



# **CLASS ACTS?**

**Examining modern slavery legislation  
across the UK**

October 2016

**The Anti Trafficking  
Monitoring Group**

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# Preface

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The Anti-Trafficking Monitoring Group (ATMG) was founded in 2009 to monitor the UK's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (2005) which came into effect in the UK on 1 April 2009. The ATMG now also monitors the implementation of the EU Directive on preventing and combating trafficking in human beings and protecting its victims 2011/36, which entered into force on 5 April 2013.

The eleven organisations belonging to the ATMG are:

- AFRUCA
- Amnesty International UK
- Anti-Slavery International
- Bawso
- ECPAT UK
- Focus on Labour Exploitation (FLEX)
- Helen Bamber Foundation
- Kalayaan
- Law Centre (NI)
- The TARA Service (Trafficking Awareness Raising Alliance, of Community Safety Glasgow)
- UNICEF UK

# Executive summary

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In 2015 the Modern Slavery Act, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland), and the Human Trafficking and Exploitation (Scotland) Act entered into force in the UK. These Acts have introduced new offences of human trafficking and other forms of modern slavery, as well as a raft of provisions aimed at preventing modern slavery and protecting its victims.

The purpose of this research was to review and compare the key provisions in these three Acts, to assess the extent to which they contribute to the UK's implementation of the 2005 Council of Europe Trafficking Convention<sup>1</sup> and EU Trafficking Directive<sup>2</sup>, and the extent of their implementation to date. The report considers whether the Acts have better equipped the UK to tackle modern slavery. The research was undertaken through a combination of desk research, parliamentary questions and interviews with key stakeholders.

The introduction of this legislation marks a significant development in the UK's efforts to tackle this crime. A considerable amount of time and expertise was involved in the drafting of the legislation, and the resulting laws passed are comprehensive in scope. The Acts, and the scrutiny surrounding them, served to shine a spotlight on the issue of modern slavery and galvanise efforts to tackle it. The Prime Minister's recent announcement to continue her work on fighting modern slavery is encouraging and signals that the momentum gained in this regard will not be lost.

However, the ATMG has found, through reviewing the Acts' provision, that there are significant differences in a number of key areas across the three jurisdictions of the UK, for instance in both the statutory support entitlements for adult victims and in the non-criminalisation provisions. In the majority of cases where differences occur, it is the Modern Slavery Act that falls short of its counterparts in Scotland and Northern Ireland.

The ATMG is concerned that there isn't a robust monitoring framework in place to oversee the implementation and impact of the Acts, and calibrate their success. This research highlights continuing weaknesses in data collection and the lack of a central, statutory body with the responsibility to collate and analyse data on both victims and perpetrators and to assess the interface between the various data streams across the UK. There must also be greater oversight and accountability to ensure that data on victims is stored safely and used effectively.

The ATMG believes the Independent Anti-Slavery Commissioner would, with the necessary resources and independence, be ideally placed to have oversight of modern slavery data collected in the UK. However, this is currently not part of the Commissioner's role.

## Offences

The criminal offences of human trafficking, slavery, servitude, forced and compulsory labour are included in all three Acts. The research identified key differences in the drafting of the offence of human trafficking across the three jurisdictions. The Modern Slavery Act in particular moves away

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<sup>1</sup> Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series No. 197, 2005.

<sup>2</sup> 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

from the internationally recognised definition of human trafficking by using the word 'travel' as the gateway for framing all other trafficking acts, such as the 'harbouring' or 'recruitment' of victims of trafficking. This has the potential to make convictions more difficult where the movement of a victim is difficult to prove.

Due to the limited timeframe in which they have been in use, the ATMG acknowledges that it is too early to fully evaluate if the new criminal offences are more effective than previous laws and whether the differences in legislative drafting have resulted in varying prosecution and conviction rates across the jurisdictions. However it is important to acknowledge these differences now, as they will result in discrepancies in policy and training across the jurisdictions which could have knock-on effects in the longer-term.

The ATMG is concerned that the current recording and reporting of criminal offences and perpetrators is inadequate to provide a comprehensive picture as to whether these drafting differences matter in practice. For instance, the Crown Prosecution Service (CPS) case recording process does not allow for concise reporting on the number of traffickers who are convicted for the specific offence of human trafficking. The CPS continues to publish only the number of charges of trafficking and slavery offences, rather than the number of defendants charged, and this fails to bring insight into how many perpetrators have been brought to justice or how well the laws are being used. The Public Prosecution Service in Northern Ireland does record the number of charges laid against each person, however they do not routinely publish these figures. There is also no reporting across the UK on the age of the victims of the offences, making it impossible to know how many children's cases are being prosecuted.

Whilst extensive data is collected on victims through the National Referral Mechanism, data collection on perpetrators is still limited. Moreover, data on victims and criminals is collected in silos by different authorities and no comprehensive assessment is undertaken to assess if and how one data set informs the other. The lack of a UK-wide data strategy and the absence of a central body responsible for data collection and analysis is a major shortfall in the UK's response to modern slavery that urgently needs to be addressed.

## **Duty to notify**

All three Acts introduce a duty on specified public authorities to officially notify a particular body e.g. the National Crime Agency in the case of Northern Ireland, when they encounter a potential victim. To date this duty has only come into force in England and Wales. The research has raised a number of questions about the use of this duty in England and Wales and the data collected through it, including the potential misuse of this data for purposes beyond the remit of the Modern Slavery Act. Despite government assurances that the Duty to Notify forms would not be used to identify victims, the reporting form contains a section in which sensitive, identifying information can be provided, with the individual's consent. It is unclear exactly who will handle and store this sensitive information, and how it will be used, and whether the person referred will receive acknowledgement that their information has been shared.

The ATMG is also deeply concerned by the mixed messages regarding children, who are referenced in the Duty to Notify guidance and on the reporting form. The Government's stated intention of the Duty to Notify is to capture data on victims who are not referred to the NRM. All children who are believed to be potential victims of modern slavery should be referred into the National Referral Mechanism (NRM) as, unlike for adults, a child's consent to the referral is not required. It therefore follows that no child's case should fall under the 'Duty to notify'. The Duty to Notify forms should make clear that children who are suspected victims of trafficking and modern slavery are to be referred into the NRM immediately.



## **Child Guardianship**

All three Acts provide for a child guardian scheme, albeit the guardians have different titles across the three jurisdictions. There are also key differences in the wording of Acts, in particular regarding the eligibility for guardianship i.e. who is entitled to have a guardian, how the guardian is appointed, and when and for how long a guardian will be able to represent the child. The most detailed and comprehensive model for guardianship is found in the Northern Ireland Act. The ATMG believes that greater policy coherence is required across the three jurisdictions on the statutory role of the guardian, as well as a greater understanding of the special protection measures to be provided to child victims.

To date, none of the proposed models for guardianship under the trafficking and modern slavery laws have commenced. The roll-out of the guardianship scheme across England and Wales has been further delayed due to new government proposals to test the scheme at 'Early Adopter Sites'. However, the proposed full implementation date of mid-2019 is excessively long. The ATMG considers this both unacceptable and unnecessary.

## **Support entitlements for adults**

Adult victims of modern slavery identified in England and Wales now have significantly fewer statutory support entitlements than in Scotland and Northern Ireland. The Scotland and Northern Ireland Acts transpose the minimum support standards set out in the Trafficking Convention and Directive, and in some ways go beyond them. The Modern Slavery Act does not place a duty on authorities to provide support and protection to victims. A victim's support entitlements are instead to be detailed in statutory guidance. To ensure parity of care for adults across the UK, this guidance and any related regulations must mirror the support provisions in the Scotland and Northern Ireland Acts.

The National Referral Mechanism (NRM), the system through which victims are formally identified and provided access to specialist support across the UK, is currently under review. A revised model of identification decision-making is being tested in two regions in England. Given the connection between NRM decision-making and the provision of access to specialist victim support, the ATMG is concerned that no consideration has been given to the latter in the NRM pilots. The adult support model and the viability of the revised decision-making process in the devolved administrations must be considered in the remainder of the pilots.

## **Non-criminalisation of victims**

All three laws provide for the non-criminalisation of victims, albeit in different forms. Unlike the Scotland Act, the Modern Slavery Act and Northern Ireland Act include a statutory defence for victims who find themselves prosecuted for crimes they were compelled to commit as a direct consequence of their trafficking. Further guidance is needed to provide clarity on the term 'direct consequence' embedded in this defence. The use of the defence needs to be monitored to assess whether the inclusion of a 'reasonable person test' in the defence acts as a barrier to victims accessing protection from unjust criminalisation.

The Scotland Act provides that the Lord Advocate must issue guidance on the prosecution of victims of human trafficking and exploitation. The Lord Advocate's Instructions have now been published and provide an easily understood set of principles and guidelines on non-prosecution for lawyers and non-lawyers. The Instructions require that where the individual has been identified as a victim of human trafficking or exploitation, the case must be referred to the National Lead



Prosecutor for Human Trafficking and Exploitation who will make the final decision on whether to prosecute. The ATMG considers this to be exemplary practice for monitoring and enhancing understanding of criminal practices and recommends that this be adopted in other UK jurisdictions.

## **Overseas Domestic Workers**

Despite assurances to the contrary, the UK Government did not fully implement the recommendations made in the Independent Review of the Overseas Domestic Worker (ODW) visa. In particular it has refused to grant ODWs the universal right to change employer and renew their visa annually. The ATMG fears that the changes the Government has made to the terms of the ODW visa e.g. allowing a domestic worker to change employer but only within the 6-month visa term, will make little difference in practice to the rates of abuse of domestic workers. Tying the right to extend and renew their visa to a National Referral Mechanism (NRM) decision fails to recognise the inadequacy of the NRM for the majority of these workers. A domestic worker may not meet the threshold of modern slavery but may nevertheless be exploited, yet under this system will be unable to remain in the UK to find alternative employment. If an NRM referral is the only route through which domestic workers can remain in the UK, it will be easier for their employers, and perhaps NRM decision-makers, to claim they are fabricating the allegations. The power imbalance therefore continues to remain in their employer's favour. The proposal made in the independent review to introduce information meetings to inform domestic workers of their rights may go some way to redressing this power imbalance. Attendance at these meetings should be made compulsory for all domestic workers, including those who entered the UK prior to 2012.

## **Prevention & Risk Orders**

All three Acts include new civil orders as an additional mechanism to prevent future trafficking and exploitation. The Modern Slavery Act introduced the Slavery and Trafficking Prevention Order [STPO] and Slavery and Trafficking Risk Order [STRO], and the Scotland Act introduced the Trafficking and Exploitation Prevention Order [TEPO] and Trafficking and Exploitation Risk Order [TERO]. The Northern Ireland Act includes only a Slavery and Trafficking Prevention Order [STPO] and did not introduce a Risk Order. The UK Home Office Minister has indicated that under the Modern Slavery Act the STPOs & STROs are already being used although we note that two STRO applications have been refused. The ATMG recommends that data collection and analysis is undertaken on the use of these orders across the UK, and that specific attention is paid to case analysis when an application for an order is 'refused' by the court, as well as when successful, so that lessons can be learned and good practice shared. The ATMG also recognises the importance of training for Magistrates and others in the civil court proceeding. Progress on training should be reported to the Independent Anti-Slavery Commissioner.

## **Independent Anti-Slavery Commissioner**

The Commissioner has been in post since October 2014, prior to the Modern Slavery Act's entry into force. The Commissioner's role and mandate expanded significantly as a result of the legislative scrutiny, to one that now has a UK-wide remit that covers victim protection, the prevention and prosecution of modern slavery offences, and the development of national and international partnerships.

Although the Commissioner is not intended to be the UK's national rapporteur, the role does share some functions equivalent to one. The ATMG believes that the Commissioner's role could be further strengthened if given the mandate to collate and analyse modern slavery data. This

would allow the Commissioner to have a comprehensive understanding of the picture of modern slavery across the UK, and the gaps in the UK's response to tackling it. This function would better inform the Commissioner's work and increase the role's effectiveness in spearheading the UK's fight against modern slavery.

## **Recommendations**

If this new, targeted legislation is to achieve the desired effect of driving up the number of modern slavery convictions, preventing exploitation and enhancing support for victims then its implementation needs to be closely monitored. There needs to be central oversight of the Acts' implementation, and a statutory body responsible for collating and analysing all relevant UK data on modern slavery. This will ensure that impact of the legislation can be examined across the UK and that there is coherence in approach across the three jurisdictions. The voices of victims must be heard in future assessments of the impact of legislation and policy on modern slavery. The ATMG recommends that:

- **The UK Government and devolved administrations publish a proposed timetable and monitoring framework for the implementation of the respective Acts**
- **The UK Government, in collaboration with the devolved administrations and the Independent Anti-Slavery Commissioner, implement a UK-wide data strategy, with a particular focus on the collection of perpetrator data**
- **The Independent Anti-Slavery Commissioner is given the necessary mandate, resources and independence to collate, analyse and report on UK-wide data on modern slavery**
- **The statutory guidance and regulations on victim identification and assistance issued by the Secretary of State for the Home Department include support entitlements equivalent to those in the Scotland and Northern Ireland Acts to ensure parity of care across UK jurisdictions**
- **The UK Parliament undertake an assessment of the impact of the Acts within five years of their commencement, ensuring that the voices and experiences of victims and stakeholders across all regions are included in it.**

# Introduction

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In June 2013, the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill was introduced into the Northern Ireland Assembly. Its introduction was shortly followed by an announcement<sup>3</sup> in Autumn 2013 by the then Home Secretary, Theresa May, of plans to introduce a Modern Slavery Act in England and Wales, and the launch of Jenny Marra MSP's consultation<sup>4</sup> on a Human Trafficking Bill in Scotland. By the following year, draft Bills on human trafficking and related forms of exploitation were being scrutinised by the respective Parliaments in each of the UK's three jurisdictions, and by 2015 three new Acts had passed into law: the Modern Slavery Act<sup>5</sup>, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland)<sup>6</sup>, and the Human Trafficking and Exploitation (Scotland) Act<sup>7</sup>.

The introduction of the legislation was widely welcomed by NGOs and legal professionals involved in anti-trafficking work. The Anti-Trafficking Monitoring Group (ATMG) in its 2013 report *'In the Dock: Examining the UK's Criminal Justice Response to Trafficking'*<sup>8</sup> highlighted the need for improved legislation and called for the introduction of a new, comprehensive anti-slavery law. Given the importance of this new legislation, a significant amount of time and expertise was dedicated to scrutinising and strengthening the Acts. Through collaborative working and the commitment of parliamentarians, the government and NGOs, the legislation was significantly improved. The three Acts are comprehensive in scope and include; a raft of new criminal offences, measures aimed at preventing modern slavery, support provisions for child and adult victims, and, in the Modern Slavery Act, the role of an Independent Anti-Slavery Commissioner and a 'Transparency in Supply Chains' provision, aimed at improving businesses' response to slavery and exploitation.

The Modern Slavery Act was heralded as 'world-leading'<sup>9</sup> and the 'first legislation of its kind in Europe'<sup>10</sup>. Whilst it may be true that the Scotland and Northern Ireland Acts are not as broad in scope as the Modern Slavery Act, due to the reserved powers of the UK Parliament, closer inspection of comparable provisions across the three Acts shows that the Modern Slavery Act is, in a number of areas, weaker than its counterparts. The aim of this research is to examine the key differences between the three Acts and assess how these differences transpired. The research also considers the potential repercussions of these differences, and asks whether variances in approach to tackling modern slavery could emerge across the UK as a result. The research argues that there is a need for greater collaboration and consistency across the three jurisdictions.

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<sup>3</sup> <http://www.thesundaytimes.co.uk/sto/comment/regulars/guestcolumn/article1304361.ece>

<sup>4</sup> <http://www.jennymarra.com/human-trafficking-bill/4579313773>

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

<sup>6</sup> <http://www.legislation.gov.uk/nia/2015/2/contents/enacted>

<sup>7</sup> <http://www.legislation.gov.uk/asp/2015/12/contents>

<sup>8</sup> [http://www.antislavery.org/includes/documents/cm\\_docs/2013/i/inthedock\\_final\\_small\\_file.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/i/inthedock_final_small_file.pdf)

<sup>9</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/448200/Consultation\\_Government\\_Response\\_\\_final\\_\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448200/Consultation_Government_Response__final__2_.pdf)

<sup>10</sup> <https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article>

The ATMG is mandated to monitor the UK's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings<sup>11</sup> (hereafter the 'Trafficking Convention') and, since 2013, the European Directive on preventing and combating trafficking in human beings<sup>12</sup> (hereafter the 'Trafficking Directive'). The focus of this research is therefore on the provisions within the three Acts that pertain most closely to the UK's obligations under this international legislation, for example, the criminalisation of human trafficking, protection and support for adult victims, measures to prevent modern slavery offences, non-prosecution of trafficking victims, and the institution of a system of child guardianship. This research therefore does not include analysis of, for instance, the 'Transparency in Supply Chains' provision or the 'Paying for sexual services of a person' offence in the Northern Ireland Act.

The research considers the extent of the Acts' implementation to date and the work undertaken to commence particular provisions, such as the drafting of statutory guidance and the launch of trials in England and Wales to test the Independent Child Trafficking Advocates scheme. The ATMG acknowledges that it is early stages in the life of the legislation, however indications as to its impact are beginning to be seen. This research argues though that the full extent of the Acts' impact cannot currently be measured due to on-going gaps in data collection and analysis. The report makes practical recommendations to the UK Government and devolved administrations as to how these gaps can be addressed.

The ATMG was encouraged by the Prime Minister's announcement in July 2016 as to her continued commitment to defeating modern slavery in the UK. It considers the adoption and implementation of this report's recommendations essential to achieving this aim.

## **Methodology and limitations**

This research was undertaken between June and September 2016 through a combination of desk research and interviews with key stakeholders from civil society, statutory authorities, as well as legal professionals. Hansard records were used extensively to examine the genesis and development of the legislation. Parliamentary questions were tabled to gather information on implementation progress and governmental timetables for future work when these were otherwise unavailable.

The information contained within this report is considered to be correct at the time of publication, however developments after the time of publication may impact on the ongoing accuracy of the information. The ATMG also acknowledges that, due to time constraints, not all of the Acts' provisions that relate to the UK's implementation of the Trafficking Convention and Directive have been included in this research. For instance, no analysis has been undertaken on the 'Civil legal aid for victims of slavery' (Clause 47, Modern Slavery Act) provision or on the 'Confiscation of assets' (Clause 7, Modern Slavery Act) provision. Further research is needed.

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<sup>11</sup> Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series No. 197, 2005.

<sup>12</sup> 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

# Chapter 1: Independent Anti-Slavery Commissioner

The office of the Independent Anti-Slavery Commissioner is set out in Part 4 of the Modern Slavery Act, Sections 40-44. The following chapter discusses the development of the role throughout the parliamentary scrutiny process, and the overlap of the Commissioner's mandate with that of the Interdepartmental Ministerial Group (IDMG) on modern slavery; the body currently stated to be the UK's national rapporteur on human trafficking and other forms of modern slavery. The chapter argues that the Commissioner would be better able to drive improvements in the UK's response to modern slavery if his mandate was extended to include oversight of modern slavery data.

The table below summarises the Commissioner's mandated functions and activities as set out in Part 4 of the Modern Slavery Act.

	<b>Modern Slavery Act: Part 4</b>
<b>Functions</b> Sections 41 (1) & 44	<p><b>To encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences; the identification of victims</b> of those offences; <b>provision of assistance and support</b> to victims of those offences.</p> <p>The Commissioner must not exercise any function in relation to an individual case, however this does not prevent the Commissioner considering individual cases and drawing conclusions about them for the purpose of, or in the context of, considering a general issue.</p>
<b>Activities</b> Section 41(3)	<p>a) Making reports on any permitted matter* to the Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland;</p> <p>b) making recommendations to any public authority about the exercise of its functions;</p> <p>c) undertaking or supporting (financially or otherwise) the carrying out of research;</p> <p>d) providing information, education or training;</p> <p>e) consulting public authorities (including the Commissioner for Victims and Witnesses), voluntary organisations and other persons;</p> <p>f) co-operating with or working jointly with public authorities (including the Commissioner for Victims and Witnesses), voluntary organisations and other persons, in the United Kingdom or internationally.</p> <p><i>*a permitted matter is one which has been agreed by the Secretary of State, in consultation with the Department of Justice for Northern Ireland and Scottish Ministers</i></p>
<b>Reporting</b> Section 42	<p>The Commissioner must prepare a <b>strategic plan</b> setting out his/her objectives, priorities and proposed activities over the reporting period, between 1-3 years. The strategic plan must be agreed by the</p>

	<p>Secretary of State, in consultation with the Scottish Ministers and Department of Justice in Northern Ireland.</p> <p>Annual reports must be published to Parliament by the Commissioner to report on the extent to which he/she has fulfilled his/her objectives and priorities in that year. Material whose publication would be against interests of national security, might jeopardise the safety of any person, or may prejudice an investigation or prosecution can be removed by the Secretary of State, Scottish Ministers and Department of Justice in Northern Ireland prior to the report's publication.</p>
<p><b>Duty to Cooperate</b> Section 43</p>	<p>The Commissioner may request a specified public authority to co-operate with the Commissioner in any way that the Commissioner considers necessary for the purposes of the Commissioner's functions.</p> <p>A specified public authority must so far as reasonably practicable comply with a request made to it under this section.</p> <p>Schedule 3 lists the public authorities under a duty to co-operate with the Commissioner.</p>

The current office holder is Kevin Hyland, in post since 2014. He was appointed 'designate' Commissioner before the Act's entry into force in March 2015 and his office officially commenced in July 2015<sup>13</sup>. His first strategic plan was published in October 2015, covering the period 2015-2017. In it he sets out his priorities with his first and foremost priority being to 'drive improved identification of victims and enhanced levels of immediate and sustained support'. His other priorities are: law enforcement evaluation, partnerships, private sector engagement, and international collaboration.

His first annual report, detailing the extent to which he has achieved his priorities, is due for publication on the 12th October 2016. The ATMG was been unable to review the Commissioner's annual report prior to this report's publication.

## Development of the Commissioner's role

The Commissioner's role expanded in the course of the Modern Slavery Bill's passage through parliament, developing from one that focused solely on the effectiveness of the law enforcement response in England and Wales to one that encompassed the 4 'Ps' (prevention, protection, prosecution and partnerships), working across the whole of the UK.

Significant pressure was mounted on the Government to expand the role and strengthen its independence in statute. The difference between the Government's intention for the role and the expectations of external stakeholders was highlighted during the pre-legislative scrutiny period. Both Frank Field's Modern Slavery Review<sup>14</sup> and the report of the Joint Committee on the draft Modern Slavery Bill took evidence from a wide range of NGOs, independent experts and statutory bodies, including European national rapporteurs (on human trafficking) and other UK Commissioners. The resulting reports from both scrutiny committees reiterated and supported the calls by witnesses that the Commissioner should have a clear statutory framework of independence and a broad mandate, in line with other European national rapporteurs.

<sup>13</sup> [http://www.legislation.gov.uk/uksi/2015/1816/pdfs/ukxi\\_20151816\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/1816/pdfs/ukxi_20151816_en.pdf)

<sup>14</sup> <http://www.frankfield.com/upload/docs/Modern%20Slavery%20Bill%20Evidence%20Review.pdf>

Despite the role’s eventual expansion in functions and geographical remit as a result of this parliamentary pressure, and the inclusion of the word ‘Independent’ in the role’s title, the Government remained steadfast that the Commissioner is distinct from a national rapporteur. This role, it stated, would continue to be performed by the Interdepartmental Ministerial Group (IDMG) on Modern Slavery, previously the IDMG on Human Trafficking. The then Minister for Modern Slavery, Karen Bradley MP, stated in the Public Bill Committee<sup>15</sup> debates:

*‘We have talked about the rapporteur-type function and it is worth pointing out that the Anti-Slavery commissioner will not be the UK national rapporteur. That role remains with the interdepartmental ministerial group. The commissioner has a specific role and remit in strengthening our law enforcement response, but the role of the rapporteur, as set out in the EU directive, is fulfilled by that group, and it is important for that to be clear and for the Committee to be aware of it.’*

11th Sept 2014

The role of National Rapporteur (or equivalent mechanism) is set out in the Trafficking Convention & Directive , as detailed in the table below.

Trafficking Convention - Article 29 (4)	EU Trafficking Directive - Article 19
Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.	Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.

The Trafficking Convention’s Explanatory Report uses the Dutch National Rapporteur as an example as to how the role could function: *“The institution of a national rapporteur has been established in the Netherlands, where it is an independent institution, with its own personnel, whose mission is to ensure the monitoring of anti-trafficking activities. It has the power to investigate and make recommendations to persons and institutions concerned and makes an annual report to the Parliament containing its findings and recommendations”* (paragraph 298). The importance of the role of national rapporteur lies in its monitoring and oversight function, to assess trafficking trends as well as the impact of the State’s anti-trafficking work. Having access to the relevant data collected on human trafficking allows the national rapporteur to objectively monitor whether government actions are resulting in improved outcomes.

<sup>15</sup> <http://www.publications.parliament.uk/pa/cm201415/cmpublic/modernslavery/140911/am/140911s01.htm>

<sup>16</sup> The ‘Trafficking Convention’ refers to the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, and the ‘Directive’ refers to the 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU).



## The IDMG as the UK's national rapporteur?

The Interdepartmental Ministerial Group (IDMG) on modern slavery was established in 2005 and comprises representatives from the UK Government, the Northern Ireland Executive, the Scottish Government and the Welsh Government. The IDMG meets on occasion during the year and publishes an annual report. The reports collate data held by a number of statutory authorities on victim identification, and on prosecution and conviction rates. They also report on changes in relevant legislation and policy and the work undertaken by state institutions over the previous year.

Given the IDMG's membership it is questionable whether the group's reporting can be wholly non-partisan in nature. It is also questionable whether the IDMG can provide an *independent* assessment of the UK's anti-trafficking activities. In fact, the IDMG does not undertake its own investigations on government actions; rather it collates information from government sources. The reports state the governments' intended actions in the upcoming year<sup>17</sup> but they do not make recommendations as to how the anti-trafficking response can be improved. In fact, the reports contain little critique of the UK's anti-trafficking response in general.

The ATMG therefore maintains its position<sup>18</sup> that the IDMG on modern slavery is not suitable to fulfil the role of national rapporteur as envisaged by the Trafficking Convention and Directive.

## The Independent Anti-Slavery Commissioner as the UK's national rapporteur?

Whilst the Independent Anti-Slavery Commissioner is not intended to be the UK's national rapporteur, some of the role's functions are akin to that of one. For instance, the Commissioner can undertake research into particular issues and hold investigations, and can make recommendations to public authorities. The Commissioner also has the powers to request particular public authorities, listed in Schedule 3, to cooperate with his office, through, for instance, the provision of data. His UK-wide remit allows him to look across all of the different jurisdictions, enabling him to have a holistic understanding of modern slavery and the work being undertaken to tackle it across the UK.

There are ways though in which the Commissioner falls short of being a rapporteur. Despite being physically located outside of the Home Office and being able to appoint his own staff, the Commissioner still sits under the control of the Home Office, and must consult with Government Ministers on his work plans. It is yet to be seen whether the Commissioner will be freely able to report on government failings in his annual reports should he encounter them in the course of his work.

The importance of a rapporteur's independence, both perceived and actual, was highlighted by the incumbent Dutch National Rapporteur, Corinne Dettmeijer-Vermeule, in her oral evidence to the Joint Committee on the draft Modern Slavery Bill.

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<sup>17</sup> For example, see Chapter 3 of the IDMG's 2015 report

<sup>18</sup> The ATMG first raised concerns about the suitability of the IDMG as the national rapporteur in its 2010 report, 'Wrong Kind of Victim?', see Chapter 8 at p. 51.

*'First, in my view, independence is quite an important element. Why is it so important? If you worked for the Government, you could not pull off what I did with my research ... my independence also makes for trust between the NGOs and the governmental institutions. I am not an NGO. NGOs are extremely important in this field, but for a rapporteur it is better to keep some distance. I do not look at individual cases; I have a helicopter view ... the effectiveness lies in the independence and the in-between role that I have.'*<sup>19</sup>

Another fundamental difference between the mandate of the UK Anti-Slavery Commissioner and a national rapporteur is in data collection and analysis. The offices of the Dutch and Finnish national rapporteurs act as a central repository for relevant data on victims and perpetrators submitted by NGOs and statutory authorities, including from the police and judiciary. This data is then analysed by the rapporteur to identify victim/perpetrator trends and gaps in the state's anti-trafficking response. Eva Biaudet, the then Finnish national rapporteur<sup>20</sup>, explained this further in her evidence to the Joint Committee<sup>21</sup>:

*'We gather police protocols, court sentences, pre trial investigations and decisions from the victims help and assistance system. We also gather information from NGOs. This information is reliable as such, but to be able to understand the phenomenon of trafficking, the national rapporteur puts the information together and actually looks at what is not there and at what lies behind the numbers... We are trying to focus on what is not there: "What is it that we miss?" For instance, we have found on several occasions that in Finland women, particularly foreign women, in prostitution are very poorly identified by the police, the courts and the health system for many reasons. Then we go in and try to see what are the reasons and what could be the thing that would improve identification there, and we try to give recommendations, and work together with the authorities.'*

The independence of a rapporteur is central to their data collection function; NGOs and statutory authorities need to know that their data will be used objectively and sensitively when they entrust it to the rapporteur.

## **Strengthening the Commissioner's role**

Regardless of whether the Commissioner is named as the UK's national rapporteur, his ability to fulfill his mandate and drive improvements in the UK's response to modern slavery could be enhanced if provided oversight of the data collected on modern slavery. There is currently no statutory body that collates relevant data related to modern slavery crimes in the UK and analyses it to look for the connections between the different data streams. An assessment has not been undertaken to determine what specific data each different statutory authority should collect, and the most effective way it should be recorded. As will be highlighted elsewhere in this report, data on victims and prosecution and conviction rates is collected in silos. The new 'Duty to Notify' provision (Section 52, Modern Slavery Act; Section 13, Northern Ireland Act; Section 38, Scotland Act) will potentially result in another large volume of victim data being collected by different bodies in each of the three jurisdictions. It is not clear if or how this data will be collated and analysed at the UK level.

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<sup>19</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/draft-modern-slavery-bill-committee/draft-modern-slavery-bill/oral/7098.html> Q.917

<sup>20</sup> In January 2009 the Finnish government appointed the Ombudsman for Minorities to serve as the National Rapporteur, a position filled by Eva Biaudet until 2015. This role of national rapporteur was then given to the Non-Discrimination Ombudsman, currently Kirsi Pimiä, since 1 January 2015.

<sup>21</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/draft-modern-slavery-bill-committee/draft-modern-slavery-bill/oral/7281.html>

The ATMG proposes that the office of the Independent Anti-Slavery Commissioner is ideally placed to address this gap in data collection and analysis. Having the mandate to collate and analyse relevant data will provide the Commissioner with a more comprehensive understanding of modern slavery across the UK. It will enable him to understand trends in victims and perpetrators, and identify ongoing gaps in the UK's response, and spearhead the UK's fight against modern slavery.

It is crucial that the Commissioner can act independently from the Government in practice as well as in name. Presently the Commissioner's strategic plan requires sign-off from the Home Secretary and Scottish and Northern Ireland Ministers, who may make modifications to it. Redactions to the Commissioner's reports may also be made on the limited grounds of content being - 'against the interests of national security, ... might jeopardise the safety of any person, or ... might prejudice the investigation or prosecution of an offence'. There may come a point when it is necessary for the Commissioner to scrutinise the operation of government departments themselves. The Commissioner must be permitted to undertake this scrutiny and report freely on his findings. If he is limited in his reporting scope then the impact of his role will also be limited. The Commissioner has told the ATMG that he currently provided the freedom to report freely on his findings. It is important that this freedom is not curtailed in the future.

## Conclusion & Recommendations

Parliamentary scrutiny resulted in the role of the Independent Anti-Slavery Commissioner's being expanded from one focused on improving the law enforcement response in England and Wales to one that is UK-wide and includes victim protection, prevention and private sector engagement.

Despite the Government's insistence to the contrary, some of the Commissioner's functions are akin to that of a national rapporteur. The Commissioner does not however have a data collection and analysis function. The lack of a central statutory body responsible for collating and analysing UK data on modern slavery has been highlighted previously, and throughout this report, as a significant, ongoing issue. The ATMG believes that the Independent Anti-Slavery Commissioner is best placed to fulfill this role. Through having this function the Commissioner will be better equipped to monitor the impact of this new legislation and drive improvements in the UK's response to modern slavery. The ATMG recommends that:

- **The Independent Anti-Slavery Commissioner is given the necessary resources and staff to have oversight of the data collected across the UK on modern slavery victims and perpetrators; to identify trends, gaps in data collection and shortcomings in the UK's response. A summary of this analysis should be included in his annual report.**
- **The Independent Anti-Slavery Commissioner is given the mandate to determine what specific data statutory bodies should record so that data collection on modern slavery is improved.**
- **The UK Government and devolved administrations continues to provide the Commissioner with the necessary independence to freely decide on his strategic objectives and priorities, and report openly on research findings without fear of redaction or repercussions.**
- **Public authorities who fall under the 'Duty to Cooperate' (Section 43) should be required to state in writing what action they have taken or propose to take in response to the recommendation(s) made to them by the Commissioner.**

# Chapter 2: Criminal Justice Measures

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New criminal offences for human trafficking, slavery, servitude and forced and compulsory labour were introduced across the UK in 2015, replacing earlier offences that were dispersed across a number of different laws. In addition, new civil penalties have been introduced designed to provide the courts with additional measures to prevent future offences. The ATMG recognises that it can take months or even years for a modern slavery case to be finalised through the courts and therefore acknowledges, given how recently they were introduced, that it is too early to fully evaluate the effectiveness of these measures. However, early indications are beginning to emerge as to their impact in the small number of cases in which they have been used. To evaluate their effectiveness in the longer-term, it is important to recognise and understand the differences between each law, and assess whether the necessary data is being collected to monitor their use.

This chapter is in two sections; the first looks at the criminal offences and the second addresses the civil orders. We draw attention to the different approaches taken by the three administrations across the UK and highlight the urgent need for a UK-wide data strategy to fully understand whom the criminals are that traffic and exploit vulnerable people across the UK.

## 2.1 Criminal Offences

This report aims to focus attention on human trafficking offences in light of the UK's obligations under the Trafficking Convention and Directive, therefore a detailed analysis of the slavery, servitude, forced and compulsory labour offences, and in particular their compliance with international law, is outside the scope of this report. However we recognise that there is a need for this to be undertaken, to identify any differences in drafting across the jurisdictions and consider the potential impact this may have.

In highlighting the differences between the new laws in England/Wales, Northern Ireland and Scotland it is also relevant to mention that the Northern Ireland Act includes a new offence of Paying for the Sexual Services of a Person [Part 2, Section 15] and the offence of Forced Marriage [Part 2, Section 16]. An analysis of these offences is outside the scope of this report and has not been undertaken. In addition, in Northern Ireland, the new legislation has also created a new preparatory offence of committing an offence with intent to commit a human trafficking or slavery-like offence, and has made changes to the sentencing framework which will enhance public protection by setting out statutory aggravating factors. A preparatory offence was already in place in England and Wales.

The following table summarises the modern slavery offences across the three Acts.

	<b>Modern Slavery Act 2015</b>	<b>Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015</b>	<b>Human Trafficking and Exploitation (Scotland) Act 2015</b>
	<i>England/Wales</i>	<i>Northern Ireland</i>	<i>Scotland</i>
Offences	<b>PART 1: Offences</b> 1. Slavery, servitude and forced or compulsory labour 2. Human trafficking 3. Meaning of exploitation 4. Committing offence with intent to commit offence under section	<b>PART 1: Offences</b> 1. Slavery, servitude and forced or compulsory labour 2. Human trafficking 3. Meaning of exploitation for purposes of section 2 4. Committing offence with intent to commit offence under section 1 or 2	<b>PART 1: Offences</b> 1. Offence of human trafficking 2. Application of offence to conduct in United Kingdom and elsewhere 3. Exploitation for purposes of offence of human trafficking 4. Slavery, servitude and forced or compulsory labour
<i>Commencement date</i>	<b>31st July 2015</b>	<b>13th January 2015</b>	<b>31st May 2016</b>

The following table contains the definitions of the offence of human trafficking in the Trafficking Convention & Directive<sup>22</sup>.

<b>Trafficking Convention</b>	<b>Trafficking Directive</b>
<p><b>Article 4 – Definitions</b></p> <p>For the purposes of this Convention:</p> <p>a) “Trafficking in human beings” 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;</p>	<p><b>Article 2- Offences concerning trafficking in human beings</b></p> <p>1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable: The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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.</p>

<sup>22</sup> The ‘Trafficking Convention’ refers to the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, and the ‘Directive’ refers to the 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU).

The key elements of the human trafficking offence in international law are:

1. 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.
2. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even when there is no means as set out above.
3. A child is any person under the age of 18 years.

## Key legislative differences in the human trafficking offence across the UK

The Modern Slavery Act, Scotland and Northern Ireland Acts each contain offences of Human Trafficking, Slavery, Servitude, and Forced or Compulsory labour and provide an explanation of the meaning of 'exploitation'. They all also define a child as any person under the age of 18 years. The majority of differences in the criminal offences can be found in the wording of the human trafficking offence; the key ones are set out in the table below.

	England & Wales	Northern Ireland	Scotland
<b>Definition of human trafficking</b>	Section 2 (1) A person commits an offence if the person arranges or facilitates the travel of another person ("V") with a view to V being exploited	Section 2 (1) A person ("A") commits an offence if A arranges or facilitates the travel of another person ("B") with a view to B being exploited.	Section 1 A person commits an offence if the person— (a) takes a relevant action, and (b) does so with a view to another person being exploited <i>[This differs from the definition of 'arranges or facilitates the travel' in the other Acts.]</i>
<b>Securing services from vulnerable persons</b>	Section 3 (6) ...(a)he or she is a child, is mentally or physically ill or disabled, or has a family relationship with a particular person, and (b)an adult, or a person without the illness, disability, or family relationship, would be likely to refuse to be used for that purpose.	Section 1 (4) ...regard may be had to any of B's personal circumstances which may make B more vulnerable than other persons such as, for example— (a)that B is a child or a vulnerable adult; or (b)that A is a member of B's family. ' <i>[This a more limited definition than the Modern</i>	Section 3(8) Another person uses or attempts to use the person for any purpose ...where - (a) the person is— (i) a child, or (ii) an adult whose ability (to refuse to be used for a purpose within subsection (7)(a), (b) or (c) is impaired through mental or physical

		<i>Slavery Act, however the inclusion of the phrase 'for example' may allow for a more open-ended interpretation]</i>	illness, disability, old age or any other reason (a “vulnerable adult”), and (b) a person who is not a child or a vulnerable adult would be likely to refuse to be used for that purpose.
<b>Consent</b>	Section 2 (2) “It is irrelevant whether V consents to the travel (whether V is an adult or a child)”. <i>[the focus here is on consent to travel]</i>	Section 1(5) “The consent of B to any act which forms part of an offence under this section is irrelevant.” <i>[This is not just 'consent to travel', it encompasses all acts, and is therefore different to the Modern Slavery Act]</i>	Section 1 (3) “It is irrelevant whether the other person consents to any part of the relevant action”. <i>[This is not just 'consent to travel', it encompasses all acts, and is therefore different to the Modern Slavery Act]</i>
<b>Aggravated Factors</b>		Part 1, Section 6 An offence is aggravated if: - the offender is a public officer - the offender is a family member of the victim - the offender was in a position of trust - it involves a child - it involves a vulnerable person - was committed by use of threats against a family member of the victim - the offence caused serious harm to the victim - the offender has previous convictions for offences of the same type whether committed in Northern Ireland or anywhere else	Part 1, Sections 5-7 An offence is aggravated if: - It is connected to human trafficking - Involves a child. - If the offender is a public officers <i>[It is unclear to the ATMG in what circumstances it would apply that an offence is aggravated on account of it being related to trafficking, but then not a trafficking offence itself]</i>

The drafting of the offence of human trafficking is broadly the same in the Modern Slavery Act and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) but significantly different in the Scottish Human Trafficking & Exploitation Act. The ATMG considers the wording of the human trafficking offence in the Scottish legislation to be more easily understood by those who are not legally trained.

Each of the Acts must take into consideration the related laws in their respective jurisdictions but, notwithstanding that, there are differences in wording that will impact on policy and training. For



example in Section 2 (2) of the Modern Slavery Act it states, “It is irrelevant whether V consents to the travel (whether V is an adult or a child)”. Yet, in the trafficking offences in the Northern Ireland and Scotland Act ‘consent’ is applied wider and relates to any relevant action named in the Act. The Trafficking Convention makes clear that children cannot consent to any of the trafficking acts or the exploitation itself. This is not clear in the drafting of the Modern Slavery Act, and as such the ATMG considers it be out of line with the spirit of the Convention. This has the potential to confuse and mislead practitioners in their understanding of the issue of consent in cases involving children.

## **Use of the offences to date**

### **Northern Ireland**

Our research indicates that there have now been two prosecutions in Northern Ireland under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. In response to a written question in the Northern Ireland Assembly the Minister of Justice replied:

“From its introduction in January 2015, until the end of February 2016, (the most recent point at which data is available), there have been no convictions for offences under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. Within that period, however, two defendants were received into the Magistrates’ Court on charges relating to section 4 of the Act, committing offence with intent to commit offence under section 1 or 2. [AQW 55220/11-16 15.03.16]

### **Scotland**

The Human Trafficking and Exploitation (Scotland) Act 2015 only came into force in May 2016 and so it is too early to expect any prosecution data. The Lord Advocate, Scotland’s chief prosecutor, has appointed a specialist prosecutor to deal with human trafficking and has published guidance for prosecutors in relation to human trafficking. This specialist prosecutor is a senior member of Crown Counsel within the National Sexual Crimes Unit and all cases involving trafficking are referred to them for instructions on how to proceed. The Crown Office and Procurator Fiscal Service (COPFS) has also appointed local lead prosecutors for human trafficking to assist with all aspects of investigation and prosecution. These leads work closely with the National Human Trafficking Unit of the Police Service for Scotland and with agencies working with victims of human trafficking in Scotland.<sup>23</sup>

### **England & Wales**

The first Modern Slavery Act Review<sup>24</sup>, commissioned by the Home Secretary and written by Caroline Haughey, was published on 31 July 2016. Ms Haughey reported that there had been a total of 289 offences prosecuted in 2015: 27 offences under the Modern Slavery Act [cases ongoing] and 262 under previous slavery and trafficking legislation, and that police in England and Wales had recorded 884 modern slavery crimes between April 2015 and March 2016. Ms Haughey noted that Modern Slavery was introduced as a separate crime recording category by the Home Office in April 2015 so it is not possible to compare the statistics to previous laws on human trafficking before the introduction of the Modern Slavery Act.

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<sup>23</sup> 2015 Report of the Inter-Departmental Ministerial Group on Modern Slavery

<sup>24</sup> <https://www.gov.uk/government/publications/modern-slavery-act-2015-review-one-year-on>

## Measuring the use and effectiveness of the offences

In June 2016, the Home Office Minister reported positively on the early success of the Modern Slavery Act:

*“The Act is already having a significant impact. All victims of modern slavery can now access the support they need. In 2015 alone, the police and CPS prosecuted 12 defendants using the new modern slavery offences and used Slavery and Trafficking Prevention and Risk Orders on at least 12 occasions. Over 100 businesses have published slavery and human trafficking statements. And the Independent Anti-Slavery Commissioner is spreading best practice and helped to secure the UN’s first ever Goal to end modern slavery.”*

[HC Deb, 13 June 2016, cW]

The ATMG recognises the areas where the Act is beginning to have an impact. However, the Government’s response does not stand up to detailed scrutiny, not least because there is no calibration of what constitutes success or failure when there are so many victims being identified and so few traffickers convicted.

The ATMG believes there will be an ongoing problem with assessing the effectiveness of the criminal laws due to ongoing gaps in data collection and the lack of a robust monitoring framework to assess the implementation and impact of the legislation.

## Data collection

In 2014 the All Party Parliamentary Group on Human Trafficking & Modern Day Slavery undertook an Inquiry into the collection, exchange and use of data about human trafficking and modern slavery. In the Inquiry report the parliamentarians stated that:

*“A common theme across the Inquiry has been that, despite some good practice in local areas, the national picture on modern slavery is incomplete, patchy and at times misleading by what it leaves out. There is virtually no data published by government about the criminals who exploit or traffic people and no disaggregated data on the offences with which they are charged – and therefore information is more likely to be shared informally between people within specific networks, rather than being regularly shared with front line agencies to identify trends and to reach victims more quickly. This matters for many reasons: not least because, in the case of children, this also relates to the need to understand more about the methods used by seemingly ‘responsible’ adults in cases involving benefit fraud, begging and criminal activity where the adult is still in contact with the child.”<sup>25</sup> [Emphasis added]*

The issue identified in 2014 regarding the lack of data on perpetrators persists today. For England and Wales the Crown Prosecution Service (CPS) publishes the number of charges of trafficking and slavery offences, but not the number of defendants charged. The challenge with this method of reporting is that one defendant could be charged with multiple offences; it fails to bring any insight into how many traffickers are being brought to justice in any given period. The table below shows the number of offences, rather than defendants, charged by way of the human trafficking

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<sup>25</sup> <http://allpartygrouphumantrafficking.org/the-appg/data-collection>

offences during each of the last three calendar years. The Modern Slavery Act includes five distinct offences but in this table we cannot see whether that a single defendant has been charged with one or multiple offences under the Act.

	2013	2014	2015
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 { 4 }	20	73	48
Coroners and Justice Act 2009 { 71 }	36	26	34
Modern Slavery Act 2015 { 1 }	0	0	5
Sexual Offences Act 2003 { 57 }	22	35	69
Sexual Offences Act 2003 { 58 }	84	35	75
Sexual Offences Act 2003 { 59 }	4	4	9
Sexual Offences Act 2003 { 59A }	1	17	94
<b>Total Human Trafficking Offences Charged</b>	<b>167</b>	<b>190</b>	<b>334</b>

*Data Source: CPS Management Information System  
[HC Deb, 18 July 2016, cW]*

It is also not recorded whether the victims of the offences were adults or children at the time the offence took place. It is therefore impossible to know how many children’s cases are being prosecuted in the UK.

In addition to disaggregating data to identify the number of defendants and the age of the victims in each case, the effectiveness of the offences could be assessed by monitoring the use of defences in each case taken forward. If prosecutions under the new laws are failing, or not being taken forward, due to unforeseen criminal defences then the laws may need amending. Gathering this data across the UK would assist Parliament when being requested to amend legislation, or when asking Ministers to report on convictions of traffickers.

Information on perpetrators of modern slavery offences needs to be collected and shared in a more consistent manner across the UK. In this regard, the ATMG is encouraged to see that a ‘Modern Slavery Threat Group’ has been established. The group brings together senior operational law enforcement officers and is chaired by the national policing lead for modern slavery, Chief Constable Shaun Sawyer, who announced<sup>26</sup> that one of his key objectives as national lead is to improve ‘the way in which we gather and manage data and intelligence...[to] develop a greater strategic understanding both nationally and at a more localised level’. The recent review of the Modern Slavery Act made several recommendations regarding the Modern Slavery Threat Group. Regarding improvements in data collection the ATMG in particular supports Recommendation 6:

*‘The Modern Slavery Threat Group should strengthen data collection by disseminating guidance on which cases should be recorded as exploitative or trafficking offences, and by enforcing the use of nationally consistent processes to collect and synthesise data and intelligence from different partners including local authorities.’*

<sup>26</sup> <http://www.npcc.police.uk/ThePoliceChiefsBlog/ShawnSawyerSmashingthebondsofmodernslaveryremainsa.aspx>

The Prime Minister has also recently announced<sup>27</sup> that a new 'Modern Slavery Taskforce' will be established, intended to improve the operational response to tackling modern slavery. The taskforce, made up of Government Ministers, intelligence and policy experts, appears to be heavily focused on bringing perpetrators to justice. The four specific objectives of the taskforce are to:

1. Bring efforts and resources targeted at modern slavery in line with resources to tackle other forms of organised crime – including by increasing investigatory resource, capabilities and intelligence provision;
2. Increase and improve investigations into the perpetrators of modern slavery, through further education of law enforcement officers on the nature of modern slavery offences; the provision of additional tools to support investigations such as greater data and intelligence; and more effective use of joint investigation teams;
3. Improve successful prosecution levels with further education of prosecuting authorities on modern slavery, and improvements to the quality of supporting evidence;
4. Improve international cooperation to tackle modern slavery.

Within these objectives there is a clear focus on improving data and sharing intelligence, which is to be welcomed. It is not yet clear if and how data and intelligence will be shared across relevant partners and whether a central statutory body will be tasked with collating and analysing the data collected.

## Data collection on victims

Data collection on victims has greatly improved in the last few years which has allowed the government to report on the number of potential victims of slavery and human trafficking identified. This answer below to a parliamentary question shows the three-fold increase of NRM referrals since 2011.

Year	Number of potential victims
2011	946
2012	1,186
2013	1,746
2014	2,340
2015	3,266

[HC Deb, 30 June 2016, cW]

NRM referral data is disaggregated by the potential victim's nationality, age and gender, their exploitation type, the referring agency, and even the location (by police force area) in which they presented to the authorities. There is a wealth of information here, however the NRM statistics do not include any parallel data on prosecutions. Where there is no context the above table could be read as either a great success in the improvement of NRM reporting or a dismal failure in the UK's response to prevent and prosecute traffickers.

<sup>27</sup><https://www.gov.uk/government/news/pm-calls-for-global-action-to-stamp-out-modern-slavery>

Greater consideration is needed as to how data collected on victims and on perpetrators can be used to inform the other, and used together to improve the UK's understanding of and response to modern slavery.

## **The need for a monitoring framework**

In July 2016 the Home Office Minister reported that there were no plans to publish a monitoring framework for the Modern Slavery Act and referred to several different mechanisms that already exist.

*'While there are no plans to publish an additional plan or monitoring framework, the Government has several mechanisms overseeing implementation and monitoring of the Modern Slavery Act and Strategy. The Inter-Departmental Group for Modern Slavery, chaired by the Home Secretary, publishes an annual report on Government work to tackle modern slavery. The Modern Slavery Threat Group chaired by the National Policing Lead, oversees the operational response. And the Independent Anti-Slavery Commissioner will publish his first annual report about the UK's response this Autumn.'* [HC 19 July 2016, cW]

This response highlights the fragmented approach to data gathering and analysis. These different government bodies have overlapping mandates and report irregularly on different data sets. There is an urgent need for a comprehensive data strategy, not only related to individual laws in each jurisdiction, but at a UK-wide level. This is necessary as traffickers operate both within and across the borders of England and Wales, Scotland, and Northern Ireland. Without such a tool there can be no analysis of whether the UK is achieving success in the fight against modern slavery.

The 2014 an All Party Party Group Inquiry into the collection, exchange and use of data about human trafficking and modern slavery concluded that:

*'Accurate data is required to see the whole picture, which is hard to do in the murky underworld of modern slavery. Agencies do not need to have conclusive statistics provided by a single source before making modern slavery a priority or taking immediate action to protect any individual from harm, but improving information and statistics will improve the prospects of tackling this crime effectively. An Anti-Slavery Commissioner will be key to this process.'*

The ATMG agrees that the Independent Anti-Slavery Commissioner can and should play a central role in developing and implementing this data strategy, and is ideally placed to have oversight of modern slavery data.

## **A separate offence of exploitation**

The Modern Slavery Act Review commissioned by the Home Secretary and published in July 2016 made the following recommendation:

- Consider the definition of 'exploitation' in the Act, whether there would be merit for amending the Act to introduce a standalone offence of exploitation and whether Schedule 1 offences should include other associated exploitative offences. [Recommendation 26]

The ATMG supports this recommendation and further asks that a separate offence of child exploitation be introduced in each of the three UK jurisdictions. The ATMG and other leading children's organisations repeatedly made the case for such an offence to be included in the

Modern Slavery Act. Amendments were tabled to introduce a separate offence of child exploitation at various stages of the Bill's passage through the Commons and the Lords, which gained cross-party support but did not make it into the final Act.

The offences in the Modern Slavery Act do not make clear enough the particular vulnerability of children to these crimes or the lower evidential threshold for cases involving children. As highlighted previously, the issue of the irrelevance of consent in the offence of human trafficking in the Modern Slavery Act is in regard to whether the individual has consented to the 'travel', not to the exploitation itself, and therefore differs from the definition of child trafficking in international law. Children can be exploited but the element of 'travel' or 'movement' required to prosecute under the human trafficking offence in the Modern Slavery Act will not be present, and it may be hard to prove a person's intention to exploit at the time of travel. Young children may be unable to account for their travel into the UK, or may be exploited subsequently by people other than those that facilitated their travel into the UK.

The offence of slavery, servitude and forced or compulsory labour also does not make explicitly highlight the particular vulnerabilities of children and does not clearly state that children cannot be forced, coerced or deceived into exploitation of any form. Given these shortcomings the ATMG recommends the introduction of a separate offence of child exploitation to set out a clear and simple definition of child exploitation that includes the range of exploitation that children face, including sexual exploitation, forced labour, domestic servitude and forced criminality.

## Conclusion & Recommendations

Modern slavery, and in particular human trafficking, crosses national and international borders. Law enforcement partners and victim support organisations must work with partners at the local, national and international level, and across all UK jurisdictions.

There are now differences in the offence of human trafficking across the three UK jurisdictions and a risk that the offence will be used, reviewed and amended in isolation. Monitoring at a UK-wide level is essential for the government to understand if prosecution rates and the sentences handed down to traffickers differ across the UK as a result.

It is encouraging that the Government is undertaking work to improve the operational response to modern slavery and improve data collection and intelligence-sharing. It remains a problem, however, that there is no UK-wide data strategy in place nor a central body responsible for data collection and analysis. Whilst there are now new criminal offences, the old methods of recording and reporting on prosecution and conviction rates have been retained. Moreover, data on victims and criminals is collected by a number of different authorities, and analysis is not being undertaken to look at if and how the various strands inform the other. To address this the ATMG recommends that:

- **The UK Government, in collaboration with the devolved administrations, implement a UK-wide data strategy that includes a responsibility to monitor, record and analyse the criminal defences being used in modern slavery cases.**
- **The Independent Anti-Slavery Commissioner conducts an Inquiry into the use and effectiveness of criminal offences in the three Acts within 2 years of their commencement, and works with relevant authorities to ensure that that data collected on modern slavery in each of the three jurisdictions is comparable.**
- **The Commissioner, together with the Modern Slavery Threat Group, brings a greater focus to the perpetrators by requiring the various criminal justice partner agencies across the UK to submit data on suspected and convicted traffickers for analysis by the Commissioner's office.**



- **Immediate action should be taken to implement the Modern Slavery Review recommendation number 6 (disseminating guidance on which cases should be recorded as exploitative or trafficking offences) and number 26 (to amend the Modern Slavery Act to introduce a standalone offence of exploitation), and identify how all these measures can be made applicable to both Northern Ireland and Scotland so that there is consistency and cooperation across the UK to different manifestations of exploitation and human trafficking. Consideration should also be given to introducing a separate offence of child exploitation.**

## 2.2: Prevention & Risk Orders

In addition to the modern slavery criminal offences, new civil orders were introduced in all jurisdictions in 2015 designed to prevent future harm based on current risk. The titles of the civil orders across the jurisdictions reflect the different names of the legislative Acts, as set out in the table below:

<b>Modern Slavery Act 2015</b>	<b>Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015</b>	<b>Human Trafficking and Exploitation (Scotland) Act 2015</b>
England/Wales	Northern Ireland	Scotland
Part 2 Sections 14 - 34 - Slavery & Trafficking Prevention Orders - Slavery & Trafficking Risk Orders <i>[Abbreviated as STPO or STRO]</i>	Part 1 Section 11 - Schedule 3 Slavery and trafficking prevention orders  <i>[Abbreviated as STPO]</i>	Part 4 Sections 16 -34 - Trafficking and Exploitation Prevention Orders - Trafficking and Exploitation Risk Orders <i>[Abbreviated as TEPO or TERO]</i>
Commenced in operation July, 2015	Commenced in operation in April, 2016	Not yet commenced

The new prevention and risk orders mirror the Sexual Harm Prevention Orders and Sexual Risk Orders introduced in England and Wales in March 2015<sup>28</sup>. The new prevention orders are not intended as a substitute for prosecution when sufficient evidence is available. They are intended as an additional tool available to law enforcement agencies to control the behaviour of individuals who may cause harm through committing slavery and human trafficking offences. Upon the granting of an order the court can impose certain restrictions including restrictions on travel and requirements for reporting bank accounts, address changes and other details.

The main difference between the types of order is that a ‘risk order’ restricts the activity of individuals who have not been convicted of a relevant offence but who pose a risk of committing any such offence and a ‘prevention order’ restricts the activity of those who have already been convicted of a relevant offence.

There are some differences between the three Acts, notably in Northern Ireland there is no ‘Risk

<sup>28</sup> Section 113, Anti-Social Behaviour and Policing Act, 2014



Order’, only a single Slavery & Trafficking Prevention Order [STPO]. In Scotland the name of orders reflect the offences in the Scottish Act and are called Trafficking & Exploitation Prevention Orders [TEPO] & Trafficking & Exploitation Risk Orders [TERO], whereas in the Modern Slavery Act they are called Slavery and Trafficking Prevention Orders [STPO] & Slavery and Trafficking Risk Orders [STRO].

## Key legislative differences across the Acts

The following table sets out the drafting differences across the Acts, which are further discussed below.

	England	Northern Ireland	Scotland
<b>Who decides on what is a relevant offence?</b>	Subsection (3) defines “slavery or human trafficking offence” by reference to offences listed in Schedule 1. Subsection (4) enables the Secretary of State to amend Schedule 1 by order. For example, this power could be used to add to Schedule 1 any new slavery or trafficking offences created by legislation in Scotland or Northern Ireland.	Section 11 gives effect to Schedule 3 to the Act which makes provision for courts to be able to impose new civil orders - slavery and trafficking prevention orders (STPOs) – either upon sentencing, or following an application by the PSNI.	Section 16 provides a list of the relevant trafficking and exploitation offences for the purposes of trafficking and exploitation prevention and risk orders made under the Act. Subsection (2) provides that the Scottish Ministers may modify by regulations the offences contained in the list. Under section 37(2) any such regulations are subject to the affirmative procedure.
<b>Meaning of Relevant Offender</b>	Subsections (1) to (3) – a relevant offender includes a person convicted, made the subject of a finding or cautioned for a slavery or human trafficking offence in any part of the United Kingdom, and also a person convicted etc. in relation to an equivalent offence outside the United Kingdom (defined in subsections (4) to (5)). Where an application is made in respect of an equivalent offence, it is	(2) The court may make the order only if it is satisfied that— (a) the defendant is a relevant offender (see paragraph 3), and (b) since the defendant first became a relevant offender, the defendant has acted in a way which means that the condition in sub-paragraph (3) is met. (3) The condition is that— (a) there is a risk that the defendant may commit a slavery or human trafficking offence; and (b) it is necessary to make the order for the purpose of	Subsection (2) provides that a person is a relevant offender if any of the court disposals listed in the subsection have been made in the UK in relation to that person and in respect of a relevant trafficking or exploitation offence (as set out in section 16 of the Act). Subsections (3) to (5) deal with findings of courts and tribunals outside the United Kingdom. Subsection (3) provides that a person is a

<p>open to the person in respect of whom the application is made to challenge whether the offence he or she has been convicted of is an equivalent offence. They can do this by serving a notice on the applicant setting out the grounds for such a challenge (subsection (6)), or without serving such a notice if the court permits.</p>	<p>protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed such an offence.</p>	<p>relevant offender if, under the law of a country outside the United Kingdom, a listed disposal is made in respect of a person in relation to an offence which is equivalent to an offence listed in section 16. Subsections (4) and (5) set out tests for determining whether an offence is equivalent to a relevant offence. 86. Subsection (6) establishes a mechanism for determining whether an act constituting an offence in a country outside the UK would constitute an offence under the law of Scotland.</p>
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## England & Wales

Section 33 of the Modern Slavery Act required the government to publish Statutory Guidance, which occurred in July 2015. The guidance and the STPO and STRO application forms are available to download from the Home Office website.<sup>29</sup>

The Modern Slavery Act Guidance<sup>30</sup> says:

*“The fundamental purpose of an STPO or STRO is to protect the public, or particular individuals, from harm, and therefore a key factor to be considered is the risk presented by the defendant. Risk in this context should include reference to:*

- the likelihood of the defendant committing a slavery or human trafficking offence;
- the imminence of that offending; and
- the potential harm which may result from it.”

<sup>29</sup> <https://www.gov.uk/government/publications/slavery-and-trafficking-prevention-and-risk-orders>

<sup>30</sup> Guidance on Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders under Part 2 of the Modern Slavery Act 2015. Home Office, July 2015

## **Slavery and Trafficking Prevention Orders [STPO]**

Slavery and Trafficking Prevention Orders [STPO]: the purpose of the prevention orders is to prevent slavery and human trafficking offences being committed by someone who has already committed such offences. The STPO can be made on conviction, or on application. The STPO on conviction will typically be sought by the prosecutor at the sentencing stage. STPOs on conviction enhance the Court's ability to place restrictions on individuals who have been convicted of a modern slavery offence, ensuring that even after they have served their sentence any future risk of similar criminality is effectively managed.

The police, the NCA or immigration officers may also apply to a Magistrates' Court (including a Youth Court) for a free-standing STPO on application. This may be made by a Court in respect of an individual who has been convicted or cautioned (or subject to a similar finding – see 3.1.2) for a slavery or trafficking offence in the UK or been convicted or cautioned for an equivalent offence abroad. The Court must be satisfied that there is a risk that the defendant may commit another slavery or human trafficking offence and that the STPO is necessary to protect against the risk of harm from the defendant committing the offence. STPOs on application enable the Courts to place restrictions on individuals convicted or cautioned for modern slavery type offences whether the offence took place before or after Part 2 of the Modern Slavery Act 2015 was commenced on 31 July 2015. Convictions include spent convictions. STPOs on application also cover individuals convicted abroad.

## **Slavery and Trafficking Prevention Orders [STPO]**

Slavery and Trafficking Risk Orders: A STRO can be made by a Court in respect of an individual who has not been convicted of a slavery or trafficking offence. The Court must be satisfied that there is a risk that the defendant may commit a slavery or human trafficking offence and that the STRO is necessary to protect against the risk of harm from the defendant committing the offence. STROs enable action to be taken where this is necessary to prevent serious harm to the public, notwithstanding the absence of a conviction.

The STRO is sought through a free-standing application by the police, the NCA or an immigration officer to a Magistrates' Court.

An STRO may impose any restriction the Court deems necessary for the purposes of protecting the public from harm. The STRO may also include a requirement that the defendant provide his name and address, including updating this where the information changes; the detail of who the defendant should contact and how should be set out in the Order.

The provisions in the Modern Slavery Act have already commenced and are being used. A parliamentary question received the following answer from the Home Office Minister on 14th July 2016:

'16 Slavery and Trafficking Prevention Orders (STPOs) have been made on sentencing in the Crown Court under section 14 of the Modern Slavery Act. Data on the number of STPOs applied for on sentencing is not collated centrally. No STPOs have been applied for or made in the Magistrates' Court.

No slavery and trafficking prevention orders have been applied for or made on application under section 15 of the Modern Slavery Act in the Magistrates' Court.

Nine Slavery and Trafficking Risk Orders have been applied for on application to the Magistrates' Court, of which three have been made. Of the remaining six, two were refused, one was withdrawn and three cases were adjourned.<sup>31</sup>

The ATMG was not able to find out if Magistrates have already received training on the new orders. A recent parliamentary answer by the Department for Justice confirmed that the government did not know either, which is concerning - *"It is not however possible to identify where magistrates have received standalone or direct training on the use of slavery and trafficking risk orders or slavery and trafficking prevention orders."*<sup>32</sup>

## Northern Ireland

In Northern Ireland a Statutory Rule was published on 27th November 2015 to allow for the commencement of Section 11 and Schedule 3 for the purpose of making regulations about the STPOs. A further instrument was laid before the Assembly on 8th February 2016, about which the Northern Ireland Assembly Minister for Justice said:

*"The draft order is intended to enhance the STPO regime by giving courts in Northern Ireland the powers to deal with offenders from other jurisdictions within the United Kingdom. It does that in two ways. First, the draft order will allow courts in Northern Ireland to make STPOs against individuals who have been convicted of modern slavery offences in the other jurisdictions of the UK. It does that by amending the list of relevant offences that can trigger an STPO in Northern Ireland, as set out in paragraph 1(4) of schedule 3, to include modern slavery offences in England and Wales under sections 1, 2 and 4 of the Modern Slavery Act 2015 and Scottish offences under sections 1 and 4 of the Human Trafficking and Exploitation (Scotland) Act 2015."*<sup>33</sup>

In the debate the Minister confirmed; "...the order really completes the work on the STPOs..." Section 11 and Schedule 3 subsequently came into operation on 1st April 2016.

The Northern Ireland Act does not include a 'Slavery & Trafficking Risk Order' making it significantly different to the laws in England, Wales, and Scotland. However, under the provisions of the Northern Ireland Act, a breach of 'risk orders' from England, Wales and Scotland will be an offence in Northern Ireland and punishable as this statement from the NI Justice Minister David Ford explains:

*"Although the Assembly has not legislated to provide a power for courts in Northern Ireland to impose risk orders on individuals who have not previously been convicted of a modern slavery offence, such risk orders are available to courts in the other United Kingdom jurisdictions.*

*The order, therefore, is essential to ensure that courts in Northern Ireland will be able to enforce such risk orders that have been made elsewhere in cases where they have been breached in Northern Ireland. That safeguard will help to ensure that those subject to risk orders cannot bypass the restrictions that are placed on them by traveling to Northern Ireland.*

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<sup>31</sup> HC Deb, 14 July 2016, cW

<sup>32</sup> HoC Deb 14 July 2016, cW

<sup>33</sup> NIA 08.02.16

*The draft order provides that any breach of the orders elsewhere in the UK constitutes a criminal offence in Northern Ireland, attracting a maximum sentence of six months on summary conviction or five years on conviction on indictment.*<sup>34</sup>

No training on the use of these orders has yet been delivered in Northern Ireland.

## Scotland

In Scotland the Draft Human Trafficking and Exploitation (Scotland) Act 2015 (Consequential provisions and modifications) Order 2016 was debated and agreed by the Scottish Parliament on 13 September 2016 giving full effect to a number of provisions in the 2015 Act including enabling the English and Welsh courts to enforce the two new Scottish trafficking and exploitation prevention and risk orders. The date for the commencement of these orders in Scotland has not yet been set.

### Conclusion & Recommendations:

It is too early to tell the impact of the prevention and risk orders across the UK; in England and Wales they have been in use just over a year whilst in Scotland they are yet to commence. To monitor their use and effectiveness the ATMG recommends that:

- **Data is collected on the use of the prevention and risk orders across the jurisdictions and collated centrally by the Independent Anti-Slavery Commissioner**
- **Case analysis is undertaken when an application for an order is 'refused' by the court, as well as when successful, so that lessons can be learned and good practice shared.**

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<sup>34</sup> Northern Ireland Assembly 08.02.16

# Chapter 3: Duty to Notify

A 'Duty to Notify' [*the authorities about potential victims*] provision is included in each of the three Acts. Much of the debate that supported the government proposal for a Duty to Notify drew on whether the NRM should be placed on a statutory footing. However when fully implemented the Duty to Notify will go much further than an NRM referral and with so much of the detail not yet worked out there is a grave risk that this statutory duty will be misapplied and, as such, may not have the best interests of victims at its centre. This chapter compares the scope of this duty across the three jurisdictions and raises questions about the intended use and storage of the data collected.

The below table lists the relevant provisions on the Duty to Notify in three Acts and their commencement dates.

	<b>Modern Slavery Act 2015</b>	<b>Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015</b>	<b>Human Trafficking and Exploitation (Scotland) Act 2015</b>
	<i>England/Wales</i>	<i>Northern Ireland</i>	<i>Scotland</i>
<b>Duty to Notify</b>	Part 5, Section 52	Part 1, Section 13	Part 5, Section 38
<b>Royal Assent</b>	26 March 2015	12 January 2015	4 November 2015
<b>Commencement Regulations</b>	1 November 2015 for implementation	Draft 2016-2017 Department of Justice Human Trafficking & Modern slavery Strategy sets December 2016 as implementation target date	31 May 2016 Commencement of some elements but further regulations required

The key legislative differences in the Duty to Notify are set out below.

	<b>Modern Slavery Act</b>	<b>Northern Ireland Act</b>	<b>Scotland Act</b>
	<i>England/Wales</i>	<i>Northern Ireland</i>	<i>Scotland</i>
<b>Who to Notify</b>	The Secretary of State	The National Crime Agency - The Department [of Justice] may by order substitute for the reference to the National Crime Agency in subsection (1) a reference to such other body or person as may be specified in the order.	The Chief Constable of the Police Service of Scotland - After receiving a notification under subsection (1), the chief constable of the Police Service of Scotland must notify a person who may be specified by regulations made by the Scottish Ministers about the person who is, or

			appears to be, a victim of an offence of human trafficking or an offence under section 4.
<b>Disclosure of identity (adults)</b>	...a notification relating to a person aged 18 or over may not include information that— (a)identifies the person, or (b)enables the person to be identified (either by itself or in combination with other information), unless the person consents to the inclusion of the information.	...a notification relating to a person aged 18 or over may not include information that— (a)identifies the person, or (b)enables the person to be identified (either by itself or in combination with other information), unless the person consents to the inclusion of the information.	...adult must not include information that— (a)identifies the adult, or (b)enables the adult to be identified (either by itself or in combination with other information), unless the adult consents to the inclusion of that information.
<b>Protection of identity (children)</b>	[does not include any specific reference to children]	[does not include any specific reference to children]	[does not include any specific reference to children]
<b>Who is responsible for Regulations &amp; Guidance</b>	The Secretary of State	The [Northern Ireland] Department of Justice	Scottish Ministers

## Commencement and Implementation

### *Northern Ireland*

In Northern Ireland Subsection (3) of Section 13 of the Act provides a power for the Department of Justice to make regulations prescribing the information that must be included in a notification to the UKHTC under this subsection. These regulations are yet to be published.

### *Scotland*

In Scotland, the Human Trafficking and Exploitation (Scotland) Act 2015 (commencement no. 1 and transitory provisions) Regulations 2016 [SSI 2016/128 (C. 12)] brought into force on 31st May 2016 the majority of provisions in the 2015 Act, including the transitory provisions for Section 38, the Duty to Notify. Further Regulations are required before the Duty to Notify is implemented, and in particular regulations detailing what authorities will have a statutory duty and what will be included in the notification.



## England & Wales

The Secretary of State published Circular 025/2015 on 2nd November 2015 regarding the commencement of the Duty to Notify in the Modern Slavery Act, 2015. On 18th March 2016 the Home Office published Guidance (v2) on the Duty to Notify<sup>35</sup> for England and Wales.

### The UK Government's intention behind the duty

The guidance note says *“This duty is intended to gather statistics and help build a more comprehensive picture of the nature and scale of modern slavery.”*

In April 2014 the Home Office gave further written evidence to the Joint Committee on the Modern Slavery Bill following their request for further information regarding the Duty to Notify, which said:

*“The purpose of this provision is to ensure that public bodies, who are also first responders, will provide information to the National Crime Agency about all potential human trafficking offences. This notification is for law enforcement purposes and will take place even where suspected victims have requested that their cases are not referred into the NRM. The reports will be anonymous if the suspected victim prefers. This will contribute to a more comprehensive intelligence picture and, as a result, greater enforcement action against those who seek to exploit others.”<sup>36</sup>*

The same Home Office evidence to parliament also said:

*“Subsection 35(3) also makes it clear that no Order can require the disclosure of information in contravention of the Data Protection Act 1998. It is envisaged that the information will include the nationality of the victim, type of exploitation and the location and dates when it took place, which should not be sufficient for an individual to be identified.”*

### So what exactly does the Duty to Notify mean?

There was debate prior to the launch of the Modern Slavery Bill and during the course of the Bill through parliament about whether the NRM, and its referral process, should be on a statutory footing. However as time went on it became clear that the government did not intend for the NRM process, including referrals to the NRM, to be included in the Duty to Notify rules as can be seen here from the Home Office evidence:

*“The duty to notify is distinct from referrals under the National Referral Mechanism (NRM). The NRM is focused on providing care and support to victims. Clause 35 is aimed at improving the data that law enforcement need to better understand – and tackle – the problem of trafficking. This data will go to the National Crime Agency (NCA), as the body responsible for coordinating the overall law enforcement response.”*

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<sup>35</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/508817/Duty\\_to\\_Notify\\_Guidance\\_Version\\_2.0\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508817/Duty_to_Notify_Guidance_Version_2.0_.pdf)

<sup>36</sup> [https://www.parliament.uk/documents/joint-committees/Draft-Modern-Slavery-Bill/Home-Office-Duty-to-Notify\(final\).pdf](https://www.parliament.uk/documents/joint-committees/Draft-Modern-Slavery-Bill/Home-Office-Duty-to-Notify(final).pdf)

The Home Office Duty to Notify guidance and the notification forms are now available on the Home Office website. At the top of the Duty to Notify Form (called an MS1) it says:

*“This form should be completed to notify the Home Office if you have encountered a potential victim of modern slavery but they do not want to be referred into the NRM (to receive support and a decision about their case).”*

This assumes that the problem that the Duty to Notify form seeks to solve is the gap in data when victims have chosen not to be referred to the NRM.

The NRM referral form and subsequent follow-up should capture data on all adults who have given their consent. In the case of children, the child does not need to give their consent to the referral. Government policy is that all children suspected or known to be trafficked and exploited are to be referred to the NRM. The gap in knowledge is with adults who have not given their consent and this is where the Duty to Notify seeks to gather more details. Where there is weak data in the NRM referral this problem should be acknowledged and a solution sought, but it should not be rectified by the use of the Duty to Notify.

### **Does the Duty to Notify go beyond its intended purpose?**

Part C of the current MS1 form<sup>37</sup> contains extended questions asking for sensitive and identifying details such as the potential victims name, address, alias and date of birth. It also includes questions asking for a ‘safe phone number’ for the victim. This information appears to go well beyond the remit of the Duty to Notify parameters as detailed in the explanatory notes to the Modern Slavery Act. We are reminded of the evidence given by Dr Ken Macdonald, Assistant Information Commissioner for Scotland, to the Scottish government on the proposed Duty to Notify during the Scottish Parliament deliberations:

“Clause 34 of the Bill will require specified Scottish public authorities to notify the Chief Constable of Police Scotland about people who are, or are believed to be, victims of human trafficking or exploitation. Paragraphs 92-94 of the policy memorandum consistently talks about the use of anonymised data. However, Clause 34(2) includes a provision that an adult victim might consent to being identifiable. We infer from this that, as a matter of course, adult victims would be asked to consent to their name being provided to the Chief Constable. We understand the purpose of such sharing is to improve the available intelligence about the scale and extent of trafficking and exploitation.

Victims are likely to be in a vulnerable state and may have little, if any, understanding of the English language and the Scottish legal system. In which case, we question whether they would be capable of providing fully informed and freely given consent. As the stated policy intention is for only anonymised data to be provided, we recommend that the consent provision be deleted. We would be happy to work with the Scottish Government in the drafting of any regulations made under this clause to ensure that specific individuals cannot be identified from what may be very unique circumstances.”<sup>38</sup>

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<sup>37</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/508818/Duty\\_to\\_Notify\\_\\_MS1\\_\\_Form\\_\\_Version\\_\\_2.0\\_\\_.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508818/Duty_to_Notify__MS1__Form__Version__2.0__.PDF)

<sup>38</sup> [http://www.parliament.scot/S4\\_JusticeCommittee/Inquiries/HTE29InformationCommissionersOffice.pdf](http://www.parliament.scot/S4_JusticeCommittee/Inquiries/HTE29InformationCommissionersOffice.pdf)

We are concerned about the potential misuse of the Duty to Notify to go beyond the remit in the Act, and beyond the original intention of anonymised data return, and a lack of regulations governing who has consent to authorise the sharing of victims' personal details without victims receiving acknowledgement of this.

## How will referral information be used?

The official explanatory note for the Duty to Notify in the Modern Slavery Act says:

242. This new duty to notify will mean that adult potential victims of trafficking who do not wish to be referred, assessed and supported through the current administrative process for doing so may still be referred for data purposes by specified public authorities, and that additional information on victims of other forms of modern slavery will also be captured.

243. Subsection (2) enables the Secretary of State by regulations to prescribe the information that must be included in a notification under subsection (1). It is envisaged that, as a general rule, such information will include the nationality of the victim, type of exploitation experienced and the location and dates it took place.

244. Subsection (3) provides that identifying information about an adult potential victim of slavery or trafficking should only be included in a notification where the individual concerned has given their consent. In the case of child potential victims, this information can be provided without their consent.

In relation to exactly where the information goes after referral, how it is analysed and checked and who has ultimate responsibility for it, the position is quite vague. The Home Office guidance simply says:

“The information provided will be used to build a better picture of modern slavery in England and Wales, and to improve our law enforcement response, by sharing the information with the National Crime Agency and other law enforcement agencies.”

There must be much greater accountability and oversight for the potentially huge volume of sensitive data that will be submitted through the Duty to Notify forms, including 'safe phone numbers' and alleged perpetrators. It is not clear who will hold ultimate responsibility for the data at different stages, whether it will be uploaded onto a centralised system for data analysis, or how the information will be protected. The risk for further mission creep is worrying; greater legal scrutiny of the process is needed.

The ATMG believes there is a clear and urgent need to have the advice and involvement of the Information Commissioner and the Victims' Commissioner before any further implementation. We believe the Home Office is not equipped to take a policy lead on the Duty to Notify without further expert and legal advice on data management for the protection of highly vulnerable individuals. There are also no published details or process map showing who handles the data once it is submitted and the conditions under which consent can be deemed to be legitimately given.

The Duty to Notify form has been rushed into circulation without due regard to the procedures and duties of local authorities, health providers and others who are listed in the Act and publication of what sanctions will be applied if they do not notify. In a recent answer to a parliamentary question on Section 52 of the Modern Slavery Act Ministers said that they will publish information about the number of notifications in due course. The Government advised Local Authorities of the Duty to Notify by way of the government circular and stated that awareness raising would be done in Summer, however the ATMG has seen no evidence of what has been done to involve local authorities in policy making to put victim rights at the forefront of how notification is best achieved:

“On 7 November, the day that s52 of the Act came into Force, the Government issued full guidance on GOV.UK. A circular providing information to all bodies subject to the duty, including local authority Chief Executives, was sent the next day. Further communications to raise awareness of the Duty to Notify are planned this summer.”<sup>39</sup>

## A person’s right to know

The ATMG notes that there is no guidance about ensuring the person who is subject to the notification, the victim or potential victim, must get verification from the notifying authority that their details have been submitted under this statutory duty. We strongly recommend that the government follow the principles of the Code of Practice for Victims of Crime<sup>40</sup> and works with the Victims’ Commissioner to ensure that the victim’s rights to protection and privacy are at the centre of policy and guidance. The ATMG recommends that every person whose details are taken for the Duty to Notify form is entitled to have a record of that notification, including the date, the authority and a named person, and case reference number. This could be addressed with a tear-off slip for the person to take home, for instance, but it must explain what will happen to the information they have given. This would also ensure that if the person is subsequently asked for details of their contact with authorities they will have something they could refer to.

## Children & the ‘Duty to Notify’

The position with children is, according to the Home Office, different to adults because all children should be referred to the NRM as children are not required to give their consent to the referral. The Home Office guidance says, “*Although the duty to notify applies to both children and adults, children do not need to consent to enter the NRM, so potential child victims should be referred into the NRM in all cases (rather than making an MS1 notification).*” It therefore follows that no child’s case should be referred on a Duty to Notify form or MS1 and this duty is instead fulfilled through a NRM referral. However, the MS1 does not make it explicit that the form should not be used for children. On the contrary, it has a box to tick if the victim is under 18 years old and space for details of their identification. Even more confusing is that Schedule 2 of the Statutory Instrument<sup>41</sup> to bring the Duty to Notify into force actually sets out what information should be contained in the Notification regarding children:

Further information to be included in a notification relating to a victim under the age of 18 or by consent:

1. The victim’s name.
2. The victim’s date of birth.
3. The names of persons whom the public authority believes may have perpetrated the suspected slavery or human trafficking of the victim.
4. The names of persons whom the public authority believes may also have been victims of slavery or human trafficking by the same perpetrators.

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<sup>39</sup> HL Deb, 19 July 2016, cW

<sup>40</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/476900/code-of-practice-for-victims-of-crime.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF)

<sup>41</sup> Statutory Instrument 2015 No. 1743 [http://www.legislation.gov.uk/uksi/2015/1743/pdfs/uksi\\_20151743\\_en.pdf](http://www.legislation.gov.uk/ukSI/2015/1743/pdfs/uksi_20151743_en.pdf)

The ATMG is concerned about these mixed messages regarding children and the inclusion of children in the Duty to Notify guidance and the MS1 form. The confusion is largely caused because at the present time the NRM is not on a statutory footing for children or adults. However, conversely, the government's policy is that all children should be referred into the NRM without exception, implying that it is mandatory. The new Duty to Notify does not put the NRM on a statutory footing for children and this is where the contradiction lies.

Without any change to the proposed Duty to Notify system the risk is that inexperienced professionals will mistakenly believe that by completing the Duty to Notify form they are referring the child's case to police and other professional services for further support, when in fact the Duty to Notify form is only intended as a data-gathering tool. The risk to the child is considerable if no other action is taken in the belief that the Duty to Notify form triggers a full investigation and safeguarding response. The government's safeguarding children agenda is rooted in joined-up, multi-agency working practices; the proposed system of Duty to Notify is inconsistent with these principles and does not put the protection of the child at its core.

This could all be rectified if there is one single system of referral for children via a statutory duty to refer to the NRM. The changes required to the new system are minimal; it simply requires the current NRM referral process to be the equivalent mechanism for the Duty to Notify where a child is concerned. This would streamline child-safeguarding efforts and eliminate the need for duplication of data recording. The MS1 form must make clear that if there are concerns that the child is a potential victim of modern slavery then they must be referred into the NRM.

The issue of a child's consent is also frequently misunderstood and sometimes used as a short cut to doing things without the child's knowledge. The statutory role of Child Trafficking Advocate must now be recognised in matters relating to children but the role of Advocate is entirely missing from the Duty to Notify guidance, and the MS1 form does not give due regard to the role of a legal guardian or child trafficking advocate.

The ATMG recommends that there is an immediate change to the Duty to Notify MS1 form which makes it clear that children under 18 years should be referred into the NRM immediately if they are suspected to be a victim of modern slavery, and that guidance regarding children is amended to make it clear that children must only be notified through an NRM referral. Further references to children in the Duty to Notify form should be removed.

## **The Duty to Notify and Re-trafficking**

In the current NRM referral system, the Home Office suspend the case when the potential victim goes missing and a new referral must be made if the same person is subsequently found. That system is failing to identify re-trafficking because it doesn't allow for the recording of this missing period as potential re-trafficking. There is now a new risk that the Duty to Notify will also fail to identify re-trafficking as a crime pattern. The Duty to Notify begins from the commencement of the Modern Slavery Act and the guidance deals with it in the following way:

“This duty is not retrospective and so public authorities do not need to notify the Home Office of victims first encountered prior to 1 November 2015. Where a case has already been referred into the NRM prior to 1 November 2015 and the individual is encountered again, a ‘duty to notify’ notification is not required.”

The Home Office Guidance only assumes a scenario that the same victim can be identified on one occasion but this does not reflect the picture of trafficking in the UK. The guidance does not provide details on how to notify cases of re-trafficking when the victim may have been identified prior to 1st November 2015, went missing then came to notice after 1st November and is suspected to have

been re-trafficked. This is a gap that must be addressed otherwise intelligence on re-trafficking, which is already very patchy, will not improve.

The MS1 form does include a question asking if the victim was under 18 at the time the slavery or trafficking first occurred. This is a positive element to capture data that is often missing from other reports.

## Conclusion & Recommendations

Both Scotland and Northern Ireland are yet to implement the Duty to Notify provisions. England & Wales have now commenced and the Home Office has published guidance and a reporting form, called an MS1. Despite our research there is a long list of questions that remain unanswered and the ATMG believes that the process of implementation in England & Wales should be suspended until there is greater clarity about the individual and collective responsibilities in handling a notification, the sanctions if an employee of an authority fails to notify, or if information contained in the notification is not dealt with appropriately after it is submitted. If the purpose of the Duty to Notify is not clear to professionals tasked with filling out the form then that will increase the risk to already highly vulnerable victims. This is unacceptable.

The ATMG is concerned that the Duty to Notify has become a tool to compel professionals, particularly law enforcement, to give as much information as they can about victims to the Government. However, there are unresolved issues regarding the Duty to Notify and the data collected through it, which the ATMG believe must be addressed, particularly before Northern Ireland and Scotland move towards commencement and implementation. The ATMG recommends:

- **The immediate engagement of the Office of the Information Commissioner and the Victims' Commissioner in the development of good practice regarding the use of the Duty to Notify**
- **The MS1 form is amended to clearly state that children who are suspected victims of trafficking and modern slavery are to be referred into the NRM immediately, and that the completion of an NRM referral is fulfilment of this Duty to Notify in cases involving children**
- **Ensure any guidance or policy on the Duty to Notify gives due regard to the role of a child's guardian or child trafficking advocate**
- **Change Part C of the MS1 to ensure the form only contains non-identifying details**
- **Ensure that the person, who is the subject of the notification, receives 'take home' evidence that their details have been submitted. This could be a tear-off coded slip, with the date, the named person and authority that made the notification.**
- **Re-think how the Duty to Notify adapts to information regarding victims of re-trafficking**

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<sup>134</sup>[www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2015/11/pat-reg-sop-pmc-gp.pdf](http://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2015/11/pat-reg-sop-pmc-gp.pdf)



# Chapter 4:

## Adult Support Entitlements

Support for adult victims of modern slavery is a devolved matter. In England and Wales the Salvation Army manages the government contract for adult victim care, which it delivers through 11 partner organisations. In Scotland, the TARA service and Migrant Help are funded to provide support to, respectively, female and male victims of trafficking. In Northern Ireland support is provided to men and mixed couples by Migrant Help and to women by Women's Aid. Access to specialist support for adult victims of trafficking across the UK is largely tied to whether they have been identified as a potential victim through the National Referral Mechanism (NRM), although services in Scotland and Northern Ireland currently have greater flexibility in the timeframe in which they can support an individual.

The Modern Slavery Act and the respective Acts in Scotland and Northern Ireland each contain provisions regarding adult support, however, as will be discussed in this chapter, there are key difference between them. The Modern Slavery Act is significantly weaker in this regard than its counterparts. This chapter will discuss the potential implications of these differences as well as the impact of recent changes to the NRM.

The adult support provisions and commencement dates across the three Acts are set out below:

	<b>Modern Slavery Act 2015</b>	<b>Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015</b>	<b>Human Trafficking and Exploitation (Scotland) Act 2015</b>
	<i>England/Wales</i>	<i>Northern Ireland</i>	<i>Scotland</i>
<b>Support for adult victims</b>	Section 49 - Guidance about identifying and supporting victims Section 50 - Regulations about identifying and supporting victims	Section 18 - Assistance and support pending determination by competent authority	Section 9 - Support and assistance: victims of offence of human trafficking Section 10 - Support and assistance: victims of an offence under section 4
<b>Royal Assent</b>	26th March 2015	13th January 2015	4th November 2015
<b>Commencement</b>	Section 49 - 15th October 2015	Section 18 - 14th January 2015	Section 9 - commenced on 31st May 2016 only for the purpose of making regulations



# Protection and support for adults in the Trafficking Convention & Directive<sup>42</sup>

Measures to protect and promote the rights of adult victims are set out in Chapter III of the Trafficking Convention and in Articles 11 and 12 of the Trafficking Directive.

Council of Europe Trafficking Convention	EU Trafficking Directive
<p>Art. 10 (2) - Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations.</p> <p>Art.12 (1) - Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery.</p>	<p>Article 11 (2) - Member States shall take the necessary measures to ensure that a person is provided with assistance and support...</p> <p>Article 11 (5) - The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.</p>

The key elements in these articles on victim protection can be broadly grouped in four categories:

- a. Placing a duty on the state to establish measures to identify and support victims
- b. The minimum standards of support and assistance
- c. The timeframes for support provision
- d. Key principles and safeguards of support provision e.g. *that assistance to a victim is not made conditional on his or her willingness to act as a witness<sup>43</sup>, that services are provided on a consensual and informed basis<sup>44</sup>, that the support provided takes into account the special needs of victims<sup>45</sup>.*

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<sup>42</sup> The 'Trafficking Convention' refers to the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, and the 'Directive' refers to the 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU).

<sup>43</sup> Trafficking Convention, Article 12 (6), Trafficking Directive 11(3)

<sup>44</sup> Trafficking Convention, Article 12 (7), Trafficking Directive 11(5)

<sup>45</sup> Trafficking Convention, Article 12 (7), Trafficking Directive 11(7)

The table below provides analysis of the relevant sections on adult support in the Modern Slavery Act, Scotland and Northern Ireland Acts – do the Acts include these four key elements and where and how do they differ?

	<b>Modern Slavery Act</b>	<b>Human Trafficking &amp; Exploitation (NI) Act</b>	<b>Human Trafficking &amp; Exploitation (Scotland) Act</b>
	<i>England/Wales</i>	<i>Northern Ireland</i>	<i>Scotland</i>
<b>Duty on state to establish measures to support &amp; identify victims</b>	Section 49: ‘The Secretary of State must issue guidance ...about - a. the sorts of things which indicate a person may be a victim... b. arrangements for providing support and assistance...’	Section 18 (1) - ‘The Department must ensure that a person to whom this section applies is provided with assistance and support in accordance with this section.’	Section 9 (1) – ‘...the Scottish Ministers must, during the relevant period, secure for the adult the provision of such support and assistance as they consider necessary given the adult’s needs.’
<b>Duration of support provision</b>	Not included	Section 18 (2) & (4) states that support should be provided to a person if a reference has been, or is about to be made to a competent authority for identification purposes and for a period of 45 days following receipt of a positive reasonable grounds decision.  Section 18 (8) states that those eligible for assistance and support may continue to receive it even if they leave Northern Ireland In addition, Section 18 (9) allows support and assistance to be provided following receipt of a positive, conclusive determination for as long as the Department (of Justice) deems necessary.	Section 9 (2) – The relevant period – a. begins on the date it is determined there are reasonable grounds to believe... b. ends on the earlier of the following- (i) the end specified in regulations... (ii) the date on which there is a conclusive determination that the adult is not a victim In addition, Section 9 (3) enables support to be provided prior to receipt of a reasonable grounds decision, and for such period as deemed appropriate after the conclusive determination.

<b>Minimum standards of support and assistance</b>	Not included	As per the Convention & Directive	As per the Convention & Directive
<b>Key principles and safeguards for support provision</b>	Not included	<p>Sections 18 (5) (c) to (d)- assistance and support provided</p> <ul style="list-style-type: none"> <li>- Not conditional on victim's being a witness</li> <li>- Provided with agreement of individual</li> <li>- Takes into account of victim's safety and protection needs</li> <li>- Has regards for special needs or vulnerabilities caused by gender, pregnancy, physical or mental illness, disability or being the victim of serious violence or abuse</li> </ul> <p>Section 18(6) - Assistance must be offered from a person is who is of the same gender</p>	<p>9 (5)(a)- Support and assistance provided</p> <ul style="list-style-type: none"> <li>- Only where the person consents</li> <li>- Not made conditional on the victim's assistance with a criminal investigation or prosecution</li> </ul>

## Adult support entitlements in the Acts

The Modern Slavery Act is significantly weaker than the respective Acts in Scotland and Northern Ireland regarding support for adult victims. The Scotland and Northern Ireland Acts include all of the four key elements of the Trafficking Convention and Directive, and in some regards go beyond the minimum international standards.

Both Acts place a legal duty on Ministers to provide support and assistance to victims, and explicitly state the minimum types of support that should be provided (the list is non-exhaustive), which reflect the support standards set out in the Convention and Directive. They also state that support should be provided in the period between a reasonable grounds and conclusive determination that the person is a victim, as well as prior to the reasonable grounds determination (i.e. if a referral about the individual is about to be made) and after the conclusive determination is made, for as long as deemed necessary. The Northern Ireland Act goes further still by stating that support can continue to be provided to persons who are conclusively determined *not* to be victims, if continued support is deemed necessary, and to eligible victims even if they leave Northern Ireland<sup>46</sup>.

<sup>46</sup> The reasoning behind this can be found in the explanatory notes; 'Subsection (9) provides a further discretionary power which would ensure that the Department is able to continue to provide support to an individual beyond the point where a Conclusive Determination is made, where that is considered necessary'.

Both the Scotland and Northern Ireland Acts include the key principles and safeguards for support provision listed in the Trafficking Convention and Directive i.e. that support must be provided on an informed and consensual basis, and that support provision should not be dependent on an individual's willingness to act as a witness in criminal proceedings. Northern Ireland again goes further, stating that consideration should be given to the special needs and particular vulnerabilities of victims, and that support must be offered from a person who is of the same gender.

The Modern Slavery Act does not explicitly place a duty on the State to provide support and assistance to victims, nor set out victims' support entitlements. Rather, the arrangements for identifying and supporting victims are to be set out in guidance to be issued by the Secretary of State, which may be revised from 'time to time'. The Secretary of State may also make regulations in this regard. Therefore, unlike those in Scotland and Northern Ireland, victims in England and Wales cannot look to the Modern Slavery Act to claim their rights to support.

## **Commencement and Implementation**

### *Modern Slavery Act*

The drafting of the statutory guidance under Section 49 is currently underway. The initial draft of the guidance is being developed by a peer group consisting of representatives from statutory authorities as well as NGOs, and will be released for public consultation towards the end of the 2016. The finalised guidance is due to be published in spring 2017.

### *Northern Ireland Act*

Section 18 of the Act commenced on the 14th January 2015, the day after the Act was given Royal Assent. No guidance as yet has been published on the application of Section 18, however its development is planned to commence December 2016, according to the draft Human Trafficking and Modern Slavery Strategy, 2016-2017, published by the Department of Justice.<sup>47</sup>

### *Scotland Act*

Section 9 of the Scotland Act commenced on 31st May 2016, but only for the purposes of making regulations. The public consultation on these regulations has not yet started. It is believed that the regulations will only focus on the timeframe for support provision, rather than on the types of support to be provided. The finalised regulations are due to be published by mid-2017.

Section 9(8) and (9) enables Scottish Ministers to bring forward regulations on the framework for the identification of victims i.e. on the decision-making process and criteria, and the actors involved in the decision-making process. Section 9(10) enables Scottish Ministers to bring forward regulations on the framework for the identification of victims of slavery, servitude and forced or compulsory labour. The National Referral Mechanism (NRM) - the framework through which victims are formally identified and provided access to specialist support - is currently a UK-wide system and set out in policy rather than statute. This enabling clause in Section 9(8) and (9) and Section 10 of the Scotland Act effectively allows Scotland to independently develop its own NRM through a statutory instrument. The implications of this and the wider developments in the NRM are further discussed below.

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<sup>47</sup> <https://www.justice-ni.gov.uk/sites/default/files/consultations/justice/human-trafficking-strategy-consultation-2016-17.pdf>

## How did the differences between the Acts arise?

Unlike its counterparts in Northern Ireland and Scotland, the UK Government was reluctant to set out the minimum support and assistance entitlements for adult victims in the Modern Slavery Act, despite cross-party recommendations in favour of this throughout the legislative scrutiny process.

*'The Bill should offer on a statutory basis what assistance is available to all potential victims of modern slavery.'*

**Frank Field Modern Slavery Bill Evidence review, p.26**

Instead assurances were given by Home Office Ministers that the UK did 'already provide, or facilitate access to, all the support that are listed in the amendments'<sup>48</sup>; i.e. those that included the minimum support and assistance standards in the Trafficking Directive and Convention. When challenged that statutory guidance failed to provide victims with the same assurances of their support entitlements as having them detailed in the Act, and the possibility that victims in Scotland and Northern Ireland would have greater statutory rights than in England and Wales<sup>49</sup>, the Minister countered:

*'... asked whether the regulations will include information about our international obligations. The answer is, yes, the regulations [under Section 50] will include the international obligations we have discussed, including the type of victim support set out in the Council of Europe conventions. To distil this down to a fine point, which my noble friend was eager to ensure: when the guidance [under Section 49] comes forward in statutory form, will it spell out what is going to be provided? I can say unequivocally that the answer to that is yes.'*

**Lord Bates, 4th Mar 2015**

These assurances from the Minister are welcome, but as yet have not been realised as the statutory guidance is still being drafted.

## The National Referral Mechanism (NRM)

A separate but often confused debate in the legislative scrutiny of the Modern Slavery Bill centred around whether the National Referral Mechanism (NRM) - the framework through which victims are formally identified and provided access to specialist support – should be placed on a statutory footing. Whilst protection and support for adults are devolved responsibilities, the NRM is currently a UK-wide system; potential victims can be referred in to the central NRM from any country in the UK.

In a somewhat pre-emptive move, the Home Secretary commissioned a review of the NRM, to assess the key areas of the system, including identification of victims, decision-making and access to support. The review was announced in October 2013, prior to the publication of the draft Modern Slavery Bill and was finalised in November 2014, mid-way through the legislative scrutiny process.

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<sup>48</sup> Lord Bates 10th Dec 2014 Col 1846

<sup>49</sup> Lord Rosser, 4 Mar 2015: Column 226

The review report<sup>50</sup> recommended an overhaul of the referral and identification process, as well as the provision of support based on an assessment of individual need. The review did not recommend placing the NRM on a statutory footing, stating that:

*'Any process put on a statutory footing can become inflexible and unresponsive to changing demands and indeed improvements, due to the requirement to further legislate before making changes. Pinning the National Referral Mechanism down now would not be an effective methodology particularly when the National Referral Mechanism is going through a period of significant change.'*

**p.51, para. 8.2.15, NRM Review**

This finding was repeated and used as justification by the UK government to not include details of the NRM in the Modern Slavery Act. Towards the latter stages of scrutiny in the House of Lords, however, the Government conceded to include an enabling power, set out in Section 50, for the Secretary of State to make regulations in relation to victim identification and support arrangements.

## **NRM pilots**

On the back of the NRM review, the Government announced<sup>51</sup> that a 12-month pilot would be run in two areas of England 'to test the core recommendations relating to the identification of victims and to the referral and decision-making processes'<sup>52</sup>. The pilots, amongst other things, are testing the replacement of First Responders with 'Slavery Safeguarding Leads', representatives from public authorities who are responsible for making the initial 'reasonable grounds' decision, and multi-disciplinary panels who make the final, conclusive decision as to whether an individual is a victim of modern slavery.

The introduction of regional, multi-agency decision-making, and the move away from having UKVI as sole decision-maker is a positive step. However there are a number of concerns regarding the NRM pilots, including that the pilots are only being run in England. No testing has been undertaken, or is planned, in the devolved administrations to assess whether the new decision-making model is viable in the different jurisdictions. To be successful this new decision-making model requires buy-in from the statutory authorities and NGOs who will sit on the multi-agency panels and act as 'Slavery Safeguarding Leads'.

A second key concern is that the pilots are only testing a new decision-making model and have not considered the support model. The NRM review made a number of recommendations regarding support, including that support should be provided 'based on an assessment of the individual needs of the victim' and that 'consideration should be given to entry and exit timescales, support following conclusive identification, and the audit and inspection of support provision'<sup>53</sup>. These recommendations have not, as yet, been tested in the pilots.

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<sup>50</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/467434/Review\\_of\\_the\\_National\\_Referral\\_Mechanism\\_for\\_victims\\_of\\_human\\_trafficking.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf)

<sup>51</sup> <https://www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking/pilot-evaluating-the-proposed-reforms-to-the-national-referral-mechanism>

<sup>52</sup> <https://www.gov.uk/government/publications/review-of-the-national-referral-mechanism-for-victims-of-human-trafficking/pilot-evaluating-the-proposed-reforms-to-the-national-referral-mechanism>

<sup>53</sup> Supra note 50

The decoupling of decision-making for identification purposes and decision-making on the support to be provided to an individual is concerning. The two are inextricably linked and should be treated as such. The identification of a victim of modern slavery results from the recognition of indicators of trafficking and exploitation; the presence of which indicate a safeguarding concern and a consideration of the individual's support needs. Conversely, identification and referral depend on the provision of appropriate support. A victim will only disclose their experiences fully once they feel safe, therefore a comprehensive referral and accurate decision-making in the NRM will hinge on whether the person is receiving the necessary support and protection. Moreover, the NRM is a voluntary choice for adults and should only be undertaken once the individual has given their informed consent. In order for this to be given the potential victim has to fully understand the NRM process and the potential implications and outcomes of the process. This takes time, during which the individual may require access to healthcare, accommodation and legal advice.

The ATMG supports the recommendation<sup>54</sup> in the NRM review that decision-making in the NRM should be made by a multi-disciplinary panel, however the ATMG also proposes that the panel, having a clear understanding of the individual's case and comprising of professionals from a range of services, should be responsible for making recommendations regarding the support to be provided to the individual. In the instances where the individual is not deemed to be a victim of modern slavery, the panels will nevertheless identify safeguarding concerns and be able to signpost the individual on to support services.

It was announced in August 2016 that the pilots are to be extended until March 2017. The ATMG strongly recommends that support for victims, as well as identification decision-making, is also considered by the multi-agency panels in this extension period.

The ATMG also urges the Home Office to consider how the revised NRM will operate outside of England, involving relevant stakeholders in the devolved administrations to a greater degree in the discussions going forward.

## Conclusion & recommendations

Victims of modern slavery identified in England and Wales have significantly fewer statutory support entitlements than in Scotland and Northern Ireland. The Scotland and Northern Ireland Acts transpose the minimum support standards set out in the Trafficking Convention and Directive, and in some ways go beyond them. The support entitlements for victims of modern slavery in England and Wales are to be detailed in statutory guidance, which is currently being drafted. There is a risk that the standards of care and support provided to victims will differ across the different jurisdictions.

Given the connection between NRM decision-making and the provision of access to specialist victim support, it is concerning that no consideration has been given to the latter in the NRM pilots. The viability of the NRM model in the devolved administrations has also not been considered in the pilots, albeit that the NRM is currently UK-wide.

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<sup>54</sup> Para. 7.4.2



The ATMG recommends that:

- **Statutory guidance and regulations on victim identification and assistance stemming from the Modern Slavery Act are in line with international obligations, and set out victim support entitlements equivalent to those in the Scotland and Northern Ireland Acts to ensure parity of victim care across the UK**
- **The Home Office, in the remainder of the NRM pilots, considers the model of support for victims and the viability of the revised model in the devolved administrations. Multi-disciplinary decision-making panels should be responsible for making recommendations on the support to be provided to victims, including recommendations on whether the individual should be granted discretionary leave to remain**
- **A system of inspection and auditing is instituted for service-providing organisations that support victims of modern slavery across the UK to ensure adequate monitoring of standards of care**
- **The Commissioner for Victims and Witnesses undertakes a review of the treatment of victims of modern slavery identified in the UK**

# Chapter 5: Child Guardianship & The ‘Presumption of Age’

All three new Acts make provision for a guardian type role, however, to date, none of the proposed models for guardianship have commenced. It is almost certain that there will be no commencement of any statutory guardianship scheme before 2017. The existing non-statutory Scottish Guardianship Service has remained in operation through the passing of the Scotland Act and an extension of funds was granted, but only for one year. There is no certainty that this scheme will be the service that Scotland takes forward in implementing the guardianship model.

The following chapter provides a comparative analysis of the guardian/advocate roles across the UK and the roll-out of these schemes to date. The chapter also discusses the ‘presumption of age’ provisions and special protection measures for children. The ATMG has previously recommended that the guardianship system extend to all unaccompanied and separated children, not only those children known or suspected to be trafficked, and we maintain this position. All separated children are vulnerable to exploitation by the very nature of being separated from their parent or main caregiver.

## 5.1 Child Guardianship

The below table lists the child guardian/advocates provisions in each of the Acts.

	<b>Modern Slavery Act</b>	<b>Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015</b>	<b>Human Trafficking and Exploitation (Scotland) Act 2015</b>
	<i>England/Wales</i>	<i>Northern Ireland</i>	<i>Scotland</i>
<b>Child Guardianship/advocates</b>	Section 48. Independent child trafficking advocates.	Section 21: Independent guardian.	Section 11: Independent child trafficking guardians.
<b>Royal Assent</b>	26th March 2015	13th January 2015	4th November 2015
<b>Commencement</b>	Not yet fully commenced. The ‘Secretary of State must, no later than 9 months after the day the Act is passed, lay before Parliament a report on the steps the Secretary of State proposes to take in relation to advocates’. Further testing planned through ‘early adopter sites’, beginning in November 2016.	Not yet commenced. Intended date of commencement - 10 months after Royal Assent i.e. 13th November 2015	Commencement Order in force on 31st May 2016 that enacts the power set out in S.11 (7) of the 2015 Act to make Regulations regarding appointment of guardians. Public consultation on regulations to commence October 2016.

## Child Guardianship in the Trafficking Convention & Directive<sup>55</sup>

Trafficking Convention	Trafficking Directive
<p>Article 10.4: As soon as an unaccompanied child is identified as a victim, each Party shall:</p> <p>a) provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child</p> <p>b) take the necessary steps to establish his/her identity and nationality;</p> <p>c) make every effort to locate his/her family when this is in the best interests of the child.</p>	<p>Article 16.3: Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.</p>

The three key elements of child guardianship in international law are:

- Child guardians act in the best interests of the child
- The guardian is recognised by the government to provide representation of the child
- The qualifying age of a young person to be appointed a guardian is up to 18 years old

The tables below set out the respective provisions in the three Acts; whether they include these three elements and the key differences between them.

	Modern Slavery Act	Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015	Human Trafficking and Exploitation (Scotland) Act 2015
	England/Wales	Northern Ireland	Scotland
	Section 48. Independent child trafficking advocates	Section 21: Independent guardian	Section 11: Independent child trafficking guardians
<b>Best Interests of the Child</b>	Yes	Yes	Yes
<b>Legally recognised to represent the child</b>	Yes	Yes	Yes
<b>Qualifying Age of Child</b>	Assumes up to 18 years	Up to 18, and in some circumstances a guardian will stay on up to 21	Assumes up to 18 years

<sup>55</sup> The 'Trafficking Convention' refers to the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, and the 'Directive' refers to the 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU).

## Differences in child guardianship across the UK

The key differences across the child guardianship provisions in the three Acts are set out below.

	<b>England &amp; Wales</b>	<b>Northern Ireland</b>	<b>Scotland</b>
<b>Eligibility</b>	Section 41 (1) ...to be available to represent and support children who there are reasonable grounds to believe may be victims of human trafficking. All children, including British children, where there are reasonable grounds to believe or are known to be victims of modern slavery	Section 21 (2) This section applies to a child if— (a) A reference relating to that child has been, or is about to be, made to a 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 child is a victim of trafficking in human beings; and (b) there has not been a conclusive determination that the child is not such a victim; (i)All children who are suspected or known to be trafficked and (ii)separated children from abroad who are not known to be trafficked but where being without a person with parental responsibility is a risk in itself to being trafficked.	Section 11 ...If a relevant authority determines that— (a) there are reasonable grounds to believe that the child— (i) is, or may be, a victim of the offence of human trafficking, or (ii) is vulnerable to becoming a victim of that offence, and (b) no person in the United Kingdom is a person with parental rights or responsibilities in relation to the child.
<b>Can instruct a solicitor on behalf of a child</b>	Yes	Yes	No/Not explicit
<b>Functions</b>	To be determined by Home Secretary and made by Regulations	Detailed and listed in the Act	To be determined by Department of Health and made by Regulations
<b>Arrangements post 18 years</b>	No specific provision post 18 years	Provision in legislation up to 21 years (with child's consent)	No specific provision post 18 years.
<b>Dependent on an NRM decision</b>	Unclear	No – can be appointed before a decision is made	No – can be appointed before a decision is made

## Inconsistencies between the Acts

In the first instance all three laws have decided upon different names for the role of guardian – in Scotland they have legislated for ‘Independent Child Trafficking Guardians’, in Northern Ireland it is ‘Independent Guardians’, and in England and Wales it is ‘Independent Child Trafficking Advocates’. Terminology aside, there are real differences in the scope, function and intention of the role across each of the nations. Currently, each jurisdiction has a different interpretation on eligibility for guardianship, for example who is entitled to have a guardian, how the guardian is appointed, when and for how long a guardian will be able to represent the child. At a time when we know traffickers systematically move children across the UK and don’t limit themselves to operating within national borders there is an urgent need to ensure that a trafficked child’s access to a skilled and trained guardian doesn’t become a postcode lottery. There is currently no single monitoring mechanism that is responsible for oversight of policy on guardianship for trafficked children in all jurisdictions. The UK has international reporting obligations under the UN Convention on the Rights of the Child as well as the Trafficking Convention. The ATMG consider it is essential that there is policy coherence on guardianship across the UK to enable consistency in reporting to ensure coherent protections for children no matter where in the UK they come to the attention of the authorities.

## England & Wales

### *Modern Slavery Act, 2015 – Section 48: Independent Child Trafficking Advocates.*

The Independent Child Trafficking Advocate scheme has not yet been implemented. The commencement of Section 48 requires resolutions of the House of Commons and the House of Lords. The formal details are the subject of further guidance and regulations which are currently undergoing consultation.

### *Background*

In September 2014 a pilot Advocate scheme was launched and tested over 12 months across 23 Local Authority areas in England. The Government’s intention was to wait until the outcome of the pilot evaluation to determine the model that will be implemented. The evaluation of the 2014/15 trial of Independent Child Trafficking Advocates was completed in September 2015 and the evaluation findings were published in December 2015<sup>56</sup>. Following the trial, children with an advocate were provided support to transition into existing trafficking or other support services.

Section 48 (6) of the Modern Slavery Act requires the Secretary of State to make regulations about child trafficking advocates, and Section 48 (7) required the Secretary of State to lay a report before Parliament within 9 months after the Act is passed. In December 2015 Government ministers laid a report before Parliament announcing that regulations would not yet be brought forward as the government was not satisfied with the pilot model following evaluation<sup>57</sup> and intended to consult further. In February 2016 the Home Office Minister met with a number of interested parliamentarians announcing that the government was intending to develop a revised model of Advocates and officials were in discussions with non-government organisations. In June 2016 the Government announced that it was intending to re-start the process with three ‘early adopter’ sites in Hampshire, Wales and Greater Manchester to be established in November 2016 and run until March 2019.

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<sup>56</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486138/icta-horr86.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486138/icta-horr86.pdf)

<sup>57</sup> <https://www.gov.uk/government/publications/independent-child-trafficking-advocates-trial-government-report>

*“First, I propose to introduce independent child trafficking advocates at three early adopter sites. The competition for providing those sites will be launched this summer. The sites will enable us to refine the model that was previously tested, including by increasing the speed of referral and the number of people and organisations that can make such referrals; testing the use of quasi-legal powers by advocates and the impact that that will have on their effectiveness and their relationships with statutory agencies; and training and recruiting advocates with specialist skills, such as in certain languages or in dealing with particular forms of abuse, so that they can give more targeted support.*

*Secondly, in collaboration with the Department for Education, the Home Office will commission a training programme for existing independent advocates, who are statutorily provided to all looked-after children. The training will improve their awareness and understanding of the specific needs of trafficked children and how to support them. But that is not enough. I am also determined to address the other concerns raised in both the trial and the feedback from right hon. and hon. Members.*

*I am therefore pleased to announce that this year the Home Office will establish and launch a new child trafficking protection fund, with up to £3 million of Government funding initially available over the next three years. The fund will be targeted at addressing two key issues where advocacy alone appears to be insufficient and where alternative and additional approaches are needed. The first aim is to reduce the number of children who go missing or who have contact with traffickers. The second is to support children from high-priority states, from which we continually see high numbers of children trafficked to the UK. [28.06.16 HC col 50WH]*

The Government stated that: “Independent Child Trafficking Advocates will be introduced in three early adopter sites. The Home Office will conduct an assessment through monitoring outcomes for children who receive an advocate and considering how the advocates were implemented in the three sites. This will be overseen and informed by an expert panel of independent individuals. The learning from the early adopter sites will be used to refine the model for Independent Child Trafficking Advocates to be rolled out across England and Wales.”<sup>58</sup>

When asked in a parliamentary question the Home Office Minister said: “The early adopter sites [Hampshire, Greater Manchester, Wales] were chosen because they offer a wide geographical coverage across England and Wales with the potential for differing levels and types of referrals, including children who may have been internally trafficked, as well as those that have been trafficked from abroad.”<sup>59</sup>

The government’s proposed ‘early adopter’ sites have not yet been implemented. There is currently a draft version of interim statutory guidance that will be reviewed by the Child Task & Finish Group that sits under the Modern Slavery Strategic Implementation Group (MSSIG). This has become an excessively long and bureaucratic process that seems entirely unnecessary when highly vulnerable children are in need of a guardian now. The government’s plan to further delay the roll out of the independent child advocate scheme across England & Wales until after March 2019 is deeply worrying and not envisaged by parliament during the passing of the Modern Slavery Bill. The ATMG recommends that the process for full implementation start simultaneously to the roll out of the early adopter sites to speed up the process across England and Wales. The ATMG

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<sup>58</sup> HoC Deb 08 September 2016 Written Answer to Question 44824

<sup>59</sup> HoC Deb 08 September 2016 Written Answer to Question 44822

fully supports the recommendation made by the Independent Anti-Slavery Commissioner to the Minister for Preventing Abuse Exploitation and Crime on 29th April 2016 in which he said:

“If at any point for example, mid-term evaluation, the panel considers that the pilots are successful then the Government should proceed with full implementation as soon as possible.”

### *Access to and appointment of a guardian/advocate*

The use of the term ‘reasonable grounds’ in the appointment of Child Trafficking Advocates has caused us to question whether the government intends in the future to link a child’s access to an Independent Child Trafficking Advocate to the National Referral Mechanism (NRM). Section 48 6 (c) of the Act states that Regulations must be made - requiring an Independent Child Trafficking Advocate to be appointed for a child as soon as reasonably practicable, where there are reasonable grounds to believe a child may be a victim of human trafficking. The phrase ‘Reasonable Grounds’ is now so closely associated with the National Referral Mechanism that it would be very easy to interpret this as having to wait for a positive NRM reasonable Grounds Decision before an Advocate was appointed. The Explanatory Note to the legislation tries to overcome any misinterpretation by stating *“as soon as reasonably practicable where there are reasonable grounds to believe a child may be a victim of trafficking – this can be before any referral into the UK’s victim identification process”*. In addition during the Modern Slavery Bill debates the government has already said:

*‘The reference here to “reasonable grounds” does not tie the appointment of a child trafficking advocate to a reasonable grounds decision or the national referral mechanism.’<sup>60</sup>*

The ATMG strongly believes that the appointment of the Advocate should not be dependent on an NRM decision and that it is essential that an Advocate can be appointed before the NRM referral is made so that the Child Trafficking Advocate can inform and advise the referral process.

Although the term ‘reasonable grounds’ is common in legal documents the people making every day decisions for children might have only heard this phrase in connection with the NRM. The ATMG recommends that the government issue a position statement on what the term ‘reasonable grounds’ is intended to mean in regulations, guidance and training and that it is explicit that an Advocate can be appointed before a referral to the NRM. The Northern Ireland and Scotland Acts are explicit that the appointment of a guardian is not dependent on an NRM decision.

At this point in time there a high a risk of inconsistency in the final implementation of the guardianship provisions and this will impact on vulnerable children. The ATMG recommends that a joint panel review is undertaken by the Children’s Commissioners of England, Wales, Scotland and Northern Ireland after the first year of implementation in order to identify policy gaps and inconsistency between each jurisdiction. The ATMG also recommends extending the protections to all unaccompanied and separated migrant children in the UK.

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<sup>60</sup> HoL 25 February 2015



## Northern Ireland

### *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015: Section 21: Independent Guardians.*

The Northern Ireland legislation is the most comprehensive and detailed of all three laws and the most explicit on the functions and duties of the independent guardian. However, there are a number of key decisions to be made prior to commencement and further regulations must be laid before the Northern Ireland Assembly before implementation. Section 21 of the Act places a duty on the Health and Social Care Board to make arrangements to enable an Independent guardian to be appointed to assist, represent and support a child. The arrangements must be made with a charity that will provide for the appointment of a person as an independent guardian. Section 21(11), as amended by section 101(3) of the Justice Act (Northern Ireland) 2015, provides that charities already registered under the Charities Act (Northern Ireland) 2008, charities waiting to be called forward to register under that Act and charities registered in England, Wales or Scotland are eligible to be considered by the Health and Social Care Board to provide an independent guardian service in Northern Ireland.

### *Regulations*

Section 21(5) of the Act requires the Department to make regulations for:

*“the training and qualifications required for a person to be eligible for appointment as an independent guardian”; and*

*“the support to be provided for, and the supervision of, an independent guardian” post appointment.*

The legislation specifies that, in order to be eligible for appointment as an independent guardian, individuals must be qualified social workers with at least five years' post-qualification experience of working with children and families, including direct work with children, court-related experience and agency working.

A public consultation on the draft regulations ran from 10 September to 6 November 2015. There were 18 responses, 56% that broadly supported the appointment of a qualified Social Worker but 33% that did not. A meeting of the Northern Ireland Assembly, NIA, Committee for Health, Social Services and Public Safety, on Wednesday, 9 March 2016 discussed the consultation results and took further evidence from Department of Health officials. At the end of the meeting the Chairperson concluded:

*“I have to say that I am not convinced, given the lack of detail in what we have in front of us today, that we can proceed at this stage. ....It will certainly be my recommendation that we bring this back for proper scrutiny to allow the voices of those who are in favour of the regulation, those who are not and those who are not sure, to be heard. I recommend, members, that we bring it back post-election. Are members in agreement? Members indicated assent.”<sup>61</sup>*

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<sup>61</sup> Northern Ireland Assembly Official Report [Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2016: DHSSPS] Accessed 17.08.16 at <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?Agendald=17810&evidID=10402>

In April 2016 a letter was sent to the NIA Committee for Health, Social Services and Public Safety [“Health Committee”] from a coalition of specialist NGOs to ask for a widening of the definition around the qualifications for an Independent guardian. Their primary concern is that the requirement of a qualified Social Worker is unduly restrictive and would limit the pool of potential applicants, who could otherwise bring a range of skills and experiences to this complex role. They also noted that an Independent Guardian who is not a social worker could bring more independence to the role.

The ATMG recommends that the Northern Ireland Regulations expand to allow qualified professionals who are not social workers to be appointed as independent guardians in line with the previous submission of specialist organisations recognising the contribution and independence that could be made by youth workers, legal professionals, teachers etc.

At the time of writing this report there has been no date set by Northern Ireland Assembly for when they will bring the matter back to the Committee to discuss, which is concerning as there is no sense as to when the guardianship system may be up and running.

## **Scotland**

### ***Human Trafficking and Exploitation (Scotland) Act 2015: Section 11, Independent child trafficking guardians.***

In October 2015 the Scottish Parliament passed the Human Trafficking and Exploitation (Scotland) Act 2015. The Act received Royal Assent on 4 November 2015 and the first Commencement Order came into force on 31 May 2016. The Commencement Order enacts the power set out in S.11 (7) of the 2015 Act to make Regulations with regard to how independent child trafficking guardians should be appointed and other issues in relation to their administration. This includes power to make further provision about the appointment of independent child trafficking guardians (including the termination or, in certain circumstances, continuation of that appointment), the conditions which require to be satisfied before a person may be eligible to be appointed as a guardian, the functions of such guardians, and other administrative matters such as a payment and record keeping. The Regulations will be the subject of a wider consultation which starts in October 2016 and is not likely to conclude before mid-2017. Regulations have to be approved by the Scottish Government and Parliament.

### ***Eligibility***

In Scotland the independent child trafficking guardians are to be appointed for a child:

- whom a relevant authority has reasonable grounds to believe is or may be a victim of human trafficking;
- whom a relevant authority has reasonable grounds to believe is vulnerable to becoming a victim of human trafficking; AND
- for whom no-one in the UK has parental rights or responsibilities. [This is an important and marked difference to the proposals in England & Wales]

Unlike the Modern Slavery Act or the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland), the Scottish child trafficking guardian model excludes British children or others where there exists someone with parental responsibility in the UK. The rationale during the Bill debates was that Scotland already has alternative systems of protection for children in Scotland which would apply in these circumstances. However, the case is not at all clear what would happen if a child from abroad was trafficked in a family group where a member

of the family was complicit in the trafficking and the child was separated from the family. This will need to be tested robustly during future consultations to ensure that no child falls through the gaps or where a lack of clarity amongst professionals leads to a child not getting a guardian from the earliest possible moment.

### **‘Relevant Authority’ to determine appointment of a Guardian**

In Scotland the mechanics of who appoints a child trafficking guardian are not yet known. Section 11(8) of the Commencement Order allows Scottish Ministers to add to the list of relevant authorities who can appoint an independent child trafficking guardian for a child alongside local authorities. The Act currently specifies that

“relevant authority” means—

- a local authority, and
- any other person specified by regulations made by the Scottish Ministers.

The Scottish Government written consultation on expanding the Relevant Authorities closed on 15th August 2016. At the time of writing this report the results of the consultation were not yet known.

### **The existing Scottish Guardianship Service**

Scotland has an advantage over the rest of the UK in that it has a well-regarded and well-tested model of guardianship run by the Aberlour Child Care Trust and the Scottish Refugee Council<sup>62</sup> already in operation. The existing Scottish Guardianship Service works with children and young people who arrive in Scotland unaccompanied and separated from their families. The current service supports unaccompanied asylum seeking and trafficked children and young people and has provided an extensive evidence base for all those across the UK looking to see how a model of guardianship could best support trafficked children. The Scottish Government has not yet said how the proposed model of child trafficking guardians will interface with the Scottish Guardianship Service or whether a new service will be put out for tender through the government’s procurement processes.

### **Good Practice – consultation with young people**

Extensive consultations have taken place across the UK with different stakeholder groups. However, of particular merit is that Scotland has already completed a consultation with children and young people about what they would like to see in a guardian and the results of this consultation will inform future policy and guidance. The young people’s participation and consultation was initiated by the Scottish Government Department of Health. By contrast the Home Office have not requested or initiated any consultation with young people to ensure that the voice of children is heard in the Modern Slavery Act deliberations. The ATMG consider it essential that the voices of children and young people who have been trafficked and exploited are heard and recommends that children and young people are consulted and engaged in policy and practice development. This should become standard practice across the UK.

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<sup>62</sup> [http://www.aberlour.org.uk/how\\_we\\_help/services/248\\_scottish\\_guardianship\\_servic](http://www.aberlour.org.uk/how_we_help/services/248_scottish_guardianship_servic)

## 5.2 ‘Presumption of Age’ and Special Protection Measures

Article 10 (3) of the European Convention states that:

*“When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.”*

The ATMG is mindful that the presumption of age obligations in the Convention also include a reference to providing ‘special protection measures’, but there has been no articulation in any of the individual laws about the definition of special protection measures for children who are not trafficked and exploited, beyond the provision of a guardian/advocate. The Trafficking Convention itself implies a higher degree of protection than is offered to children who are trafficked and exploited. There is a need to ensure that essential support such as accommodation, language support and legal advice are provided at an enhanced level and not eroded through ambiguity or a gradual watering down of guidance over time. Article 16 (1) of the Trafficking Directive also obliges Member States to take due account of the personal and special circumstances of the unaccompanied child victim.

The ATMG is concerned that what government has set is a two-stage test – first the reason to believe the young person is a child; followed by the reason to believe they are trafficked. All separated children should have heightened protection because that is the very core of their vulnerability. We already know this the identification process of trafficking, especially at an early stage of encountering a young person, is very tricky but that is when they need the presumption of age most.

### England & Wales

The presumption of age is dealt with in Section 51 of the Modern Slavery Act but the particular protection measures are not specified in the Act itself. Instead the Act relies on future regulations and guidance using the term “Relevant Arrangements” in Section 51 (3).

“Relevant arrangements” means arrangements for providing assistance and support to persons who are, or who there are reasonable grounds to believe may be, victims of human trafficking, as set out in—

- (a) Guidance issued under section 49(1)(b)<sup>63</sup>
- (b) any regulations made under section 50(1).

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<sup>63</sup> \*arrangements for providing assistance and support to persons who there are reasonable grounds to believe may be victims of slavery or human trafficking

## Scotland

The presumption of age is dealt with in Section 12 of the Human Trafficking and Exploitation (Scotland) Act 2015 and although the Act does list the specific national laws unto which it refers it does not include any elaboration about what level of support and protection should be offered to children under this Section. As with the Modern Slavery Act, Section 12 (2) of the Scottish Act does not require the assessment of age to be a 'lawful' assessment of age as determined by Scottish law.

Section 12 -

(2) Until an assessment of the person's age is carried out by a local authority, or the person's age is otherwise determined, the relevant authority must assume that the person is a child for the purposes of exercising its functions under the relevant enactments.

(3) The "relevant enactments" are—

(a) an enactment which applies to a child who is looked after by a local authority within the meaning of section 17(6)(a) of the Children (Scotland) Act 1995 (child for whom a local authority is providing accommodation),

(b) section 22 of the Children (Scotland) Act 1995 (promotion by a local authority of welfare of children in need),

(c) section 25 of the Children (Scotland) Act 1995 (provision by a local authority of accommodation for children),

(d) Part 4 of the Children and Young People (Scotland) Act 2014 (provision of named persons),

(e) Part 5 of the Children and Young People (Scotland) Act 2014 (child's plan), and

(f) section 11.

## Northern Ireland

The Northern Ireland Act does not contain specific reference to the presumption of age. Other than a reference in s18 (2)(a), which deals with the provision of assistance & support to an adult:

"This section applies to a person if—

(a) that person is aged 18 or over or, in a case where the age of the person is uncertain, the Department reasonably believes that person is aged 18 or over;...."

The presumption of age section of the Act/s is a positive development in principle that should offer important protections to children. The interpretation and use of this principle requires close monitoring.

## Conclusion & recommendations

To date none of the proposed models for guardianship under the trafficking and modern slavery laws have commenced. It is almost certain that there will be no commencement of a new guardianship scheme in any nation before 2017. By comparing the provisions across all three jurisdictions it is Northern Ireland that provides the most comprehensive model for guardianship written into the legislation itself but Scotland may be more able to get up and running quicker

because of the existing guardianship service. The full implementation of the Modern Slavery Act appears to be most likely to stumble due to delays rolling out a full service across England and Wales while testing at 'Early Adopter Sites' and adjusting the model as it goes along.

One element that is almost certain to be inconsistent across the three laws is the age at which the guardian/advocate can remain with the young person. Northern Ireland has it written into statute that a guardian is available for children up to 21 years of age in some circumstances. In Scotland it will ultimately be a matter for the regulations to determine this upper age-limit, however current social work practice in Scotland is to allow children to access local authority care up to 26 years of age, and the current guardianship service already includes young people over 18. In England and Wales this upper age-limit is not specified in the Modern Slavery Act but will be a matter for regulations.

It is also not clear in any of the three laws whether a guardian can be appointed in circumstances where a young person has already been determined to be 18 years or more but who has challenged this assessment in a court process. These young people need particular attention as their vulnerability is increased when they are, potentially incorrectly, placed into the adult system. There needs to be policy coherence with the principle of 'benefit of the doubt' on age, which is now embedded into law, and greater clarity for the role of guardian/advocate. The ATMG recommends that:

- **A joint panel review be undertaken by the Children's Commissioners of England, Wales, Scotland and Northern Ireland after the first year of commencement of all the advocates/guardianship schemes in order to identify if the models are being implemented in the spirit and letter of the law, and to highlight policy gaps and inconsistencies between each jurisdiction.**
- **All guardianship schemes across the UK enable children to stay with the guardian/advocate up to the age of 21 years of age.**
- **The voices of children and young people who have been trafficked and exploited are consulted in policy and practice development on the advocate/guardianship schemes in each jurisdiction.**

## **England/Wales**

- **The government issue a clearly-worded position statement to ensure that the appointment of a Child Trafficking Advocate is not dependent on a positive NRM decision and clarifies in Regulations the term 'reasonable grounds' used in Section 48 (6)(c) of the Modern Slavery Act.**
- **The Advocate scheme is expanded to include all separated children to enable an Advocate to be appointed to all vulnerable children at the earliest possible point**
- **Full implementation of the Independent Child Trafficking Advocates scheme across England and Wales is expedited and that an early review of the Early Adopter sites is undertaken.**

## **Northern Ireland**

- **The Northern Ireland Regulations expand to allow qualified professionals who are not social workers to be appointed as Independent Guardians**
- **The Independent Child Guardianship provisions are prioritised and implemented without further delay.**

## **Scotland**

- **Scotland expands the guardianship scheme to include all trafficked children, including British nationals, and clarifies what it means about a child being ‘vulnerable’ to trafficking. The Scottish Government should also clarify that if a child is trafficked into the UK by a person with parental responsibility rights, or that the person with parental responsibility rights in the UK is an associate of the trafficker, the child is entitled to support from the child trafficking guardianship service.**



# Chapter 6: Non-Criminalisation of Victims

All three laws make provision for the non-prosecution of victims who may have committed a criminal offence as a result of exploitation. However, there are differences in the way each jurisdiction has approached it. The following chapter will discuss the differences between the Acts and their potential merits. The chapter will also discuss the ‘Duty [on public authorities] to identify’ and the role of prosecutors in identifying victims and preventing unnecessary criminalisation.

The principle of non-punishment/prosecution of victims can be found in the Trafficking Convention and Directive<sup>64</sup>. The wording of the respective provisions is set out below.

Trafficking Convention	Trafficking Directive
<p><b>Article 26 – Non-punishment provision</b></p> <p>Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.</p>	<p><b>Article 8 - Non-prosecution or non-application of penalties to the victim</b></p> <p>Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.</p>

The explanatory note to the European Trafficking Directive states that:

*“Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.” [Article 8]*

The relevant sections setting out the non-punishment/prosecution of victims across the Acts are as follows:

<sup>64</sup> \*The ‘Trafficking Convention’ refers to the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, and the ‘Directive’ refers to the 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU).

## 6.1 Statutory defence and non-prosecution in the UK Acts

	<b>Modern Slavery Act, 2015</b>	<b>Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015</b>	<b>Human Trafficking and Exploitation (Scotland) Act 2015</b>
	<i>England/Wales</i>	<i>Northern Ireland</i>	<i>Scotland</i>
	<b>Section 45 and Schedule 4:</b> Defence for slavery or trafficking victims who commit an offence.	<b>Section 22:</b> Defence for slavery and trafficking victims compelled to commit an offence.	No Statutory Defence provision in the Act but the non-punishment provision is embedded within Section 8: Lord Advocate's instructions on prosecution of victims of offences.
<b>Royal Assent</b>	26th March 2015	13th January 2015	31st May 2016
<b>Regulations</b>	Schedule 4 para. 1 in force on 31st July 2015 by Statutory Instrument 2015/1476, reg. 2(i)	N/A	Lord Advocates Instructions commenced 31st May 2016

There are key differences between the respective provisions across the Acts. The table below provides a summary of these differences, which are furthered discussed below.

	<b>England/Wales</b>	<b>Northern Ireland</b>	<b>Scotland</b>
<b>Exclusions – which offences are excluded from the Statutory Defence provisions</b>	Section 45 contains specific details of the statutory defence provisions. Subsection (7) introduces Schedule 4, which sets out those offences to which the defence (for both those under the age of 18 and those over the age of 18) will not apply. Subsection (8) enables the Secretary of State to amend Schedule 4 through regulations.	Section 22 contains specific details of the Statutory Defence provisions. Subsection (9) sets out that the defence under section 22 (whether for adults or children) only applies to offences which attract a maximum sentence of less than five years, as well as to a small number of additional specified offences which are particularly linked with trafficking and exploitation.	Section 8 places a duty on the Lord Advocate to prepare and publish instructions for prosecutors about the prosecution of suspected or confirmed victims of the offence of human trafficking and the offence under section 4 of the Act. Neither the Act nor the Lord Advocate's Instructions contain a list of exclusions

<b>Oversight - Duty to report to the National Lead Prosecutor for a final decision to be made</b>	N/A	N/A	The Lord Advocate's Instructions explicitly state that in all cases where the suspect has been identified as a victim of human trafficking and exploitation each case must be reported to the National Lead Prosecutor for Human Trafficking and Exploitation for a final decision to be made. [para 25]
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The non-punishment provision exists in all three Acts but is most distinct in Scotland where Section 8 of the Human Trafficking and Exploitation (Scotland) Act 2015 allows the principles of the non-punishment and its practical interpretation to be detailed in the Lord Advocate's Instructions, which in turn provides an easily understood set of guidelines for lawyers and non-lawyers.

In particular the Lord Advocate's Instructions require that in all cases where the suspect has been identified as a victim of human trafficking and exploitation they must be reported to the National Lead Prosecutor for Human Trafficking and Exploitation for a final decision to be made. The ATMG considers this to be exemplary practice for monitoring and enhancing understanding of criminal practices and recommends that this be adopted in England, Wales and Northern Ireland. The central gathering of case data by the National Lead Prosecutor when the defence is raised would greatly assist in building a UK-wide picture on the use of this defence.

## Scotland

The Preamble to the Lord Advocate's Instructions illustrates the evolving nature of criminality, and explains that the statutory defence may be invoked in offences committed as part of the process of trafficking or as a consequence of trafficking. Paragraph 4 of the Preamble states that:

*"The list of offences which victims of human trafficking or exploitation may commit is constantly evolving. The most common types of offences which victims commit in the process of trafficking or exploitation include immigration offences and possession of false identity documents. The offences which victims commonly commit as a consequence of the trafficking or exploitation include the production or being concerned in the sale and supply of controlled drugs, shoplifting, theft by housebreaking, benefit fraud and offences linked to commercial sexual exploitation. Prosecutors should also be alert to the fact that victims of human trafficking or exploitation may themselves commit human trafficking or exploitation offences in relation to other individuals."* [Emphasis added]

On the principles of the non-punishment provision the Lord Advocate's Instructions leave little room for doubt:

7. If there is sufficient evidence that a child aged 17 or under has committed an offence and there is credible and reliable information to support the fact that the child;
  - (a) is a victim of human trafficking or exploitation and
  - (b) the offending took place in the course of or as a consequence of being the victim of human trafficking or exploitation, then there is a **strong presumption** against prosecution of that child for that offence.

8. If there is sufficient evidence that a person aged 18 or over has committed an offence and there is credible and reliable information to support the fact that the person;
  - (a) is a victim of human trafficking or exploitation
  - (b) has been compelled to carry out the offence and
  - (c) the compulsion is directly attributable to being the victim of human trafficking or exploitation, then there is a **strong presumption** against prosecution of that person for that offence.

## England & Wales

Section 45 of the Modern Slavery Act includes a statutory defence for victims of modern slavery.

Section 45 (4) A person is not guilty of an offence if—

- (a) the person is under the age of 18 when the person does the act which constitutes the offence,
- (b) the person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and
- (c) a reasonable person in the same situation as the person and having the person's relevant characteristics would do that act.

There is concern over the interpretation of the term 'direct consequence' which is central to the defence. The Act does not define the term 'direct consequence' used in Section 45 (4)(b) and there is no further explanatory note. This was raised as a concern as part of the Ms. Haughey's Modern Slavery Act review, published in July 2016, which also questioned whether the statutory defence is consistent with Article 8 of the Trafficking Directive.

The Modern Slavery Act review recommended that:

*"In respect of s45 of the Modern Slavery Act, which provides for a defence for slavery or trafficking victims who commit an offence, consideration should be given to clarifying and/or enhancing the term 'direct consequence', and to clarifying the process by which s45 is raised and applied." [Rec 25]*

The ATMG agrees with this recommendation and urges immediate action to clarify this term, not just in CPS guidance but also more widely across the police and for other frontline professionals who come into contact with victims.

The statutory defence in the Modern Slavery Act and in the Northern Ireland Act both contain a 'reasonable person test' i.e. whether a reasonable person in the same situation as the person charged with the offence and having the person's relevant characteristics would have no realistic alternative to doing the criminal act. 'Relevant characteristics' refer to age, sex and any physical or mental illness or disability. In Northern Ireland this test only applies to adult cases but in the Modern Slavery Act this test must also be applied to children. Throughout the Modern Slavery Bill debates the ATMG and others raised concerns about the inclusion of this reasonable person test, particularly in regard for children.

Under international law, namely the UN Trafficking Protocol, the Council of Europe Trafficking Convention and the EU Trafficking Directive, all legally binding for the UK, the presence of any of "the means" – including compulsion – are irrelevant when defining a child as a victim of trafficking. However, the reasonable person test requires a juror to decide whether a reasonable child with relevant characteristics would have acted in the same way – and as such, inadvertently retains the need for a child defendant and victim to prove compulsion in their actions in order to access the protection of the statutory defence.

Legal professionals also questioned whether this test is workable in practice, for both children and adults. As the Immigration Law Practitioners Association (ILPA) explained<sup>25</sup>:

*'This part of the test is an attempt to import an objective element, that of the "reasonable person", but with a subjective twist – the reasonable person must have the same characteristics as the victim in question.... It would require a member of the jury to attempt to imagine what s/he would have done, if s/he had exactly the same personal circumstances and background as the person in question, and were placed in the same situation. The purported objective test is thus a hybrid: it is so subjective (by importing the need for the 'reasonable person' to be, in effect, the same person as the victim, and in the same situation) that it is unable to achieve the intended objectivity. A judge would have real difficulty in directing any jury as to the correct approach as a result.'*

The use of the statutory defence needs to be carefully monitored to ascertain whether the inclusion of the 'reasonable person test' forms a barrier to victims accessing protection from unnecessary punishment and prosecution.

### **Police Guidance**

The College of Policing launched new police guidance on the Modern Slavery Act in 2015 on the Authorised Professional Practice (APP) website<sup>66</sup>. The Modern Slavery guidance is, on the whole, extremely thorough but the ATMG is concerned that the detail regarding non-criminalisation is very weak. The police guidance for Section 45 of the Modern Slavery Act sits within Section 2.9 of the Modern Slavery 'Post Investigation' section on the APP website and states that:

*'If evidence supports the fact that a suspected perpetrator of modern slavery has committed the offence while in a coerced situation, there is strong public interest to stop the prosecution. Where there is clear evidence that the suspect has a credible defence of duress, the case should be discontinued on evidential grounds. [Emphasis added]*

*Section 45 of the Modern Slavery Act 2015 has introduced a statutory defence for slavery or trafficking victims who commit an offence, if it can be evidenced that they were compelled to commit the offence as a result of exploitation. The defence in section 45 does not, however, apply to victims who have committed offences outlined in Schedule 4 of the Act.'*

The ATMG is concerned about the wording of this section, as it appears to link the statutory defence and non-criminalisation only to those who are being investigated as perpetrators of modern slavery. It does not make clear that there are situations where the person suspected of offences such as drug offences, fraud, document offences and forced criminality must be dealt with under Section 45. We are also concerned that the Section 45 guidance is embedded deep within the College of Policing guidance on modern slavery, which is likely to mean that if an investigator were not already looking for modern slavery victims then it would be easily overlooked. There is a link to the Crown Prosecution Service (CPS) website, which has not been updated with the latest CPS guidance for the Modern Slavery Act.

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<sup>65</sup> ILPA Briefing for the Modern Slavery Bill House of Commons, Second Reading, 8 July 2014

<sup>66</sup> Authorised Professional Practice on modern slavery, Available at: <http://www.app.college.police.uk>

Regarding children, there is no clear message about the non-criminalisation of children or the potential types of crimes they may have committed. The ATMG recommends that the non-criminalisation and statutory defence elements in the College of Policing Guidance are enhanced and clarified and that greater attention is given to the section 45 obligations for police.

## Northern Ireland

The non-punishment provision can be found in Section 22 of the Northern Ireland Trafficking and Exploitation (Criminal Justice and Support for Victims) Act.

Section 22 (4)b of the Act also contains the term 'direct consequence':

Compulsion is attributable to slavery or to relevant exploitation only if—

- (a) it is, or is part of, conduct which constitutes an offence under section 1 or conduct which constitutes relevant exploitation, or
- (b) it is a direct consequence of a person being, or having been, a victim of an offence under section 1 or a victim of relevant exploitation.

As with the Modern Slavery Act the ATMG recommends that the term 'direct consequence' in the Northern Ireland Act is clarified or enhanced for guidance and training.

## 6.2 Duty to Identify and the role of the prosecutor

### Scotland

The Lord Advocate's Instructions is the only instrument to set out that there is a "*duty on all public authorities to proactively identify any victim of human trafficking and exploitation*" and it directs prosecutors to carefully consider the information of other statutory and non-government sources when deciding whether to invoke the non-punishment provisions. It states:

10. There is a duty on all public authorities to proactively identify any victim of human trafficking and exploitation. Prosecutors must be alert to the particular circumstances or situations where someone suspected of committing a criminal offence might also be a victim of human trafficking and exploitation. Prosecutors should consider all information provided in a Police Report and instruct further investigation where necessary.

11. The accused may have provided information to the police, a solicitor, a social worker, a representative of a Non-Governmental Organisation (NGO) or any other person who has met with them, suggesting that they are a victim of human trafficking or exploitation and prosecutors must carefully consider the information regardless of its source. It is however important that the veracity of any claim by an accused person is properly tested.

Of particular note in the Lord Advocate's Instructions is Paragraph 13: "*If deemed necessary the Prosecutor should instruct further investigation by the Police to help identify whether these factors exist in any given case...*" and is explicit that a negative NRM, or the absence of an NRM decision, does not mean that the accused is not a victim of trafficking.

14. The absence of a referral to the NRM or a negative finding does not of itself mean that the accused is not a victim of human trafficking or exploitation. In relation to children the Police should always seek further information from the relevant child protection authorities."



## England & Wales

The Modern Slavery Act does not make it a statutory duty for prosecutors to identify victims and does not direct that all such cases where suspects may be victims they must be referred to a single lead prosecutor. However, there is guidance for prosecutors provided by the Crown Prosecution Service (CPS) on the use the Statutory Defence under Section 45, and there is further guidance regarding when a prosecutor should use the discretionary 'Public Interest' test in human trafficking and exploitation cases. The current CPS guidance relies heavily on the prosecutor being presented with evidence about the specific trafficking and exploitation situation from either the police, or the National Referral Mechanism, before taking such action to invoke the statutory defence. The current CPS guidance directs that:

'In considering whether a suspect might be a victim of trafficking or slavery, as required in the first stage of the assessment, prosecutors should have regard to the duty of the prosecutor to make proper enquiries in criminal prosecutions involving individuals who may be victims of trafficking or slavery.

The enquiries should be made by:

- advising the law enforcement agency which investigated the original offence that it must investigate the suspect's trafficking /slavery situation; and
- advising that the suspect is referred through the NRM for victim identification (if this has not already occurred). All law enforcement officers are able to refer potential victims of trafficking/slavery to the NRM...'

Indeed the current CPS guidance says, "Prosecutors should take account of an NRM decision (reasonable grounds or conclusive grounds) regarding the status, or potential status, of the suspect as a victim of trafficking/slavery when considering the decision to prosecute; however a conclusive decision will carry more weight."

Where an NRM referral has been made the CPS Guidance states that:

*'If there is a conclusive grounds decision under the NRM that a suspect is a victim of trafficking or slavery; and there is evidence that proves on a balance of probabilities that the other conditions in section 45 are met, relevant to whether the suspect is an adult or child; and the offence is not an excluded offence under schedule 4 of the Act, then no charges should be brought.*

*If there is no NRM conclusive grounds decision but other available evidence shows that on the balance of probabilities the suspect is a victim; that is, it is more likely than not that they are a victim of trafficking or slavery, this will satisfy the evidential stage of victim status. Where there is a reasonable grounds decision only, prosecutors should make enquiries about when a conclusive decision is likely to be made. If there is to be a delay, then prosecutors can take account of the reasonable grounds decision of the suspect but should additionally consider other evidence and the seriousness of the offence when considering the decision to prosecute.*

*If the suspect is not a victim of trafficking or slavery, it is immaterial whether he fulfils the other conditions; the defence is not then available.'*

The CPS guidance is silent on the protocol and procedures to protect the victim in circumstances where the NRM decision is negative but where a third party other than police, such as a social worker or legal representative, believes that the person is a victim of trafficking or exploitation. This



is a significant omission in the guidance and one that causes great concern to the ATMG given the large number of negative NRM decisions that have been successfully challenged.

The ATMG recommends that a review is undertaken on all cases where the statutory defence has been raised to identify inconsistencies across the implementation of three Acts.

## Conclusion & Recommendations

Central collation of data on cases where the statutory defence has been raised is necessary in order to assess the effectiveness of the defence and the frequency of its use. The Lord Advocate's Instructions provided for by section 8 of the Scottish Act provides the clearest example of the principles and guidance for a statutory defence. The wording is unambiguous and can be easily used in policy and training for people without legal training. There is also a strong element of oversight and accountability built into the Lord Advocate's Instructions that is currently missing in the other jurisdictions. The ATMG recommends that England, Wales and Northern Ireland adopt the practice set out in the Lord Advocate's Instructions to require that in cases where the suspect has been identified as a victim of human trafficking and exploitation the case must be reported to the National Lead Prosecutor for Human Trafficking and Exploitation. The ATMG recommends:

- **In line with Recommendation 25 of the Modern Slavery Review<sup>67</sup>, the term 'direct consequence' should be clarified and/or enhanced; and that it is equally considered in the Northern Ireland Act where the term 'direct consequence' is also used.**
- **Police guidance on the statutory defence and on non-criminalisation is clarified and enhanced, ensuring that cases involving children are given particular attention.**
- **CPS guidance for England and Wales is brought into line with the Northern Ireland Act and with the Lord Advocate's Instructions in Scotland to make clear to prosecutors that a negative NRM, or the absence of an NRM decision, does not mean that the accused is not a victim of trafficking for the purpose of the statutory defence.**

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<sup>67</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/542047/2016\\_07\\_31\\_Haughey\\_Review\\_of\\_Modern\\_Slavery\\_Act\\_-\\_final\\_1.0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf)

# Chapter 7: Overseas Domestic Workers

Domestic workers based overseas can accompany their foreign employers to the UK and work for them throughout the duration of their stay. In order to do so they must obtain an ‘Overseas Domestic Workers (ODW) visa’. Some domestic workers are exploited and abused by their employers and trapped in situations of domestic servitude. In 2015, over 300 domestic workers were referred into the National Referral Mechanism as potential victims of trafficking, a 50% increase in the number referred in 2014.

This chapter discusses the terms of the ODW visa, widely believed to exacerbate rates of abuse by ‘tying’ the worker to their employer, and explore the debates that took place on the Modern Slavery Act that resulted in an independent review of the terms of the visa. The chapter argues that domestic workers remain a highly vulnerable group in the UK.

	<b>Modern Slavery Act*</b>
<b>Overseas Domestic Workers</b>	<p><b>Section 53</b></p> <p>(1) Immigration rules must make provision for leave to remain in the United Kingdom to be granted to an overseas domestic worker—</p> <p>(a) who has been determined to be a victim of slavery or human trafficking, and</p> <p>(b) in relation to whom such other requirements are met as may be provided for by the rules.</p> <p>(2) Immigration rules must make provision as to the conditions on which such leave is to be granted, and must in particular provide—</p> <p>(a) that the leave is to be for the purpose of working as a domestic worker in a private household;</p> <p>(b) for a person who has such leave to be able to change employer (subject to paragraph (a)).</p> <p>(3) Immigration rules may specify a maximum period for which a person may have leave to remain in the United Kingdom by virtue of subsection (1). If they do so, the specified maximum period must not be less than 6 months</p> <p><i>See the Act for further sub-sections 53 (4) - (7)</i></p>

\* Immigration is a reserved matter hence the changes to the Immigration rules made by Section 53 of the Modern Slavery Act will affect Overseas Domestic Workers in all UK jurisdictions.

## The Overseas Domestic Workers visa

Overseas Domestic Workers (ODWs) must obtain a pre-entry visa to accompany and work for their employer in the UK. Around 17,000 of these visas are issued to ODWs each year.

Significant changes were made to the terms of the ODW visa on 6th April 2012; domestic workers were prohibited from changing employers, or renewing or extending their visa beyond the original 6-months visa term. These changes effectively prevented domestic workers from challenging abusive treatment they received from their employer. Domestic workers who left their employer to escape their exploitative treatment were effectively in breach of the immigration rules and

at risk of deportation. Data collected by Kalayaan showed that these changes led to greater levels of abuse<sup>68</sup>. The 'tied visa' was widely criticised by politicians, academics, domestic worker organisations, NGOs, and trade unions.

## **An opportunity through the Modern Slavery Act**

The introduction of the draft Modern Slavery Bill was seen by many as an opportunity to reinstate the pre-2012 protections for ODWs. Written and oral evidence was provided to the Joint Committee on the Draft Modern Slavery Bill highlighting how the visa changes had exacerbated rates of abuse. The Committee called for an urgent reversal of the April 2012 changes which, it stated, had '*unintentionally strengthened the hand of the slave master over the victim*'<sup>69</sup>. An amendment was tabled in Committee to reverse the 2012 visa changes but it was defeated by a casting vote of the Committee chair.

Lord Hylton maintained the focus on ODWs in the House of Lords by tabling a similar amendment. The amendment re-introduced some of the basic but vital protections for domestic workers that were removed in April 2012, including the right to change employer and to extend their leave, for a period not exceeding 12 months. The amendment also included provision for a 3-month visa permitting a worker to live in the UK for the purposes of seeking alternative employment as a domestic worker where there is evidence they are a victim of modern slavery.

Ultimately the Government defeated the amendment when the Bill returned to the House of Commons. Section 53 was instead included in the Act, which allowed for 6 months leave to a recognised victim of trafficking with a positive conclusive grounds decision.

## **James Ewin's independent review**

The parliamentary debates prompted the government to commission an independent review of the Overseas Domestic Worker regime. The then minister Karen Bradley said she '*could not commit a future government but the intention is that whoever is in government will implement the review's recommendations*'<sup>70</sup>. The review<sup>71</sup>, carried out by James Ewins, recommended that domestic workers be allowed to change employers and to renew their visa for up to two years. It made a number of other recommendations including providing mandatory information sessions for all domestic workers staying in the UK for more than 42 days. The expert organisation Kalayaan, amongst others, welcomed these recommendations as a significant step towards preventing trafficking for domestic servitude and other forms of exploitation and enabling domestic workers in abusive situations to escape.

Unfortunately, while the Government accepted some of the Ewins' review recommendations, it chose not to implement them all, in particular it did not implement the recommendation to allow all ODWs the right to change employer and apply for annual visa extensions provided they are working as a domestic worker.

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<sup>68</sup> <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-2nd-Reading-Modern-Slavery-Bill.pdf>

<sup>69</sup> <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtselect/166/16603.htm>

<sup>70</sup> Karen Bradley MP, 17 March 2015 Modern Slavery Bill debates

<sup>71</sup> <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review>

The Government has made changes to the Immigration Rules which permit a domestic worker to change employer but only in the first 6 months of their original visa term. Only those recognised to be a victim of trafficking or slavery through the NRM can apply to renew their 6-month visa for a period not exceeding two years. **The ATMG believes that these concessions will make little difference in practice to the rate of abuse experienced by domestic workers.**

- Workers who choose to leave their employer, perhaps due to abuse, will have just a few months or weeks remaining on their visa in which to find alternative work, and will likely have to do so without any references. In practice it will be extremely difficult, if not impossible, for ODWs to find alternative work and change employer in this short time frame. Domestic workers will be left with the choice to remain in an exploitative situation, risk entering into new, potentially precarious employment, or unemployed and without recourse to public funds.
- The NRM is still not designed to deal with the problems and abuse faced by domestic workers tied to their employers. The government has proffered that victims whose situation meets the Trafficking Convention's definition of human trafficking will be allowed to apply for a 2-year visa, up from the 6 months provided for by the Modern Slavery Act 2015. However this will be of no use to domestic workers who do not meet this definition but who have nonetheless been abused.
- If an NRM referral is the only route through which domestic workers can remain in the UK, it will be easier for their employers, and perhaps NRM decision-makers, to claim they are fabricating the allegations. The power imbalance continues to remain in their employer's favour.

There are other issues with linking a domestic worker visa with an NRM decision. Domestic workers who are referred into the NRM and receive a positive reasonable grounds decision<sup>72</sup> during their initial 6-month visa term will be permitted to continue working for so long as their case is being considered. Those who are issued a positive reasonable grounds decision or come to the attention of the authorities as a potential victim after the 6 months and are then referred into the NRM will need to wait until they receive a positive conclusive decision before they can then apply for a visa. They are not permitted to work to support themselves in this period. In some cases, Kalayaan has had clients waiting for over a year before a decision is made at the conclusive grounds stage. This is a time of extreme worry and uncertainty for vulnerable domestic workers.

If a victim is issued a conclusive grounds decision, they must apply for a visa within 28 days of receiving confirmation from the Home Office. There is no fee for this application. The Home Office website says that a victim of trafficking does not need to have a job when they apply for this visa but victims must provide evidence of their finances and how they plan to maintain and accommodate themselves without recourse to public funds. This will prove nigh impossible for those who have been residing in safe house accommodation and have not had permission to work whilst a decision on their trafficking claim is being considered. Many will have been out of work for a long period of time and will be without references. This could be overcome if all domestic workers referred into the NRM are entitled to work, irrespective of their immigration status.

## Information meetings for ODWs

The government has agreed to implement James Ewins' second key recommendation of mandatory information meetings for domestic workers who remain in the UK for more than 42

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<sup>72</sup> Immigration (Variation of Leave) Order 2016 (SI 2016 No. 948) came into force on 6th October 2016, and requires that domestic workers must have received a positive reasonable grounds decision in the NRM in order to continue working whilst their case is being considered; it does not suffice to merely have been referred into the NRM.

days. The provision of independent information, advice and support in a format and language domestic workers can understand is of fundamental importance, so they are aware of and are able to enforce their rights while at work in the UK. A pilot scheme for the information meetings is being planned.

The government has also stated that they want to refocus their checks on employers to ensure they can better prevent them bringing more domestic workers to the UK when they do not comply with requirements. The government has said they will introduce this by changes to the Immigration Rules later this year<sup>73</sup>. It remains to be seen how the government will punish abusive employers and whether this will act as a sufficient deterrent.

## Conclusion & Recommendations

Despite assurances to the contrary, the UK Government did not implement fully the recommendations made in the Independent Review of the Overseas Domestic Worker visa, in particular it has not accepted the recommendation to give ODWs the universal right to change employer and renew their visa annually. The changes that the Government has chosen to make to the terms of the ODW visa provide little additional protection to domestic workers in practice, and ODWs remain a particularly vulnerable group in the UK. It is unclear if and how attendance at information meetings will help vulnerable domestic workers to assert their rights and serve to identify abusive employers. The ATMG recommends:

- **In line with the Ewins' review, information meetings are made compulsory to all domestic workers coming to the UK. The information delivered at these meetings needs to be clear and in a format and language each domestic worker can understand. Onus to attend these meetings should lie with an employer and this condition be placed in the employment contract (Appendix 7) as part of the application for entry clearance. Failure to attend these meetings should be followed up with further investigation.**
- **Domestic workers already in the UK who entered pre April 2012 should also be made to attend information meetings. Attendance should be linked to their extension application in the same way an applicant enrolls their biometrics. The Home Office will have the workers up-to-date contact details from the information provided in their application.**
- **Domestic workers referred into the NRM should be given the right to work at the point of referral, irrespective of their immigration status. This right should then be evidenced on the acknowledgement email or letter from the Home Office following receipt of a NRM referral, which domestic workers can show to prospective employers.**
- **Domestic workers who are victims of exploitation but are not victims of trafficking should be permitted to change employer and apply for a 2-year visa.**
- **In order to bring a domestic worker to the UK, employers must apply for a license. They can lose their license if they fail to comply with UK legislation on the National Minimum Wage or if they are found to have trafficked and exploited domestic workers.**
- **The Legal Aid Agency must allocate more matter starts to experienced legal aid providers so that victims of trafficking and modern day slavery can pursue compensation claims against their traffickers**

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<sup>73</sup> <https://hansard.parliament.uk/Commons/2016-04-25/debates/16042535000002/ImmigrationBill>

## Conclusion

The Anti-Trafficking Monitoring Group welcomes the new trafficking and exploitation laws introduced across the UK in 2015. This new suite of legislation stretching across England, Wales, Northern Ireland and Scotland represents a hugely positive development in the UK's fight against modern slavery. In particular it demonstrates the Prime Minister's continued focus and drive to tackle this issue, and hails a great success in cross-party political agreement. The determination and collaboration between parliament, government and non-government organisations in the legislation's preparation and scrutiny undoubtedly resulted in the strengthening of the resulting laws.

The ATMG recognises that it is very early days; various elements of the legislation are yet to be implemented or have been operational for less than a year. We chose to publish this report at this early stage not just to highlight the differences between the three Acts but to highlight the opportunities for improving policy and practice as the laws begin to take effect.

The intention of government and expectation of all is that the new laws will increase the number of prosecutions, prevent further trafficking and exploitation and enhance the protection of victims. But how are we calibrating success and can we measure it?

Through this research the ATMG has noted that improvements in data recording, collection and analysis are not only desirable but also necessary if we are to know whether the new laws are making a difference. At the moment data collection is fragmented; data on both victims and perpetrators is collected in different ways by different authorities and the necessary context to make the data useful is not always provided. There is still very little data collected and shared between agencies on perpetrators, who are they, how they operate and what happens to them. Intelligence considered sensitive is shared between specific networks, but there is no central mechanism to publish regular updates across the UK to aid with general awareness and prevention. The risk now is that with the differences in definitions and parameters across the three Acts, each jurisdiction will start to evolve their monitoring mechanisms separately and data collected across the UK will not be comparable.

The ATMG believes the only way forward is to have a UK-wide data strategy on modern slavery and a central, statutory body mandated with oversight of all relevant data collection. The ATMG believes that this is a function that could, and should, be undertaken by the Independent Anti-Slavery Commissioner. This function will better equip the Commissioner to monitor the UK's anti-slavery response and drive improvements. The Commissioner should not only act as a central repository for data but be mandated to work with statutory agencies to define what information they should be recording and in what format.

The experiences of victims must play a central role in future assessments of the impact of legislation and policy on modern slavery. We need to go beyond the quantitative NRM referral data and drill down on whether support provided through the Acts makes a difference to the long-term outcomes of victims, and positively impacts on their experience of the criminal justice system and support services. We need to understand more than just the raw numbers of victims, important though that is. A comprehensive UK-wide data strategy and a data collection process overseen by the Independent Anti-Slavery Commissioner will enable a more robust assessment of whether the new laws are making a difference.

We now need to capitalise on the renewed enthusiasm across the UK to end all forms of modern slavery. The new laws give us the opportunity to develop a framework for the future in order to promote a UK-wide manifesto for combatting modern slavery. This requires a willingness to collaborate across and between borders, and requires improvements and consistency in data recording,



collection and analysis. The ATMG believes that in the Independent Anti-Slavery Commissioner there is now a functioning UK-wide mechanism around which everyone can coalesce, ideally placed to lead the UK's anti-slavery efforts.

## **Recommendations**

### **Overarching**

- The UK Government and devolved administrations publish a proposed timetable and monitoring framework for the implementation of the respective Acts.
- The UK Government, in collaboration with the devolved administrations and the Independent Anti-Slavery Commissioner, implement a UK-wide data strategy, with a particular focus on the collection of perpetrator data.
- The Independent Anti-Slavery Commissioner is given the necessary mandate, resources and independence to collate, analyse and report on UK-wide data on modern slavery.
- The statutory guidance and regulations on victim identification and assistance issued by the Secretary of State for the Home Department include support entitlements equivalent to those in the Scotland and Northern Ireland Acts to ensure parity of care across UK jurisdictions.
- The UK Parliament undertake an assessment of the impact of the Acts within five years of their commencement, ensuring that the voices and experiences of victims and stakeholders across all regions are included in it.

### **Independent Anti-Slavery Commissioner**

- The Independent Anti-Slavery Commissioner is given the necessary resources and staff to have oversight of the data collected across the UK on modern slavery victims and perpetrators; to identify trends, gaps in data collection and shortcomings in the UK's response. A summary of this analysis should be included in his annual report.
- The Independent Anti-Slavery Commissioner is given the mandate to determine what specific data statutory bodies should record so that data collection on modern slavery is improved.
- The UK Government and devolved administrations continues to provide the Commissioner with the necessary independence to freely decide on his strategic objectives and priorities, and report openly on research findings without fear of redaction or repercussions.
- Statutory authorities who fall under the 'Duty to Cooperate' should be required to state in writing what action they have taken or propose to take in response to the recommendation(s) made to them by the Commissioner.

### **Criminal Justice Measures**

- The UK Government, in collaboration with the devolved administrations, implement a UK-wide data strategy that includes a responsibility to monitor, record and analyse the criminal defences being used in modern slavery cases.
- The Independent Anti-Slavery Commissioner conducts an Inquiry into the use and effectiveness of criminal offences in the three Acts within two years of their commencement, and works with relevant authorities to ensure that that data collected on modern slavery in each of the three jurisdictions is comparable.
- The Commissioner, together with the Modern Slavery Threat Group, brings a greater focus to the perpetrators by requiring the various criminal justice partner agencies across the UK to submit data on suspected and convicted traffickers for analysis by the Commissioner's office.



- Immediate action should be taken to implement the Modern Slavery Review recommendation number 6 (disseminating guidance on which cases should be recorded as exploitative or trafficking offences) and number 26 (to amend the Modern Slavery Act to introduce a standalone offence of exploitation), and identify how all these measures can be made applicable to both Northern Ireland and Scotland so that there is consistency and cooperation across the UK to different manifestations of exploitation and human trafficking. Consideration should also be given to introducing a separate offence of child exploitation.
- Data is collected on the use of the prevention and risk orders across the jurisdictions and collated centrally by the Independent Anti-Slavery Commissioner. Undertake case analysis on when an application for an order is 'refused' by the court, as well as when successful, so that lessons can be learned and good practice shared.

## **Duty to Notify**

- The Office of the Information Commissioner and the Victims' Commissioner are immediately engaged in the development of good practice regarding the use of the Duty to Notify.
- The Duty to Notify forms are amended to clearly state that children who are suspected victims of trafficking and modern slavery are to be referred into the NRM immediately, and that the completion of an NRM referral is fulfilment of this duty to notify.
- Ensure any guidance or policy on the Duty to Notify gives due regard to the role of a child's guardian or child trafficking advocate.
- Change Part C of the Duty to Notify form to ensure the form only contains non-identifying details.
- Ensure that the person who is the subject of a notification receives 'take home' evidence that their details have been submitted. This could be a tear-off coded slip, with the date, the named person and authority that made the notification.
- Re-think how the Duty to Notify adapts to information regarding victims of re-trafficking.

## **Adult Support Entitlements**

- The Home Office ensures that the statutory guidance and regulations on victim identification and assistance stemming from the Modern Slavery Act are in line with international obligations, and set out victim support entitlements equivalent to those in the Scotland and Northern Ireland Acts to ensure parity of victim care across the UK.
- The Home Office, in the remainder of the NRM pilots, considers the model of support for victims and the viability of the revised NRM model in the devolved administrations. Multi-disciplinary decision-making panels in the NRM pilots should be responsible for making recommendations on the support to be provided to victims, including recommendations on whether the individual should be granted discretionary leave to remain.
- Institute a system of inspection and auditing is instituted for service-providing organisations that support victims of modern slavery across the UK to ensure adequate monitoring of standards of care.
- The Commissioner for Victims and Witnesses undertakes a review of the treatment of victims of modern slavery identified in the UK.

## **Child Guardianship**

- A joint panel review is undertaken by the Children's Commissioners of England, Wales, Scotland and Northern Ireland after the first year of commencement of all the advocates/

guardianship schemes in order to identify if the models are being implemented in the spirit and letter of the law and to highlight policy gaps and inconsistencies between each jurisdiction.

- All guardianship schemes across the UK enable children to stay with the guardian/advocate up to the age of 21 years of age.
- The voices of children and young people who have been trafficked and exploited are consulted in policy and practice development on the advocate/guardianship schemes in each jurisdiction.

### *England/Wales*

- The government issue a clearly-worded position statement to ensure that the appointment of a Child Trafficking Advocate is not dependent on a positive NRM decision and clarifies in Regulations the term 'reasonable grounds' used in Section 48 (6)(c) of the Modern Slavery Act.
- The Advocate scheme is expanded to include all separated children to enable an Advocate to be appointed to all vulnerable children at the earliest possible point.
- Full implementation of the Independent Child Trafficking Advocates scheme across England and Wales is expedited and that an early review of the Early Adopter sites is undertaken.

### *Northern Ireland*

- The Northern Ireland Regulations expand to allow qualified professionals who are not social workers to be appointed as Independent Guardians.
- The Independent Child Guardianship provisions are prioritised and implemented without further delay.

### *Scotland*

- Scotland expands the guardianship scheme to include all trafficked children, including British nationals, and clarifies what it means about a child being 'vulnerable' to trafficking. The Scottish Government should also clarify that if a child is trafficked into the UK by a person with parental responsibility rights, or that the person with parental responsibility rights in the UK is an associate of the trafficker, the child is entitled to support from the child trafficking guardianship service.

## **Non-criminalisation of victims**

- In line with Recommendation 25 of the Modern Slavery Review, the term 'direct consequence' should be clarified and/or enhanced; and that it is equally considered in the Northern Ireland Act where the term 'direct consequence' is also used.
- Police guidance on the statutory defence and on non-criminalisation is clarified and enhanced, ensuring that cases involving children are given particular attention.
- CPS guidance for England and Wales is brought into line with the Northern Ireland Act and with the Lord Advocate's Instructions in Scotland to make clear to prosecutors that a negative NRM, or the absence of an NRM decision, does not mean that the accused is not a victim of trafficking for the purpose of the statutory defence.

## **Overseas Domestic Workers**

- In line with the Ewins' review, information meetings are made compulsory to all domestic

workers coming to the UK. The information delivered at these meetings needs to be clear and in a format and language each domestic worker can understand. Onus to attend these meetings should lie with an employer and this condition be placed in the employment contract (Appendix 7) as part of the application for entry clearance. Failure to attend these meetings should be followed up with further investigation.

- Domestic workers already in the UK who entered pre-April 2012 should also be made to attend information meetings. Attendance should be linked to their extension application in the same way an applicant enrolls their biometrics. The Home Office will have the workers up-to-date contact details from the information provided in their application.
- Domestic workers referred into the NRM should be given the right to work at the point of referral, irrespective of their immigration status. This right should then be evidenced on the acknowledgement email or letter from the Home Office following receipt of a NRM referral, which domestic workers can show to prospective employers.
- Domestic workers who are victims of exploitation but are not victims of trafficking should be permitted to change employer and apply for a 2-year visa.
- In order to bring a domestic worker to the UK, employers must apply for a license. They can lose their license if they fail to comply with UK legislation on the National Minimum Wage or if they are found to have trafficked and exploited domestic workers.
- The Legal Aid Agency must allocate more matter starts to experienced legal aid providers so that victims of trafficking and modern day slavery can pursue compensation claims against their traffickers.



The Anti-Trafficking Monitoring Group (ATMG) was established in May 2009 and works to promote a victim-centred, human rights-based approach to protect the well-being and best interests of trafficked persons.

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**The ATMG comprises:**

AFRUCA

Amnesty International UK

Anti-Slavery International

Bawso

ECPAT UK

Focus on Labour Exploitation (FLEX)

Helen Bamber Foundation

Kalayaan

Law Centre (NI)

The TARA Service (Trafficking Awareness Raising Alliance, of Community Safety Glasgow)

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# The Anti Trafficking Monitoring Group

