

Joint Briefing for the Sixth Delegated Legislative Committee debate:
The draft Slavery and Human Trafficking (Definition of Victim) Regulations 2022
Wednesday 29 June 2022

This joint briefing by the Anti Trafficking and Labour Exploitation Unit (ATLEU), ECPAT UK (Every Child Protected against Trafficking), Focus on Labour Exploitation (FLEX), Helen Bamber Foundation, and Hope for Justice is informed by our direct and partners' experiences of supporting survivors of trafficking and modern slavery to access identification, protection and justice. We have also written to the Home Affairs Select Committee to express our concerns along with over 30 other organisations and experts.

It outlines our concerns about the Draft Slavery and Human Trafficking (Definition of Victim) Regulations 2022. We believe they could have far-reaching damaging consequences for victims of trafficking and modern slavery. This is because **they narrow the definition of a victim** and therefore **reduce the scope that victims will be identified**. The definitions are **not in alignment with international law**, such as the European Convention Against Trafficking (ECAT) and the Palermo Protocol. The draft regulations were **introduced without consultation with anti-trafficking organisations**: we did not see nor have the opportunity to give feedback on the definition wording before they were published.

The Draft Slavery and Human Trafficking (Definition of Victim) Regulations 2022

The Regulations have been laid before Parliament under section 69(2) of the Nationality and Borders Act 2022 for approval by resolution of each House of Parliament. They are intended to define victims of slavery and human trafficking for the purpose of Part 5 of the Act though their text was not scrutinised as part of the debates on the Act.

Identification of victims of trafficking and modern slavery

The National Referral Mechanism (NRM) is the two-stage process for initial identification and confirmation of who is considered to be a victim of trafficking and modern slavery. Identification under the NRM is crucially important: it is the gateway to support services and assistance including legal advice, safe house accommodation, and in the case of children, an independent Child Trafficking Guardian and for those subject to immigration control, decisions about their leave. The consequences of not being correctly identified as a victim are extremely serious: this can have a negative impact on credibility, compounding the control of an exploiter, leaving someone without support, without the opportunity to gain leave to remain as a survivor, at risk of destitution and removal, and vulnerable to further exploitation including re-trafficking.

The draft Slavery and Human Trafficking (Definition of Victim) Regulations:

- **Raise the threshold for identification**

The draft regulations require someone to have personal circumstances that **significantly impair** their ability to protect themselves from slavery, servitude and forced labour. It is not clear why this new

definition is needed or where it has come from. The language in the draft regulations appears to place a duty on the person to protect themselves from the vulnerabilities which contributed to their exploitation. This is inappropriate and contrary to established practice. The language used in section 1 of the Modern Slavery Act in relation to a criminal offence sets a lower threshold than that now required for victim identification (referring only to circumstances “which may make the person more vulnerable than other persons”.)

- **Set a definition of exploitation that is far too narrow**

Article 4 of ECAT and Article 3 of the Palermo Protocol makes clear that their definitions of exploitation are a “minimum”, leaving room to adapt and include new forms of exploitation as they emerge over time. In contrast, the definitions in the draft regulations are prescriptive, for example, tying sexual exploitation to certain offences in UK law.

- **Are not in alignment with international law**

The definition of a victim of trafficking in the regulations does not follow the definitions in the European Convention against Trafficking (ECAT). The stated intent in the Explanatory Memorandum is to align with ECAT but its definitions have not been replicated in the regulations.

- **Do not distinguish between adult and child victims**

The draft regulations merely set age as being a circumstance to pay due regard to when determining if that person is a victim of slavery. This is not sufficient given children’s heightened vulnerability to trafficking, forced labour and modern slavery and the need to have regard to the wider set of international legal obligations, where age accounts for a different standard regarding what constitutes the exploitation of children.

- **Do not include criminal exploitation**

The lack of reference to criminal exploitation is a significant gap given that child potential victims were most often referred into the NRM for criminal exploitation in 2021.

- **Do not feature ‘practices similar to slavery’**, as is detailed within ECAT and its Explanatory report, within the definitions of exploitation.

- **Over emphasise ‘arranging or facilitating travel’**

The international standard sets out that ‘travel’ or movement is only one aspect of the ‘action’ element of the definition of trafficking, the others being recruitment, harbouring, receipt, and transfer of persons. The drafting is confusing.

- **Are completely defective on the ‘means’ element of trafficking**

The drafting is inconsistent with the definition of a victim of trafficking in ECAT and highly confusing. It introduces the language of means into what exploitation is. Means and exploitation should be distinct. It is narrower than the criminal law definition of exploitation which does not require a means element to be proven. It defines consent with regard to adult victims as being linked to the ‘travel’ rather than the international standard which sets out that it is related to the exploitation or purpose. It is completely unacceptable that the draft regulations also include children in this deliberation of means, despite the fact that under international standards, legally children can never consent to their own exploitation. Instead of means explicitly being seen as irrelevant for children, the drafting brings in a poorly drafted means test.

Conclusions: The draft regulations are highly complex and introduce definitions of a victim of trafficking and modern slavery that are narrower and depart from those that have been used since the inception of the NRM and from established international standards. This would cause significant confusion for survivors and support providers alike, and could require the re-training of frontline workers. Crucially, it would lead to victims who fall clearly within international definitions not being identified and therefore being excluded from the support and assistance that they need to rebuild their lives after exploitation. The stated intent in the Explanatory Memorandum is to align with ECAT but its definitions have not been replicated in the draft regulations. If the government is following international obligations, it would replicate the simple wording in Article 4 of ECAT.

During the debate, we ask Committee members to:

- **Raise concerns that the draft Regulations narrow the definition of a victim, depart from international standards, provide insufficient distinction between adults and children and could lead to many victims being excluded from identification and therefore support and assistance.**
- **Ask the Home Office to re-draft the Regulations and consult with the anti-trafficking sector to ensure that redrafted definitions of a victim are workable, consistent, in line with international law, and informed by the lived experience of survivors and those who assist them.**
- **Vote against the draft regulations pending this necessary redrafting.**

Impact on survivors

Case example: One example of how this could lead to survivors failing to be identified is with domestic workers. Domestic workers may consent to work in the UK, believing they will be treated in accordance with the law. They may consent to travelling to the UK before the exploitation takes place. However, even if their consent to the work was secured through deception (the employer not being truthful about their working conditions or pay, or the duration of their stay in the UK) or through abuse of their vulnerability, the Regulations risk not assisting them. The Regulations require decision makers to only disregard consent if it is about travel. The Regulations would then undermine the benefit presented by the NRM, which should offer domestic workers recognition and a viable option for protection from an abusive employer.

For further information, please contact:

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