

Rt Hon Harriet Harman QC MP
Joint Chair Committee on Human Rights
House of Commons
London
SW1A 0AA

23 February 2022

Dear Harriet,

I write in response to the recent reports published by the Joint Committee on Human Rights as part of the Committee's work on the Nationality and Borders Bill. In this letter, I would like to respond to the Committee's Eleventh Report (Part 5) – Modern Slavery. I thank the Committee for this report.

**Joint Committee on Human Rights Legislative Scrutiny: Nationality and
Borders Bill**

Part 5 Modern Slavery

***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)**

When an individual registers a claim for asylum or has been refused human rights claim they will be served with a 'Slavery and Trafficking Information' (STIN Notice). This notice requires any new information to be raised that will support a referral into the National Referral Mechanism (NRM) if that has not already happened. It will apply to those already within the NRM system only if

they want to raise new information relating to a new referral for a separate incidence of exploitation. There will be no delay in processing ongoing decisions or for people in accessing the support they require due to the service of these notices.

The Home Office will provide information regarding the Secretary of State's obligations to victims alongside the service of a STIN and give people adequate time and opportunity to seek clarity or assistance with any notices they do not understand. The STIN will not have unreasonable deadlines or notice periods attached and details on setting notice periods will be provided in guidance for caseworkers. Individuals who are served with the STIN, and who are receiving legal aid advice on their human rights or asylum claim, will additionally be able to receive legal aid advice on the NRM. This is to support individuals in understanding if they may be a potential victim of modern slavery or human trafficking, and to support a referral into the NRM, where appropriate. This is in addition to the assistance offered with their asylum claims at interview and appeal in the form of interpreters and legal representation (subject to the legal aid means and merits test).

Those who are not able to adhere to the requirements of the slavery and trafficking notice for "good reasons" will be able to provide information later in the process. Specifying a period by which relevant information and evidence must be provided will ensure there is sufficient time for a person to bring their claim. This will support the early identification of victims and those in need of international protection.

All referrals will be appropriately considered regardless of when they are brought to make sure that those who need protection are afforded it.

- 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)**

We intend to serve the Slavery and Trafficking information Notice (STIN) on all those who have made an asylum, protection or human rights claim¹. The

¹ For the purposes of Clause 57 the below definitions of human rights and protection claim apply

- "human rights claim" means a claim made by a person to the Secretary of State at a place designated by the Secretary of State *that to remove the person from or require him to leave the United Kingdom [F2] or to*

aim is to bring out relevant information to support referral at the earliest point in the immigration journey; this will allow both early identification and access to support for victims. As stated earlier, individuals who are served with the STIN, and who are receiving legal aid advice on their human rights or asylum claim, will additionally be able to receive legal aid advice on the NRM. This is to support individuals in understanding if they may be a potential victim of modern slavery or human trafficking, and to support a referral into the NRM, where appropriate.

When an individual registers a claim for asylum or has been refused a human rights claim that relates to their removal they will be served with a 'Slavery and Trafficking Information' notice. If an individual provides relevant information, they will be referred into the National Referral Mechanism as appropriate. If someone is already in the National Referral Mechanism and they are served the notice, it will only apply if there is a subsequent referral required for a separate incidence of exploitation.

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)

We agree that vulnerable or traumatised people should have clarity on how they will be treated under this provision, and we will look to provide this clarity in guidance. Ensuring that decision makers take account of an individual's vulnerabilities is fundamental to our approach. This is why we have included the condition of “good reasons” in Clause 58 and ensured decision-makers have the flexibility and discretion to appropriately consider these without prejudging what that should cover.

What constitutes “good reasons” has purposefully not been defined in the Bill. The detail on how to apply “good reasons” will be set out in guidance for decision makers. This will give decision-makers the tools to, for instance, recognise the effect traumatic events can have on an individual's ability to accurately recall, share, or recognise such events, while maintaining a case-by-case approach.

Examples of what may constitute 'good reasons' for late disclosure of information include: where the victim was still under the coercive control of the

refuse him entry into the United Kingdom] would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention) [F3](#)...

- a “protection claim” is a claim made by a person (“P”) *that removal of P from the United Kingdom—*
(i) would breach the United Kingdom's obligations under the Refugee Convention, or

- (ii) would breach the United Kingdom's obligations in relation to a persons eligible for a grant of humanitarian protection;

trafficker, that they did not recognise themselves as victims at that point, or for reasons relating to capacity to understand the requirement or proceedings.

Setting the parameters of what can constitute 'good reasons' in guidance will allow decision makers the flexibility to take a case-by-case approach depending on a person's specific situation and vulnerabilities and will ensure that we also have the flexibility to update and add to the range of considerations undertaken by a decision maker in exercising discretion.

The Home Office will ensure that any changes to processes as a result of these measures are designed in a way that accounts for the impact of trauma. This includes ensuring individuals working within the system are aware of the factors which can affect the task of obtaining information, including the effects of traumatic events on people's ability to accurately recall such events. Decision makers are fully trained in making all National Referral Mechanism decisions. This training involves considering all information to assess the vulnerabilities of victims including the best interest of the child and takes into account the need to safeguard and promote the welfare of children.

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)

We agree that all referrals will be appropriately considered regardless of when they are brought to make sure that those who need protection are afforded it.

If an individual raises late information without good reason, then this will have an impact on credibility and will be weighed in the balance with their overall information. This impact on credibility is not necessarily determinative of the case should other factors indicate the individual is a victim or potential victim of modern slavery. Where a person has raised evidence late, which causes delay and wasted resource, it is right that decision-makers consider whether there is any merit in the reasons for that lateness. To remove this aspect of the clause is to undermine the integrity of the clause and would remove the important deterrent aimed at stopping any potential misuse of the system.

Claimants will have the opportunity to set out those reasons in a statement that must accompany any late evidence. The "good reasons test" gives decision-makers the leeway to decide what is meritorious in the context of that case, taking into account the individual personal circumstances of any vulnerable claimant.

Any individual who has good reasons why the information was provided late, such as the effects of trauma, will not be subject to damaged credibility. We will set out in guidance the details of this approach giving decision-makers the tools to recognise the effect of exploitation and trauma and ensure decisions are based on an understanding of modern slavery and trafficking.

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)

Any individual who has good reason why the information was provided late, such as the effects of trauma, will not be subject to damaged credibility. We will set out in guidance the details of this approach, giving decision-makers the tools to recognise the effect of exploitation and trauma and ensure decisions are based on an understanding of modern slavery and trafficking.

To create a carve-out for any cohort of victim would create a two-tiered system based on the type of exploitation. The Government believes that all types of exploitation should be regarded equally, and no artificial distinctions should be made between them, given that this may inadvertently suggest a difference in their severity.

The one stop process currently applies to all individuals who are claiming asylum or have made a human rights claim, including children. The Bill does not change that.

The new and expanded 'one-stop' process seeks to ensure that asylum, human rights claims, and any other protection matters are made and considered ahead of any appeal hearing (where appropriate). The aims in terms of modern slavery and trafficking are to ensure that we are able to identify possible victims of modern slavery as early as possible in order to best support the needs of this group and to streamline decision making.

It is therefore right that children and victims of sexual exploitation are included in this process to aid early identification.

However, there are specific actions the Government is taking in relation to both these cohorts of victims to ensure they are identified as quickly as possible and receive appropriate protection.

Child victims

A child's welfare and their best interests will remain the primary consideration in any decision making. To provide further support to children in England and Wales, potential victims will be provided with an Independent Child Trafficking Guardian (ICTG), where the service is available, to support them to navigate

the National Referral Mechanism. The Government remains committed to national roll out of the ICTG service.

When considering whether a child is a potential victim of trafficking or modern slavery at Reasonable Grounds decision, we already take into account the specific vulnerabilities of children, for example, by not requiring there to be any means of exploitation as children cannot give informed consent to engage in criminal or other exploitative activity. This position will not change.

Clause 57 ensures that child victims of modern slavery who have made a human rights or protection claim are identified at the earliest possible opportunity, which is imperative to ensure they receive the specific protection and support they need to assist in their recovery.

We will also make clear in guidance specifically how children, or those who were children at the time of their exploitation, should be considered, taking into account their particular vulnerabilities and specific needs.

Victims of sexual exploitation

The Government is committed to identifying victims of modern slavery as promptly as possible to ensure they quickly receive the help they need. This is why we have launched online training which follows a trauma-informed approach for First Responders. This assists in the identification of indicators of modern slavery at the earliest opportunity and supports a referral into the National Referral Mechanism whenever appropriate. The list of First Responder Organisations enabled to refer into the NRM includes various organisations, including NGOs, that are experienced at working with vulnerable people and looking for indicators of modern slavery.

Further, the Modern Slavery Statutory Guidance makes clear that victims can be reluctant to come forward, and that first responders should be mindful of that when considering whether an individual is a potential victim and could be referred into the NRM. However, we are continually looking to improve this system and have committed, as part of the New Plan for Immigration, to improving the training for First responders.

We do recognise that some people working in the sex and escort industry can face traumatic experiences and often have needs arising from their exploitation. The Government provides specialist support and advocacy services for victims of modern slavery, including sexual exploitation, to assist them in rebuilding their lives and reintegrating into local communities.

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)**

We are committed to safeguarding victims and are acutely aware of the particular vulnerabilities that children present. The definition of “victim” will be in accordance and alignment with our international obligations and will be subject to both stakeholder consultation and affirmative parliamentary procedure.

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 Council of Europe Convention on Action against Trafficking in Human Beings obligations.

The definition of “victim of slavery” or “victim of trafficking” for the purposes of the Bill will be set out in affirmative regulations and will therefore be subject to affirmative parliamentary procedure.

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)**

The purpose of including Clause 61 is to provide clarity under what circumstances individuals should and should not receive multiple recovery periods under the National Referral Mechanism (NRM) following any sequential positive Reasonable Grounds decisions. This also aims to ensure we close off any opportunities for potential misuse particularly by those wishing to delay their removal from the UK.

Therefore, including Clause 61 in the Bill provides the circumstances when individuals may not receive multiple recovery periods under the National Referral Mechanism following any sequential positive Reasonable Grounds decisions.

Clause 61 does not preclude individuals who have been re-trafficked or experienced repeated exploitation since their recovery period, from receiving a further recovery period. The application of this clause is discretionary, and there may be specific vulnerabilities or circumstances where it is appropriate for an individual to receive multiple recovery periods. Clause 61 does not therefore remove protections where individuals need them, but only does so where the provisions of the NRM are not necessary because the individual's needs have already been met.

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)

Clause 63 enshrines in legislation that those identified as potential victims, following a Reasonable Grounds decision, will be entitled to support and assistance during the 30 days (45 days in guidance) of the recovery period.

Following a positive Reasonable Grounds decision a potential victim will receive a Recovery Period of at least 45 calendar days. This period begins on the date the decision was made.

This support continues from when they are first identified until a final Conclusive Grounds decision is taken, at which point a confirmed victim's ongoing recovery needs are assessed and a clear plan set out to help them transition out of support and back into a community. This needs-based approach ensures that the Government provides tailored support to enable victims to recover and rebuild their lives.

A minimum of 45 days of 'move on' support is maintained for confirmed victims following receipt of the Conclusive Grounds decision.

All confirmed adult victims of modern slavery who are receiving support through the Modern Slavery Victim Care Contract will have their support needs assessed through the Recovery Needs Assessment, including those in both outreach support and those provided with accommodation through the Modern Slavery Victims Care Contract.

The Recovery Needs Assessment process ensures that support is personalised to the victim's individual recovery needs and informs a tailored move-on plan to help them transition out of Modern Slavery Victims Care Contract support and back into a community, as appropriate.

The victim's support worker can request any or all three pillars of Modern Slavery Victims Care Contract support – accommodation, financial support and support worker contact – where appropriate for any confirmed victim undergoing the Recovery Needs Assessment process, for up to six months at a time.

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

10. 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). (Paragraph 48)*

Clause 62(2)(b) stipulates that where the subsection regarding disqualification from protection applies to a person, any requirement under section 64 to grant the person limited leave to remain in the United Kingdom ceases to apply.

Clause 64 sets out the circumstances in which the Secretary of State must grant limited leave to confirmed victims, and the circumstances in which the Secretary of State is **not** required to grant leave under subsection (2). Clause 64 subsection (6) and (7) provide that where the Secretary of State is satisfied that the individual is a threat to public order then they are not required to grant leave, and if leave has already been granted it may be revoked.

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)

Clause 62 is compliant with our international obligations, including ECAT and ECHR Article 4. We have drafted the clause to specifically enable consideration of the individual circumstances of each case, rather than imposing a blanket exemption. This will allow decision makers to make a holistic assessment on a case-by-case basis including considerations around the needs of each individual, and whether protection and support are necessary for ongoing investigations. This approach will ensure that people who genuinely require protection and support receive it, and that needed investigations can continue where appropriate.

It is a priority for this Government to increase prosecutions of perpetrators of modern slavery and the measures included within the Nationality and Borders Bill are designed to support these aims.

We are committed to strengthening the criminal justice response to modern slavery, including by ensuring victims have the support they need to engage with the system so that offenders face justice. That is why we launched a grant, open to police forces in England and Wales and the Gangmasters and Labour Abuse Authority, to fund initiatives to support victims of modern slavery within the criminal justice system.

This builds on existing work to support the police response to modern slavery and drive-up prosecutions, including a total of £15m Home Office funding since October 2016, which has helped to drive the increase in modern slavery investigations.

This Government's commitment to supporting victims is precisely why the Nationality and Borders Bill also makes clear that, where a public authority is pursuing an investigation or criminal proceedings, confirmed victims who are co-operating in this activity and need to remain in the UK in order to do so, will be granted a form of temporary leave to support this crucial endeavour. These measures build upon support and investment to strengthen the police response to modern slavery, including initiatives to help victims engage in the criminal justice system so more offenders can face justice.

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)

Clause 62 is compliant with our international obligations under ECAT and ECHR Article 4.

Potential and confirmed victims of modern slavery may have been convicted of serious criminal offences or be involved in terrorism offences. It is right that the Government should be able to withhold protections from those individuals who pose a threat to public order or national security. This is set out in the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT). However, this is not a blanket disqualification.

Decisions to withhold recovery periods on public order grounds will be made on a case-by-case basis. This will balance the need to safeguard exploited individuals against public protection concerns and will allow the Secretary of State to withhold the protections of the National Referral mechanism where the circumstances of the individual mean it is appropriate to do so.

The corresponding guidance will be very clear on the need to carefully consider the individual circumstances of each case to make sure that people who genuinely require protection and support receive it; this includes consideration as to whether their crime was committed as part of their exploitation.

The disqualification laid out in this clause is separate to the Section 45 defence. The Section 45 defence provides for a statutory defence for adult and child victims who have been forced to commit crimes as a result of their exploitation in certain circumstances. The definition for the public order disqualification includes offences set out in Schedule 4 of the Modern Slavery Act, such as sexual offences or offences involving serious violence. The Section 45 defence does not apply to those serious crimes set out within Schedule 4. Therefore, Clause 62 is a distinct process, separate to the use of Section 45 as a defence.

The Section 45 defence is applicable at the time of prosecution, whereas the public order disqualification is a different process and will be considered where there is a conviction or specific terrorism notices have been served. Any decision to withhold a Recovery Period as a result of an individual committing a Schedule 4 offence is taken at a later stage, post-conviction, and will still be considered on a discretionary basis, taking the individual's vulnerabilities and circumstances into account.

There are no current plans to amend the section 45 provisions in the Modern Slavery Act, which were introduced to provide a defence for victims of trafficking forced to commit crimes as a result of their exploitation. However, the Home Office will continue to monitor the effectiveness of these provisions.

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)

We will set out in guidance the considerations for decision makers in determining ‘bad faith’, which will be considered on a case-by-case basis.

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)

We agree that the public order disqualification should apply on a case-by-case basis. Recognising the individual nature of each case, decision makers will have discretion on whether to apply the disqualification, taking account of the individual facts of each case. This is what the current drafting of Clause 62 allows for.

It’s right that we can withhold support from individuals on grounds of Public Order, particularly where they are serious criminals or pose a threat to the UK and where those referrals are unmeritorious and designed to frustrate the removal process.

Indeed, the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) envisages that the recovery period should be withheld on grounds of public order and improper claims. However, our international obligations do not include a definition of “public order”, and to date, this has hindered our ability to disqualify suitable individuals in practice.

This clause in our domestic legislation will provide a definition for public order and make it operationally possible to withhold the recovery period in certain circumstances, in line with the provision set out in ECAT. We are satisfied that the current definition of Public Order in the Nationality and Borders Bill does comply with ECAT. Where individuals do meet the definition set out within this clause, decisions will be made on a case-by-case basis, balancing the public order risk and the need to safeguard individuals.

15. The Public Order disqualification covers those convicted in other countries for equivalent offences rather than a wholesale approach to 12-month sentences, as we recognise that other countries have different sentencing approaches - the relevant line in the Bill is clause 62(5)(b). 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)

While ECAT does not contain a definition of public order, we are satisfied that the current definition of public order in the Nationality and Borders Bill does comply with ECAT.

Potential and confirmed victims of modern slavery may have been convicted of serious criminal offences or be involved in terrorism offences. It is right that the Government should be able to withhold protections from those individuals who pose a threat to public order or national security.

However, this is not a blanket disqualification. Our approach to Clause 62 is discretionary and there will not be a blanket disqualification on the basis of “public order”. We want all victims of modern slavery to continue to come forward for identification and support regardless of their personal circumstances or the circumstances of their exploitation. We will communicate clearly in guidance that decisions will be taken on an individual basis and we expect this to reassure victims to come forward despite previous convictions. We will also work with stakeholders and First Responders to ensure this is clearly communicated.

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)

Competent Authority decision makers will be provided with the information necessary to make decision about an individual’s modern slavery exploitation, and any consideration of public order exemptions. They will be supported by clear decision-making guidance and escalation processes as required, making these decisions on behalf of the Secretary of State. Trained decision-makers will carefully consider each individual case and take into account the specific vulnerabilities and needs of each individual. The Recovery Period may be withheld following a Reasonable Grounds decision and the rights that flow from a Conclusive Grounds decision may be withheld at that stage, if relevant disqualifications apply.

We will set out the detail in guidance but decisions in relation to withholding support on public order grounds will consider the full circumstances of the case, including if an individual is appealing their conviction.

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)

We are satisfied that the current definition of public order in the Nationality and Borders Bill does comply with ECAT.

The aim is to have a clear definition in domestic legislation to support decisions. However, recognising the individual nature of each case, decision makers will have discretion on whether to apply the disqualification, taking account of the individual facts of each case.

We are working to develop guidance which will provide more detail on how the public order disqualification should be applied and the other considerations to be taken into account.

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)

The public order disqualification covers those convicted in other countries for equivalent offences rather than a wholesale approach to 12-month sentences, as we recognise that other countries have different sentencing approaches.

Any decision on applying a disqualification to the Recovery Period will be discretionary and considered by the decision-maker on a case-by-case basis, taking into account the full facts of the case, and will be balanced with our priority to safeguard victims.

We will fully address these issues in policy guidance to ensure that due account is taken of the circumstances, so that any punitive actions, including prosecutions, are proportionate and in the public interest.

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)

Children will be considered under this policy on the basis of whether they meet the threshold defined under "threat to public order". However, particular consideration will be given to the specific need to safeguard children.

Potential and confirmed victims of modern slavery may have been convicted of serious criminal offences or be involved in terrorism offences, and this includes children. It is right that the Government should be able to withhold protections from those individuals who pose a threat to public order or national security. However, this is not a blanket disqualification.

Following a National Referral Mechanism Referral, the specific circumstances and vulnerabilities of each individual case will be carefully considered to make sure that people who genuinely require protection and support receive it. This will balance the need to safeguard exploited individuals against public protection concerns. Further details of how to apply this discretionary element will be outlined in guidance for decision makers. This will include consideration of the particular vulnerabilities of children and, for example, whether individuals are assisting with prosecutions.

As set out in the modern slavery statutory guidance, the support local authorities provide to child victims is not dependent on a child remaining in the NRM. As such, children will continue to be supported in their existing situation by local authorities under their statutory duty to safeguard and promote the welfare of looked after children in their area. Support may continue until children reach the age of 25 where the child was looked after, or until the age of 18 otherwise.

Teams across Government and our wider operational partners are working closely together to ensure that we reflect the specific vulnerabilities of children and any vulnerability to criminal exploitation, in the guidance provided to decision-makers.

Decisions to withhold recovery periods on public order grounds from children and adults will be made on a case-by-case basis. And the Home Office is also continuing to work across Government and with operational partners to raise the profile and improve the safeguarding response to child criminal exploitation.

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)

Clause 64 provides a domestic interpretation of the obligations in Article 14 ECAT regarding residence permits to certain confirmed victims. By including Clause 64 in the Bill we aim to provide clarity for decision makers and victims concerning the circumstances in which confirmed victims qualify for temporary leave to remain.

Clause 64 is compatible with the obligations set out in Article 14 of the Council of Europe Convention on Action against Trafficking in Human Beings.

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)

The temporary leave to remain policy will set out, for the first time in domestic legislation, clarify the policy currently set out in guidance. Clause 64 provides a domestic interpretation of the obligations in Article 14 ECAT regarding residence permits to certain confirmed victims. By including Clause 64 in the Bill we aim to provide clarity for decision makers and victims concerning the circumstances in which confirmed victims qualify for temporary leave to remain.

Clause 64 is compatible with the obligations set out in Article 14 of the Council of Europe Convention on Action against Trafficking in Human Beings.

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)

As under the current modern slavery discretionary leave guidance [Discretionary leave for victims of modern slavery \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1014217/Discretionary_leave_for_victims_of_modern_slavery_(publishing.service.gov.uk)_Version_5.0.pdf), (Version 5.0 published 10 December 2021) discretionary leave decisions for child victims of slavery and human trafficking will continue to be taken with the best interests of the child as a primary consideration.

Clause 64 applies equally to adult and child confirmed victims of modern slavery. We will continue to factor the best interests' of the child into our consideration of grants of leave for child victims and decision makers always consider the circumstances of a child to make sure their best interests are considered when deciding on appropriate leave. We will further make this clear in the Immigration Rules that this is the underpinning principle when considering leave for children.

Decision makers are fully trained in making all leave to remain decisions, including considering all information to assess the best interest of the child as well as account for the need to safeguard and promote the welfare of children. Decision makers will receive training and up-to-date guidance on the policy.

We will ensure that children continue to be supported and protected through existing mechanisms in local authorities.

It continues to be a core principle of our approach to modern slavery that support provided in the UK should only be available to victims who need it.

24. 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. (Paragraph 90)

Clause 64 is compatible with the obligations set out in Article 14 of the Council of Europe Convention on Action against Trafficking in Human Beings.

This Clause is subject to exemptions contained in other clauses in the Bill. This includes clause 61, which sets out under what circumstances individuals should and should not receive multiple recovery periods under the National Referral Mechanism following any sequential positive Reasonable Grounds decisions, and Clause 62, which sets out the withholding of the Recovery Period on public order grounds.

Within our international obligations, there is provision within Article 14 (3) for the non-renewal or withdrawal of a residence permit subject to the conditions provided for by our internal law.

We will set out in the Immigration Rules and underpin in guidance for decision makers, when leave can be withdrawn or not renewed. This is the appropriate place, giving the Government the flexibility to meet the needs of victims or respond to changing criminal activity that may seek opportunities to misuse the National Referral Mechanism. All decisions will balance the need to safeguard individuals with removing the opportunities for misuse of the generous protections the National Referral Mechanism provides.

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)

Following a positive Reasonable Grounds decision, a potential victim will receive a Recovery Period for at least 30 days (set at 45 days in guidance) or up to the point a Conclusive Grounds decision is made, whichever is longer, unless disqualifications apply. We will, for the first time, place on a statutory footing the access to support and protection from removal from the UK that is available through the National Referral Mechanism in Clauses 60 and 63

This Bill confirms that where necessary support is provided from the recovery period to the Conclusive Grounds decision. After receiving a positive

Reasonable Grounds decision, potential victims can access a wide range of specialist support services through the Modern Slavery Victim Care Contract to help rebuild their lives. This support includes safehouse accommodation, financial support, and access to a support worker. This is in line with our international obligations under Article 12 of the Council of Europe Convention on Action against the Trafficking of Human Beings.

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)

We are grateful for the Committee’s positive comments that these clauses will help ensure access to legal aid for victims of modern slavery with insecure immigration status.

Unidentified victims of modern slavery who have insecure immigration status are a particularly vulnerable category as without identification, they will not be able to benefit from the support of the National Referral Mechanism and may face removal from the country. This includes the fact that whilst a decision from the National Referral Mechanism is outstanding, an individual cannot be removed from the UK.

The Government is clear that victims of modern slavery can access free and impartial legally aided advice in order to make the Home Office aware of their whole situation and ensure that they are supported at every instance.

This builds on existing legal aid provision, ensuring that individuals can receive advice on the National Referral Mechanism before entering it, allowing them to make an informed decision.

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)

An individual who is served with a priority removal notice and a trafficking information notice together will be entitled to seven hours of advice under Clause 24 as they will be at risk of priority removal from the country.

Where immigration matters are out of scope, legal aid may be available via the Exceptional Case Funding scheme where failure to provide legal aid would risk breaching the individual's human rights. We do not recognise the Committee's claim that exceptional case funding is "extremely difficult to secure in practice". In 2020, 85% of applications for exceptional case funding in immigration matters were granted.

Legal aid has and will continue to be available for asylum cases, where someone is challenging a detention decision, and where the individual is a victim of modern slavery or domestic abuse. The Legal Aid Agency (LAA) regularly monitors capacity in the legal aid market and the provision of legal aid services across England and Wales. The LAA will take immediate action should gaps appear.

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)**

The clause seeks to only disapply the EU Trafficking Directive to the extent that it is incompatible with the clauses in the Bill. This means that any provisions in the Directive that have effect (and we do not believe that any do) and remain compatible will be unaffected by this Clause. This is an important point of legal clarity to ensure victims are clear on their entitlements and

reduce unnecessary litigation where we are clear on the rights we are providing and that these are in line with our international obligations.

We are not therefore removing any entitlements from victims.

In future, should it be required, and parliamentary time allows, we will consider whether further legislation is needed to clarify other elements of the EU Trafficking Directive. Here, we are seeking to provide clarity on the specific measures within this Bill.

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)

These measures will supplement what the Government has already done to give effect to modern slavery obligations under ECAT and the UN Palermo Protocol, not least through the Modern Slavery Act 2015.

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)

The creation of the Immigration Enforcement Competent Authority is an internal restructure within the Home Office. When a potential victim of modern slavery is referred into the National Referral Mechanism, it is important that they receive a decision as quickly as possible to provide certainty and secure the correct support to assist with their recovery.

This new team will streamline decision-making and ensure, wherever possible, that the various factors which may be pertinent to decisions about an individual are taken by those who can consider their circumstances most fully.

All decisions will continue to be made in line with the definitions and standards of proof in the published Modern Slavery Statutory Guidance and quality assurance activity will be consistent across the competent authorities. We will ensure consistency in the decision-making process in both competent authorities, and all decision makers will receive consistent training (including on any new measures coming in through the Bill) and be held to the same standards across the Home Office, operating within the same legal systems.

A handwritten signature in blue ink, appearing to read 'T. Pursglove', is centered on the page.

Tom Pursglove MP

Minister for Justice and Tackling Illegal Migration