

Modern Slavery Act 2015

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Summary

The [Modern Slavery Act 2015](#), which received Royal Assent on 26 March 2015, is intended to provide law enforcement agencies with stronger legal tools to stamp out modern slavery, ensuring that the perpetrators receive suitably severe punishment, while enhancing the protection of, and support for, victims.

The new Act consolidates and updates the existing criminal legislation on human trafficking, slavery, forced labour and domestic servitude and increases the maximum custodial sentence, for the most serious offences, from fourteen years to life. In addition, the legislation creates the post of Anti-Slavery Commissioner and places a duty on specified public authorities including local authorities to report potential victims of trafficking to the National Crime Agency.

This briefing will be of interest to elected members and officers working in social services and in particular children services.

Briefing in full

The [Modern Slavery Act 2015](#) (“the Act” or the “new Act”), which received Royal Assent on 26 March 2015, is intended to provide law enforcement agencies with stronger legal tools to stamp out modern slavery, ensure that the perpetrators receive suitably severe punishment, and enhance the protection of and support for victims.

The term ‘modern slavery’ encompasses: human trafficking, slavery, sexual and criminal exploitation, forced labour and domestic servitude. The current offences for which are spread across several pieces of legislation.

Responsibility for tackling human trafficking lies with the National Crime Agency (NCA) and specifically its dedicated UK Human Trafficking Centre which uses the [National Referral Mechanism](#) (NRM) as a framework for identifying victims and ensuring they receive the appropriate protection and support. (The Home Office Immigration and Visa Department also deals with referrals via NRM and is identified as part of the immigration process). The NRM is also the mechanism through which the NCA collects data about victims. Referral to the NCA via the NRM is generally handled by an authorised agency (called a ‘first responder’) such as the police, the UK Border Force, local authorities, the Gangmasters Licensing Authority and the Home Office as well as certain designated NGOs such as the Refugee Council, Barnardo’s and NSPCC. Where support for adult victims (in the England and Wales) is provided under a national contract via the Salvation Army; with support for child victims provided by local authorities as part of their statutory safeguarding responsibilities.

It is widely acknowledged that there is a lack of accurate statistical information making it difficult to estimate the number of victims of these crimes. The only means of systematically collecting data is through the NRM. However, it is widely acknowledged that this under-reports the true position, as

for example, not all victims want to be referred to the authorities for help. Indeed part of the objective of the Act is to help address that.

Nonetheless, in 2014, [2,340 potential victims](#) were referred to the NRM - comprising of 61% females, 39% males and 71% were referred for adult exploitation and 29% for exploitation as a minor. This represents a 34% increase on 2013 referrals and a figure which was double that recorded in 2012, probably reflecting that the NRM was only introduced in 2009. The [Global Slavery Index 2014](#) (published by the Walk Free Foundation) estimated that there are 8,300 people kept in conditions of slavery in the UK. Only two of the 167 countries covered by the index have a better record (by proportion to the population) with the UK considered to be one of a small number of countries taking the most action to end modern slavery. However, an assessment published last November conducted by the [Home Office estimates](#) that there are between 10,000 and 13,000 victims in the UK.

But despite the UK's international comparable record, the Government has considered that more needs to be done specifically to increase the number of convictions and offer better support to victims. The need to do so is illustrated by the fact that in 2012 there were only 148 prosecutions and of these there were only 34 convictions and only in 13 of these were trafficking or slavery the principle offences.

As part of the government's wider strategy, set out in the ["Modern Slavery strategy"](#) published in November 2014, the new Act is seeking to address:

- The existing legal framework is deemed to be fragmented and lacked clarity.
- Sentencing and asset recovery are not creating a sufficient deterrent effect or providing justice for victims.
- There are specific gaps in the powers available to law enforcement to pursue and prevent these crimes, notably slavery offences committed at sea.
- The criminal justice system is not giving victims the confidence to come forward and help the law enforcement authorities.
- Children are not being adequately supported as they navigate the complexities of the social care, immigration and criminal justice systems.

The Act was informed by a [review of evidence](#) led by Frank Field MP (commissioned by the Home Secretary) and [pre-legislative scrutiny](#) conducted by a joint committee of both houses of parliament, also chaired by Frank Field.

The [Government accepted](#) some of the joint committee's recommendations like introducing a statutory defence for victims of modern slavery and introducing independent child trafficking advocates. It rejected the Committee's recommendation to have six new offences on the basis that this would "create uncertainty" in the justice system. Changes to the NRM framework were recommended following a [Government review](#) which concluded in November 2014. On overseas domestic workers, the Government suggested that "permitting a change of employer once in the UK would not be compatible with the purpose of the [immigration] route, which is to allow a short visit with an existing employer". Rather than taking legislative action on tackling modern slavery in supply chains, the Government preferred to "work collaboratively with businesses". However, during the passage of the Bill the Government gave ground on both these issues.

The Act primarily applies in England and Wales, apart from sections on the anti-slavery commissioner, maritime powers, overseas domestic workers, transparency in supply chains and on the Gangmasters Licensing Authority, all of which will apply across the UK.

This briefing provides an overview of the key legislative provisions set out in the new Act. It is not meant to be a comprehensive legal description, for that see the explanatory notes which have been prepared by the Home Office which can be found [here](#).

The main legislative provisions

Consolidating existing offences ([sections 1 to 4](#))

The Act consolidates and seeks to clarify the offences of human trafficking for sexual (Sexual Offences Act 2003) and non-sexual (Asylum and Immigration Act 2004) exploitation into one substantive offence of human trafficking while providing the separate offence of slavery, servitude and forced or compulsory labour (Coroners and Justice Act 2009) and an offence for preparatory offences (committed with a view to committing a trafficking offence).

The aim is to make the legislative framework clearer and simpler for law enforcement officers and prosecutors to understand and apply. The nature of the offences will not change substantially and the evidential threshold will remain the same.

In response to concerns that the existing offences were ineffective in cases involving child victims, the new Act will require the courts to have particular regard to the alleged victim's age, any physical or mental illness or disability, and where relevant family relationships, when considering if the offence has been committed. For example the courts will be able to consider the vulnerability of a child, in looking at the type or level of coercion they have been subject to.

The new offence has extra-territorial effect for UK nationals, who would commit an offence regardless of where the offence takes place. Foreign nationals would only commit the offence if any part of the offence takes place in the UK.

Increasing the maximum sentence to life imprisonment ([sections 5 to 6](#))

The current maximum sentence available for modern slavery and human trafficking offences is fourteen years imprisonment, which is considered as not always being sufficient in reflecting the gravity of these offences. The Act therefore increases this for the most serious offences to life imprisonment. It also extends this further so that if the offence is a second serious offence, the perpetrator will be automatically considered for a life sentence.

All modern slavery offences will be considered 'criminal lifestyle' offences ([section 7](#))

The Government considers that modern slavery is often motivated by profit and so they see it as essential that law enforcement demonstrates that this crime does not pay. So in response to the pre-legislative committee which found evidence that more is needed to be done to make current powers (to confiscate the proceeds of these crimes) an effective deterrent, the new Act will make the offence of slavery, servitude and forced or compulsory labour a 'criminal lifestyle' offence (for the purposes of the Proceeds of Crime Act, 2002). This means that a court can potentially treat all the assets that a defendant has and has had in the six years prior to his or her trial as the proceeds of crime and so order their confiscation as opposed to just those assets that can be directly shown to be the proceeds of the crime in question which is currently the case in relation to human trafficking offences.

Providing redress to victims ([sections 8 to 10](#))

The new Act provides for specific slavery and trafficking reparation orders to provide redress to victims. It was felt necessary to have specific powers related to these offences given the limited number of compensation orders which have been made in modern slavery cases over the last ten years using existing generic powers. So these new provisions come with the assumption that reparation will be sought by the courts and if not they will have to justify the reasons for not doing so.

Slavery and trafficking prevention and risk orders ([sections 14 to 34](#))

The Act introduces two new civil orders to enable the courts to place restrictions on individuals convicted or suspected of involvement in modern slavery offences. Slavery and trafficking prevention orders (STPOs) will be available on conviction of such offences including cases in which a person had been convicted of an equivalent offence overseas and had since moved to the UK.

While Slavery and Trafficking Risk Orders (STROs) can be imposed by the courts where an individual has not been convicted but presents a serious risk to others. This could be where they have been charged with a slavery or trafficking offence (and not yet convicted) or where there is insufficient evidence to bring a case, but there is clear evidence of future risk. An STRO can also be used where individuals have been convicted of offences linked to trafficking or slavery overseas, and where there is evidence of a future risk of offending involving slavery or trafficking.

These orders can prohibit the individuals concerned from doing anything described in them, including preventing a person from participating in a particular type of business, working with children, visiting a particular place or travelling to a specific country. But the court making the order must be satisfied that all prohibitions are necessary for protecting persons at risk. Breach of any order will be a new criminal offence attracting a maximum sentence of five years imprisonment.

Extend law enforcement powers to offences committed at sea ([sections 35 to 39](#))

The Act introduces new powers enabling the police (including the port and transport police), the Border Force, custom officers, the armed forces and NCA officials to tackle suspected human trafficking and slavery offences taking place on board ships at sea. Currently, there is no jurisdiction in relation to these offences taking place in international waters, nor do the law enforcement agencies have the power to stop or divert vessels in UK territorial waters. So the new Act gives them similar powers to those they have on land including: the power to stop, board, divert and detain a vessel, the power to search a vessel and obtain information and the power to make arrests and seize any relevant evidence. These powers apply throughout the UK.

Anti-Slavery Commissioner ([sections 40 to 44](#))

A new independent Anti-slavery Commissioner will be created by the new Act with a UK-wide remit to work with domestic and international law enforcement agencies to encourage good practice in the identification of victims and the prevention, detection, investigation and prosecution of modern slavery cases. The government says that in practice the Commissioner will focus on these areas rather than on the quality of victim support but the new Commissioner will be expected to complement the work of the existing Victims' Commissioner.

The Commissioner is prevented from looking at individual cases or individuals but that does not preclude drawing conclusions from individual cases.

The Act provides the Commissioner with a statutory right to request information from 'specified' public authorities, including local authorities, who are under a duty to comply.

Kevin Hyland, the former head of the Metropolitan Police's human trafficking unit, was appointed to the post in November 2014 and has been acting as designate commissioner.

Introduction a statutory defence for victims ([section 45](#))

The pre-legislative scrutiny committee found evidence that some victims have been arrested, and subsequently convicted for crimes they were forced to commit such as cannabis cultivation or using forged documents. This is despite Crown Prosecution Service (CPS) guidance that where a suspect is a victim of slavery and has committed the offence whilst in a coerced situation there is a strong public interest to stop a prosecution. Consequently the government has gone further and provided a statutory defence for victims of modern slavery where they are forced to commit crimes which they otherwise would not have committed. The change is justified by the need to encourage victims to come forward and give evidence without fear of being prosecuted for offences connected to slavery or a trafficking situation. This defence will exclude serious sexual, violent and modern slavery offences. However the CPS will still be able to decide not to prosecute if it would not be in the public interest to do so.

There is a different test in the defence for persons aged 18 or over and those under the age of 18 in recognition of the vulnerabilities of children.

Statutory child trafficking advocates scheme ([section 48](#))

Frank Field's review and the pre-legislative scrutiny committee heard evidence that children are not being adequately supported as they navigate the complexities of the social care system as well as the immigration criminal justice systems. This was seen as important for a number of reasons including that children are deemed to be especially vulnerable to going missing and re-trafficking if they are not properly supported.

In response the Government is conducting a trial of independent child advocates in twenty three local authority areas whereby a specialist advocate is allocated to a child who has been referred via the National Referral Mechanism. Their role will be to steer the child through the complexities of the social care system as well as the immigration and criminal justice systems, and to ensure the child's voice is heard.

The Act places a duty on the Secretary of State to make independent advocates available for all child victims of trafficking, after a trial has concluded, provided that both Houses of Parliament pass resolutions that this is the correct way to proceed. This scheme, including the detail of the role, will be established by secondary legislation (subject to affirmative resolutions being passed by both Houses of Parliament). The interim trial evaluation was published in March 2015 and can be found [here](#).

Identification of victims and provision of victims' services ([sections 49 and 50](#))

The Act obliges the Secretary of State to issue statutory guidance on the effective identification of victims and victim support. This might cover support services such as accommodation, financial assistance, assistance in obtaining healthcare, the provision of information and translation and interpretation services. The Secretary of State is also enabled (but not compelled) to issue a set of requirements for victim identification and support in regulations - which means they must be followed, as opposed to 'have regard to' in the case of statutory guidance. While the Government

already provides this support, enshrining this in legislation is seen as essential for example in signalling the importance of victim support.

Presumption of age ([section 51](#))

The Act makes clear that if the age of a victim is uncertain and there are reasons to believe they are a child, they will be presumed to be a child in order for them to receive immediate access to assistance, support and protection; reflecting the position set out in the EC Directive on preventing and combating trafficking adopted by the UK government in April 2011.

Duty on public authorities to notify the National Crime Agency ([section 52](#))

The new Act places a duty on specified public authorities to report details of suspected cases of modern slavery to the NCA. Currently, victims of human trafficking who are identified by a 'first responder', including local authorities, can be referred to the NCA via the NRM. However, referral to the NCA is voluntary and can only happen if the potential victim gives their consent. But this means that if the adult victim opts not to be referred the case might not get referred to the NCA at all, and so, knowledge of the trafficking problem is unreported. Children do not need to give their consent to be referred to the NCA.

The new duty means that specified public bodies, to be set out in regulations, will be legally obliged to report suspected cases of human trafficking and slavery servitude and forced labour to the NCA. But this will not apply to NGOs who are currently 'first responders' only to specified public bodies, expected to be NRM 'first responders'. So in effect the new duty places the NRM process on a statutory basis for public bodies. Significantly in a slightly modified form of the NRM referral process, if the adult victim does not want to engage with the authorities, the public body will still be able to fulfil its new duty by making a notification to the NCA in such a way as the identification of the victim remains anonymous where the adult victim does not want to be referred.

Overseas domestic workers ([section 53](#))

The Act creates a requirement that the immigration rules provide for a new type of 'leave to remain' for those who have come to the UK on an overseas domestic worker visa and are found to be a victim of slavery or human trafficking. The victim is allowed to change employer and continue to work as domestic worker, something a victim is not able to do at present. The likelihood of deportation is reduced, which is seen as a barrier to victims coming forward.

Transparency in Supply Chains ([section 54](#))

Businesses over a certain size will be required by the Act to disclose each year what steps they have taken to ensure there is no slavery or human trafficking in their business or supply chains. The size of business that this applies to will be specified in secondary legislation, after a recently concluded [consultation](#) indicated that the turnover threshold might be at least £36 million annually, though it may be set higher.

The Government say that it will not specify what a business must include in that disclosure or what action it must take, though indications are that guidance will be issued on the kind of information that might be included in a disclosure. Indeed, if a business wants to, they can do nothing and disclose that they have done nothing. However it is hoped that this reporting requirement will allow consumers, campaigners and investors to call for more action if they do not think enough has been done.

Gangmasters Licensing Authority ([section 55](#))

Section 55 requires the Secretary of State to publish a consultation paper on the role of the [Gangmasters Licensing Authority](#) within a year of Royal Assent (i.e. before 26 March 2016). This came about as a result of a number of calls in both houses for the GLA to be given new powers and resources to monitor and enforce labour standards not only in its current sector areas of agriculture, food processing and packaging and gathering shellfish, but also in expanding its remit to include factories, construction and care homes.

Comment

The Government sees that local authorities have an important role to play in addressing slavery and trafficking. A range of frontline council services may be the only public services that interact with victims offering opportunities to spot the signs or receive intelligence that they are victims; for instance when identifying and addressing rough sleeping and homelessness. Local authorities can also assist in disrupting the activities of those holding victims in servitude through their licensing and inspection powers. A good example is in inspecting houses in multiple occupation under the control of gangmasters, which may be used to house victims in debt bondage.

However, for local authorities, the main focus of this new legislation, given their statutory safeguarding duties, is children's social services.

There is already a requirement on councils to notify the National Crime Agency via the National Referral Mechanism of trafficked individuals – both adults and children – they come across; the new Act will put this on a statutory basis in part to address the “small proportion” of the real number of trafficked children being identified due to:

- UK children may not always be identified as trafficked as the term is more often associated with those who have been trafficked into, rather than around, the UK.
- The low awareness of indicators of trafficking not only among local authorities but also within the police force.
- In addition it is said, that local authorities may not see the benefit of referral to the NRM if the children are already in receipt of care.

It has also been estimated that 60% of children of trafficked children in local authority care go missing (nearly a third within the first week) and are therefore at risk of re-trafficking. And if they do reappear in another part of the UK, it may be difficult to identify them as such, if not registered with the NRM. The Home Office say this position has not improved despite explicit reporting requirements (on children going missing from care).

Not all these issues will be resolved by simply ratcheting up the legislative requirements. There are some deep-seated cultural and practice issues to be addressed. Not just in local authorities, which is the focus here. Indeed, the Act has been criticised for focusing too much on law enforcement and not enough on the needs of victims. Responding to concerns expressed during the Parliamentary process the Government has taken the unusual step to require itself – rather than just to enable itself – to issue statutory guidance on victim support (as well as victim identification). This may or may not be backed up by statutory requirements that must be followed as laid out in regulations. Of course, as with NRM reporting requirements, issuing statutory guidance, like new legal duties, is not some kind of universal cure.

That is perhaps why the government is looking for a new model through the introduction of independent child advocates. This is currently being piloted in 23 local authority areas run by the children's charity Barnardo's. The advocates' role is to help trafficked children understand what is happening to them, speak up for them where necessary, and enhance timely, clear and consistent decision making by stakeholders in the criminal justice, immigration and social care services. The pilot covers all trafficked children, including children who are UK nationals. [The interim evaluation](#) has now been published on the first four and a half months of the pilots. The final evaluation report will be published after the pilots end in September.

Campaigners are already calling for advocates to be given legal powers and status involving them having legal authority to act on the child's behalf (e.g. to obtain legal advice, and other assistance), becoming a full and equal member of formal networks of protection and care around the child, given equal access to information and meetings, and whose views are given due regard. The interim evaluation has also raised questions about whether there may be benefits from having multiple referral points to allocate trafficked children to advocates, rather than allocation by a single point of contact within the local authority. This gives rise to some interesting questions about how the independence and status of advocates relate to local authorities' own safeguarding duties, and to whom the advocates are accountable.

The Act places a duty on the Secretary of State to make independent advocates available for all child victims of trafficking after the pilot has concluded subject to Parliamentary approval. However it is clear that Parliament wants to see this happen. After a failed attempt in the Commons, the Lords removed the Secretary of State's discretion to make detailed regulations and replace this with a duty to do so and one which is already heavily prescribed regardless of the outcomes of the trial. However given the trial is relatively small involving only thirty children (including only two UK nationals) and while that number will increase during the course of the year, it is still unlikely that the model will be fully tested across social care, immigration and the criminal justice systems. Government has to report back to the Parliament by the end of the year.

The provisions of the Act will come into force at times specified by regulations. It is likely that provisions which relate to supply chains will come into force in October 2015. However, a timetable for the other provisions has not been announced. A number require secondary legislation to specify their detailed requirements, which will require consultation notably on the civil prevention orders, on the duty to notify the NCA, the duty to co-operate with the anti-slavery commissioner, and the statutory defence for victims. Statutory guidance is expected on victim support and parliamentary approval will be required for regulatory proposals for child trafficking advocates once the evaluation of the trials has been completed in the autumn. Implementation will stretch into 2016.

External Links

[Modern Slavery Act 2015](#)

[Explanatory Notes](#)

[National Referral Mechanism](#)

[Home Office information on modern slavery](#)

www.modernslavery.co.uk - Government supported website on the types of slavery, the signs to spot, the reporting mechanism and the appropriate referral processes for victims.

Related LGiU Briefings

[Safeguarding Adults](#) (June 2015)

[Tackling child sexual exploitation and protecting children who go missing from residential care](#) (July 2012)

[Child Sexual Exploitation in Oxfordshire – Serious Case Review](#) (March 2015)

[Child Sexual Exploitation in Rotherham – Alexis Jay report](#) (September 2014)

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