



House of Commons

House of Lords

Joint Committee on Human
Rights

Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery

Eleventh Report of Session 2021–22

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to the report*

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Joint Committee on Human Rights

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Contents

Summary	3
1 Introduction	5
The Nationality and Borders Bill	5
Human Rights in issue	7
Our Inquiry	7
2 Deadlines and the impact of trauma on the ability of victims to disclose exploitation	8
The new ‘slavery or trafficking information notice’:	8
The impact of trauma on the ability to disclose exploitation	8
Analysis	10
3 Defining “victim of slavery” and “victim of human trafficking”	13
Amendments to the MSA: Clause 59	13
Defining “victim of slavery” and “victim of human trafficking”	14
4 The process for determining whether a person is a victim of slavery or human trafficking	16
Determining whether a person is a victim of slavery or human trafficking	16
Potential gaps in protection for victims who have a further reasonable grounds decision	16
5 Victims that won’t receive protection: the public order and bad faith exceptions	19
Will excluding some victims impact on the UK’s ability to investigate and prosecute perpetrators of slavery and human trafficking?	19
Prosecuting victims of slavery or human trafficking	20
Public order and bad faith as exceptions	22
6 Support for victims of slavery and human trafficking	27
Leave to remain for victims of slavery or human trafficking	27
Assistance and support for identified potential victims of slavery or human trafficking	29
7 Legal aid	31
8 Disapplication of certain rights and obligations under the EU Trafficking Directive	33
9 Other Matters Arising	35
Other concerns relating to Modern Slavery	35

The Council of Europe Convention Against Trafficking in Human Beings and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.	35
New competent authority for detained victims of slavery and human trafficking	36
Amendments	39
Conclusions and recommendations	42
Formal minutes	47
Declaration of interests	48
Witnesses	49
Published written evidence	50
List of Reports from the Committee during the current Parliament	51

Summary

Part 5 of the Nationality and Borders Bill makes changes to the law on modern slavery. Some of the provisions place in law processes that are currently contained in policy or guidance, but often with some amendment. Other provisions amend existing statutory requirements, in many instances the protections for victims of slavery or human trafficking would be reduced to the minimum required to still be compatible with the prohibition on slavery in Article 4 of the European Convention on Human Rights (ECHR) and the European Convention Against Trafficking in Human Beings (ECAT).

The changes in Part 5 seem largely capable of being compatible with the UK's human rights obligations, subject to certain clarifications. However, there are three themes that seem to raise more significant concerns.

Firstly, victims of slavery or human trafficking who have suffered trauma—and particularly child victims and victims of sexual exploitation—may take time to be able to disclose what happened to them. Clause 58 would set a deadline for potential victims to disclose the full details of their exploitation, or face a new statutory obligation that late provision of evidence must damage their credibility. In these circumstances, this seems to be unreasonable, unfair and contrary to the UK's protective and investigative obligations in relation to preventing and combatting slavery. We recommend that this provision is amended so that late evidence “may” rather than “must” damage the credibility of a victim's case.

Secondly, the exclusion of a potentially very significant number of victims of slavery or human trafficking from protection under the guise of “public order” risks having negative effects on the UK's ability to take action against criminal gangs responsible for slavery and trafficking. It will also harm the ability of the relevant authorities to protect victims of those gangs, given the consequent impacts of this provision on investigations and prosecutions. We are concerned that, without amendment, clause 62 will be applied to victims who do not pose a current threat to public order in the UK, contrary to the UK's obligations under ECAT. For example, this would be the case in relation to minor offending; historic offending; convictions for conduct a person was compelled to do as a victim of slavery or human trafficking; unsafe convictions overseas; cases where there has been no conviction; child victims; and child soldiers exploited by armed groups. Excluding such a wide range of victims of slavery and human trafficking, including child victims, from protection, is not compliant with the prohibition on slavery and forced labour under Article 4 ECHR or ECAT.

Thirdly, there is uncertainty about the definition of “victim of human trafficking” and “victim of slavery” (see clause 59(7) and 68). Given their central importance to human rights and combatting slavery, such important definitions ought to be defined in this Bill, not at a later date in secondary legislation. We recommend that the definitions should, at a minimum, include the terms in the relevant international instruments, such as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the UN Palermo Protocol).

More generally, there is a lack of adequate consideration of child victims of slavery or human trafficking throughout this part of the Bill. We have suggested amendments to help to ensure child rights are protected.

The Government acknowledges that there is a lack of clarity as to the state of the law and what rights are being removed by clause 67 (concerning the Trafficking Directive). We ask for a Memorandum to set out how the UK is meeting its obligations under ECAT and the UN Palermo Protocol to combat slavery and human trafficking, and to protect the victims of such heinous practices. We also raise concerns that the creation of a separate Immigration Enforcement Competent Authority for certain potential victims of slavery and human trafficking may indicate a different level of treatment for certain victims, with the potential for discrimination.

1 Introduction

The Nationality and Borders Bill

1. The Nationality and Borders Bill (NBB) was introduced to the House of Commons on 6 July 2021 and completed its Commons stages on 8 December. The NBB covers wide-ranging matters. This Report focuses on the modern slavery provisions in Part 5 of the Bill.
2. The modern slavery provisions in Part 5 of the NBB (Clauses 57–68) contain a mixture of standalone clauses relating to modern slavery (Clauses 57, 58, 60, 61, 62, 64 and 68), clauses that amend the Modern Slavery Act 2015 (“MSA”) (Clauses 59 and 63), clauses relating to legal aid that amend the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”) (Clauses 65 and 66) and a clause that disapplies some of the rights and obligations relating to the EU Trafficking Directive (Clause 67). Some of these provisions are placing on the statute book processes that are currently contained in policy or guidance, sometimes with some amendment. Other provisions amend existing requirements, often to reduce protections for victims of slavery or human trafficking to the minimum required to still be compatible with the prohibition on slavery in Article 4 ECHR and the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT).
3. The provisions of Part 5 NBB include:
 - a) A new provision to require a person who has made a claim for asylum (a protection or human rights claim) and who has been served with a ‘slavery or trafficking information notice’ to provide any information relating to a potential claim of being a victim of slavery or human trafficking by a specified date (Clause 57). This is accompanied by another new provision specifying that any late provision of such information after the specified date ‘must’ be considered to be ‘damaging the person’s credibility’ unless there are ‘good reasons’ for providing the information late (Clause 58);
 - b) Changes to the definition, standard and threshold for considering a person to be a victim of slavery or human trafficking, amending the MSA (Clause 59);
 - c) Provisions placing the process for making a determination as to whether a person is a victim of slavery or human trafficking onto a statutory footing. This includes:
 - i) The decision-making process, including: (a) the reasonable grounds decision;¹ followed by, (b) a recovery period (during which a person cannot be removed/deported); followed by, (c) a conclusive grounds decision² (Clause 60);

1 i.e. a decision that there are reasonable grounds for believing that the person is a victim of slavery or human trafficking.

2 i.e. a decision on the balance of probability as to whether or not a person is a victim of slavery or human trafficking.

- ii) Provisions setting out that a ‘further reasonable grounds decision’ will not lead to a further recovery period, but that if the competent authority³ considers it “appropriate in the circumstances of a particular case”, it may determine that the person may not be removed from the UK until after the conclusive grounds decision is made (Clause 61);
 - iii) Provisions allowing the competent authority to disapply protections for victims of slavery or human trafficking, such as the granting of limited leave to remain, or the prohibition on removing/deporting a person, where that person is a ‘threat to public order’ or has claimed to be a victim of slavery or human trafficking ‘in bad faith’ (Clause 62);
 - iv) Provisions requiring the Secretary of State to give a victim of slavery or human trafficking (after a positive conclusive grounds decision) limited leave to remain where this is necessary to assist their recovery, for them to seek compensation or for them to cooperate with law enforcement (Clause 64); and
 - v) Definitions relating to these clauses (Clause 68).
- d) Provisions to amend the MSA to require the Secretary of State to ensure that “any necessary assistance and support” to assist in their recovery from harm arising from the slavery or human trafficking is available to an identified potential victim of slavery or human trafficking in respect of whom a positive reasonable grounds decision has been made (Clause 63);
 - e) Provisions to amend LASPO to allow for people already in receipt of legal aid for an immigration or asylum claim or a human rights claim (‘exceptional case determination’) to receive legal aid advice in relation to referral into the ‘National Referral Mechanism’ (“NRM”) - i.e. to seek a positive reasonable grounds decision as a potential victim of slavery or human trafficking (Clauses 65 and 66); and
 - f) Disapplication of the rights, powers, liabilities, obligations, restrictions, remedies and procedures derived from EU Trafficking Directive (2001/36/EU) so far as their continued existence would be incompatible with a provision in or made under the NBB (Clause 67).

4. Although this report focuses solely on the provisions relating to modern slavery in Part 5 of the Bill, other provisions of the Bill could also be relevant to victims of slavery or human trafficking. For example, Part 2 NBB will be relevant if victims are also refugees or asylum seekers, and Part 3 could significantly affect victims if they are caught up in some of the new enforcement powers or immigration offences when they are being trafficked.

5. In this Report we have used the numbering of provisions in the Bill as introduced in the Lords. Part 5, therefore, includes Clauses 57–68.⁴

3 Clause 68 provides that “‘competent authority’ means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention”. Following the recent change in statutory guidance, we assume that now means the Single Competent Authority and the Immigration Enforcement Competent Authority. For more information on the implications of that change, please see chapter 9.

4 Nationality and Borders Bill [[HL Bill 82](#) (2021–2022)]

Human Rights in issue

6. The provisions in Part 5 of the Bill engage several human rights in the European Convention on Human Rights (ECHR) and other international human rights treaties that bind the UK. Most notably, Part 5 engages the prohibition of slavery in Article 4 ECHR, Article 8 of the International Covenant on Civil and Political Rights (ICCPR), the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (UN Palermo Protocol).

7. There are a number of obligations flowing from these prohibitions of slavery and human trafficking, including the positive obligation to put in place an appropriate legislative and administrative framework; the positive obligation to take operational measures to protect victims or potential victims of human trafficking or slavery; and the procedural obligation to investigate and prosecute the perpetrators of slavery or human trafficking. Both ECAT and the UN Palermo Protocol set out specific obligations in relation to victims of human trafficking or slavery, many of which are relevant to, and in some cases given effect to, through the provisions of this Part of the NBB.

Our Inquiry

8. On 26 July 2021, we published a call for written evidence for individuals and organisations to respond to the questions in the Terms of Reference, to which we received 61 submissions. Alongside this, we also published an online survey, promoted on our website and through our Twitter account, so we could hear a wider range of views on the human rights implications of the Bill. We received 84 responses to the survey. We have held oral evidence sessions on the Bill and have had an exchange of letters with Tom Pursglove MP, Parliamentary Under Secretary of State at the Home Office, where we sought further information in relation to specific provisions of the Bill, including provisions of Part 5 NBB.⁵ We are grateful to all who have provided evidence to our inquiry.

⁵ [Letter to Tom Pursglove MP relating to Part 2 \(Asylum\) and Part 5 \(Modern Slavery\) of the Nationality and Borders Bill](#), dated 17 November 2021

2 Deadlines and the impact of trauma on the ability of victims to disclose exploitation

The new ‘slavery or trafficking information notice’:

9. Clause 57 contains a new provision to enable the Secretary of State to require a person who has made a claim for asylum (a protection or human rights claim) to be served with a ‘slavery or trafficking information notice’, requiring them to provide any information relating to a potential claim of being a victim of slavery or human trafficking by a specified date.

10. Clause 58 provides that, in determining whether to believe a statement made by a person, the competent authority “must take account, as damaging the person’s credibility” the fact that information relevant to their being a victim of slavery or human trafficking was provided after the date specified in the letter by the Secretary of State, unless there are “good reasons why the information was provided late”.

The impact of trauma on the ability to disclose exploitation

11. Whilst the Home Office’s interest “to reduce costs to the Government by more efficiently”⁶ considering claims is understandable, such measures must not be at the expense of protecting victims of slavery or human trafficking. We cannot see any justification for the timing of provision of information to negatively affect the credibility of a victim or potential victim of slavery or human trafficking.⁷ This is all the more so given that it is well known that victims of slavery and/or trafficking, due to the trauma they have suffered, often take a long time before feeling comfortable talking about that experience and therefore providing some of the details that might assist in providing useful factual accounts. As Enver Solomon, Chief Executive of the Refugee Council, told us:

The presumption that late disclosure should affect credibility is a particularly problematic one. It is widely understood in the Government’s own statutory guidance in relation to modern slavery that the trauma and the impact of having gone through that process of being enslaved can result in delayed disclosure. It is highly traumatic [...] It also takes time to establish and gather evidence about someone’s experience of being subject to modern slavery. Individuals themselves are not always aware that they have been exploited and what has been going on. It is really important to recognise

6 [Explanatory Notes to the Nationality and Borders Bill](#) [Bill 141 (2021–22)-EN], at paragraph 523

7 Similar concerns have been raised in relation to clauses 18, 21 and 25, in Part 2 of the NBB relating to asylum seekers, where such provisions provide that a failure to meet a deadline or other procedural requirement must negatively impact an (otherwise credible) witness.

that that whole process is not a single event, but it is a process in gathering information and in speaking to the victims and understanding their predicaments and circumstances.⁸

12. This is in addition to many other well-known issues, such as language barriers, fear of reprisals, cultural taboos, and geographical distance, which can be further barriers to meeting an arbitrary deadline imposed by the Home Office in a standard letter.⁹ There are therefore significant concerns that this provision, as currently drafted, risks failing to accommodate the known needs of victims of slavery and human trafficking and therefore risks being unfair to genuine victims of slavery or trafficking. Raza Husain QC, a barrister at Matrix Chambers, explained why this would then risk breaching the UK's obligations to combat slavery and human trafficking:

Part of the duty under Article 4 is to properly identify victims, and Clause [58] creates a very significant problem with proper identification [...] The issue of trauma obviously applies across the board to refugee claimants and trafficking victims, but with trafficking victims there is the added element that trafficking is very often not just the evil over there; it is the evil in our midst. It is very unusual for a treaty to condescend to this level of detail, but the Council of Europe trafficking convention is absolutely shot through with a recognition that the trafficking victim will take time to be able to reveal their story, to help in the prosecution and to get support, and will be in fear of the trafficker. That is really important to acknowledge. It was something acknowledged by a Court of Appeal decision in a case called MN. Clause [58] in particular cuts across the duty properly to identify trafficking victims.¹⁰

8 [Q12](#), [Enver Solomon]. See also [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021: "any such process needs to recognise that trauma can lead to memory loss and inconsistencies in recalling experiences. This is reflected within the Modern Slavery Statutory Guidance, which notes that 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... It is recognised that for those who have experienced trauma, it can often take a considerable amount of time before they feel comfortable to disclose fully what has happened to them. It is therefore problematic that the Bill does not specify the timescales within which individuals would be required to provide this information. The proposal that late compliance may be interpreted as damaging to credibility also fails to take into account the severe trauma suffered by some victims". See also, Joint Council for the Welfare of Immigrants ([NBB0053](#)) and Every Child Protected Against Trafficking ([NBB0046](#)).

9 Joint Council for the Welfare of Immigrants ([NBB0053](#)): "There are numerous reasons why refugees and victims of trafficking may be unable to provide all the evidence and information regarding their case at one early stage in the procedure. This includes a simple lack of knowledge of the system and what constitutes evidence, as well as the significant obstacle to immediately disclosing information for survivors of trauma including and especially women and survivors of sexual violence. The UNHCR has clear guidance urging states not to deny claimants the benefit of the doubt based on delays in supplying evidence for these very reasons. Contrary to the assumptions of the Bill, it is not a minority of cases where there are good reasons for submitting evidence late, it is usually the case. The impact of this provision, therefore, will exacerbate the culture of disbelief at the Home Office, which is bad for asylum seekers and bad for the system".

10 [Q13](#) [Raza Husain QC]. The case referred to is *MN v Secretary of State for the Home Department* [2020] EWCA Civ 1746.

Analysis

13. The UK has clear positive duties under Article 4 ECHR (prohibition of slavery and forced labour) to protect victims or potential victims of slavery or human trafficking, as well as the UK's duties under ECAT (Articles 10 and 13). Clauses 57 and 58 risk undermining these positive obligations.

14. It should be for the State to establish adequate processes, procedures and expertise to identify potential victims of slavery or human trafficking, and to take appropriate protective action—it should not rely on the victims to have to develop this expertise or take proactive action. The Modern Slavery Policy and Evidence Centre expressed concerns that clause 57 was placing the onus on victims to self-identify and to develop the relevant expertise to know what information was relevant to a slavery and human trafficking determination:

The requirement to provide information in a “slavery or trafficking notice” appears to take the onus away from a first responder to identify people who have experienced modern slavery with an international protection claim and instead puts the burden more squarely on a potential victim to know what information is relevant for the purposes of making a reasonable or conclusive grounds decision and to be able to disclose that information by a particular date. This requirement in effect may demand the self-identification of an experience of modern slavery ...¹¹

15. The “specified date” by which information under a ‘slavery or trafficking information notice’ must be provided (or it will damage a person’s credibility as a victim) is to be set by the Secretary of State (clause 57(2) and (6)). There is no provision in the NBB for the specified date to be reasonable, no guidance as to what might be reasonable, and no option in the NBB as to whether, and how, an extension might be granted.

16. *The Secretary of State should clarify whether there will be guidance on setting a “specified date” by which information under a slavery or trafficking information notice must be provided, whether it will allow for sufficient time for victims (who are known to take time to feel comfortable talking about slavery and trafficking experiences) to provide the required information, and whether extensions may be granted in certain cases.*

17. It is not clear whether ‘slavery or trafficking information notices’ will be served on all asylum applicants or only some. There is the potential for the effects of slavery or trafficking information notices to be discriminatory if they are only served on certain categories of person. This will especially be so if those categories of people are negatively impacted by their difficulty in meeting the deadlines imposed by the Home Office. There is the potential, therefore, for Article 14 ECHR (principle of non-discrimination), as read with Article 4 ECHR (prohibition on slavery), to be engaged by the application of clauses 57 and 58 in practice. We are concerned about the potential for discrimination in the application of this clause unless clear criteria are set as to how it will be applied and to whom.

11 Modern Slavery Policy and Evidence Centre ([NBB0049](#))

18. If a person supplies information on or after the ‘specified date’, then they must also provide a statement setting out their reasons for not providing the information before the specified date (clause 57(4) and (5)). At present, on the face of the NBB, there is no clarity or guidance as to what the competent authority may consider to be “good reasons” as to why the information is late.¹² It is therefore unclear how this might apply to people who are vulnerable or traumatised (which will generally be the case for victims of slavery and human trafficking) and consequently may take time opening up and providing relevant information. It is further unclear how this might apply to those who, unfamiliar with the legal process and thresholds, perhaps did not realise a particular detail or information was relevant until a later date. Greater clarity, for example in subsequent guidance, as to what might be “good reasons” would improve legal clarity and certainty as to the law.

19. In determining whether to believe a statement made by a person, under clause 58(2), the competent authority “must take account, as damaging the person’s credibility” of the late provision of information relevant to their being a victim of slavery or human trafficking, unless there are “good reasons why the information was provided late”. This therefore requires the competent authority to consider a person to be less credible (even where they could be a very genuine and credible victim of slavery or human trafficking) because they submitted some relevant information after a date set by the Secretary of State.

20. There has been caselaw on this formulation of words, which is also used in section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. The Court concluded that, in order to prevent the words interfering with a decision-maker’s “global assessment of credibility”, the phrase “as damaging the claimant’s credibility” should be read with the word “potentially” inserted, so as to read “taking into account as potentially damaging the claimant’s credibility”.¹³ It would therefore seem sensible to insert such language into this provision of this Bill.

21. *The Secretary of State should produce guidance on how and when to submit a statement of reasons and what are likely to be considered “good reasons”. The Secretary of State should clarify how vulnerable or traumatised people who provide information late due to their vulnerability or trauma will be treated under this provision.*

22. *We consider that clause 58 should be amended so that it does not inadvertently remove protection from victims of slavery or human trafficking, contrary to the UK’s obligations to combat slavery and human trafficking. This would also bring it closer in line with the established caselaw of the Courts in relation to how the words in this provision should be read. Clause 58 should be amended to replace “must take account, as damaging the person’s credibility, of the late provision of the relevant status information” with “may take account, as potentially damaging the person’s credibility, of the late provision of the relevant status information”.*

23. There are specific concerns that these provisions should not apply to children who have been victims of trafficking or slavery, Children are known to find it difficult to talk about their experiences of abuse, particularly when faced with short deadlines. As the Migrant and Refugee Children’s Legal Unit said in their evidence:

12 See Modern Slavery Policy and Evidence Centre ([NBB0049](#))

13 Court of Appeal in *JT (Cameroon) v SSHD* [2008] EWCA Civ 878

Processes requiring children to raise all protection-related issues ‘upfront’ fly in the face of any understanding of the human experience of trauma, abuse and child development. Evolving levels of maturity will affect a child’s capacity to provide a clear, chronological, coherent and consistent account of what happened; they are often too afraid and mistrusting to disclose their experience immediately and it is common for abusers to coach them with a story to tell authorities. Unaccompanied asylum seeking children should be exempt from the serving of both the evidence notice, or slavery or trafficking information notice.¹⁴

24. Similarly, evidence suggests that these provisions should not apply to victims of sexual exploitation. The Independent Anti-Slavery Commissioner set this out clearly in her letter to the Home Secretary:

Victims and survivors of modern slavery may feel more able to disclose their trafficking experiences relating to one particular form of exploitation than another. Within sexual exploitation for example, shame and mistrust can be especially pronounced leading survivors to conceal their experiences. There have been cases of survivors disclosing forced labour more readily and earlier than sexual exploitation.¹⁵

25. ***We consider that clause 58 should be further amended to specify that it does not apply to child victims and victims of sexual exploitation, given the well-documented impact of trauma in delaying disclosure, especially on those two categories of victim.***

14 Migrant and Refugee Children’s Legal Unit ([NBB0051](#)). See also Every Child Protected Against Trafficking ([NBB0046](#)): “It is well understood, even in the Government’s own statutory guidance that trauma amongst other factors, significantly impacts the ability to disclose exploitation. ... the ability to engage with processes may be hampered by symptoms of depression, anxiety and post-traumatic stress disorder common for child trafficking survivors. Victims need time and a sense of safety before they can begin to disclose their experiences... These clauses will add an additional burden for children due to their immigration status which is clearly discriminatory and in breach of Article 3 of ECAT, Article 14 of The Equality Act 2010 and Article 2 of the United Nations Convention on the Rights of the Child (“UNCRC”).”

15 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021. See also Joint Committee on the Welfare of Immigrants ([NBB0053](#))

3 Defining “victim of slavery” and “victim of human trafficking”

Amendments to the MSA: Clause 59

26. Clause 59 amends sections 49, 50, 51 and 56 of the Modern Slavery Act 2015 (MSA).¹⁶ Some of the amendments introduced by clause 59 would alter the references to victims of slavery or human trafficking, so that such references no longer refer to people who there are reasonable grounds to believe “may be” victims of slavery or human trafficking, but instead to people who there are reasonable grounds to believe “are” victims of slavery or human trafficking.¹⁷

27. There is obviously the potential for this change to narrow the category of people that may be caught by a reasonable grounds decision. However, we note that this approach appears to be in line with the language used in ECAT (e.g. Article 10 ECAT refers to having reasonable grounds to believe that a person “has been” a victim). We note in particular the view of the Independent Anti-Slavery Commissioner: “On balance, I think that making the reasonable grounds threshold consistent with the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) is appropriate.”¹⁸

28. The amendments in clause 59 would also add an obligation on the Secretary of State to issue guidance concerning “arrangements for determining whether a person is a victim of slavery or human trafficking”.¹⁹ It also provides that this guidance must require the “balance of probabilities” test to be applied in making determinations as to whether a person is a victim of slavery or human trafficking.²⁰ Similarly, clause 59(5)(c) requires that any Regulations setting out how public authorities should determine whether a person is a victim of slavery or human trafficking must provide that the determination is to be made on the balance of probabilities. These provisions would seem to supplement the provisions in clauses 60, 61, 62, 64 and 68 NBB, which seek to place the process for making a determination as to whether a person is a victim of slavery or human trafficking onto a clearer statutory footing.

16 Section 49 MSA requires the Secretary of State to issue guidance to public authorities about things that indicate that a person may be a victim of slavery or human trafficking; arrangements for providing assistance and support to potential victims; and arrangements for determining whether there are reasonable grounds to believe a person to be a victim of slavery or human trafficking. Section 50 MSA provides that the Secretary of State may make Regulations about arrangements for providing assistance and support to victims and potential victims of slavery or human trafficking; and about how public authorities are to determine that a person is a victim, or potential victim of slavery or human trafficking. Section 51 MSA makes specific provision for dealing with potential victims of slavery or human trafficking who may be children. Section 56 MSA contains definitions for interpreting provisions of the MSA.

17 This change is made in respect of the duty on the Secretary of State to issue guidance concerning arrangements for providing assistance in support to people who there are reasonable grounds to believe [may be/are] victims of slavery or human trafficking [section 49(1)(b) MSA; clause 59(3)(a)]. A similar language change is made in respect of the obligation to issue guidance concerning arrangements for determining whether there are reasonable grounds to believe that a person [may be/is] a victim of slavery of human trafficking. [section 49(1)(c) MSA; clause 59(3)(b)]. A further similar language change is made in respect of the power to issue Regulations concerning potential victims of slavery or human trafficking [section 50(1)(a) and (2)(a); clauses 59(5)(a) and (b)] and in respect of provisions on how to treat children who are potential victims of human trafficking or slavery [section 51(1)(a) and (3); clause 59(6)].

18 [Letter from the Independent Anti-Slavery Commissioners to the Home Secretary](#), dated 7 September 2021

19 Clause 59(3)(c), new section 49(1)(d) MSA

20 Clause 59(4), new section 49(1A) MSA

29. As set out in paragraph 7 of the Home Office’s ECHR Memorandum, “The existing statutory guidance on the Conclusive Grounds decision adopts as a standard of proof the balance of probability, and [the] Court of Appeal in *MN v Secretary of State for the Home Department* [2020] EWCA Civ 1746, Underhill LJ held that “the adoption of the civil standard of proof is unobjectionable, indeed in practice inescapable.” Whilst the civil standard of proof may therefore be unobjectionable, we note other criticisms of the guidance at issue in that judgment. For example, in relation to assessing credibility, the judge found that the term “mitigating circumstances” in the guidance was not appropriate, as it implied that the decision-maker should first identify the defects in a person’s account and then decide whether they could be excused, whereas what is required is a single process to assess the credibility of the core account. It will be important that the guidance ensures adequate protection for the victims of slavery or human trafficking, with a single process to assess credibility.

Defining “victim of slavery” and “victim of human trafficking”

30. The UN Palermo Protocol sets out the definition of “human trafficking” as follows:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

31. Clauses 59 (7) and 68 NBB introduce a new power for the Secretary of State to define the meanings of “victim of slavery” and “victim of human trafficking” through Regulations made subject to the affirmative procedure. It should be noted that these definitions affect not only people being trafficked across borders for the purposes of slavery, but also people within the UK who may be victims of slavery—including, for example, a number of children being exploited by county lines drugs gangs in this way.²¹ These definitions will need to comply with relevant international human rights instruments relating to slavery and human trafficking if the UK is to comply with its obligations to protect victims of slavery and human trafficking.

32. We wrote to Tom Pursglove MP, Parliamentary Under Secretary of State, asking why the Government is proposing that the definitions of such important terms should be defined by the Secretary of State in Regulations, rather than contained within the Bill itself.²² He replied:

To underpin the measures in the Bill, we are creating a power to make regulations which will define the meaning of “victim” in accordance with our obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). The definition of “victim of slavery”

21 See Refugee and Migrant Children’s Consortium ([NBB0047](#))

22 [Letter to Tom Pursglove MP relating to Part 2 \(Asylum\) and Part 5 \(Modern Slavery\) of the Nationality and Borders Bill](#), dated 17 November 2021

and “victim of trafficking” for the purposes of the Bill will be set out in affirmative regulations—this means that they will be subject to affirmative Parliamentary procedure, and we will be engaging with stakeholders throughout the development of these terms. This will provide greater flexibility to adapt terms to changing needs in the future, in this nascent area of law.²³

33. The definitions of “victim of slavery” and “victim of human trafficking” are central to the treatment of victims of slavery and human trafficking, and how the Bill will operate in protecting those victims. *At a minimum, the definitions used in legislation should comply with those contained in the relevant international treaties, such as the definition of “human trafficking” in the UN Palermo Protocol. The Government should consider amending the Bill to include definitions of “victim of slavery” and “victim of human trafficking”.*

23 [Letter from Tom Pursglove MP relating to Part 2 \(Asylum\) and Part 5 \(Modern Slavery\) of the Nationality and Borders Bill](#), dated 25 November 2021

4 The process for determining whether a person is a victim of slavery or human trafficking

Determining whether a person is a victim of slavery or human trafficking

34. Clauses 60, 61, 62, 64 and 68 place the process for making a determination as to whether a person is a victim of slavery or human trafficking onto a statutory footing.

35. Clause 60 requires: (i) a reasonable grounds decision; followed by, (ii) a recovery period (during which a person cannot be removed/deported); followed by, (iii) a conclusive grounds decision. This clause puts current guidance into primary legislation, and largely gives effect to Articles 10(2) and 13 ECAT. It is worth noting, though, that the recovery period has been reduced from 45 days in the current guidance to the minimum (30 days) required under ECAT, although we understand that for the majority of individuals the recovery period will tend to be longer, continuing until the later date of the conclusive grounds decision.²⁴

Potential gaps in protection for victims who have a further reasonable grounds decision

36. Related to the process set out in clause 60, clause 61 sets out specific provisions for when a ‘further reasonable grounds decision’ is made in relation to things done before the first reasonable grounds decision was made (i.e. clause 61 would not apply to new or more recent allegations of slavery or human trafficking that occurred since the first reasonable grounds decision). Clause 61 provides that a further reasonable grounds decision will not lead to a further recovery period, but that if the competent authority considers it “appropriate in the circumstances of a particular case”, it may determine that the person may not be removed from the UK until after the conclusive grounds decision is made.

37. The Independent Anti-Slavery Commissioner explains that victims can take time to feel comfortable disclosing details of exploitation, which can lead to a need for further reasonable grounds decisions, for example in cases concerning sexual exploitation:

There have been cases of survivors disclosing forced labour more readily and earlier than sexual exploitation. The explanatory notes for the Bill set out that only one period of recovery will be provided to a potential victim unless the Secretary of State considers it appropriate to provide a further recovery period due to the particular circumstances of the case. To allow SCA decision makers to assess each case on its own merit, it is important

24 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021 where The Independent Anti-Slavery Commissioner suggested that this deadline is not so significant: “While some have voiced concern about the fact that 30 days is a reduction from the period of at least 45 days set out in the Modern Slavery Statutory Guidance, in reality the system is so slow that the average length of time for a conclusive grounds decision in 2020 was 465 days.”

that there is sufficient flexibility within guidance and that the circumstances within which a further recovery period would be appropriate are clearly set out.²⁵

38. ECAT is silent as to further reasonable grounds decisions—and whether they then lead to a further recovery period. There is a question as to whether the lack of a further recovery period following a (further) reasonable grounds decision complies with ECAT. We note, however, that Articles 10(2) and 13 ECAT only require a recovery period after a reasonable grounds decision (and not necessarily a separate recovery period after multiple reasonable grounds decisions). In light of this, the operation of this provision seems capable of complying with the aims and requirements of the UK’s obligations under ECAT and the positive protective duty under Article 4 ECHR.

39. If the competent authority has decided that a further reasonable grounds decision needs to be made, it would normally seem appropriate to offer further protection until the ensuing conclusive grounds decision is made. It is therefore not immediately clear why this is not the case in clause 61. In its ECHR Memorandum, the Home Office has set out that “where the person’s previous conclusive grounds decision was negative, the Secretary of State will be required to make a new conclusive grounds decision on the new referral, and the person will be protected from removal in the meantime, ensuring compliance with Article 10(2)” ECAT.²⁶ However, this is not made clear on the face of the Bill. Nor is there any clarity as to how other cases might be treated.

40. Paragraph 75 of the Home Office’s ECHR Memorandum asserts that “the intention is that it will be “appropriate” to do so in circumstances in which ECAT requires it.” There are questions, however, as to whether that discretion will necessarily always be applied in a way that would respect the requirement under Article 13 ECAT for a person in respect of whom a reasonable grounds decision has been made not to be expelled until after a recovery period of at least 30 days and a conclusive grounds decision.

41. It is unclear why the decision as to whether to offer protection from removal to a person who is still waiting for a conclusive grounds decision should be a discretionary power. Given the obligation to protect and provide assistance to victims of slavery or human trafficking under both ECAT and the positive protective obligation under the prohibition on slavery (Article 4 ECHR), surely such protection should be mandatory.

42. *The Secretary of State should explain how she envisages clause 61 working. She should explain how she justifies including a discretion in clause 61, as to whether a potential victim will be protected from removal, where a conclusive grounds decision is pending. We consider that the test for providing further protection under clause 61 should be amended to ensure that victims of slavery and human trafficking are given the protection they need.*

43. Clause 63 (new section 50A(4) MSA) provides that necessary assistance and support must be provided to a potential victim of slavery or human trafficking following a further reasonable grounds decision, where the Secretary of State determines that it is “appropriate to do so”.

25 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021

26 [Home Office’s ECHR Memorandum](#), at paragraph 76(d)

44. It is not entirely clear from clause 63 (new section 50A(4)) how “if the Secretary of State determines that it is appropriate” will be interpreted and whether that will be applied so as to ensure that potential victims in need of such assistance and support receive it, in line with the UK’s obligations under Article 12 and 13(2) ECAT to provide assistance and support to victims of slavery or human trafficking, including during the recovery period.

45. ***The Secretary of State should explain how the test of appropriateness in clause 63 (new section 50A(4)) will be applied and if it will ensure that assistance and support will be provided in all cases where this is necessary.***

5 Victims that won't receive protection: the public order and bad faith exceptions

Will excluding some victims impact on the UK's ability to investigate and prosecute perpetrators of slavery and human trafficking?

46. Clause 62 contains provisions allowing the competent authority to disapply certain protections for victims or potential victims of slavery or human trafficking where that person has claimed to be a victim of slavery or human trafficking 'in bad faith' or is a 'threat to public order' (which is defined as including a wide range of behaviour including criminal offending and suspicion of terrorist activity). This would allow the competent authority to disapply any prohibition on removing or deporting a person, and any duty to grant a person limited leave to remain. The clause seems to relate to Article 13(3) ECAT, which provides an option for a State not to observe the obligations of the recovery period "if grounds of public order prevent it or if it is found that victim status is being claimed improperly".

47. Related to clause 62, clause 63(5) provides that any duty to provide necessary support or assistance falls away where a determination has been made that a person is a threat to public order or has claimed to be a victim of slavery or human trafficking in bad faith.

48. Clause 64(6) and (7) provide that any duty to provide a person with leave to remain does not apply where the Secretary of State is satisfied that a person is a threat to public order or has claimed to be a victim in bad faith. However, the amended clause 62(2)(b) already provides for this, it is therefore unclear whether clause 64(6) and (7) have any effect separate to clause 63(2)(b). ***The Secretary of State should clarify the drafting intention as between clause 62(2)(b) and clauses 64(6) and (7).***

49. We had concerns that there was a significant risk that clause 62, as introduced, was incompatible with the UK's procedural duty to investigate under Article 4 ECHR and ECAT. This is because clause 62(2)(a)²⁷ provided that the obligation to make a conclusive grounds decision ceased to apply where the public order or bad faith exceptions apply. We are pleased to see that amendments made at Report stage in the Commons have removed that particular concern.

50. However, concerns remain that the removal of support for victims of human trafficking and slavery under clause 62 will severely impede the UK's ability to investigate and prosecute perpetrators of human trafficking and slavery. As the Independent Anti-Slavery Commissioner set out:

I have grave concerns about [clause 62] because it casts a wide net, with the potential to prevent a considerable number of potential victims of modern slavery from being able to access the recovery and reflection period granted through the NRM. Without such support, prosecution witnesses will be unable to provide witness evidence and this will severely limit our ability to convict perpetrators and dismantle organised crime groups [

²⁷ We are referring here to clause 62(a) of the Bill as it finished in Committee in the Commons.

...] In addition to the risk that genuine victims may be prevented from accessing support due to a public order exemption, therefore increasing their vulnerability to further exploitation, I am particularly concerned about the potential unintended consequences that this clause may have on our ability to prosecute offenders. Effective support and the opportunity to build rapport with law enforcement can be crucial in maintaining the engagement of victims and survivors as witnesses through what can often be lengthy investigations.²⁸

51. It is important to recall that the positive duty to investigate applies to all instances of slavery or trafficking—not only those where the victim has not previously been convicted of a criminal offence. Moreover, there is a significant body of evidence that organised gangs deliberately target vulnerable people, and specifically target those recently released from prison, as potential victims of slavery or trafficking.

52. Concerns have also been expressed by the Independent Anti-Slavery Commissioner that the removal of protection and support for victims of slavery or human trafficking in clause 62 will “limit victim engagement in prosecutions and therefore significantly undermine the ability of law enforcement to bring traffickers to justice”.²⁹ This will need to be borne in mind when assessing the objective, impact and scope of clause 62 as a whole.

53. Excluding certain victims from protection increases the likelihood that their cases will not be adequately investigated or prosecuted and, therefore, that action will not be taken against organised gangs exploiting these victims of slavery or human trafficking. Such an approach therefore runs counter to the UK’s obligations under ECAT and Article 4 ECHR, as well as leaving gaps in enforcing action against traffickers. We are concerned that such an approach will leave a loophole for those responsible for exploiting people in slavery and human trafficking to evade investigation and prosecution, by targeting those with a criminal past.

Prosecuting victims of slavery or human trafficking

54. Victims of slavery or human trafficking may be compelled to do unlawful things by criminal enterprises. Article 26 ECAT requires States to provide for the possibility of non-punishment of victims of slavery for their involvement in unlawful activities, to the extent they have been compelled to do so. Article 4 ECHR contains similar protection. These requirements are implemented in the UK by section 45 MSA, which contains a statutory defence for victims of modern slavery. However, section 45 MSA is not applicable for all offences (see the long list of offences in Schedule 4 MSA).

55. Moreover, there is still a lack of knowledge of this defence across the criminal justice system. As the Independent Anti-Slavery Commissioner set out:

28 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021. See also, Modern Slavery Policy and Evidence Centre (NBB0049): “The main difficulty with clause [62] is that there appears to be a significant risk of incompatibility with the positive duty to investigate whether a person is a victim of trafficking under both Article 4 ECHR and ECAT. Clause [62](2)(a) provides that where the public order or bad faith exceptions to protection apply, the requirement to make a conclusive grounds decision ceases to apply. However, the exceptions in Article 13 ECAT qualify the right to protection, not the duty to investigate. There is a positive duty to investigate whether a person is a victim under Article 4 ECHR, and that duty is not qualified by the exemptions in Article 13 ECAT. Whether an individual is disqualified from protection is to be decided after the completion of the investigation into whether they are a victim of trafficking.”

29 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021

While Section 45 of the Modern Slavery Act 2015 provides a statutory defence for victims of modern slavery, this is not applicable for Schedule 4 offences and there is still a lack of knowledge of this defence across the criminal justice system. As a result, there continue to be circumstances where victims of modern slavery are prosecuted for crimes committed whilst in a situation of exploitation.³⁰

56. In a recent European Court of Human Rights (ECtHR) case, *VCL and AN v United Kingdom*,³¹ the UK was found to have failed in its duty under Article 4 ECHR to take operational measures to protect the victims of human trafficking who were prosecuted for offences they were forced to commit. As Every Child Protected Against Trafficking (ECPAT) said in their evidence:

Most significantly, in the recent case of *V.C.L. and A.N. v. The United Kingdom*, the Court considered for the first time the relationship between Article 4 of the Convention and the prosecution of victims and potential victims of trafficking. The decision found a violation of Article 4 due to failure to take operational measures in line with international standards to protect children prosecuted despite credible suspicion they were trafficking victims.³²

57. This problem is sadly more widespread than it should be, due to failings across the criminal justice system—including by investigators, prosecutors and legal professionals—to have due regard for the defence in section 45 MSA, leading to victims being prosecuted and often pleading guilty without knowing that being compelled as a victim of slavery or human trafficking is a defence. As the Jesuit Refugee Service’s evidence makes clear:

JRS UK’s detention outreach team frequently supports victims of trafficking who have been trafficked to the UK for exploitation on cannabis farms. Following police raids, they were charged with offences related to cannabis production, advised to plead guilty by duty solicitors, and ultimately imprisoned... The Bill does not contain safeguards that would prevent this from happening, and it is questionable whether sufficiently rigorous safeguards could be created.³³

58. Now, under clause 62, those victims that were wrongly prosecuted and convicted would also be deprived of protection for victims of slavery or human trafficking, effectively for having been a victim of slavery. This is not in line with the UK’s protective obligations under Article 4 ECHR and ECAT.

59. It is anticipated that clause 62 will affect a significant number of victims of slavery or human trafficking. As the Independent Anti-Slavery Commission set out:

Data from Hope for Justice demonstrates that of their current live caseload, 29% of individuals have committed offences that would meet the criteria

30 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021

31 *VCL and AN v United Kingdom*, ECHR, 2021 (Application Nos. 77587/12 and 75603/12)

32 Every Child Protected Against Trafficking ([NBB0046](#))

33 Jesuit Refugee Service ([NBB0055](#))

for exemption under public order grounds. A further 13% have committed wider offences that may/may not meet the criteria for a public order exemption and 3% have a conviction but the details of this are unknown.³⁴

60. This is especially relevant given that victims are often targeted by traffickers due to their vulnerability, including for having left prison recently. Effectively excluding from victim status ex-prisoners will likely serve to increase the extent to which ex-prisoners are targeted by traffickers and exploited, which can only be of benefit to the criminal gangs exploiting vulnerable people. As the Independent Anti-Slavery Commissioner made clear:

We know that traffickers already have a modus operandi of recruiting individuals with offending history, including those who have recently left prison, who are less likely to engage with authorities and seek support. Should this cohort be prevented from accessing support through the NRM, they are likely to be increasingly targeted by traffickers.³⁵

61. More must be done to ensure that victims of slavery or human trafficking are not prosecuted due to conduct they were compelled to undertake as part of their exploitation. Prosecuting trafficking victims is wrong because it wrongly punishes them for doing something they may have been compelled to do as victims. Moreover, this is of concern in light of clause 62, since, if convicted, a victim may then also lose their protection and support (which itself can have ramifications for the investigation and prosecution of the perpetrators). It is not compatible with ECAT or Article 4 ECHR to remove protection from victims of slavery or human trafficking, other than for those posing a current threat, and for the most serious offending. Protection should not be removed from victims for activities caused by being a victim of slavery or human trafficking.

Public order and bad faith as exceptions

62. The Home Office has taken the words “if it is found that victim status is being claimed improperly” in Article 13(3) ECAT to mean “has claimed to be a victim of slavery or human trafficking in bad faith” in clause 62(1)(b) NBB. “Bad faith” does not seem to go any wider than “improperly”. However, there is no further explanation as to what “bad faith” means for the purposes of section 62 NBB, so it will be for the Courts to interpret this provision (as well as officials in giving effect to this provision). *The Secretary of State should explain whether there will be any further clarification given as to what “bad faith” means for the purposes of section 62(1) NBB.*

63. “Public order” in clause 62(1)(a) NBB seems to follow the wording of Article 13(3) ECAT, but clause 62(3) NBB then proceeds to define “public order” in some detail.

64. Within the list of examples of circumstances in which a person will be “a threat to public order”, clause 62(3)(b) includes where they have been convicted of offences listed in Schedule 4 MSA,³⁶ such as assault with intent to resist arrest, assisting unlawful

³⁴ [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021

³⁵ [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021

³⁶ Schedule 4 MSA lists offences for which a victim of slavery can still be guilty (even if they committed them as a result of compulsion as part of their slavery), as an exception to the general rule in section 45 MSA of non-punishment of victims for involvement in criminal activities where they were compelled to do so as a consequence of slavery or trafficking.

immigration to a member State (which could be relevant to a victim of human trafficking or slavery, for example, if they were required to steer a boat they were on across the channel to safety). This could effectively deny victims the protection they are entitled to under Article 4 ECHR and ECAT, essentially for action caused by their status as victims.

65. Clause 62(3)(i) could deprive a victim of slavery or human trafficking of protection where they posed “a risk to the national security of the UK”. Unlike most of the other limbs of clause 62, this does not require a conviction by a court. Moreover, there are no further explanations as to what this means or who decides this, no safeguards to guard against arbitrary applications of this test, and no indications as to how it could be challenged. The competent authority does not necessarily have the expertise to make determinations of risk to the national security of the UK and it would therefore be more appropriate for such determinations to be made following a clear decision-making process, such as through certifications by the Secretary of State.

66. Clause 62(3)(d) includes situations where the competent authority has “reasonable grounds to suspect that the person is or has been involved in terrorism-related activity” even where any such activity is attributable to having been a victim of slavery or human trafficking. It is unclear how such a test will be applied by the competent authority, what expertise the competent authority will have in such matters, and how any such determinations by the competent authority could be tested for fairness. More generally, it is unclear what the policy justification is for depriving a victim of slavery or trafficking of their rights for something they have done when compelled to do so as a slave. Given that clause 62(3)(i) would already cover anyone posing a risk to the national security of the UK, and given the problems that clause 62(3)(d) poses, it seems unnecessary.

67. Clause 62(3)(f) would deprive a victim of slavery or human trafficking of protection where they have been convicted of any offence in respect of which they received a sentence of a year’s imprisonment or more. This risks depriving a significant number of victims of slavery or human trafficking from their rights as victims.³⁷ Under the Bill, a sentence of over a year could, for example, be imposed on a refugee arriving by irregular means into the UK³⁸—thereby depriving the refugee who is a victim of trafficking of protection due to the fact that they arrived illegally as a result of trafficking. As Raza Husain QC said in evidence to us:

Clause [62] [...] sets a very low threshold for defining public order grounds, which preclude an individual who is a trafficking victim from support. If you have a 12-month sentence—this, remember, is what you could get on summary conviction; the maximum sentence is four years—for arriving

37 See, for example, the concerns expressed in the [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021: “I am concerned category (f), that a person is ‘a foreign criminal within the meaning given by section 32(1) of the UK Borders Act 2007’, is far too broad. This includes those who are sentenced to a period of imprisonment of at least twelve months, or those who commit an offence which is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal) and the person is imprisoned... In my view, this is a low threshold and will encompass a wide range of offences”.

38 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021: “it is also feasible that plans to update offences and increase penalties for illegal entry could result in victims of trafficking who enter or arrive in the UK without a valid entry clearance being excluded from the recovery and reflection period provided by the NRM on the basis of public order grounds with possible sentences in excess of twelve months.”

to claim asylum, under Clause [39], it is absolutely unprecedented in our history that that has been criminalised. If you do that, that then rebounds not just in refugee law, but in trafficking law.”³⁹

68. It is further unclear how the competent authority will exercise its discretion in clause 62 NBB as to whether the person is a threat to “public order” and whether to end the prohibition on removing that victim from the UK. Article 13 ECAT only permits these exceptions where “grounds of public order prevent it”—therefore even for those individuals who may fall within one of the limbs in clause 62(3), the competent authority will additionally need to show that that individual presents such an ongoing risk to public order that the UK needs to avail itself of the exception in Article 13 ECAT. It is difficult to see how such a case will be made out if applied to historic offending, minor offending, unsafe convictions from overseas, cases of suspicion only, or convictions for activity the person was compelled to do as a victim of slavery or human trafficking.

69. **The wide definition of “public order” contained with the Bill risks catching levels of behaviour that fall below what we consider to be the appropriate threshold to deprive a person of protection as a victim of slavery or human trafficking. For example, clause 62(3) catches historic offending, minor offending, offending where a person was compelled to do so by their captors in a slavery or human trafficking situation, cases where there has been no conviction, and cases relying on unsafe convictions from overseas. Moreover, it is important to recall that Article 13 ECAT only permits these exceptions where “grounds of public order prevent it”—therefore, even for those individuals who may fall within one of the limbs in clause 62(3), a person should not be excluded unless it is additionally shown that they, as an individual, present such an ongoing risk to public order as to enable the UK to avail itself of the exception in Article 13 ECAT.**

70. *We recommend that clause 62 be amended so that it complies with ECAT and is limited only to those posing a current and ongoing serious threat to public order. Such an amendment should additionally ensure that clause 62 does not to apply to minor offending or historic offending. Clause 62 should additionally be amended so that victims are not excluded from protection for any conduct they were compelled to undertake as a victim of slavery or human trafficking.*

71. *Clause 62 should be amended to ensure that it does not place the competent authority in a difficult position of having to make determinations in relation to terrorism or national security; such determinations should be made by the Secretary of State following clear decision-making processes.*

72. *The Secretary of State should clarify whether guidance will be issued to explain when and how the discretion in clause 62 will be exercised to ensure that it complies with the UK’s obligations to combat slavery and human trafficking and to protect the victims of such practices.*

73. Further, it is unclear whether unfair or unsafe convictions from overseas would still lead to a person having their rights as a victim of slavery or human trafficking removed through the operation of clause 62(4)(d) in respect of terrorist convictions overseas, or

clause 62(3)(b), as read with 62(5)(b), in respect of convictions relating to modern slavery offences overseas, or indeed the other limbs of clause 62(3). As the Independent Anti-Slavery Commissioner has said:

Home Office officials have clarified that this clause will include sentences for crimes committed both within and outside of the UK. In my view, this is a low threshold and will encompass a wide range of offences. Sentences given outside the UK may not reflect the sentencing guidelines in the UK which may draw in minor offending to this provision.⁴⁰

74. It is also unclear whether an act which is “punishable” overseas, within the meaning of clause 62(6) would necessarily imply that the conviction was safe.

75. *The Secretary of State should clarify what protections will be in place, such as instructions as to how to apply any discretion, to ensure that unsafe convictions overseas do not lead to a person’s victim status being removed under clause 62.*

Child victims of slavery or human trafficking

76. Clause 62 would also apply to child victims of slavery or trafficking who may have a criminal record, which has raised significant concerns that the provision does not adequately appreciate how trafficking and slavery can affect children, or comply with the rights of the child, under the UNCRC. As the Refugee and Migrant Children’s Consortium said in their evidence:

Clause [62] precludes child victims who have served custodial sentences of over a year, as well as those prosecuted for particular offences, from being identified as victims. Children will be prevented from accessing the victim identification process under the National Referral Mechanism. This is despite criminal exploitation being the most commonly reported form of abuse for potential child victims. This provision is incompatible with the UK’s obligations under Article 4 of the European Convention on Human Rights as well as international obligations to children and victims of crime.⁴¹

77. Criminal exploitation is the most commonly reported form of abuse for potential child victims of slavery or human trafficking, so this is a significant concern, including with specific relevance to the organisations behind ‘county lines’ drugs cases.⁴² As Every Child Protected Against Trafficking said in their evidence:

The Modern Slavery Statutory Guidance sets out the specific case of children with regard to criminal exploitation stating: In cases involving

40 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021

41 Refugee and Migrant Children’s Consortium ([NBB0047](#)). See also Every Child Protected Against Trafficking ([NBB0046](#)): “Clause [62] in the Bill seeks to preclude victims, including children, who have served custodial sentences of over a year, as well as those prosecuted for particular offences, from being identified as victims in contravention of international law... ..the clause aims to define ‘serious criminality’ as ‘specifically, where there is a prison sentence of 12 months or more’ without any view to ascertaining the proportionality of such a wide definition which will exclude children on an arbitrary basis solely on the length of custodial sentences. There are many offences which result in sentences of more than 12 months commonly committed by victims of trafficking, particularly children, who in the absence of identification may not benefit from the protections of the non-punishment provision nor the statutory defences in primary legislation in Northern Ireland, England and Wales.”

42 Every Child Protected Against Trafficking ([NBB0046](#))

children, criminal activity may appear not to have been forced but decision-makers should bear in mind that children cannot give informed consent to engage in criminal or other exploitative activity, and they cannot give consent to be abused or trafficked. A significant number of cases are for drug related offences, including so called ‘county lines’ which may carry custodial sentences of over 12 months [...] Professionals report that many children come to attention of statutory agencies when exploitation is already present in their lives and criminal groups are controlling them to deliver drugs, and that law enforcement takes precedence over safeguarding responses. ... Given the significant overrepresentation of children amongst those exploited for criminality, this proposal will detrimentally and disproportionality impact the ability of children from accessing the victim identification procedure under the NRM.

78. Clause 62 also risks being applied to child victims exploited by non-state armed groups, thus excluding them from accessing protection (under the “terrorism” limb), contrary to the international legal framework on the use of children in armed conflict.⁴³

79. **Clause 62, as currently drafted, does not adequately appreciate how trafficking and slavery can affect children, and does not comply with the rights of the child, under the UNCRC. Clause 62 should be amended so that it does not apply to child victims of slavery or human trafficking, in order to comply with the UNCRC. Such an amendment would also go some way to addressing concerns about the application of clause 62 to children exploited by non-state armed groups.**

43 Every Child Protected Against Trafficking (NBB0046): “Additionally, the ‘terrorism’ sub sections of this clause will also exclude child victims exploited by non-state armed groups from accessing protection. The Bill does not account for the international legal framework on the use of children in armed conflict, a worst form of child labour as set out in International Labour Organisation (ILO) Convention No.182. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict prohibits all recruitment – voluntary or compulsory – of children under 18 by armed groups.”

6 Support for victims of slavery and human trafficking

Leave to remain for victims of slavery or human trafficking

80. Clause 64 requires the Secretary of State to give a victim of slavery or human trafficking (after a positive conclusive grounds decision) limited leave to remain where this is necessary to assist their recovery, for them to seek compensation or for them to cooperate with law enforcement. This clause gives effect to Article 14(1) ECAT, which requires a State to issue a renewable residence permit to victims of slavery or human trafficking where: (a) the competent authority considers that their stay is necessary owing to their personal situation; and/or (b) the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings.

81. The Independent Anti-Slavery Commissioner has set out how important leave can be for victims otherwise vulnerable to destitution and further exploitation, but also noted that very few victims were granted discretionary leave:

The guidance on granting discretionary leave for victims of modern slavery states that discretionary leave may be considered where the SCA has made a positive conclusive grounds decision and the individual satisfies the required criteria. Despite this however, the number of survivors being granted discretionary leave remains very low. In 2015, 123 survivors with a positive conclusive grounds decision were granted discretionary leave, in 2019 it was 70 and in the first three months of 2020 it was only eight [...] Without such leave, survivors may be left with limited or no access to welfare benefits and entitlements, leaving them vulnerable to destitution and further exploitation. In addition, I have heard from many frontline practitioners how securing leave can have a significant impact on improving the mental health of survivors, offering stability and a chance to focus on recovery [...] For this clause to be meaningful, there must be a genuine commitment to increasing the number of survivors of modern slavery granted leave to remain.⁴⁴

82. The High Court has ruled that discretionary leave to remain should be granted to recognised modern slavery victims seeking asylum based on the fear of being re-trafficked upon return to their home countries.⁴⁵ Linden J held that refusing to grant discretionary leave whilst a victim of slavery's asylum application was processed violated Article 14 of ECAT.

44 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021. See also: ["Trafficking victims should be granted leave to remain in UK, high court rules"](#), The Guardian, 12 October 2021

45 [KTT, R \(on the application of\) v Secretary of State for the Home Department \[2021\] EWHC 2722 \(Admin\) \(12 October 2021\)](#)

83. Clause 64(2)(c) covers the requirement in Article 14(1)(b) relating to cooperation with authorities in respect of investigation or criminal proceedings. Clause 64(2)(b) relating to compensation would seem to give effect to Article 15 ECAT, which concerns victims having access to compensation from the perpetrators.

84. Clause 64(2)(a) provides that leave to remain must be given where it is necessary for the purpose of “assisting the person in their recovery from any physical or psychological harm arising from the relevant exploitation”. Prior to the amendments made at Report stage in the Commons, this provision read “assisting the person in their recovery from any harm arising from the relevant exploitation to their physical and mental health and their social well-being”. It is not clear why the reference to social harm (or harm to their social well-being) has been removed during Report stage. It is notable that the equivalent reference to assistance and support in clause 63, new section 50A(2) of the MSA, reads “physical, psychological or social harm”.

85. It is not entirely clear that clause 64(2)(a) would cover all the situations envisaged as “necessary owing to their personal situation” in Article 14(1)(a) ECAT. The Home Office’s ECHR Memorandum seems to acknowledge that this involves a particular interpretation of ECAT, noting at paragraphs 77 and 78:

Whilst the Court of Appeal in *PK Ghana v SSHD* [2018] EWCA Civ 98 recognised that personal circumstances is a “wide concept” Hickenbottom LJ also found that “Article 14(1)(a) of the Convention requires the identification of the individual’s relevant personal circumstances, and then an assessment by the competent authority of whether, as a result of those circumstances in pursuance of the objectives of the Convention, it is necessary for the person to remain in the United Kingdom” and that there is “no additional obligation outside of Article 14, to allow a victim to reside to enable his or her full recovery”. The department considers that the range of purposes set out in the legislative provision reflects the approach of Hickenbottom LJ, as linked to the objectives of ECAT... It is also relevant that there are existing protection and immigration rules which can provide if necessary for personal circumstances wider than ongoing recovery needs and the Department is satisfied that the clause is compatible with Article 14 ECAT.

86. It would seem that clause 64(2)(a) is drawn a little more narrowly than the obligation in Article 14(1)(a) ECAT. “Personal situation”, could, for example, relate to family relationships and support networks in the UK or other factors relevant to the “personal situation” of the victim that would not be covered by clause 64(2)(a).

87. We are concerned that clause 64(2)(a), as currently drafted, does not give full effect to the obligation in Article 14(1)(a) ECAT to give a victim of slavery or human trafficking leave to remain, as necessary, owing to their personal situation. We recommend amending the language in clause 64(2)(a) so that it is clear that it covers the obligations in Article 14 ECAT.

88. Finally, Article 14(2) ECAT requires that “the residence permit for child victims [...] shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions”. Such an approach would also be required by

obligations under the United Nations Convention on the Rights of the Child. However, clause 64 makes no specific reference to children or to the best interests of the child. Concerns have been raised about this omission, with the Independent Anti-Slavery Commissioner noting:

There is considerable concern within the sector regarding the absence of children throughout the Bill, and this clause in particular is felt to be at odds with Article 14.2 of ECAT. The guidance on discretionary leave for victims of modern slavery states that where the case involves a child, the best interest of the child should always be factored into any consideration regarding discretionary leave. The lack of clarity around what this clause would mean in practice for children was acknowledged in the government response to the New Plan for Immigration consultation and it is disappointing that this detail was not included as part of the Bill.⁴⁶

89. *In order to comply with the UK's obligations under ECAT and the UNCRC toward child victims of slavery and human trafficking in the UK, clause 64 should be amended to include a requirement for residence permits for child victims of slavery or human trafficking to be granted in accordance with the best interests of the child, and renewed where appropriate.*

90. Clause 64(8) provides that leave to remain may be revoked in circumstances as may be prescribed in the Immigration Rules. It is unclear what these circumstances would be and how they would comply with the UK's duties to victims of slavery or human trafficking under ECAT. *The Secretary of State should clarify how this discretion will be exercised and how she will ensure that the Rules and the exercise of this discretion will respect the UK's obligations under ECAT.*

Assistance and support for identified potential victims of slavery or human trafficking

91. Clause 63 amends the MSA. Following a positive reasonable grounds decision, it would require the Secretary of State to ensure that “any necessary assistance and support” is available to an identified potential victim of slavery or human trafficking, to assist in their recovery. This clause largely gives effect to Article 12 ECAT.

92. Article 12(1) ECAT specifies that such assistance shall include at least:

- a) Standards of living capable of ensuring their subsistence, through such measures as appropriate and secure accommodation, psychological and material assistance;
- b) Access to emergency medical treatment;

46 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021: See also Every Child Protected Against Trafficking (NBB0046): “Clause [64] ... *This standard is unlawful for child victims and does not fulfil the Government's obligations under ECAT. Child victims of trafficking have rights to protection under the UNCRC and ECAT to ensure they can recover from exploitation and transition to adulthood in safety and stability. Article 14 of ECAT sets out how member states should issue renewable residence permits to victims when required such as owing to their personal situation, to pursue compensation and ongoing cooperation with law enforcement.*” And Refugee and Migrant Children's Consortium (NBB0047): “*The standards for being granted leave at clause [64] are inappropriate for child victims. The appropriate standard for children is stipulated at Article 14(2) of the Council of Europe Convention on Action against Trafficking in Human Beings and must be reflected in the Bill.*”

- c) Translation and interpretation services, when appropriate;
- d) Counselling and information, in particular as regards a victim's legal rights and the services available to them, in a language that they can understand;
- e) Assistance to enable a victim's rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders; and
- f) Access to education for children.

93. Additionally, other provisions of Article 12 ECAT specify further types of assistance that may be necessary in certain cases.

94. However, clause 63 (new section 50A MSA) does not specify details as to what “any necessary assistance and support” should include, leading to some ambiguity as to whether clause 63 (new section 50A MSA) will indeed adequately give effect to the UK's obligations under Article 12 ECAT to provide the types of assistance specified in that Article. Sections 49 and 50 MSA empower the Secretary of State to make arrangements and Regulations, respectively, providing for assistance and support to be provided to victims of slavery or human trafficking. It may be hoped, therefore, that Regulations and arrangements made under these provisions will comply with Article 12 ECAT.

95. ***The Secretary of State should confirm whether “necessary assistance and support” will include all of the types of assistance listed in Article 12 ECAT and whether this will be made clear in the arrangements and Regulations made under section 49 and 50 MSA.***

7 Legal aid

96. Clauses 65 and 66 NBB amend LASPO to allow for people already in receipt of legal aid for an immigration or asylum claim or a human rights claim (‘exceptional case determination’) to receive legal aid advice in relation to referral into the National referral Mechanism (NRM)—i.e. Clauses 65 and 66 NBB amend LASPO to allow for people already in receipt of legal aid for an immigration or asylum claim or a human rights claim (‘exceptional case determination’) to receive legal aid advice in relation to referral into the national referral mechanism (NRM)—i.e. to seek a positive reasonable grounds decision as a potential victim of slavery/human trafficking. This legal aid advice expressly does not include advocacy or attendance at an interview conducted by the competent authority under the NRM.

97. These clauses should help to ensure that at least some victims get timely legal aid assistance for advice about whether to be referred into the NRM as a potential victim of slavery or human trafficking. The change is therefore a step in the right direction. However, these provisions would only help victims of slavery or human trafficking who already receive legal aid and who know to ask for it—it does not assist all victims of slavery or human trafficking who may want advice about entering the NRM, including victims of modern slavery in wholly domestic situations.

98. Moreover, there are some doubts as to whether this will lead to meaningful change, in part due to “legal aid deserts” in some parts of the country and the lack of available legal aid practitioners to advise potential victims. The Committee has previously raised concerns about legal aid deserts in its 2018 report, “Enforcing Human Rights”,⁴⁷ and we note the Independent Anti-Slavery Commissioner’s concerns that this continues to be a problem impeding victims and survivors from accessing legal aid lawyers.⁴⁸

99. “Exceptional case” funding is extremely difficult to secure in practice, which could indicate that these provisions may only help a small number of victims of slavery or human trafficking. As the Independent Anti-Slavery Commissioner has noted:

Clause [66] refers to amending LASPO 2012 to enable advice on referral into the NRM to be provided as ‘add on’ advice where individuals have received an exceptional case determination under section 10 of LASPO 2012. I understand from colleagues in the sector that exceptional case funding is extremely difficult to secure in practice. It is described as time consuming and unlikely to be successful, requiring a lot of work upfront with the solicitor only paid if the application is successful.⁴⁹

100. The Independent Anti-Slavery Commissioner has suggested that an equivalent amount of civil legal services should be available to those in receipt of a trafficking information notice, as for those in receipt of a priority removal notice:

47 Joint Committee on Human Rights, Tenth Report of Session 2017–2019, [Enforcing human rights](#), HC 669, HL 171, para 79–83

48 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021: “I am aware that outside London and the South East, victims and survivors already often experience significant difficulties in accessing legal aid lawyers... It is also essential that those providing legal aid for victims and survivors understand the complexities of the NRM and the unique experiences of victims of modern slavery. ... I refer to a letter I sent to Alex Chalk MP last year highlighting the risk that legal aid lawyers will be deterred from taking on complex trafficking cases if the fees do not cover the work required.”

49 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021

While Clause [25] clearly states that up to seven hours of civil legal services may be available to support the completion of a Priority Removal Notice, the Bill does not confirm whether such provision would also be made available to aid the completion of a Trafficking Information Notice. It is essential that the seven hours of civil legal services is also provided to support individuals to respond to a Trafficking Information Notice in order to avoid victims of severe trauma remaining unidentified⁵⁰

101. We welcome the changes to legal assistance being introduced by clauses 65 and 66. However, we are concerned about the impact of “legal aid deserts” and note that these provisions do not help victims of slavery or human trafficking who may need advice but are not already in receipt of legal aid. Advice on entering into the NRM process for victims of slavery or human trafficking should be free for all potential victims (including those in wholly domestic situations, such as those being used by criminal gangs in the UK). *The Bill should be amended to provide victims of slavery or human trafficking with an equivalent amount of civil legal services support as for those receiving a priority removal notice.*

50 [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021

8 Disapplication of certain rights and obligations under the EU Trafficking Directive

102. Clause 67 NBB provides that section 4 European Union (Withdrawal) Act 2018 (“EUWA”) ceases to apply to rights, powers, liabilities, obligations, restrictions, remedies and procedures derived from the EU Trafficking Directive (2011/36/EU) so far as their continued existence would otherwise be incompatible with provision made by or under the NBB.

103. Section 4 EUWA effectively provides that EU measures (such as the EU Trafficking Directive) continue to have legal effect after exit day where the Courts (domestic courts or the Court of Justice of the European Union (CJEU)) have recognised, in a case decided before exit day, that a right under an EU Directive has direct effect.

104. It is not clear what rights (etc) derived from the EU Trafficking Directive have been retained as part of UK law after exit day through the operation of section 4 EUWA. To our knowledge there is no catalogue of rights retained under section 4 EUWA, although legal certainty would surely be improved if one were produced.

105. Further, it is not clear from the face of clause 67 what rights (etc) retained under section 4 EUWA in respect of the EU Trafficking Directive will continue to apply or will cease to apply by virtue of this clause. However, given the subject matter there is a real risk that human rights and rights for victims of human trafficking or slavery could be at stake. The explanatory notes in relation to clause 67 provide no real further elucidation as to what this clause means in practice (or in law). It is consequently not possible to assess what human rights (such as those protected under Article 4 ECHR or ECAT) may be affected by this clause.

106. It is well established that to have a system where the rule of law functions effectively, legal certainty and accessibility of the law are crucial.⁵¹ Clause 67 NBB, as read with section 4 EUWA, does not allow the reader to understand what the state of the law is—and these provisions therefore fail the requirement for law to be accessible. As such, we have significant concerns that this clause, as currently drafted, lacks sufficient clarity to be compatible with rule of law principles. Moreover, it does not allow us to know the extent to which human rights might be being negatively affected by this clause.

107. We wrote to Tom Pursglove MP, Parliamentary Under Secretary of State, on 17 November asking that the Government provide a memorandum setting out which rights (etc) under the EU Trafficking Directive were retained by section 4 EUWA and which of those rights will cease to have effect under clause 67 of the Nationality and Borders Bill.⁵² He replied, in a letter dated 25 November:

We would agree that it is not clear what from the Directive, if anything, applies, and that brings little legislative certainty, so it is difficult for victims to interpret the legislation and their entitlements. We are therefore making

51 See Lord Bingham’s [eight principles on the rule of law](#), especially the requirement that the law be accessible.

52 [Letter to Tom Pursglove MP, Parliamentary Under Secretary of State, relating to Part 2 \(Asylum\) and Part 5 \(Modern Slavery\) of the Nationality and Borders Bill](#), dated 17 November 2021

clear in the Nationality and Borders Bill that to the extent that a provision of the Directive does apply in the UK; and where it is incompatible with a provision in this Bill it is disapplied. This does not affect the effect of ECAT or Article 4 of the ECHR.⁵³

108. As the Government has set out, from the current state of UK law in relation to the human trafficking directive, “it is not clear what from the Directive, if anything, applies” and the Government recognises that the current state of UK law in this respect “brings little legislative certainty, so it is difficult for victims to interpret the legislation and their entitlements”.

109. We are concerned that clause 67 NBB, as read with section 4 EUWA, lacks sufficient clarity and accessibility to be compatible with the rule of law and moreover does not allow the Committee to know the extent to which human rights, for example the rights of victims of slavery or human trafficking, might be negatively affected by this clause. We are further concerned that the Government itself is unable to explain what, of the Trafficking Directive, applies in UK law. We encourage the Government to ensure better transparency and clarity in legislating by ensuring the impact of provisions are clear and by providing Memoranda explaining the impacts of provisions where necessary.

110. It is not entirely clear to us why clause 67 is present in the Bill, given that section 5(1) of the EU (Withdrawal) Act would seem to already achieve the effect of the later NBB taking precedence over earlier retained EU law.

111. The Government should clarify its intentions with regard to the Trafficking People for Exploitation Regulations 2013, which implement the Trafficking Directive.

⁵³ [Letter from Tom Pursglove MP, relating to Part 2 \(Asylum\) and Part 5 \(Modern Slavery\) of the Nationality and Borders Bill](#), dated 25 November 2021.

9 Other Matters Arising

Other concerns relating to Modern Slavery

112. The Committee asked, in its call for evidence “Do the changes that the Bill would make to the law regarding modern slavery ensure appropriate protections for victims?” We received comments raising the following concerns:

- a) The NBB could be a retrograde step for tackling modern slavery.⁵⁴
- b) Safeguarding practices should be improved so that Home Office screening processes better pick up on potential victims of trafficking.⁵⁵
- c) The modern slavery provisions in the Bill do not adequately put children’s rights and protections as a priority, and in particular the risk of exploitation of children by county lines drugs gangs.⁵⁶ We have suggested amendments in this Report to protect child rights in specific clauses.
- d) Victims of slavery or human trafficking being wrongly prosecuted (notwithstanding section 45 MSA) for offences they were compelled to commit whilst victims of slavery or human trafficking (see chapter 5).

The Council of Europe Convention Against Trafficking in Human Beings and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

113. As well as the duties under Article 4 ECHR to investigate cases of slavery, to punish offenders and to protect victims, there are two main international Conventions binding on the UK in relation to slavery and human trafficking: (i) the Council of Europe Convention Against Trafficking in Human Beings (“ECAT”); and (ii) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention Against Organised Crime (“UN Palermo Protocol”).

54 See [Q12](#) [Enver Solomon]: “There has been considerable progress made in recent years, and you referred to it yourself, in relation to recognising modern slavery in a commitment by Government to assist and support victims by improving the understanding of those who come into contact with people who have been exploited. We are concerned that the Bill could undermine this progress that has been made, and it is critical that it does not.”

55 Jesuit Refugee Service ([NBB0055](#)): “We observe many instances in which Home Office safeguarding practice is poor and lacks rigour. In our work supporting individuals placed at Napier barracks, we frequently encounter victims of torture and trafficking, despite the fact that this contravenes the Home Office’s own policy. In many cases, victims of trafficking have had screening interviews in which they explain they have travelled through Libya. Libya is a hotspot for trafficking and ought to raise a red flag, but repeatedly we find it has not: no action has been taken and the individual has consequently been placed in accommodation that is especially likely to retraumatise them.”

56 See [Letter from the Independent Anti-Slavery Commissioner to the Home Secretary](#), dated 7 September 2021: “I would highlight the lack of detail on provisions for children. Reforms must put children’s rights and protections first and decisions taken with their best interests as a priority.” See also [Every Child Protected Against Trafficking](#) ([NBB0046](#)) and [Refugee and Migrant Children’s Consortium](#) ([NBB0047](#)). See also, [Q12](#) [Enver Solomon]: “We know that county lines activity is an issue that affects children in the UK, including children who come into the UK through the asylum and refugee system. We work at the Refugee Council with children who come here alone, unaccompanied, and we see cases of those children being exploited and those children who have been subject to modern slavery. It is imperative that there is a greater understanding of the exploitation of these young people and of modern slavery more broadly, how it impacts on victims of trafficking and how it interrelates with people who come through the asylum and immigration system.”

114. It is not clear the extent to which the UK is fully complying with (and has legislated to give full effect to the protections and obligations contained in) these Conventions:

- a) To a certain extent the Modern Slavery Act 2015 gives effect to some of the obligations and protections under these Conventions.⁵⁷
- b) Some of the protections are given effect to through policies that are being placed on a statutory footing by the NBB, such as many of the provisions in Chapter 3 (Rights of Victims) of ECAT.⁵⁸
- c) Other provisions, we assume, are given effect to solely or principally through policies and operational practices.
- d) Other provisions may not require any direct implementation action by the UK.⁵⁹

115. *The Government should provide a Memorandum setting out how it has given effect to each provision of ECAT and the UN Palermo Protocol in order to improve transparency and to assist the Committee in holding the Government to account for complying with international human rights standards in combatting slavery and human trafficking.*

New competent authority for detained victims of slavery and human trafficking

116. On 8 November 2021, the Home Office published revised statutory guidance “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”.⁶⁰ Of particular note, this introduced a significant change, to use a different decision-making body for the identification of victims of modern slavery depending on their immigration status/nationality. Therefore, for certain victims of slavery or human trafficking, they would no longer be dealt with by the “single competent authority”, but rather by a new “Immigration Enforcement Competent Authority (IECA)”, which was created the same day, 8 November 2021.⁶¹

117. Paragraph 4.14 of the guidance lists the groups that the IECA is responsible for, with the SCA responsible for everything else, including all child cases:

57 For example, sections 1–11 in Part 1 MSA relating to offences, penalties and sentencing for offences relating to human trafficking and slavery arguably give effect to Article 5 of the UN Protocol and Chapter 4 ECAT (“substantive criminal law”), at least in part.

58 For example, clause 60 NBB (“Identified potential victims of slavery or human trafficking: recovery period”) seems to give effect to Article 13(1) ECAT relating to a recovery and reflection period for suspected victims of human trafficking. Clause 63 NBB (“Identified potential victims etc in England and Wales: assistance and support”), inserting a new section 50A in the MSA, seems to be giving effect, at least in part, to Article 12 ECAT (“assistance to victims”) and Article 6(3) of the UN Protocol. Clause 64 NBB (“Leave to remain for victims of slavery or human trafficking”) seems to be giving effect, in part, to Article 14 ECAT (“residence permit”) and Article 7 of the UN Protocol. We similarly note that clauses 65 and 66, relating to legal aid provision, arguably give effect, in part, to Article 15(2) ECAT (“compensation and legal redress”).

59 For example, Articles 36–47 ECAT are unlikely to require transposition or implementation action by the UK, other than practical cooperation with GRETA evaluations, as they relate to modalities of how ECAT and its monitoring body GRETA (Group of Experts on Action against Trafficking in Human Beings) should run.

60 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](#) (November 2021)

61 See paragraph 4.13 of the [Statutory Guidance](#).

4.14. The IECA is responsible for a specific cohort of adult cases. These are individuals who fall within the following cohorts at the point of referral to the NRM:

- All adult Foreign National Offenders (FNOs) detained in an Immigration Removal Centre.
- All adult FNOs in prison where a decision to deport has been made.
- All adult FNOs in prison where a decision has yet to be made on deportation.
- Non-detained adult FNOs where action to pursue cases towards deportation is taken in the community.
- All individuals detained in an Immigration Removal Centre (IRC) managed by the National Returns Command (NRC), including those in the Detained Asylum Casework (DAC) process.
- All individuals in the Third Country Unit (TCU)/inadmissible process irrespective of whether detained or non-detained.⁶²

118. Therefore, where someone referred into the NRM is also in prison or in detention, or where the Home Office are seeking to deport someone living in the community, or where a person's asylum claim has been deemed 'inadmissible', that person will be dealt with by the IECA rather than the Single Competent Authority. We understand that, at least under the current guidance, the same procedures will be applied by the two separate decision-making bodies. However, if the same procedures and standards are to be applied, it does not seem to make any sense to devise two bodies—instead of one—to do this task.

119. There are concerns that this could be linked to wider moves to treat certain categories of asylum seeker, or victim of slavery or human trafficking, differently from others, making it potentially harder to identify certain victims of slavery or human trafficking. For example, within Part 2, which falls outside the scope of this Report, the Bill would allow for differential treatment of recognised refugees depending on whether or not they arrived through 'legal routes'.⁶³ Part 2 of the Bill would also put into statute the current policy on inadmissibility of asylum claims, which allows the Home Office to remove, without considering their claim, any asylum seeker with a 'connection' to a safe third country.⁶⁴ However, the removal of such inadmissible claimants is, in practice, prevented by the absence of return agreements with all but a few foreign nations. While that may mean these claimants' asylum applications will ultimately be considered within the UK, there is likely to be a substantial delay before that takes place. Given the wide meaning given to 'connection' with a safe third country in the Bill, and this inability to effect removals, there is a real risk of large and increasing numbers of asylum seekers having their claims declared to be inadmissible but remaining in the UK. These individuals will fall within a category that comes under the authority of the IECA, and so would be subject to any different practices as between IECA and the single competent authority.

62 Paragraph 4.14 of the [Statutory Guidance](#)

63 Clause 11

64 Clause 15

120. It should be noted that any difference in treatment between those potential victims whose cases are considered by IECA and those whose cases are considered by the single competent authority, would, of course, risk engaging Article 14 ECHR (prohibition on discrimination), as read with Article 4 ECHR (prohibition on slavery).

121. We are concerned that the creation of a separate body to the Single Competent Authority, may indicate a different level of treatment, or a different approach, for certain victims of slavery and human trafficking. This will be even more concerning if this approach leads to lower standards being applied to one group of victims of slavery or human trafficking. *The Government should clarify why it considers it necessary and justified to create a separate Immigration Enforcement Competent Authority to determine the cases for certain victims or potential victims of slavery and human trafficking. Absent compelling reasons, we cannot see how a separate body can be justified, and the Government should reconsider its approach.*

Amendments

Amendment 1: Clause 58: Removing the confusion between procedure and substance

Page 62, line 12, leave out Clause 58

Explanation: This amendment would leave out clause 58, which requires that late provision of evidence must negatively affect the credibility of victims of slavery or human trafficking.

Amendment 2: Clause 58(2): The need for a global assessment of credibility

Clause 58, page 62, line 21, leave out from “authority” to “unless”, and insert—

“may take account, as potentially damaging the person’s credibility, of the late provision of the relevant status information,”

Explanation: This amendment would amend clause 58 to make the requirement for late provision of information to have a negative impact on credibility less mandatory, given the well-documented difficulties for trauma victims to disclose such information in time, and would bring the language into line with existing caselaw on how such language should be interpreted given the need for a global assessment of credibility.

Amendment 3: Clause 58: Non-penalisation of child victims and victims of sexual exploitation

Clause 58, page 62, line 28, at end insert—

“(5) This section does not apply to—

- (a) child victims, or potential victims, of slavery or human trafficking, or
- (b) victims, or potential victims, of sexual exploitation.”

Explanation: This amendment would amend clause 58 to specify that the requirement for late provision of information to have a negative impact on credibility does not apply to child victims of slavery or human trafficking or victims of sexual exploitation, given the well-known difficulties that such victims have in disclosing abuse.

Amendment 5: Clause 61(4)(b): Prohibition of removal

Clause 61, page 64, line 11, leave out “may” and insert “must”

Explanation: This amendment would clarify that a person should not be removed if a conclusive grounds decision is pending and it would be inappropriate to remove that person.

Amendment 6: Clause 62(1)(a): Serious and ongoing threat to public order

Clause 62, page 64, line 24, after “a”, insert “serious and ongoing”

Explanation: This amendment would ensure that this exemption goes no wider than that permitted under Article 13 ECAT in relation to a person who poses an ongoing threat to public order.

Amendment 7: Clause 62: Conduct a victim was compelled to do

Clause 62, page 65, line 40, at end insert—

“(5A) For the purposes of subsection (1)(a), a person is not a threat to public order, for any reason related to conduct that that person was compelled to do as a victim of slavery or human trafficking.”

Explanation: This amendment would amend clause 62 so that it does not apply where any criminality was caused by the victim being compelled to do so by virtue of their being a victim of slavery or human trafficking.

Amendment 8: Clause 62(3)(d): Determinations as to terrorist activity

Clause 62, page 64, line 40, leave out paragraph(d)

Explanation: This amendment would remove the public order condition that would require the competent authority to make a determination in relation to terrorist activity; such risks could be covered by clause 62(3)(i).

Amendment 9: Clause 62(3)(f): Criminal convictions

Clause 62, page 65, line 1, leave out paragraph (f)

Explanation: This amendment would remove clause 62(3)(f), which provided that any person who had been sentenced to more than one year in prison was a “threat to public order”.

Amendment 10: Clause 62(3)(i): Determinations that a person is a threat to national security

Clause 62, page 65, line 9, leave out “the person otherwise” and insert “the Secretary of State has certified that the person”

Explanation: This amendment would remove the requirement for the competent authority to develop expertise in making determinations as to who is a threat to national security and instead requires such determinations to be made and certified by the Secretary of State.

Amendment 11: Clause 62: Child victims of slavery or human trafficking

Clause 62, page 64, line 25, at end insert—

“(1A) No determination may be made under subsection 1 in respect of a child”.

Explanation: This amendment would ensure that clause 62 does not apply so as to deprive child victims of slavery or human trafficking of protection.

Amendment 12: Clause 64(2)(a): Support for assisting a victim with their personal situation

Clause 64, page 67, line 1, leave out “assisting the person in their recovery from any physical or psychological harm” and insert “assisting with their personal situation, including but not limited to assisting the person in their recovery from any physical, psychological or social harm”

Explanation: This amendment would ensure clause 64 adequately covers the obligations in Article 14 ECAT.

Amendment 13: Clause 64: Best interests of the child

Clause 64, page 67, line 33, at end insert—

“(8A) The best interests of the child shall be a primary consideration when making decisions under this section in respect of a child.”

Explanation: In order to comply with the UK’s obligations, under ECAT and the UNCRC, toward child victims of slavery and human trafficking in the UK, this would ensure that the best interests of the child are a primary consideration when making decisions on granting leave to remain for child victims of slavery or human trafficking.

Amendment 14: Clause 24: Civil legal services support for those receiving a slavery or human trafficking information notice (new section 31ZA(1) of LASPO)

Clause 24, page 28, line 40, after “notice” insert “or a slavery or trafficking information notice”

Explanation: This would amend the Bill to provide those receiving a slavery or human trafficking information notice with an equivalent amount of civil legal services support as for those receiving a priority removal notice.

Amendment 15: Clause 24: Civil legal services support for those receiving a slavery or human trafficking information notice (new section 31ZA(1) of LASPO)

Clause 24, page 28, line 41, after “notice” insert “or a slavery or trafficking information notice”

Explanation: This would amend the Bill to provide those receiving a slavery or human trafficking information notice with an equivalent amount of civil legal services support as for those receiving a priority removal notice.

Conclusions and recommendations

Deadlines and the impact of trauma on the ability of victims to disclose exploitation

1. *The Secretary of State should clarify whether there will be guidance on setting a “specified date” by which information under a slavery or trafficking information notice must be provided, whether it will allow for sufficient time for victims (who are known to take time to feel comfortable talking about slavery and trafficking experiences) to provide the required information, and whether extensions may be granted in certain cases.* (Paragraph 16)
2. It is not clear whether ‘slavery or trafficking information notices’ will be served on all asylum applicants or only some. There is the potential for the effects of slavery or trafficking information notices to be discriminatory if they are only served on certain categories of person. This will especially be so if those categories of people are negatively impacted by their difficulty in meeting the deadlines imposed by the Home Office. There is the potential, therefore, for Article 14 ECHR (principle of non-discrimination), as read with Article 4 ECHR (prohibition on slavery), to be engaged by the application of clauses 57 and 58 in practice. We are concerned about the potential for discrimination in the application of this clause unless clear criteria are set as to how it will be applied and to whom. (Paragraph 17)
3. *The Secretary of State should produce guidance on how and when to submit a statement of reasons and what are likely to be considered “good reasons”. The Secretary of State should clarify how vulnerable or traumatised people who provide information late due to their vulnerability or trauma will be treated under this provision.* (Paragraph 21)
4. *We consider that clause 58 should be amended so that it does not inadvertently remove protection from victims of slavery or human trafficking, contrary to the UK’s obligations to combat slavery and human trafficking. This would also bring it closer in line with the established caselaw of the Courts in relation to how the words in this provision should be read. Clause 58 should be amended to replace “must take account, as damaging the person’s credibility, of the late provision of the relevant status information” with “may take account, as potentially damaging the person’s credibility, of the late provision of the relevant status information”.* (Paragraph 22)
5. *We consider that clause 58 should be further amended to specify that it does not apply to child victims and victims of sexual exploitation, given the well-documented impact of trauma in delaying disclosure, especially on those two categories of victim.* (Paragraph 25)

Defining “victim of slavery” and “victim of human trafficking”

6. The definitions of “victim of slavery” and “victim of human trafficking” are central to the treatment of victims of slavery and human trafficking, and how the Bill will operate in protecting those victims. At a minimum, the definitions used in legislation should comply with those contained in the relevant international treaties, such as the definition of “human trafficking” in the UN Palermo Protocol. (Paragraph 33)

7. *At a minimum, the definitions used in legislation should comply with those contained in the relevant international treaties, such as the definition of “human trafficking” in the UN Palermo Protocol. The Government should consider amending the Bill to include definitions of “victim of slavery” and “victim of human trafficking”. (Paragraph 33)*

The process for determining whether a person is a victim of slavery or human trafficking

8. *The Secretary of State should explain how she envisages clause 61 working. She should explain how she justifies including a discretion in clause 61, as to whether a potential victim will be protected from removal, where a conclusive grounds decision is pending. We consider that the test for providing further protection under clause 61 should be amended to ensure that victims of slavery and human trafficking are given the protection they need. (Paragraph 42)*
9. *The Secretary of State should explain how the test of appropriateness in clause 63 (new section 50A(4)) will be applied and if it will ensure that assistance and support will be provided in all cases where this is necessary. (Paragraph 45)*

Victims that won't receive protection: the public order and bad faith exceptions

10. *The Secretary of State should clarify the drafting intention as between clause 62(2)(b) and clauses 64(6) and (7). (Paragraph 48)*
11. *Excluding certain victims from protection increases the likelihood that their cases will not be adequately investigated or prosecuted and, therefore, that action will not be taken against organised gangs exploiting these victims of slavery or human trafficking. Such an approach therefore runs counter to the UK's obligations under ECAT and Article 4 ECHR, as well as leaving gaps in enforcing action against traffickers. We are concerned that such an approach will leave a loophole for those responsible for exploiting people in slavery and human trafficking to evade investigation and prosecution, by targeting those with a criminal past. (Paragraph 53)*
12. *More must be done to ensure that victims of slavery or human trafficking are not prosecuted due to conduct they were compelled to undertake as part of their exploitation. Prosecuting trafficking victims is wrong because it wrongly punishes them for doing something they may have been compelled to do as victims. Moreover, this is of concern in light of clause 62, since, if convicted, a victim may then also lose their protection and support (which itself can have ramifications for the investigation and prosecution of the perpetrators). It is not compatible with ECAT or Article 4 ECHR to remove protection from victims of slavery or human trafficking, other than for those posing a current threat, and for the most serious offending. Protection should not be removed from victims for activities caused by being a victim of slavery or human trafficking. (Paragraph 61)*
13. *The Secretary of State should explain whether there will be any further clarification given as to what “bad faith” means for the purposes of section 62(1) NBB. (Paragraph 62)*

14. The wide definition of “public order” contained with the Bill risks catching levels of behaviour that fall below what we consider to be the appropriate threshold to deprive a person of protection as a victim of slavery or human trafficking. For example, clause 62(3) catches historic offending, minor offending, offending where a person was compelled to do so by their captors in a slavery or human trafficking situation, cases where there has been no conviction, and cases relying on unsafe convictions from overseas. Moreover, it is important to recall that Article 13 ECAT only permits these exceptions where “grounds of public order prevent it”—therefore, even for those individuals who may fall within one of the limbs in clause 62(3), a person should not be excluded unless it is additionally shown that they, as an individual, present such an ongoing risk to public order as to enable the UK to avail itself of the exception in Article 13 ECAT. (Paragraph 69)
15. *We recommend that clause 62 be amended so that it complies with ECAT and is limited only to those posing a current and ongoing serious threat to public order. Such an amendment should additionally ensure that clause 62 does not apply to minor offending or historic offending. Clause 62 should additionally be amended so that victims are not excluded from protection for any conduct they were compelled to undertake as a victim of slavery or human trafficking.* (Paragraph 70)
16. *Clause 62 should be amended to ensure that it does not place the competent authority in a difficult position of having to make determinations in relation to terrorism or national security; such determinations should be made by the Secretary of State following clear decision-making processes.* (Paragraph 71)
17. *The Secretary of State should clarify whether guidance will be issued to explain when and how the discretion in clause 62 will be exercised to ensure that it complies with the UK’s obligations to combat slavery and human trafficking and to protect the victims of such practices.* (Paragraph 72)
18. *The Secretary of State should clarify what protections will be in place, such as instructions as to how to apply any discretion, to ensure that unsafe convictions overseas do not lead to a person’s victim status being removed under clause 62.* (Paragraph 75)
19. Clause 62, as currently drafted, does not adequately appreciate how trafficking and slavery can affect children, and does not comply with the rights of the child, under the UNCRC. (Paragraph 79)
20. *Clause 62 should be amended so that it does not apply to child victims of slavery or human trafficking, in order to comply with the UNCRC. Such an amendment would also go some way to addressing concerns about the application of clause 62 to children exploited by non-state armed groups.* (Paragraph 79)

Support for victims of slavery and human trafficking

21. We are concerned that clause 64(2)(a), as currently drafted, does not give full effect to the obligation in Article 14(1)(a) ECAT to give a victim of slavery or human trafficking leave to remain, as necessary, owing to their personal situation. (Paragraph 87)

22. *We recommend amending the language in clause 64(2)(a) so that it is clear that it covers the obligations in Article 14 ECAT. (Paragraph 87)*
23. *In order to comply with the UK's obligations under ECAT and the UNCRC toward child victims of slavery and human trafficking in the UK, clause 64 should be amended to include a requirement for residence permits for child victims of slavery or human trafficking to be granted in accordance with the best interests of the child, and renewed where appropriate. (Paragraph 89)*
24. *The Secretary of State should clarify how this discretion will be exercised and how she will ensure that the Rules and the exercise of this discretion will respect the UK's obligations under ECAT. (Paragraph 90)*
25. *The Secretary of State should confirm whether "necessary assistance and support" will include all of the types of assistance listed in Article 12 ECAT and whether this will be made clear in the arrangements and Regulations made under section 49 and 50 MSA. (Paragraph 95)*

Legal aid

26. We welcome the changes to legal assistance being introduced by clauses 65 and 66. However, we are concerned about the impact of "legal aid deserts" and note that these provisions do not help victims of slavery or human trafficking who may need advice but are not already in receipt of legal aid. Advice on entering into the NRM process for victims of slavery or human trafficking should be free for all potential victims (including those in wholly domestic situations, such as those being used by criminal gangs in the UK). (Paragraph 101)
27. *The Bill should be amended to provide victims of slavery or human trafficking with an equivalent amount of civil legal services support as for those receiving a priority removal notice. (Paragraph 101)*

Disapplication of certain rights and obligations under the EU Trafficking Directive

28. As the Government has set out, from the current state of UK law in relation to the human trafficking directive, "it is not clear what from the Directive, if anything, applies" and the Government recognises that the current state of UK law in this respect "brings little legislative certainty, so it is difficult for victims to interpret the legislation and their entitlements". (Paragraph 108)
29. We are concerned that clause 67 NBB, as read with section 4 EUWA, lacks sufficient clarity and accessibility to be compatible with the rule of law and moreover does not allow the Committee to know the extent to which human rights, for example the rights of victims of slavery or human trafficking, might be negatively affected by this clause. We are further concerned that the Government itself is unable to explain what, of the Trafficking Directive, applies in UK law. We encourage the Government to ensure better transparency and clarity in legislating by ensuring the impact of provisions are clear and by providing Memoranda explaining the impacts of provisions where necessary. (Paragraph 109)

30. It is not entirely clear to us why clause 67 is present in the Bill, given that section 5(1) of the EU (Withdrawal) Act would seem to already achieve the effect of the later NBB taking precedence over earlier retained EU law. (Paragraph 110)
31. The Government should clarify its intentions with regard to the Trafficking People for Exploitation Regulations 2013, which implement the Trafficking Directive. (Paragraph 111)

Other Matters Arising

32. *The Government should provide a Memorandum setting out how it has given effect to each provision of ECAT and the UN Palermo Protocol in order to improve transparency and to assist the Committee in holding the Government to account for complying with international human rights standards in combatting slavery and human trafficking.* (Paragraph 115)
33. We are concerned that the creation of a separate body to the Single Competent Authority, may indicate a different level of treatment, or a different approach, for certain victims of slavery and human trafficking. This will be even more concerning if this approach leads to lower standards being applied to one group of victims of slavery or human trafficking. The Government should clarify why it considers it necessary and justified to create a separate Immigration Enforcement Competent Authority to determine the cases for certain victims or potential victims of slavery and human trafficking. (Paragraph 121)
34. *The Government should clarify why it considers it necessary and justified to create a separate Immigration Enforcement Competent Authority to determine the cases for certain victims or potential victims of slavery and human trafficking. Absent compelling reasons, we cannot see how a separate body can be justified, and the Government should reconsider its approach.* (Paragraph 121)

Formal minutes

Wednesday 15 December 2021

Virtual Meeting

Members present:

Harriet Harman MP, in the Chair

Lord Brabazon of Tara

Joanna Cherry MP

Lord Dubs

Florence Eshalomi MP

Lord Henley

Baroness Ludford

Dean Russell MP

David Simmonds MP

Lord Singh of Wimbledon

Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery

Draft Report, Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery, proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 121 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Eleventh Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Adjournment

Adjourned till 12 January at 2.40pm.

Declaration of interests

Lord Brabazon of Tara

- No relevant interests to declare

Lord Dubs

- Former Chief Executive of the Refugee Council

Lord Henley

- No relevant interests to declare

Baroness Ludford

- No relevant interests to declare

Baroness Massey of Darwen

- No relevant interests to declare

Lord Singh of Wimbledon

- No relevant interests to declare

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee’s website.

Wednesday 8 September 2021

Ngozi, Member, VOICES Network; **Elkhansaa**, Member, VOICES Network; **Peter**, Ambassador, VOICES Network [Q1–5](#)

Raza Husain QC, Barrister, Matrix Chambers; **Enver Solomon**, Chief Executive, Refugee Council; **Madeleine Sumption**, Director, Migration Observatory [Q6–14](#)

Wednesday 20 October 2021

Daniel Ghezlbash, Associate Professor, Macquarie University; **Sonali Naik QC**, Barrister, Garden Court Chambers; **Aurélie Ponthieu**, Coordinator Forced Migration Team, Médecins Sans Frontières [Q1–9](#)

Elizabeth Ruddick, Senior Legal Adviser, United Nations High Commissioner for Refugees (UNHCR); **Rossella Pagliuchi-Lor**, UK Representative, United Nations High Commissioner for Refugees (UNHCR) [Q10–17](#)

Wednesday 17 November 2021

Ms Zoe Gardner, Policy & Advocacy Manager, Joint Council for the Welfare of Immigrants; **Lucy Moreton**, Professional Officer, Immigration Services Union [Q18–27](#)

Mr Stewart MacLachlan, Senior Legal & Policy Officer, Refugee and Migrant Children’s Consortium; **Luke Geoghegan**, Head of Policy and Research, British Association of Social Workers [Q28–35](#)

Wednesday 1 December 2021

Tom Pursglove MP, Parliamentary Under Secretary of State, Home Office; **Dan Hobbs**, Director, Asylum, Protection and Enforcement, Home Office; **Dan O’Mahoney**, Clandestine Channel Threat Commander, Home Office [Q36–54](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

NBB numbers are generated by the evidence processing system and so may not be complete.

- 1 Every Child Protected Against Trafficking (ECPAT UK) ([NBB0046](#))
- 2 Jesuit Refugee Service UK ([NBB0055](#))
- 3 Joint Council for the Welfare of Immigrants ([NBB0053](#))
- 4 Migrant and Refugee Children's Legal Unit (MiCLU) at Islington Law Centre ([NBB0051](#))
- 5 Modern Slavery Policy and Evidence Centre ([NBB0049](#))
- 6 Refugee and Migrant Children's Consortium ([NBB0047](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

Session 2021–22

Number	Title	Reference
1st	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill	HC 90 HL 5
2nd	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)	HC 331 HL 23
3rd	The Government's Independent Review of the Human Rights Act	HC 89 HL 31
4th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Part 4): The criminalisation of unauthorised encampments	HC 478 HL 37
5th	Legislative Scrutiny: Elections Bill	HC 233 HL 58
6th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People	HC 451 HL 73
7th	Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality	HC 764 HL 90
8th	Proposal for a draft Bereavement Benefits (Remedial) Order 2021: discrimination against cohabiting partners	HC 594 HL 91
9th	Legislative Scrutiny: Nationality and Borders Bill (Part 3) – Immigration offences and enforcement	HC 885 HL 112
10th	Legislative Scrutiny: Judicial Review and Courts Bill	HC 884 HL 120
1st Special Report	The Government response to covid-19: fixed penalty notices: Government Response to the Committee's Fourteenth Report of Session 2019–21	HC 545
2nd Special Report	Care homes: Visiting restrictions during the covid-19 pandemic: Government Response to the Committee's Fifteenth Report of Session 2019–21	HC 553
3rd Special Report	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill: Government Response to the Committee's First Report	HC 585
4th Special Report	The Government response to covid-19: freedom of assembly and the right to protest: Government Response to the Committee's Thirteenth Report of Session 2019–21	HC 586
5th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order): Government Response to the Committee's Second Report	HC 724

Number	Title	Reference
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee's Fifth Report	HC 911
8th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People: Government Response to the Committee's Sixth Report	HC 983

Session 2019–21

Number	Title	Reference
1st	Draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019: Second Report	HC 146 HL 37
2nd	Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report	HC 148 HL 41
3rd	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing	HC 343 HL 59
4th	Draft Fatal Accidents Act 1976 (Remedial) Order 2020: Second Report	HC 256 HL 62
5th	Human Rights and the Government's response to COVID-19: the detention of young people who are autistic and/or have learning disabilities	HC 395 (CP 309) HL 72
6th	Human Rights and the Government's response to COVID-19: children whose mothers are in prison	HC 518 HL 90
7th	The Government's response to COVID-19: human rights implications	HC 265 (CP 335) HL 125
8th	Legislative Scrutiny: The United Kingdom Internal Market Bill	HC 901 HL 154
9th	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill	HC 665 (HC 1120) HL 155
10th	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill	HC 847 (HC 1127) HL 164
11th	Black people, racism and human rights	HC 559 (HC 1210) HL 165
12th	Appointment of the Chair of the Equality and Human Rights Commission	HC 1022 HL 180
13th	The Government response to covid-19: freedom of assembly and the right to protest	HC 1328 HL 252

Number	Title	Reference
14th	The Government response to covid-19: fixed penalty notices	HC 1364 HL 272
15th	Care homes: Visiting restrictions during the covid-19 pandemic	HC 1375 HL 278
1st Special Report	The Right to Privacy (Article 8) and the Digital Revolution: Government Response to the Committee's Third Report of Session 2019	HC 313
2nd Special Report	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill: Government Response to the Committee's Tenth Report of Session 2019–21	HC 1127
3rd Special Report	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill: Government Response to the Committee's Ninth Report of Session 2019–21	HC 1120
4th Special Report	Black people, racism and human rights: Government Response to the Committee's Eleventh Report of Session 2019–21	HC 1210
5th Special Report	Democracy, freedom of expression and freedom of association: Threats to MPs: Government Response to the Committee's Third Report of Session 2019	HC 1317
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee's Fifth Report	HC 911