

Nationality and Borders Bill Briefing

Impact on identifying and supporting victims of modern slavery and human trafficking

July 2021

The [Nationality and Borders Bill](#) implements the proposals in the New Plan for Immigration consultation paper. Primarily focused on reforming the asylum system it also includes proposals to amend the National Referral Mechanism (NRM) and support for victims of modern slavery of all nationalities. We welcome the Government's continued commitment to tackling modern slavery, including the inclusion of victim support in legislation. However, the detail of the Bill leaves significant risks that modern slavery victims will not be identified or supported, their vital intelligence lost, leaving the door open for organised criminal networks to continue operating with impunity. There is an opportunity to amend the Bill to further the fight against slavery and maintain our legacy of the world leading Modern Slavery Act 2015 (MSA). Our concerns are in three key areas: identification and credibility, support and protection during the NRM and leave to remain for confirmed victims. Caution is also needed to avoid the general asylum reform having an unintended negative impact on the identification and protection of modern slavery victims.

Identification and credibility

The Government argues that increasing numbers of potential victims being referred to the NRM from immigration detention suggest it is being used to bypass removal and other immigration processes. However, these fears are misplaced as there is no data proving these 'late' claims are spurious since most are still awaiting a final NRM decision. Rather than preventing false claims the Bill's provisions requiring early disclosure of modern slavery as a marker of credibility (eg clauses 20, 47, 50, 51, 64) will create barriers to the identification and support of genuine victims and reduce our opportunity to gather their intelligence necessary to dismantling the trafficking networks. It also runs contrary to the understanding in the statutory guidance under s49 of the MSA that victims may not recognise themselves as victims and factors including trauma or fear of the authorities can result in delayed disclosure and difficulty recalling facts ([Statutory Guidance](#) paras 13.1 -13.11, 14.1-14.18). It will also play into the hands of exploiters who instill fear of the authorities and deportation in their victims as a means of control and coercion. Add-on legal aid provision for NRM advice prior to referral is welcome but offers insufficient mitigation (clauses 54-55).

Raising the MSA 2015 Reasonable Grounds threshold (clause 48) and the [New Plan for Immigration](#) proposal to amend the statutory guidance to require "objective factors" may impact negatively on those genuine victims of modern slavery unable to provide objective evidence of their exploitation. This will potentially delay or prevent them accessing the support they need under the NRM. Careful analysis should be undertaken before this more onerous test is implemented.

Support and protection during the National Referral Mechanism (clauses 49 to 52)

We welcome the intention to put into domestic law international obligations for a recovery period during which victims receive support and are protected from removal. However, we are disappointed that the minimum recovery period (between Reasonable and Conclusive Grounds decisions) is being reduced from the current 45 days to 30 days. We are also concerned that availability of support during the NRM for victims in England and Wales is limited to needs arising from the person's exploitation. Victims of modern slavery have many overlapping and intersecting needs and it is not a simple matter to divide them into needs arising from exploitation and those which do not. Wider needs and vulnerabilities, for example a learning or physical disability, may have made a victim a target for exploitation, may be exacerbated by exploitation, may make recovery from the harms caused by exploitation more difficult and leave a person at risk of re-exploitation. Yet,

since they are not caused by the exploitation these are unlikely to fall within the criteria. Care for the exploited and abused is not a luxury extra - it unlocks progress against organised crime. Failure to support survivors increases re-trafficking rates and hinders our ability to dismantle the criminal networks responsible because their vital evidence and intelligence is lost. Restricting support is a false economy.

Defining the grounds on which protection from removal and support during the recovery period may be withheld (clause 51) will bring welcome transparency. However, the proposed exclusion of all foreign national offenders (FNOs) previously sentenced to 12 months or more (UK Borders Act 2007 s32) is too broad. It is likely to catch genuine modern slavery victims who pose no risk to the public including where those convictions made them targets for slavery, resulted from exploitation or were received for minor offences in jurisdictions with longer sentences than the UK. The Government is concerned FNOs are using the NRM to prevent removal but this wide definition is disproportionate to the fewer than 300 FNOs referred from immigration detention. Moreover, victims excluded from support and removed are unlikely to engage with police investigations leaving organised criminals to continue operating with impunity. The exclusion should focus on victims who are serious, sexual, violent or repeat offenders and who pose a serious risk to the public or national security and exclusion should be assessed on a case-by-case basis.

Leave to remain for confirmed victims (clause 53)

We welcome the Government's intention to establish in law the basis on which confirmed victims of modern slavery are eligible for temporary leave to remain. However, we are concerned that instead of providing greater certainty and enhancing victims' pathway to recovery the clause introduces narrower criteria than the current [Discretionary Leave Policy](#). Instead of providing leave "to provide protection and assistance to that victim, owing to their personal situation" as in the current policy, the Bill restricts leave to victims with recovery needs arising specifically from their exploitation which are not capable of being met in a third country. As noted above, determining whether needs arise from exploitation is complex and subjective and many pre-existing needs hinder victims' recovery and leave them vulnerable to re-exploitation. Even if a person has such a need, they will still be ineligible under this clause if that need is considered capable of being met in a third country. However, it is unclear how this will be determined and could result in a blanket inadmissibility for EU national victims (similar to that for asylum) and will not take into account the vulnerability of modern slavery victims returning to countries from whence they were trafficked. Nor does the clause require evidence or efforts to ensure support to meet victims' needs will *actually* be provided in the other country. Without support, victims overseas easily disengage from criminal investigations.

Although there is a separate ground for granting leave to support police investigations, many victims need certainty about their future including immigration status, housing and basic necessities before being able to engage with investigations. This clause does not provide that certainty and is a missed opportunity to enable more victims to provide the evidence essential to increasing modern slavery convictions. We recommend amending the Bill to provide a further 12 months of support, including leave to remain for all confirmed victims with irregular immigration status, as in Lord McColl's earlier Modern Slavery (Victim Support) Bill.

Wider asylum reforms potentially impacting modern slavery victims

Care must be taken to avoid other asylum reforms in the Bill having unintended negative impacts on identifying and supporting victims of modern slavery. The proposed inadmissibility of asylum claims from people who transit through 'safe third countries' (Clause 14) is likely to negatively impact identification and long term recovery of modern slavery victims who come to the UK under the control of traffickers, deceived into debt bondage or other exploitation and unable to seek asylum elsewhere. Similarly victims brought to the UK for exploitation may be unable to claim asylum immediately on arrival so should be exempt from classification as 'group 2 refugees' and receiving less favourable treatment under clause 10.

For a full written briefing or to discuss the Bill further please contact the Modern Slavery Policy Unit: Tatiana Gren-Jardan at tatiana.gren-jardan@centreforsocialjustice.org.uk or Louise Gleich at louise.gleich@centreforsocialjustice.org.uk. A briefing and our full response to the New Plan for Immigration consultation is available [here](#).