

Modern Slavery Bill
Report Stage Briefing – House of Lords February 2015
Victim Protection & the NRM

Introduction

Many Peers spoke about the need for stronger victim protection measures during the Second Reading and Committee stage debates and made recommendations for this to be guaranteed in statute. Despite this, the Modern Slavery Bill in its current form still does not guarantee victims the support and protection they are entitled to, nor does it explicitly define the duty on public authorities to identify and assist victims.

Hence, the ATMG strongly supports the amendment tabled by Lord McColl of Dulwich, Baroness Grey-Thompson, Lord Anderson of Swansea and the Lord Morrow to create a duty on the State to provide physical, psychological and social recovery to victims, and the new clause tabled by Lord Warner, Lord Patel and the Lord Bishop of Derby, to provide for the statutory establishment of the National Referral Mechanism (NRM).

These amendments have been tabled notwithstanding the government amendment to clause 49 and the proposed new clause after clause 49. We welcome the government's initiative in tabling these amendments, but we are not convinced that they go far enough.

A statutory duty to identify and support

Amendment tabled

Tabled by: Lord McColl of Dulwich, Baroness Grey-Thompson, Lord Anderson of Swansea, Lord Morrow

Page 38, line 13, at end insert—

- “(1A) Support and assistance for physical, psychological and social recovery must be provided to persons—
- (a) where a reference relating to that person has been, or is about to be, made to the competent authority for a determination for the purposes of Article 10 of the Trafficking Convention as to whether there are reasonable grounds to believe that the person is a victim of trafficking in human beings; and
 - (b) until a determination is made by a competent authority that the person is not a victim of trafficking in human beings; and
 - (c) in accordance with guidance issued under subsection (1B).
- (1B) The Secretary of State must issue guidance, to such public authorities and other persons as the Secretary of State considers appropriate, about arrangements for providing assistance and support in accordance with subsection (1A), and the assistance and support provided under this guidance must—

- (a) meet international obligations for the services that victims are entitled to receive in relation to—
 - (i) appropriate and safe accommodation;
 - (ii) material assistance for day-to-day living;
 - (iii) medical advice and treatment, including psychological assistance and counselling;
 - (iv) appropriate information on any matter of relevance or potential relevance to the particular circumstances of the person;
 - (v) translation and interpretation services;
 - (vi) legal advice and representation;
 - (vii) assistance in applying for compensation;
 - (viii) assistance with repatriation;
- (b) not be conditional on the willingness of the person to act as a witness in any criminal proceedings;
- (c) take due regard of the victim’s need for safety and protection, including the opportunity to receive assistance from a person of the same gender;
- (d) meet minimum standards for such support set out by the Secretary of State in the guidance published under this subsection;
- (e) ensure that any assistance and support provided to a child shall have the child’s best interests as the primary consideration;
- (f) ensure that assistance and support provided to an adult must be provided with their agreement; and
- (g) be subject to regular audit to ensure that it is meeting the conditions set out in this subsection.”

Purpose of the Amendment

The amendment places a statutory duty on the Secretary of State, addressed to public authorities, to ensure that victims are provided with the access to assistance and support to which they are entitled to facilitate their physical, psychological and social recovery, reflective of Article 12 Council of Europe Convention on Action against Trafficking¹ (CoE).

The amendment also puts in place important safeguards, found in international legislation, for the provision of this support, including that the best interests of the child should be the principle consideration², support should be provided to an adult with their informed consent³ and not be made conditional on their willingness to assist in criminal proceedings⁴.

Briefing

The UK is obliged to provide **all** victims with the support measures listed in 1(B)(a) of this amendment, these standards can be found in the CoE⁵ and the EU Trafficking Directive 2011⁶ - (the Directive). This amendment transposes these standards into national legislation.

¹ <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

² UN Convention on the Rights of the Child [UNCRC] Art 3 (1)

³ CoE Art 12 (7)

⁴ CoE Art 12 (6)

⁵ Council of Europe Convention on Action against Trafficking in Human Beings, 2005. Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0036>

The recently published Human Trafficking & Exploitation (Scotland) Bill⁷ and Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Bill⁸ both include similar, comprehensive support and assistance provisions which transpose their international obligations into national legislation.

Importantly, both bills in Scotland and Northern Ireland allow for a degree of flexibility as to the provision of support prior to entry into the NRM (currently via a Reasonable Grounds decision) thus ensuring that vulnerable individuals have access to assistance as soon as they are identified by (currently) first responders rather than having to wait precious hours or even days for a Reasonable Grounds decision.

The government has proposed an amendment to Clause 49 which changes 'is reason' to 'reasonable grounds' and thereby ties the support to a positive Reasonable Grounds decision. There is a risk that as a consequence of this amendment, the possibility to provide immediate support for victims will be removed.

Provision of immediate support for victims is important because it helps to prevent further exploitation and allows victims time to consider whether they wish to enter NRM (See below re 'Informed Consent'). Often such flexibility would be required for only a matter of hours. However, for a victim to make the decision to escape their trafficker and seek help, those first hours may be crucial. Being able to raise awareness to victims through confident statements such that, "if you need to seek help it will be offered without delay", will underpin protection and provide certainty to those who encounter victims late at night, in the early hours of the morning or at weekends. ATMG members too often experience the sight of victims in waiting rooms and reception areas for hours while numerous telephone calls are made to secure accommodation. Police officers tell us of having to 'negotiate' with agencies because they recognise that a night in a police cell may undermine their investigation.

This is described by the police as "the golden hour" after an offence has been committed. Positive action in the period immediately after the report of a crime minimises the amount of material that could be lost to the investigation, and maximises the chance of securing the material that will be admissible in court. Actions expected of police officers encountering witnesses include their identification and support.

The Police College has recently issued an Authorised Professional Practice paper on Modern Slavery⁹ for consultation. The section on "Achieving best evidence" recommends the "Use [of] a neutral space" to interview victims of modern slavery. The UNODC "First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking"¹⁰ recommends taking, "victims to a safe place, but avoid taking them to police stations. If you have no alternative, keep them away from traffickers and other criminals..."

We are also concerned that the inclusion of the term 'reasonable grounds' in the government amendment to Clause 48 (page 37, line 25), 'Child Trafficking Advocates', could tie the appointment of an advocate to a Reasonable Grounds NRM decision and would like to seek assurance from the Minister that this is not the case.

⁷ http://www.scottish.parliament.uk/S4_Bills/Human%20Trafficking%20Bill/b57s4-introd.pdf

⁸ <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/non-executive-bills/human-trafficking/human-trafficking---as-amended-at-fcs--01-12-14.pdf>

⁹ <http://www.app.college.police.uk/consultation/modern-slavery-consultation/modern-slavery-consultation/>

¹⁰ <http://www.unodc.org/unodc/en/human-trafficking/2011/first-aid-kit.html>

Questions for the Minister:

- Will the Minister explain why the underlying principles of the system of victim identification and support, set out in existing international legislation to which the UK is bound, cannot be included in the Modern Slavery Bill?
- Will the Minister explain why the provisions for victim protection and support in this Bill do not go as far as those just passed in Northern Ireland, or in the recently published Human Trafficking and Exploitation (Scotland) Bill?
- Will any guidance issued on the protection and support for potential victims of modern slavery be considered secondary legislation? How will the application of such guidance be regulated to ensure compliance? Will the guidance include a definition of informed consent?
- Could the Minister outline how public authority officials who fail to assist or refer potential victims of modern slavery for identification will be held accountable?
- Will the Minister confirm that the need for a positive Reasonable Grounds decision will not be a barrier to immediate access to care and support?
- Will the Minister provide an assurance that mechanisms will be developed for providing prompt access to care and support where a positive Reasonable Grounds decision cannot be made 'on the spot'?
- Can the Minister confirm that the appointment of a child trafficking advocate will be will not be tied to a Reasonable Grounds decision in the NRM?

A Statutory NRM

Amendment tabled

Tabled by: Lord Warner, Lord Patel, The Lord Bishop Of Derby

Before Clause 45, Insert the following new Clause—

“Establishment of the National Referral Mechanism

- (1) The Secretary of State must as soon as practicable establish by order a National Referral Mechanism (“NRM”) to—
 - (a) identify trafficked, enslaved or exploited persons within the United Kingdom;
 - (b) provide assistance and support to a person who may have been trafficked, enslaved or exploited from the time at which that person is first referred into the NRM until such time as a final and conclusive determination is made that they are not such a person; and
 - (c) ensure that the rights of such persons are protected and promoted in a manner which discharges the Government’s obligations under the Trafficking Convention and the Trafficking Directive regarding the identification and protection of victims, including measures for assistance and support.
- (2) The Secretary of State must, in regulations, specify the procedures to be followed to implement the NRM and the procedures to be applied by the NRM including to give effect to the right to a one-year renewable residence permit where a person (including a child) has been determined as having been trafficked, enslaved or exploited.

- (3) The regulations must provide for a right of appeal by an individual in respect of a decision in the NRM process that they are not a trafficked, enslaved or exploited person.
- (4) An adult must give their free and informed consent to being referred into the NRM before a referral is made on their behalf.”

Purpose of the Amendment

The amendment places the framework of the NRM in statute, creates a statutory duty on the Secretary of State, addressed to public authorities, to set out in regulations the arrangements for a system of victim identification, which must include a formal right to appeal any decision made through this system. The amendment details the minimum standards and duration of support and assistance provision to which victims are entitled. It also sets out important safeguards for this support, including that adults must give their free and informed consent to receiving such support and that its provision should not be dependent on the individuals’ willingness to participate in criminal proceedings. This reflects Article 12 of the CoE.

The amendment would also provide a right to appeal a decision by a victim, enshrine the principle of informed consent and establish a one year renewable residence permit (which is already provided for in international law binding for the UK).

We consider it fundamental to developing a stable system of victim identification and support that it be underpinned by statute. Whilst the government’s proposed amendment to insert a new clause after Clause 49 which provides for "Regulations about identifying and supporting victims" is a welcome step in the right direction, it does not go far enough. The language of the amendment establishes an option rather than a requirement in the Secretary of State to make regulations, and does not detail crucial safeguards required in this system, including a formal right of appeal and the principle of informed consent.

Providing a Formal Right of Appeal

The NRM review asserts that the right of appeal is unnecessary¹¹ because the proposed changes make substantial improvements to the current NRM. But no realistic guarantee can ever be provided that the new improved system will be problem-free, particularly in the revised system's initial stages.

An appeal would also provide a degree of independent oversight and allow for the constructive appraisal of decisions overturned on appeal, thereby allowing for continued improvement in processes.

Informed consent

Free and informed consent for adults is a vital component of any NRM. Chapter 1.4 of the EU Trafficking Directive makes clear that assistance and support "can only be provided with the victim’s consent on an informed basis." The ATMG is aware of papers put before victims by police officers and detention centre staff and being told in so many words to "sign." Placing this requirement in statute ensures that all those encountering victims must respect their autonomy.

One year renewable residence permit

In the current system, the asylum route is sometimes preferred over the current NRM by victims as it gives them the confidence that the positive outcome of an asylum claim is a grant of leave to remain via refugee status or humanitarian protection. Leave to remain in NRM cases is currently

¹¹ Supra note 1, para. 8.3.1

granted in terms of 'discretionary' leave only, without any set period. A one-year renewable residence permit, as provided for in the Trafficking Convention, would end the uncertainty which discretionary leave carries and provide confidence that, for a reasonable period, victims whose personal situation requires it and/or who are co-operating with the authorities in the prosecution of the perpetrator will be allowed to remain in the UK. The leave to remain will be renewable so that victims needs can be reassessed.

EU and EEA nationals do not require leave to remain to continue to live in the UK. However, in order to do so they must 'exercise treaty rights' as a worker or in setting up a business or by satisfying the 'habitual residence test'. EU and EEA nationals do not have immediate access to the UK welfare benefit system. By granting a one year residence permit to all non-British victims of trafficking who have received a positive decision their immediate needs can be properly met.

Questions for the Minister:

- Will the Minister explain why the government amendment makes regulations optional rather than mandatory?
- Will the Minister give assurances that if making regulations is optional, that option will be taken up as soon as the framework and central principles for the new NRM have been established?
- Will the Minister clarify the Government's reasoning for not introducing a right to appeal NRM decisions as a key safeguard to protect the rights of trafficking victims?
- Can the Minister outline what legal protections will be put in place for potential victims of modern slavery who are not able to provide informed consent due to circumstances, trauma or lack of capacity to enter into the NRM to ensure they can access specialist protection and support until they are sufficiently recovered to provide informed consent?