \(publishing.service.gov.uk\)](#)

¹⁷ <https://www.childrensociety.org.uk/information/professionals/resources/counting-lives>

¹⁸ <https://www.iicsa.org.uk/key-documents/28314/view/child-sexual-abuse-organised-networks-investigation-report-february-2022.pdf>

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941844/dl-for-victims-of-modern-slavery-v4.0ext.pdf

²⁰ Current government policy to meet its obligations under ECAT is not being implemented adequately but it does recognise the need for differential provision for children to protect them with ‘the best interests of the child is regarded as a **primary consideration**’ and further that ‘in most cases a standard period of up to 30 months DL will be appropriate.’

²¹ We also support Amendment 26 as it provides for support and leave for confirmed victims, which is welcome, and also states that decisions are to be made in children’s best interests

Questions:

- Can the Minister explain why Part 5 makes no specific provision for the greater protection of children despite international and domestic obligations to them and the specific duties to children under section 55 of the Borders, Citizenship and Immigration Act 2009 and the obligation to protect their best interests?
- Does the Minister agree that it is very difficult to disclose child abuse and that those who do should never be precluded from protection and support?
- Is it the Government's intentions to place additional and discriminatory barriers to identification of child victims and their protection and to place the onus on them to disclose?
- Disqualifying child victims from protection – as suggested by clause 62 – is incompatible with the duties on local authorities and other public bodies (under S11 of the Children Act 2004) to safeguard and promote the welfare of children. Does the Minister dispute that it will lead to more children – including British children – to suffer harm and repeat exploitation?
- Does the Minister agree that clause 62 denying protection to child victims of exploitation – many of whom will have been criminalised for their own exploitation – goes against the Government's commitment to tackle child criminal exploitation and protect children from abuse, modern slavery and violence?
- What assessment has the Government made of how many children will be affected by changes in clause 62 and the risk to them of remaining in exploitative situations or being re-victimised as a result of protection being denied to them under clause 62?
- The government has given a commitment to undertake Child Rights Impact Assessments (CRIAs). Can the Minister confirm if a CRIA has been carried out on the provisions in Part 5 of the Bill to assess the impact they will have on children? If not, can you commit to carry one out prior to the final stages of the Bill?
- The recently produced '[children factsheet](#)', contains a welcome recommitment to the principle of acting in the best interests of children so why not put this on the face of the Bill?
- Does the Minister agree that the Government are taking an inconsistent approach to whether protection measures for children should be on the face of the Bill or decided on a case-by-case basis? While it insists that there are no explicit protections for children in Part 5 and that the protection of children should be decided on a case by case basis, when it comes to age assessments (Part 4), the clauses are extremely rigid and deny Local Authorities the ability to exercise their expertise in whether or not to undertake Age Assessments in individual cases.
- If protections are to be decided on a case-by-case basis in guidance, will the Minister commit to producing this guidance without delay so that it can be duly scrutinised during the final stages of the Bill?
- Given the Government's commitment to incorporate ECAT into domestic legislation can the Minister explain how the rights of children to a residence permit under Article 14 (2) of the Convention will be incorporated?