

Border Security Asylum and Immigration Bill – Parliamentary Briefing

Second Reading – Monday 10th February 2025

Introduction

- Trafficking and modern slavery is a grave crime. Survivors of trafficking and modern slavery have the right to safety, support and protection to recover from the crimes committed against them and rebuild their lives.
- While both trafficking and smuggling can involve the movement of people, the key difference is that trafficking involves exploitation of the person being moved, for example for sexual or labour exploitation. Smuggling primarily focuses on facilitating unauthorised entry into a country.
- We cannot prevent trafficking and modern slavery, nor punish the perpetrators of these crimes, unless **all** survivors can access rights and justice as they are entitled to under international law.

Key Lines

- Organisations in the modern slavery sector welcome the Government's fulfilment of their commitment to repeal the Safety of Rwanda (Asylum and Immigration) Act 2024 in addition to repealing many harmful provisions contained in the Conservative's Illegal Migration Act 2023 (IMA) through the Border Security, Asylum and Immigration Bill (BSAIB). The Illegal Migration Act is cruel, unlawful and unworkable. It is right that the Government campaigned vociferously against the IMA when in opposition.
- As it stands, the Border Security, Asylum and Immigration Bill retains provisions from the IMA that conflict with this commitment and goal. In particular, s29 of the IMA expands the scope of s.63 of the Nationality and Borders Act 2022 and would disqualify victims from support and safety on account of detention/convictions that could have been the result of their exploitation. The retention of s.59, which makes asylum and human rights claims from a range of countries inadmissible, is similarly concerning.
- The Illegal Migration Act is incompatible with the UK domestic human rights law and international legal obligations, including the Human Rights Act 1998 (HRA), European Convention on Human Rights (ECHR) and European Convention on Action Against Trafficking (ECAT). To be a champion for rule of law, rights and justice as promised, this government must repeal it in full.
- Additionally, the Bill introduces worrying new measures that expand the scope of immigration offences and the government's ability to detain migrants, which further enhance the risk victims of modern slavery will face in being punished as criminals instead of being safely identified and supported to recovery.

- As a government that is “steadfast in its commitment to tackling [modern slavery] in all its forms and to [supporting survivors](#)” we therefore urge you to repeal the entirety of the IMA and related sections of the Nationality and Borders Act.
- This is an opportunity to reset the UK’s approach: to recognise that tackling a “barbaric crime” requires supporting all survivors and punishing perpetrators. The UK’s approach should focus on safeguarding survivors regardless of their nationality or how they have entered the country rather than immigration enforcement. An immigration led approach is counter-productive to achieving the Government’s aims on intelligence gathering and prosecutions of criminal gangs, however, a survivor’s cooperation should be a collateral benefit of support, rather than a precondition.

Our calls on the Government

(1) Repeal all IMA provisions retained in the Border Security, Asylum and Immigration Bill to ensure potential survivors of human trafficking are not disqualified from support and criminalised.

(2) Repeal harmful provisions introduced by NABA, specifically those concerning Part 5 in relation to modern slavery, Part 4 concerning age assessments and those which create immigration offences and exclude certain nationalities from seeking protection to ensure survivors have access to identification and support mechanisms and mitigate those vulnerabilities which may lead to re-trafficking and exploitation.

(3) Direct Incorporation of ECAT into Domestic Legislation to ensure compatibility with international legal obligations and to uphold legal protections for survivors of trafficking.

(4) The introduction of safe reporting mechanisms to ensure survivors of trafficking can report exploitation to the authorities without fear of deportation and immigration data being shared with the Home Office.

Removal of IMA & NABA provisions

- Organisations in the sector welcome the Government’s move to repeal many of the provisions in the IMA through the BSAIB. These include s.2 (the duty to remove people who arrived in the UK irregularly), s.11 (powers of detention), s.4, s.16-21 (powers around unaccompanied children) and s.22-28 (modern slavery provisions).
- However, the Bill retains IMA provisions which run contrary to international law. Of specific concern for survivors of trafficking is s.29 which marks a significant expansion of the public order disqualification introduced by s.63 of NABA. It

removes the important discretion not to apply the disqualification; mandating that it **must** apply unless there are “compelling circumstances”. It extends the scope of the disqualification to any non-British survivor convicted of an offence of **any** length of sentence. Survivors affected, many of whom may have committed offences under coercion, will be denied access to identification, support and protection.

- The BSAIB grants an opportunity to the Government to repeal some of the most harmful provisions introduced by NABA, which has weakened the identification and support system for survivors, creating a fertile environment for exploiters to thrive.¹

Incompatibility of Border Security Asylum and Immigration Bill & Illegal Migration Act with international legal obligations

- The Government have indicated their desire to have a “[rule of law reset](#)”, stressing the importance of respecting the rule of law following the previous administration’s deliberate efforts to breach international law and circumvent the courts. The **Prime Minister** has spoken of the need to pursue solutions that will deliver results and “*approaching this issue with humanity...and with profound respect for international law*” while outlining the Government’s commitment to the ECHR.²
- However, the **former Home Secretary Suella Braverman** made a statement under s.19(1)(b) of the Human Rights Act 1998: “*I am unable to make a statement that, in my view, the provisions of the Illegal Migration Bill are compatible with the Convention rights, but the Government nevertheless wishes the House to proceed with the Bill.*”
- Furthermore, the Government campaigned vociferously against the IMA when in opposition, with current **Home Secretary Yvette Cooper** having described it as doing “*the total opposite*” of providing support for those who have been trafficked and as “*traffickers’ charter.*”³ With current **Safeguarding Minister Jess Phillips** describing it as a “*traffickers dream, a tool for their control.*”⁴

Status of ECAT in domestic law and need for direct incorporation

- ECAT has not been entirely incorporated into UK law, but some of its obligations have been implemented by the Modern Slavery Act 2015 in respect of Article 10,12,13 and the immigration rules have been changed to reflect Article 14.⁵

¹ [NABA_report_ATMG_FINAL.pdf](#)

² [PM’s remarks at the opening plenary session of the European Political Community: 18 July 2024 - GOV.UK](#)

³ [Illegal Migration Bill - Hansard - UK Parliament](#)

⁴ [Yvette Cooper faces Labour backlash for keeping Tory policy in asylum bill](#)

⁵ [2024.06.28_ATMG_pre-election_briefing\(1\).pdf](#)

- A small number of ECAT obligations have been incorporated via policy, to high impact. For example, through the implementation of the National Referral Mechanism (NRM), which provides the only identification and support framework for survivors of trafficking and modern slavery.⁶
- Some aspects of ECAT, such as victim care, have been narrowed and in some areas eradicated by recent legislation such as NABA 2022, which has restricted these rights against what was intended by ECAT. The implementation of BSAIB in its current form will be a further restriction on these rights.
- Direct incorporation of ECAT into domestic legislation would not only shift the narrative from criminalisation to protection for survivors of trafficking but also align with the Government's desires for a closer relationship with European partners and Prime Minister's commitment to the ECHR.

Disapplication of modern slavery protections & need to repeal provisions

- S.63 NABA introduced provisions to allow for the disqualification of survivors from the NRM recovery and reflection period on public order or bad faith grounds. Since its commencement, s.63 has been applied on the basis of a wider interpretation of article 13(3) ECAT and survivors are being disqualified from the full identification process.
- Between January 2023 and June 2024, 413 confirmed disqualifications were made on public order grounds and 7 disqualifications on bad faith grounds, 68% of which had an element of criminal exploitation in their case. This is extremely concerning considering that many survivors are criminalised because of actions they were forced to commit as part of their exploitation.⁷
- The concept of disapplying modern slavery protections, namely the rest and recovery period, due to concerns arising from public order are found in ECAT. However, the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the recent legal advice published by the Modern Slavery Policy and Evidence Centre, make it clear it is not designed to be used in the way proposed in this legislation. Public Order Disqualifications are already used as far to blunt a tool which bring untold harm to hundreds of vulnerable victims. Expanding it to all individuals subject or considered for a deportation order will undoubtedly cause harm to the victims of modern slavery.
- Disqualifications on public order grounds should never be used as a blunt instrument and rather should be reserved for the extremely rare occasions when providing support to an individual comes with a clear and credible threat to public order.

⁶ [2024.06.28_ATMG_pre-election_briefing\(1\).pdf](#)

⁷ [GRETA 4th round evaluation joint submission - 24.10.2024 \(1\).pdf](#)

- This will only compound the widespread issues with the UK’s modern slavery identification and support systems and provisions, as well as pre-existing hostile immigration policies and failings in the criminal justice system and the inadequate understanding and application of section 45 defence.⁸ All of which this bill does nothing to repair.
- This also compounds the lack of any safe and secure reporting for migrants who are, or risk becoming, victims of forced labour. Expanding the cohort of people who could experience mandatory disapplication of modern slavery protections removes will trap people in ever deeper and more intractable forms of exploitation.
- The expansion of the provisions of s.63 NABA through s.29 of IMA which is set to be retained in the BSAIB risks leading to an expansion of the public order disqualification which has been applied bluntly until now, excluding victims of trafficking and forced criminality from identification and protection.⁹

Suggested Parliamentary Question

(1) To ask the Secretary of the State for the Home Department, what assessment she has made of the compatibility of the retained Illegal Migration Act provisions in the Border Security, Asylum and Immigration Bill with the European Convention on Human Rights?

Signed by:

AFRUCA Safeguarding children	Hestia
After Exploitation	Hibiscus
Anti-Slavery International	Hope at Home
Anti Trafficking and Labour Exploitation Unit (ATLEU)	Hope for Justice
Anti-Trafficking Monitoring Group (ATMG)	Kalayaan
Causeway	The Snowdrop Project
Focus on Labour Exploitation (FLEX)	The UK BME Anti-Slavery Network – BASNET
ECPAT UK	The Voice of Domestic Workers
Helen Bamber Foundation	Unseen

⁸ [GRETA 4th round evaluation joint submission - 24.10.2024 \(1\).pdf](#)

⁹ [GRETA 4th round evaluation joint submission - 24.10.2024 \(1\).pdf](#)