

Modern Slavery offences Consultation

October 2020

Modern Slavery Offences

Consultation

About this consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
- Duration:** From 15 October 2020 to 15 January 2021
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council
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- How to respond:** Please send your response by 15 January 2021 to:
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- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:
www.sentencingcouncil.org.uk
A series of consultation meetings is also taking place. For more information, please use the “Enquiries” contact details above.
- Response paper:** Following the conclusion of this consultation exercise, a response will be published at: www.sentencingcouncil.org.uk
- Freedom of information:** We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.
In addition, responses may be shared with the Justice Committee of the House of Commons.
Our [privacy notice](#) sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. The Council consults on its proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

Why Modern Slavery offences?

This consultation seeks views on a draft of the first dedicated sentencing guidelines for offences under the Modern Slavery Act 2015. These draft guidelines can be found [here](#).

There are currently no definitive guidelines for offences under the 2015 Act. The Act covers offences of holding someone in slavery, servitude, and forced or compulsory labour (section 1) and of trafficking for the purposes of exploitation (section 2). It also makes it an offence to commit an offence with the intention of committing a human trafficking offence. In addition to the offences, it provides for various orders, including reparation orders, and risk and prevention orders, breach of which is a criminal offence.

The offences in sections 1 and 2 of the Act cover a range of behaviour. A common feature of the offending is that victims are vulnerable in some way, and whilst some may be physically restrained or imprisoned, others will be subject to threats and treatment which, combined with their vulnerability, make escape from their position an impossibility. The offence of human trafficking (section 2) may involve recruiting, harbouring, receiving or transferring people cross-border, but not necessarily.

It is important to note that the apparent consent or willingness of the victim is not a defence to either offence.

Both offences can be committed on an organised, industrial scale with a significant commercial motivation, or they can be committed on a more limited, opportunistic or one-off basis.

Since the provisions relating to offences came into force in July 2015, the Act has been the subject of two reviews. The first of these reviews, looking at the effectiveness of the Act's criminal justice provisions was conducted by barrister Caroline Haughey in 2016, and made a specific recommendation about the development of guidelines for these offences¹. More recently, the Independent Review of the Modern Slavery Act 2015 led by Baroness Elizabeth Butler-Sloss, Maria Miller MP and Frank Field MP also made a recommendation in its March 2019 report relating to Modern Slavery Reparation Orders and sentencing guidelines.²

The Sentencing Council agrees that it will be important to provide courts with clear guidance about the factors to take into account when sentencing modern slavery cases,

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf

especially given they are relatively new, and bearing in mind the serious and often long-lasting impact that this offending has on victims.

What is the Council consulting about?

The Council has produced this consultation paper in order to seek views from as many people as possible interested in the sentencing of modern slavery offences.

However, it is important to clarify that the Council is consulting on sentencing guidelines for these offences and not the legislation upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guidelines more or less serious;
- the additional factors that should influence the sentence;
- the types and lengths of sentence that should be passed; and
- anything else you think should be considered.

A summary of the consultation questions can be found at **Annex B**.

What else is happening as part of the consultation process?

This is a three month public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from groups with an interest in this area. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all courts.

Alongside this consultation paper, the Council has produced an online questionnaire. The Council has also produced a resource assessment for the guideline, along with a statistical bulletin and data tables showing current sentencing practice for these offences. The online questionnaire, resource assessment, statistical bulletin and data tables can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk

In the following sections the proposed guidelines are outlined in detail and you will be asked to give your views. You can give your views by answering questions on just the areas which you are interested in or all of the questions below, either by email to consultation@sentencingcouncil.gov.uk or by using the online questionnaire.

Section One: Overarching issues

Approach to the guidelines

In preparing the guidelines, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council's aim is to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

The proposed guideline covers two main offences under the Modern Slavery Act 2015: offences contrary to section 1 (slavery, servitude and forced or compulsory labour), and section 2 (human trafficking). These offences have a maximum penalty of life imprisonment. However, there are two further offences where we propose to provide brief guidance: section 4 (committing an offence with the intention of committing a human trafficking offence), which has a maximum of ten years' imprisonment (or life imprisonment where the offence committed is kidnapping or false imprisonment); and section 30 (breach of a slavery and trafficking risk order (STRO) or slavery and trafficking prevention order (STPO)), which has a maximum penalty of five years' imprisonment.

Sections 1 and 2

The offences under section 1 and section 2 share the same maximum penalty (life imprisonment) and the approach to sentencing them in both the Crown Court and Court of Appeal has been very similar. In the case of *R v Khan [2010] EWCA Crim 2880*, the Court of Appeal set out the factors to be taken into account in sentencing the offence of trafficking people for exploitation contrary to section 4 of the Asylum and Immigration (Treatment of Claimants) Act 2004. In *Khan*, the factors are based not just on the act of trafficking itself but on the offender's culpability for the subsequent forced labour, and the harm caused by it, since the offence encompasses the offender's intention that the victim be exploited. These factors have been applied in several trafficking and forced labour cases, under previous and current legislation (as discussed below). In practice, the offences of trafficking and slavery or forced labour are often sentenced together, and judges often use the same factors for both offences.

Given these considerations, the Sentencing Council proposes to have one guideline covering both the section 1 and section 2 offences, with the same culpability and harm factors, and the same aggravating and mitigating factors. Some factors will be more relevant to trafficking cases under section 2, and some more relevant to section 1 offences. Others will be common to both offences. As with all guidelines, sentencers will apply the factors which are relevant to the case before them.

Section 4

Given the small number of cases prosecuted so far under section 4 (committing an offence with the intention of committing a human trafficking offence), the potential breadth of the offence covering any other original offence, and the likelihood of any such offences being charged and sentenced alongside both the preliminary offences and section 2 offences, the Sentencing Council does not propose to create a detailed guideline for the section 4 offence. However, we consider that it will assist courts to provide a brief guideline, along

the lines of that provided for the offence of committing an offence with intent to commit a sexual offence under section 62 of the Sexual Offences Act 2003. See <https://www.sentencingcouncil.org.uk/offences/crown-court/item/committing-an-offence-with-intent-to-commit-a-sexual-offence/>.

Section 30

When the Council developed its *Breach Offences Definitive Guideline*, which came into force in October 2018³, it did not develop a separate guideline for the section 30 offence (breach of an STRO or STPO). In general, the *Breach Offences* guideline took a similar approach to culpability across several guidelines, with different approaches to harm depending on the particular harm which an order was intended to prevent. Although culpability factors are likely to be similar for the section 30 offence, the range of harms associated with breach of a STRO or STPO is very broad, covering economic harm as well as physical and psychological harm. We therefore do not propose to develop a separate guideline for the section 30 offence but instead to deal with it as an analogous offence within the *Breach Offences* guideline, with some additional explanatory guidance for sentencers.

Sources for the guidelines

A relatively low, but growing, number of cases have been sentenced under the Modern Slavery Act 2015. However, the Modern Slavery Act 2015 repealed and replaced several pre-existing trafficking and slavery offences, including:

- the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (section 4);
- the Coroners and Justice Act 2009 (section 71); and
- the Sexual Offences Act 2003 (section 59A)

Importantly, the 2015 Act increased the maximum penalty for these offences from 14 years' imprisonment to life imprisonment. In preparing this draft guideline, we have taken into account the culpability, harm, aggravating and mitigating factors considered by the courts for offences not just under the Modern Slavery Act 2015, but also the predecessor offences. The sentence levels applied by the courts in these cases have also been taken into account, noting the increase in maximum penalties. The existing guideline for trafficking for the purpose of sexual exploitation under section 59A of the Sexual Offences Act 2003, currently part of the *Sexual Offences* guideline⁴, has also helped to provide a starting point for developing these guidelines.

The principles informing the draft guidelines have been set out in various pieces of case law over the years. Notably, examples of slavery, servitude and enforced labour include the cases of *Khan [2010] EWCA Crim 2880* referred to above, *R v Connors [2013] EWCA Crim 324* and, more recently, *R v Zielinski [2017] EWCA Crim 758* – the last of which was a case under the Modern Slavery Act 2015. In *Connors*, the then Lord Chief Justice, Lord Judge set out an often-cited guiding principle in such cases:

Sentences in this class of case must make clear, not merely that the statutory minimum wage should not be undermined, but much more important, that every vulnerable victim of exploitation will be protected by the criminal law, and they must

³ <https://www.sentencingcouncil.org.uk/publications/item/breach-offences-definitive-guideline/>

⁴ <https://www.sentencingcouncil.org.uk/offences/crown-court/item/trafficking/>

also emphasise that there is no victim, so vulnerable to exploitation, that he or she somehow becomes invisible or unknown to or somehow beyond the protection of the law. Exploitation of fellow human beings in any of the ways criminalised by the legislation represents deliberate degrading of a fellow human being or human beings. It is far from straight forward for them even to complain about the way they are being treated, let alone to report their plight to the authorities so that the offenders might be brought to justice. Therefore when they are, substantial sentences are required, reflective, of course, of the distinctions between enslavement, serfdom, and forced labour, but realistically addressing the criminality of the defendants.⁵

Statistical background

It is difficult accurately to estimate the prevalence of modern slavery in the UK. The increase in the numbers of offences that come before the courts is likely to represent improvements in recording and greater awareness of the behaviour.⁶ The first offences under the 2015 Act were sentenced in 2017. In the years 2017 to 2019, the latest year for which data is available, there were 74 sentences imposed. As with the predecessor offences the vast majority (84%) of sentences imposed were immediate custody. A further 7% were suspended sentences, 4% were fines and the rest were community orders or otherwise dealt with.

The average custodial sentence length (ACSL) over this period for section 1 offences (holding someone in slavery, servitude, and forced labour) was five years and four months. In contrast the ACSL for the predecessor offence under the Coroners and Justice Act 2009 was just over four years and two months. For section 2 offences (human trafficking), the ACSL between 2017 and 2019 was just over five years and four months, compared to ACSLs of four years and two months for those sentenced under the predecessor offence in section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004; and five years under section 59A of the Sexual Offences Act 2003, between 2009 and 2019 respectively. The former legislation related purely to trafficking for exploitation whereas the latter concerns sexual exploitation.

Section 4 and section 30 offences are much less common. There were three sentences imposed for the former (all in 2017) and six sentences for the latter in the period 2017 to 2019. All those sentenced for section 4 (committing an offence with the intention of committing a human trafficking offence) received immediate custody, whilst of those sentenced for section 30 offences (breach of an STRO or STPO) three were sentenced to immediate custody, one received a suspended sentence, one a community order and another a fine.

As one would expect the vast majority of sentences were imposed in the Crown Court, although four of the section 30 offences were imposed in the magistrates' courts.

A statistical bulletin is published alongside this consultation document, and can be found [here](#).

⁵ R v Connors, EWCA Crim 324, [10]

⁶ 'Modern Slavery in the UK', Office for National Statistics, March 2020
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/modernslaveryintheuk/march2020#the-criminal-justice-system>

Applicability of guidelines

When issued as definitive guidelines these guidelines will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of children and young people are set out in the Sentencing Council's definitive guideline, [Overarching Principles – Sentencing Children and Young People](#).

Section Two: Guideline for s1 and s2 Offences

The draft guidelines for section 1 and 2 offences can be found [here](#).

Step One

The first step of the guidelines is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

Culpability factors

Picking up on factors commonly present in case law and sentencing remarks, we propose three levels of culpability, reflecting the role that an offender played in the offending, the levels of organisation and financial advantage expected and the methods of coercion (whether threats or actual violence) used.

Culpability demonstrated by one or more of the following

In assessing culpability, the court should weigh up all the factors of the case, including the offender's role, to determine the appropriate level. Where there are characteristics present which fall under different categories, or where the level of the offender's role is affected by the very small scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A - High culpability

- Leading role in the offending
- Expectation of substantial financial advantage
- High degree of planning/premeditation
- Use or threat of a substantial degree of physical violence
- Use or threat of a substantial degree of sexual violence or abuse

B – Medium culpability

- Significant role in the offending
- Involves others in the offending whether by coercion, intimidation, exploitation or reward
- Expectation of significant financial advantage
- Some planning/premeditation
- Use or threat of some physical violence
- Use or threat of some sexual violence or abuse
- Other threats towards victim(s) or their families
- Other cases falling between A and C because:

- factors in both high and lower categories are present which balance each other out and/or
- the offender's culpability falls between the factors as described in A and C

C – Lower culpability

- Engaged by pressure, coercion or intimidation
- Performs limited function under direction
- Limited understanding/knowledge of the offending
- Expectation of limited financial advantage
- Little or no planning/premeditation

The factors are intended to reflect the fact that, whilst actual violence is often a feature of this sort of offending, the use of threats and intimidation is also used by offenders as a means of removing autonomy from their victims. These culpability factors also reflect the fact that some operations are run on a large and sophisticated scale, with the possibility and expectation of, financial gain. In these cases there may be many different offenders involved who may play greater or lesser roles in the offending: some who are central to the offending, others who are peripheral and may not be fully aware of the extent of the operation. These culpability factors are intended to reflect that division.

Note that one factor indicating lower culpability is when the offender is themselves engaged by pressure, coercion or intimidation. There is a statutory defence in section 45 of the Modern Slavery Act 2015 for those who can show that they themselves have been the victim of modern slavery. This defence is not available for those charged and prosecuted for various offences, including sections 1 and 2 of the 2015 Act. Nonetheless, this factor would apply to someone sentenced for a section 1 or 2 offence to reflect the lower culpability of someone coerced in this way. There is a related mitigating factor at step two ('Offender has been a victim of slavery/trafficking, whether or not in circumstances related to this offence' – see page 14).

Question 1: Do you have any comments on the proposed culpability factors?

Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused or intended to be caused by the offence.

We propose four levels of harm, with the highest category (category 1) intended to capture extreme examples of offences which would otherwise be category 2 offences. All harm categories aim to cover not just the physical and financial harm suffered by victims but also the psychological harms, which in many cases can be long-lasting. The factors in categories 2 and 3 also reflect the harm that offenders may expose their victims to, even if that harm does not ultimately materialise.

The Council is particularly keen to make sure that the harm caused is captured sufficiently in cases where the victim is unwilling or unable to give evidence, the prosecution is "evidence-led" without requiring the victim to provide evidence, or the loss of personal autonomy may not be obvious to the court. In a number of modern slavery cases the victim

may not appreciate the level of coercion they have suffered, and may even provide evidence in support of the offender. We therefore propose a detailed piece of text at the start of the harm table to explain that lack of evidence from a witness should not be taken to indicate a lack of harm.

Harm

Use the factors given in the table below to identify the Harm category. If the offence involved multiple victims, sentencers may consider moving up a harm category or moving up substantially within a category range.

The assessment of harm may be assisted by available expert evidence, but may be made on the basis of factual evidence from the victim, including evidence contained in a Victim Personal Statement (VPS). Whether a VPS provides evidence which is sufficient for a finding of serious harm depends on the circumstances of the particular case and the contents of the VPS. **However, the absence of a VPS (or other impact statement) should not be taken to indicate the absence of harm.**

Loss of personal autonomy is an inherent feature of this offending and is reflected in sentencing levels. The nature of the relationship between offender and victim in modern slavery cases may mean that the victim does not recognise themselves as such, may minimise the seriousness of their treatment, may see the perpetrator as a friend or supporter, or may choose not to give evidence through shame, regret or fear.

Sentencers should therefore be careful not to assume that absence of evidence of harm from those trafficked or kept in slavery, servitude or in forced or compulsory labour indicates a lack of harm or seriousness. A close examination of all the particular circumstances will be necessary.

<p>Category 1</p>	<p>A category 2 offence may be elevated to category 1 by –</p> <ul style="list-style-type: none"> • The extreme nature of one or more factors • The extreme impact caused by a combination of factors
<p>Category 2</p>	<ul style="list-style-type: none"> • Exposure of victim(s) to high risk of death • Serious physical harm which has a substantial and/or long-term effect • Serious psychological harm which has a substantial and/or long-term effect • Substantial and long-term adverse impact on the victim’s daily life after the offending has ceased
<p>Category 3</p>	<ul style="list-style-type: none"> • Some physical harm • Some psychological harm • Significant financial loss to the victim(s) • Exposure of victim(s) to additional risk of serious physical or psychological harm • Other cases falling between categories 2 and 4 because: <ul style="list-style-type: none"> ○ Factors in both categories 2 and 4 are present which balance each other out and/or

	<ul style="list-style-type: none"> ○ The level of harm falls between the factors as described in categories 2 and 4
Category 4	<ul style="list-style-type: none"> ● Limited physical harm ● Limited psychological harm ● Limited financial loss to the victim(s)

Question 2: Do you have any comments on the proposed harm factors?

Question 3: Do you have any comments on the additional wording at the head of the table?

Step Two

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

As set out above, since the Modern Slavery Act 2015 came into force, average custodial sentence levels for the section 1 and section 2 offences have been a little under five and a half years. This may appear relatively low, for an offence which has a statutory maximum penalty of life imprisonment. One reason for the current sentence levels may be that sentencers are relying (which they do explicitly in some cases) on the guideline for the predecessor offence of trafficking for sexual exploitation under section 59A of the Sexual Offences Act 2003, which has a statutory maximum penalty of 14 years. It is also the case, however, that several of the offences involved relatively low harm to the victims and/or took place over a very short period of time.

We have therefore also considered the sentence levels in guidelines for similar offences, in particular the section 59A offence, and the proposed sentence levels for section 18 GBH currently being considered as part of a revised *Assault guideline*, as well as other assault offences. We have also considered Parliament's intention in raising the statutory maximum penalty for these offences to life imprisonment. In introducing the increase, the then Home Secretary Theresa May explained that the intention was to ensure "that the worst perpetrators can receive the lengthy custodial sentences that they deserve." This suggests that the aim was not necessarily to raise sentence levels for this type of offending across the board, but to increase sentences for the most serious offences.

Sentences at the bottom end, for example in category C4, are intended to capture offences where the offender themselves may have been coerced into the offending, and the harm suffered by the victim(s) was very limited. This is comparable with the lowest sentence levels for the predecessor section 59A Sexual Offences Act 2003 offence.

Considering all these aspects leads to developing a sentence levels table with a very wide range of sentences appropriate to the breadth of the range of harm caused by these offences:

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Culpability			
Harm	A	B	C
Category 1	<p>Starting Point 14 years' custody</p> <p>Category Range 10 - 18 years' custody</p>	<p>Starting Point 12 years' custody</p> <p>Category Range 9 - 14 years' custody</p>	<p>Starting Point 9 years' custody</p> <p>Category Range 7 - 11 years' custody</p>
Category 2	<p>Starting Point 10 years' custody</p> <p>Category Range 8 - 12 years' custody</p>	<p>Starting Point 8 years' custody</p> <p>Category Range 6 - 10 years' custody</p>	<p>Starting Point 6 years' custody</p> <p>Category Range 5 - 8 years' custody</p>
Category 3	<p>Starting Point 8 years' custody</p> <p>Category Range 6 - 10 years' custody</p>	<p>Starting Point 6 years' custody</p> <p>Category Range 5 - 8 years' custody</p>	<p>Starting Point 4 years' custody</p> <p>Category Range 3 - 6 years' custody</p>
Category 4	<p>Starting Point 5 years' custody</p> <p>Category Range 4 - 7 years' custody</p>	<p>Starting Point 3 years' custody</p> <p>Category Range 1 - 5 years' custody</p>	<p>Starting Point 26 weeks' custody</p> <p>Category Range High level Community Order – 18 months' custody</p>

Question 4: Do you have any comments on the proposed sentence levels?

Aggravating and mitigating factors

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. The following are proposed:

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Offending took place over a long period of time (in the context of these offences, this is likely to mean months or years) where not taken into account at step 1
- Deliberate isolation of the victim, including steps taken to prevent the victim reporting the offence or obtaining assistance (above that which is inherent in the offence)
- Deliberate targeting of particularly vulnerable victims
- Victim's passport or identity documents removed
- Gratuitous degradation of victim
- Large-scale, sophisticated and/or commercial operation (where not taken into account at step 1)
- Abuse of a significant degree of trust/responsibility
- Substantial measures taken to restrain the victim

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Offender has been a victim of slavery/trafficking, whether or not in circumstances related to this offence (where not taken into account at step 1)
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment

Question 5: Do you have any comments on the proposed aggravating and mitigating factors?

Further steps

The steps following in the draft guidelines are standard for offence-specific guidelines. Step three covers factors which may merit a reduction in sentence, such as assistance to the prosecution and step four covers reductions in sentence for an early guilty plea.

These offences are specified offences and so step five directs the court to consider whether to impose a life sentence or an extended sentence on the offender. In the worst

cases of modern slavery, the court may impose a life sentence. Should the court determine that a life sentence is appropriate (or if required to do so by sections 224A or 225 of the Criminal Justice Act 2003) the notional determinate sentence as set out in the sentence table should be used as the basis for the setting of a minimum term of imprisonment before the offender can be considered for release.

Step six directs the court to consider totality.

However, at step seven we propose providing specific guidance to sentencers on making Modern Slavery Reparation Orders under section 8 of the 2015 Act. The Independent Review of the Modern Slavery Act 2015, published in May 2019 recommended that:

“Compensation for victims [of modern slavery] ought to be at the forefront of the Court’s mind. The Sentencing Council should include in their forthcoming Modern Slavery Act sentencing guidelines a reminder for judges of their responsibility to consider Reparation Orders in every case where it is appropriate to do so.”⁷

At the time of the report’s writing there was no record of any such reparation orders having been made under section 8 of the 2015 Act, possibly down to confusion over the circumstances when they could be used. They can only be made by the Court upon conviction where a confiscation order has been made against the offender under section 6 of the Proceeds of Crime Act 2002.

Given Parliament has provided for them, the Council agrees that it is reasonable to mention clearly the ancillary orders specific to modern slavery upon conviction (Reparation orders under section 8 of the 2015 Act, STPOs under section 14 and the possibility of forfeiture under section 11) at step seven.

We therefore propose the following wording for step seven:

STEP SEVEN

Ancillary Orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders. The following are most relevant in modern slavery cases:

Slavery and trafficking prevention orders

Under section 14 of the Modern Slavery Act 2015, a court may make a slavery and trafficking prevention order against an offender convicted of a slavery or human trafficking offence, if it is satisfied that

- there is a risk that the offender may commit a slavery or human trafficking offence, and
- it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the offender committed such an offence.

Slavery and trafficking reparation orders

⁷ Independent Review of the Modern Slavery Act 2015: Final Report, May 2019, para 3.1.3

Where a confiscation order has been made under section 6 of the Proceeds of Crime Act 2002 the court may make a slavery and trafficking reparation order under section 8 of the 2015 Act, requiring the offender to pay compensation to the victim for any harm resulting from an offence under sections 1, 2 or 4 of that Act. In practice, the reparation awarded will come out of the money taken under the confiscation order. **In every eligible case, the court must consider whether to make a slavery and trafficking reparation order, and if one is not made the judge must give reasons.** However, a slavery and trafficking reparation order cannot be made if the court has made a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000.

Forfeiture

A court convicting someone on indictment of human trafficking under section 2 of the 2015 Act may order the forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with the offence of which the person is convicted (see section 11 of the 2015 Act).

Finally, steps eight and nine respectively remind the court of its duty to give reasons for and explain the sentence, and to consider whether to give credit for time spent on bail with a qualifying curfew.

Question 6: Do you have any comments on the reference to the ancillary orders at step 7?

Question 7: Do you have any other comments on the guideline for section 1 and section 2 offences?

Section Three: Other offences

Section 4

The draft guidelines for section 4 offences can be found [here](#).

Section 4 of the Modern Slavery Act 2015 makes it an offence to commit an offence with the intention of committing a human trafficking offence. The maximum penalty is ten years' imprisonment, or life imprisonment where the offence committed under section 4 is kidnapping or false imprisonment.

We consider that it will assist courts to provide a brief guideline for sentencing section 4 cases, along the lines of that provided for the offence of committing an offence with intent to commit a sexual offence under section 62 of the Sexual Offences Act 2003, upon which the section 4 offence is based. The guideline for the section 62 offence reminds sentencers of other statutory provisions relating to the offence, and then sets out an approach to sentencing the section 62 offence based on the preliminary offence as follows:

The starting point and range should be commensurate with that for the preliminary offence actually committed but with an enhancement to reflect the intention to commit a sexual offence. The enhancement will vary depending on the nature and seriousness of the intended sexual offence but 2 years' custody is suggested as a suitable enhancement where the intent was to commit rape or assault by penetration.⁸

Applying this approach to the section 4 modern slavery offence would mean that the guideline would include the relevant provisions on dangerousness etc, text similar to that above on sentence levels and a reference to totality as follows:

Section 4

The starting point and range should be commensurate with that for the preliminary offence actually committed but with an enhancement to reflect the intention to commit a human trafficking offence. The enhancement will vary depending on the nature and seriousness of the intended trafficking offence and the seriousness of the preliminary offence, but up to 2 years' custody is suggested as a suitable enhancement. Sentencers should also take into account the totality of offending (see the Totality guideline at <https://www.sentencingcouncil.org.uk/publications/item/offences-taken-into-consideration-and-totally-definitive-guideline/>), in particular where the preliminary offence or other modern slavery offences are to be sentenced alongside the section 4 offence

⁸ <https://www.sentencingcouncil.org.uk/offences/crown-court/item/committing-an-offence-with-intent-to-commit-a-sexual-offence/>

Question 8: Do you have any comments on the approach to section 4 guidance?

Section 30

The draft guideline for the section 30 offence can be found [here](#).

Section 30 of the 2015 Act makes it an offence to breach a slavery and trafficking prevention order (STPO) or a slavery and trafficking risk order (STRO). The maximum penalty is five years' imprisonment.

We propose including guidance for sentencers by way of an addition to the 'Breach Offence definitive guidelines, first published in 2017. The natural place for these offences to sit in those guidelines is under "Breach offences: Other": see <https://www.sentencingcouncil.org.uk/offences/crown-court/item/breach-offences-other/> . Here, the guidance points sentencers to the *Breach of a criminal behaviour order* guideline in order to determine the sentence. The scope of the STROs and STPOs is broader than most of the other orders, and so a comparison with several other breach offences, together with the *General guideline*, may be of assistance to sentencers.

We therefore propose that the guidance text for the section 30 offence would read as follows:

Section 30 of the Modern Slavery Act 2015

In sentencing an offence under section 30, a court is entitled to use, and may be assisted by, a guideline for an analogous offence subject to differences in the elements of the offences and the statutory maxima. Depending on the nature of the particular slavery and trafficking risk, an analogous offence may be one or more of the following:

- Breach of a sexual harm prevention order
[\[https://www.sentencingcouncil.org.uk/offences/crown-court/item/breach-of-a-sexual-harm-prevention-order/\]](https://www.sentencingcouncil.org.uk/offences/crown-court/item/breach-of-a-sexual-harm-prevention-order/)
- Breach of a criminal behaviour order
[\[https://www.sentencingcouncil.org.uk/offences/crown-court/item/breach-of-a-criminal-behaviour-order/\]](https://www.sentencingcouncil.org.uk/offences/crown-court/item/breach-of-a-criminal-behaviour-order/)
- Breach of disqualification from acting as a director
[\[https://www.sentencingcouncil.org.uk/offences/crown-court/item/breach-of-disqualification-from-acting-as-a-director/\]](https://www.sentencingcouncil.org.uk/offences/crown-court/item/breach-of-disqualification-from-acting-as-a-director/)

The court will also wish to consider the General guideline
[\[https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/\]](https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/)

Question 9: Do you have any comments on the approach to section 30 guidance?

Question 10: Is there anything else you wish to say about the proposed sentencing guidelines, which has not been covered elsewhere in this document?

Section Four: Public sector equality duty

The Public Sector Equality Duty is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have “due regard” to three “needs” or “limbs” when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act.

The second is the need to advance equality of opportunity between those who share a “protected characteristic” and those who do not.

The third is to foster good relations between those who share a “protected characteristic” and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations.

The Council has considered data available in relation to offenders sentenced for Modern Slavery offences. This data includes volumes of offenders sentenced grouped by sex, ethnicity and age and is available at **Annex A**.

There are many and varied reasons for the distribution of offender types and prevalence towards a particular type of offending, including wider social issues. The modern slavery offence guidelines are intended to apply equally to all demographics of offenders, and in drafting the guidelines the Council has taken care to guard against any unintended impact.

The Council recognises, however, that the draft guidelines could be interpreted in different ways. We are therefore seeking views on whether any of the factors in the draft guidelines, or the ways in which they are expressed, could risk being interpreted in ways which could lead to discrimination against particular groups.

We are also seeking views as to whether there are any other equality or diversity issues the guideline has not considered, so that we may consider these post-consultation.

Question 11: Do you consider that any of the factors in the draft guidelines, or the ways in which they are expressed could risk being interpreted in ways which could lead to discrimination against particular groups?

Question 12: Are there any other equality and diversity issues the guidelines should consider?

Annex A

For further details on these statistics please see the accompanying statistical bulletin published at <https://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics.

Table 1: Demographics of adult offenders sentenced for the offence of Slavery, servitude and forced or compulsory labour¹, by sex, age and perceived ethnicity, 2017² to 2019^{3,4}

Sex	Number of adults sentenced	Percentage of all adults sentenced ⁵
Male	22	85%
Female	4	15%
Not recorded/not known	0	
Total	26	100%

Age Group	Number of adults sentenced	Percentage of all adults sentenced ⁵
18 to 21 years	1	4%
22 to 29 years	7	27%
30 to 39 years	8	31%
40 to 49 years	5	19%
50 to 59 years	5	19%
60 years or older	0	0%
Not recorded/not known	0	
Total	26	100%

Perceived Ethnicity ^{6,7}	Number of adults sentenced	Percentage of all adults sentenced ⁵
White	20	95%
Black	0	0%
Asian	1	5%
Other	0	0%
Not recorded/not known	5	
Total	26	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) We are aware of some data recording issues within the modern slavery offences which mean that the volume of adult offenders sentenced since 2017 for a section 1 or 2 modern slavery offence is likely to be an underestimate.

2) The Modern Slavery Act 2015 offences came into force in July 2015 and the first offenders sentenced for these offences were sentenced in 2017. Therefore, the statistics for Modern Slavery are only provided for calendar year 2017 onwards.

3) Due to the low volumes of offenders sentenced, data for 2017, 2018 and 2019 have been combined.

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- 4) Two offenders wrongly recorded as Otherwise Dealt With in 2019 have been excluded from the data as they were acquitted. This means total volumes may not exactly match published National Statistics.
- 5) Percentage calculations do not include cases where the sex, age or ethnicity was unknown. Additionally, due to the extremely low number of offenders sentenced for modern slavery offences any differences between two percentages may actually represent only a small number of offenders and so should be treated with caution.
- 6) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.
- 7) For one fifth of adults sentenced (19%), their perceived ethnicity was either not recorded or it was not known. Therefore, the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with relative caution.
- 8) Please note that percentages may not appear to sum to 100% due to rounding.

Table 2: Demographics of adult offenders sentenced for a Human trafficking offence¹, by sex, age and perceived ethnicity, 2017² to 2019^{3,4}

Sex	Number of adults sentenced	Percentage of all adults sentenced ⁴
Male	25	74%
Female	9	26%
Not recorded/not known	0	
Total	34	100%

Age Group	Number of adults sentenced	Percentage of all adults sentenced ⁴
18 to 21 years	3	9%
22 to 29 years	9	26%
30 to 39 years	14	41%
40 to 49 years	3	9%
50 to 59 years	5	15%
60 years or older	0	0%
Not recorded/not known	0	
Total	34	100%

Perceived Ethnicity ^{5,6}	Number of adults sentenced	Percentage of all adults sentenced ⁴
White	17	61%
Black	2	7%
Asian	1	4%
Other	8	29%
Not recorded/not known	6	
Total	34	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) We are aware of some data recording issues within the modern slavery offences which mean that the volume of adult offenders sentenced since 2017 for a section 1 or 2 modern slavery offence is likely to be an underestimate.
- 2) The Modern Slavery Act 2015 offences came into force in July 2015 and the first offenders sentenced for these offences were sentenced in 2017. Therefore, the statistics for Modern Slavery are only provided for calendar year 2017 onwards.
- 3) Due to the low volumes of offenders sentenced, data for 2017, 2018 and 2019 have been combined.
- 4) Percentage calculations do not include cases where the sex, age or ethnicity was unknown. Additionally, due to the extremely low number of offenders sentenced for modern slavery offences any differences between

two percentages may actually represent only a small number of offenders and so should be treated with caution.

5) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

6) For 18 per cent of adults sentenced, their perceived ethnicity was either not recorded or it was not known. Therefore, the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with relative caution.

7) Please note that percentages may not appear to sum to 100% due to rounding.

