



Part 5 Modern slavery in the Nationality and Borders Bill: consideration paper

Executive summary

Updated Clause numbers post Bill Committee, November 2021

The Rights Lab consideration paper presents findings on the modern slavery provisions in the Nationality and Borders Bill (2021). The paper was prepared by Kate Garbers (Rights Lab Research Fellow in Policy Evidence and Survivor Support), with input from Catherine Meredith (Barrister at Doughty Street Chambers), Dr Katarina Schwarz (Rights Lab Associate Director), the Human Trafficking Foundation (HTF) and contributions from anti-slavery sector practitioners and partners who were part of the HTF Research and Evidence Group.

Purpose of the study

The anti-slavery sector has continued to express grave concerns about the inclusion of modern slavery in the Nationality and Borders Bill and the preoccupation with viewing modern slavery through an immigration lens.

The Rights Lab produced both this Executive Summary—providing an overview of the clauses relating to modern slavery—and a consideration paper to provide an in-depth evidence and research base for MP's, Peers and the anti-slavery sector to support activity throughout the parliamentary process.

The Bill Committee stages in the Commons are now completed and amendments are being tabled ahead of the report stage, third reading in the Commons, and the Bill progressing to the House of Lords.

Post the Bill Committee, modern slavery and associated clauses have been renumbered and are now Part 5 of the Bill (Clauses 57 -68). This summary has been updated to reflect these changes. The content of both the summary and the consideration paper remains the same as the information and evidence base has not altered. The full consideration paper can be found [here](#).

Overview

The UK government position is that the legislative changes presented in the Nationality and Borders Bill (the Bill) are necessary to tackle modern slavery and human trafficking. In the New Plan for Immigration Policy Statement, the government confirmed its commitment to ensuring police and courts have the necessary powers to bring perpetrators to justice, while giving victims the support they need to rebuild their lives.

What the government is seeking to achieve in offering protection to those who need it—including victims of modern slavery—is positive. However, this research shows that the proposed changes pose a risk of causing damage to the people they are intended to protect and threaten to undermine the government's stated policy objectives.

The positioning of central modern slavery provisions within immigration legislation is a matter of general concern, as it conflates these distinct areas of policy and creates a risk of discriminatory

practice within the NRM. The specific terms of the modern slavery provisions contained in the Bill also pose risks to victim protection, criminal justice, and the UK's fulfilment of its international obligations.

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Note on language

The language of 'survivor' is generally preferred in the UK anti-slavery sector when referring to those who have experienced modern slavery and human trafficking. However, this report uses the language of 'victim' as per the Bill and Explanatory Notes.

The modern slavery provisions in Part 5 of the Bill

Clauses 57 and 58

Provision of information related to being a victim of slavery or human trafficking

Late compliance with slavery or trafficking information notice: damage to credibility

Clause 57 requires victims with a protection and human rights claim to provide information relating to being a victim of slavery or trafficking within a specified period when served with a 'slavery or trafficking information notice'. Clause 58 sets out the consequences of failure to provide such information within the specified timeframe. Late disclosure must be considered damaging to the individual's credibility, unless there are 'good reasons' for the delay.

Evidence establishes that victims may be unable or unwilling to provide disclosure of their experiences of trafficking for a variety of reasons. These include trauma, ongoing impacts of manipulation by perpetrators, fear of reprisals, and lack of awareness of what constitutes trafficking—recognised by the government as barriers to self-identification.

Clauses 57 and 58 do not appear to account for the impacts of trauma on victims' willingness and ability to self-identify or make disclosures.

The process conflates immigration and modern slavery decision-making, posing risks to the effectiveness of antislavery efforts.

The provisions apply only to those who have made a protection claim or human rights claim and are therefore discriminatory between victims.

The provisions improperly assign the obligation to identify to victims rather than the state.

Clause 59

Identification of potential victims of slavery or human trafficking

Clause 59 changes the threshold for Reasonable Grounds decision-making within the NRM from reasonable grounds to believe a person 'may be a victim' to 'is a victim'. The provision also enshrines the standard of proof for Conclusive

Grounds decisions as the 'balance of probabilities' and shifts regulatory power to define 'victim of slavery' and 'victim of human trafficking' to the Nationality and Borders Act.

Clause 59 will impact the number of victims identified. It may therefore result in fewer people with legal entitlements to support receiving such.

Clause 59 may exacerbate the problem of low NRM referrals compared to the estimated prevalence of modern slavery in the UK.

The change may deny victims support needed to enable disclosure, reducing identification, and harming criminal justice efforts.

It is unclear why regulations defining victims should be positioned under immigration law rather than the Modern Slavery Act.

Clause 60

Identified potential victims of slavery or human trafficking: recovery period

Clause 60 provides for a recovery period of at least 30 days for potential victims between the Reasonable Grounds and Conclusive Grounds decisions.

Evidence suggests that a minimum of 90 days of support is required for trafficked person to be able to make well-considered decisions about their safety and cooperation with the authorities, as well as to offer detailed evidence about past events. Evidence further suggests positive correlations between effective support and improved engagement with authorities.

The aim of accelerating decision making is welcomed, although it cannot come at the expense of quality decision making and proper identification.

Reducing available benefits of identification may negatively impact referrals into the NRM.

Reducing the period of support and total referrals may negatively impact criminal justice efforts.

Clause 61

No entitlement to additional recovery period

Linked to Clause 60, Clause 61 specifies that victims may receive only one recovery period unless specific circumstances require otherwise. The provision is intended to prevent misuse of the NRM and reduce barriers to removal. The provision limits additional support for actions prior to the initial Reasonable Grounds decision, and not in cases of re-trafficking (which would be eligible for further support).

There is no evidence of significant misuse of the NRM. Evidence assessed indicates against such.

Evidence shows individuals are not always able to disclose needs for protection within set timeframes due to fear and trauma.

Clause 61 appears to contradict the identified need for individual assessment and support, as required under ECAT and captured in Recovery Needs Assessments.

Clause 62

Identified potential victims etc: disqualification from protection

Clause 62 disqualifies potential victims from protection where they are deemed a 'threat to public order' or to have claimed to be a victim in 'bad faith'. In such cases, Clause 62 ceases protection and support under the reflection and recovery period and lifts the prohibition on removal. It also removes the requirement to complete the identification process and make a Conclusive Grounds decision.

Cessation of protection and prohibition on removals risk damaging policing and prosecution efforts, reducing self-reporting, and penalising victims.

The lack of specificity in some grounds for disqualification creates a risk that victims will be denied protection where it should have been provided in accordance with ECAT.

The lack of an appeals mechanism for decisions risks increasing resort to judicial review.

Clause 63

Identified potential victims etc in England and Wales: assistance and support

Clause 63 provides for assistance and support for identified potential victims of slavery and trafficking during the recovery period. The provision creates a legal right to support in England and Wales, where previously this was not required by statute (unlike Scotland and Northern Ireland).

The proposal to place assistance for victims into primary legislation is positive and aligns with recommendations in the evidence base.

The lack of specification of measures of support victims are entitled to creates a risk of inadequate support without legal recourse for victims.

Clause 64

Leave to remain for victims of slavery or human trafficking

Clause 64 establishes the circumstances in which 'limited leave to remain' will be granted to those conclusively identified as victims of slavery or trafficking. The proposed provision appears to:

- Narrow the scope of the personal circumstances ground;
- Limit the compensation ground if the victim can seek compensation from outside the UK; and
- Overlook the connection between police cooperation and other aspects of the support system in relation to the police assistance ground.

The narrowing of grounds for the granting of temporary leave raises a risk of non-compliance with obligations under ECAT, the ECHR, and domestic law.

It also poses a risk to UK criminal justice efforts against trafficking and sacrifices potential benefits for the UK economy.

Clauses 65 and 66

It is unclear why the definitions of victims should be established through regulations under the Nationality and Borders Bill when the Modern Slavery Act already defines these terms.

Civil legal aid under Section 9 of LASPO: add-on services in relation to the National Referral Mechanism

Civil legal services under Section 10 of LASPO: add-on services in relation to National Referral Mechanism

Under Clauses 65 and 66, legal advice on referral into the NRM is to be provided as ‘add-on’ advice where individuals are in receipt of civil legal services for certain immigration and asylum matters. Evidence shows early legal advice to be pivotal in supporting victims to achieve positive outcomes and access justice. However, significant issues are identified in current legal aid provision in the UK.

The inclusion of legal aid only as an ‘add on’ leaves a significant gap in provision of legal advice and support for victims.

Clause 67

Disapplication of retained EU law deriving from Trafficking Directive

Clause 67 disapplies the EU Trafficking Directive in so far as it is incompatible with provisions in the Nationality and Borders Bill. The Directive has a stronger enforcement mechanism than ECAT and direct effect in UK law, providing an important avenue for justice for victims. Existing UK legislation does not enshrine specific assistance and support measures included in the Directive.

The loss of the direct effect of the Directive in UK law limits victims’ rights and opportunities for redress within the UK legal system.

Clause 68

Part 4: interpretation

Clause 68 provides the definitions of terms used in Part 5 of the Bill and confers power to the Secretary of State to set the meaning of ‘victim of slavery’ and ‘victim of trafficking’ in

regulations. Definitions of these terms are already established under Section 56 of the Modern Slavery Act.

It is unclear why the definitions of victims should be established through regulations under the Nationality and Borders Bill when the Modern Slavery Act already defines these terms.

Implications of the evidence

The proposals in Part 5 Bill risk undermining the government’s claimed status as a leader on the global stage. Part 5 presents a number of regressive steps in the identification and support of victims, contrary to the principle of non-regression of human rights standards as well as the UK’s obligations under international law. Evidence indicates long-term impacts being reduction in victim protection, ability to break trafficking cycles, and prosecution of perpetrators.

Our full report on implications and evidence of impact of Part 5 of the Nationality and Borders Bill can be found at:

<https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/october/consideration-paper-nationality-and-borders-bill.pdf>

About the Rights Lab

The Rights Lab delivers research to help end modern slavery. We are the world’s largest group of modern slavery researchers, and home to many leading modern slavery experts. Through our five research programmes, we deliver new and cutting-edge research that provides rigorous data, evidence and discoveries for the global anti-slavery effort. More information about the Rights Lab is available at www.nottingham.ac.uk/rights-lab.