



## 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.<sup>1</sup> 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.

***'I too wish Part 5 was not in this Bill at all'***

Lord Alton (Cross-Bench Peer)

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 raised concerns that particular clauses in Part 5 will result in fewer victims of modern slavery accessing support and will be damaging to prosecutions.<sup>2</sup> 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.

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

Lord Deben (Conservative Peer)

### 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<sup>3</sup> and 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.*<sup>4</sup>
- Clauses 57 and 58 expect victims to disclose at the point of identification or be penalised, and clause 59 increases the threshold for entry into the NRM, requiring victims to evidence their

exploitation immediately – this is unrealistic and will result in less people 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 National Referral Mechanism (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 (ECAT) have been included in the Bill, and its articles that specifically lay out support entitlements for victims are absent. Furthermore, Clause 67 seeks to disapply the EU Trafficking Directive, which would result in a loss of clear binding legislation to prevent trafficking, prosecute traffickers effectively and better protect victims.

***[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)

#### **Harmful Impact on Children**

- The clauses mentioned above do not exclude children and children's organisations have stated that the legislation will damage protection and support for child survivors of trafficking.<sup>5</sup>
- 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.<sup>6</sup>
- 47% of suspected victims of modern slavery referred to the NRM are children.<sup>7</sup>

#### **Harmful Conflation of Immigration and Modern Slavery**

- The UK is considered a world-leader in the fight against modern slavery. This Bill threatens 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.<sup>8</sup>
- Evidence 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.<sup>9</sup> 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. 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%).<sup>10</sup>

***'I cannot believe it is the Government's wish to prevent genuine victims of modern slavery and trafficking to be excluded from the process.'***

Baroness McIntosh (Conservative Peer)

### Overuse of Statutory Guidance and Case-by-case Basis

- Throughout all stages in the Commons and Committee Stage in the Lords, 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.
- A 'case-by-case basis' was referred to over twenty times across the debates in the Commons, in terms of cases being reviewed and decided upon on their own merits and dependent on the grounds of individual cases and discretion of decision makers. However how this promotes a fair and equal system in line with our obligations of identification, assistance and support is unclear.

***'It is sad to see modern slavery in what is essentially an immigration, refugee and asylum Bill. That is to be regretted.'***

Lord Coaker (Labour Peer)

### Parliamentary Process

A range of amendments to Part 5 were put forward by cross-party MPs in the Commons, including amendments to 57, 58 and 62. Only the Government's amendments were passed at report stage. At Committee Stage in the House of Lords amendments were proposed for every Clause in Part 5. Peers from all parties expressed their strong objection to Part 5 of the Bill.

Amidst the concerns raised and amendments proposed, in both the Commons and the Lords, the Government's response has consistently been that they believe 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.<sup>11</sup>

Research, briefings, articles and amendments produced by the anti-slavery sector, from NGOs to leading prosecutors, show that this isn't the case and the sector remain worried that this Bill will have a detrimental effect on victims.

***[In relation to Part 5...] 'This is so shaming because this part of the Bill affects people whom we are so keen to support and protect.'***

Baroness Hamwee (Liberal Democrat Peer)

### Supported Amendments at Report Stage

The Anti-Slavery sector maintains that Part 5 should be removed from the Bill as there is a shared belief that it will have a devastating impact on victims of trafficking and modern slavery prosecutions. The following amendments are supported if Part 5 is not removed:

**Clause 57 and 58:** [Further briefing here](#)

The Anti-Slavery sector supports the removal of these clauses tabled by Lord Coaker.

**Clause 59:** [Further briefing here](#)

The Anti-Slavery sector supports amendment 67 to clause 59 tabled by Lord Alton, which would add the NRM Reasonable Grounds Decision threshold of 'suspect but cannot prove' into the Bill.

**Clause 62:** [Further briefing here](#)

The Anti-Slavery sector supports the removal of 62 and amendment 68A tabled by Lord Randall which excludes children and ensures the threat to public order is immediate, genuine, present and serious.

**Clause 64:**

The Anti-Slavery sector supports amendment 70 to clause 64 tabled by Lord McColl which would ensure long-term support and leave to remain for confirmed adult and child victims post-NRM.

**New Clause on Overseas Domestic Workers Visas:** [Further briefing here](#)

The Anti-Slavery sector supports new clause 70A tabled by Lord Bishop of Bristol reinstating the rights and protections that domestic workers had under the terms of the original Overseas Domestic Worker visa, including the right to change employer and the right to visa renewals, in order to prevent abuse.

*This briefing focuses on Part 5, however there is support for amendments to other parts of the Bill that may also be damaging for those who have been trafficked. An example of this is new clause [58A](#) which introduces secure reporting, enabling victims to report crimes without fear of immigration repercussions.*

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

Baroness Butler-Sloss (Cross-Bench Peer)

## 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.<sup>12</sup>

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.

<b>Smuggling</b>	<b>Trafficking</b>
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)<sup>13</sup>**

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.<sup>14</sup> 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.<sup>15</sup>

#### **Did you know?**

- **47%** of victims referred to the NRM last year were children.
- **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.<sup>16</sup>

***‘I fear that we are going backwards at a time when we need a much stronger lead in our nation.’***

Bishop of St Albans (Lord Spiritual)

### **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>

For further information, please contact [robyn@humantraffickingfoundation.org](mailto: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.*

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- <sup>1</sup> Letter from 114 CEOs of NGOs <https://bit.ly/3EbNiVR>
- <sup>2</sup> 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-priti-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>
- <sup>3</sup> GLA Conservatives report, Shadow City 2013 <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Shadow-City.pdf>
- <sup>4</sup> [Modern Slavery Act Statutory Guidance](#)
- <sup>5</sup> ECPAT. 2021. <https://www.ecpat.org.uk/news/statement-on-the-nationality-and-borders-bill> p.61
- <sup>6</sup> 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-priti-patel-mp-home-secretary-march-2021.pdf>
- <sup>7</sup> 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>
- <sup>8</sup> 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
- <sup>9</sup> [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.
- <sup>10</sup> 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.
- <sup>11</sup> 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))
- <sup>12</sup> Modern Slavery Act. 2015. <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>
- <sup>13</sup> 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>
- <sup>14</sup> Victim Care Contract. 2021. <https://www.salvationarmy.org.uk/modern-slavery/new-victim-care-contract>
- <sup>15</sup> 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](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)
- <sup>16</sup> 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>

All Peer quotes are taken from Nationality and Borders Bill Committee Stage [Hansard](#).