

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT SLAVERY AND HUMAN TRAFFICKING
(DEFINITION OF VICTIM) REGULATIONS 2022

Wednesday 29 June 2022

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Sunday 3 July 2022

© Parliamentary Copyright House of Commons 2022

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: HANNAH BARDELL

- | | |
|---|---|
| † Bonnar, Steven (<i>Coatbridge, Chryston and Bellshill</i>) (SNP) | † Owen, Sarah (<i>Luton North</i>) (Lab) |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | † Phillips, Jess (<i>Birmingham, Yardley</i>) (Lab) |
| † Henry, Darren (<i>Broxtowe</i>) (Con) | † Randall, Tom (<i>Gedling</i>) (Con) |
| † Johnson, Dr Caroline (<i>Sleaford and North Hykeham</i>) (Con) | † Russell, Dean (<i>Watford</i>) (Con) |
| † Lloyd, Tony (<i>Rochdale</i>) (Lab) | Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Maclean, Rachel (<i>Parliamentary Under-Secretary of State for the Home Department</i>) | † Spellar, John (<i>Warley</i>) (Lab) |
| † Mann, Scott (<i>North Cornwall</i>) (Con) | † Thomas, Derek (<i>St Ives</i>) (Con) |
| † Moore, Damien (<i>Southport</i>) (Con) | † Vickers, Matt (<i>Stockton South</i>) (Con) |
| † Moore, Robbie (<i>Keighley</i>) (Con) | Laura-Jane Tiley, Joe Briggs, <i>Committee Clerks</i> |
| | † attended the Committee |

Sixth Delegated Legislation Committee

Wednesday 29 June 2022

[HANNAH BARDELL *in the Chair*]

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

2.30 pm

The Parliamentary Under-Secretary of State for the Home Department (Rachel Maclean): I beg to move,

That the Committee has considered the draft Slavery and Human Trafficking (Definition of Victim) Regulations 2022.

It is a pleasure to serve under your chairmanship, Ms Bardell. The draft regulations support the implementation of part 5 of the Nationality and Borders Act 2022, which, as hon. Members will recall, received Royal Assent at the end of April. Section 69 of that Act gives the Secretary of State the power to define the terms “victim of human trafficking” and “victim of slavery” for the purposes of part 5 of the Act.

The definitions of those terms are relevant to the provisions in part 5 relating to the circumstances in which the Secretary of State must provide assistance and support to identified potential victims under section 64 of the Act, and the circumstances in which an identified potential victim may be disqualified from protection if, for example, they are a threat to public order or make a referral in bad faith, as set out in section 63. The draft regulations are consistent with existing operational practices and ensure that the important provisions in part 5 of the Act can work in practice.

Although section 56 of the Modern Slavery Act 2015 defines a victim of exploitation, that definition relates to the criminal offences in sections 1 and 2 of that Act, which deal with slavery and human trafficking respectively. In practice, that means that under section 56 of the 2015 Act,

“a person is a victim of slavery if he or she is a victim of—

(a) conduct which constitutes an offence under section 1, or

(b) conduct which would have constituted an offence under that section if that section had been in force when the conduct occurred.”

While those definitions are appropriate in the context of the criminal law, I hope hon. Members agree that for the purposes of identifying and supporting victims, we need bespoke definitions that enable victims to be identified whether or not a criminal threshold has been met for the purpose of a prosecution. Indeed, the 2015 Act’s definitions require evidence of conduct amounting to a criminal offence, which is not a requirement for the purposes of victim identification or a prerequisite for providing support. The draft regulations therefore provide statutory definitions that are better suited to defining a victim for the purpose of identification and support, and are distinct from the criminal justice-related definitions in section 56 of the 2015 Act.

I thank the Secondary Legislation Scrutiny Committee for the interest that it has shown in the draft regulations, and I will take this opportunity to clarify the points

raised by the Committee in its report of 23 June. The definition of a victim for the purposes of identification and support that is currently being used operationally, which forms the basis of the definition in the regulations, is more closely aligned to the definitions contained in the Council of Europe’s convention on action against trafficking in human beings—ECAT, as it is often called—and in the United Nations Palermo protocol. When drafting the proposed definitions, we therefore sought to define the terms in alignment with those definitions.

The Secondary Legislation Scrutiny Committee has asked whether the proposed wording will accurately deliver the Home Office’s policy intention, and whether that intention is exactly to replicate article 4 of ECAT, or to modify it in some way. ECAT is intended to enable signatory states to interpret and apply the convention’s rights and obligations. Our definitions are fully compliant with ECAT’s definitions of slavery and human trafficking. We have not mirrored the convention word for word, given that it is drafted in a way that requires signatory states to provide further detail and, in this instance, clarify where there is potential ambiguity. That is what we have achieved through the regulations. I hope that explanation helps address the Secondary Legislation Scrutiny Committee’s concerns.

The definitions contained in the draft regulations also draw from victim identification indicators. For example, regulation 2(2)(a) provides that, in determining whether a person has been subjected to slavery, servitude, or forced or compulsory labour, regard may be had to all the circumstances, including any of the person’s personal circumstances—such as their age, their family relationships, and any physical or mental disability or illness—that significantly impair their ability to protect themselves from being subjected to slavery, servitude, or forced or compulsory labour. As such, in drafting the definitions in the regulations, we have sought to draw on and align with both operational practices set out in statutory guidance, and our international obligations.

The proposed definitions are therefore familiar to practitioners. Indeed, they reflect those contained in existing statutory guidance issued under section 49 of the 2015 Act, which applies in England and Wales, and the non-statutory guidance available in Scotland and Northern Ireland.

We now need to put these established administrative definitions into secondary legislation to support the implementation of part 5 of the Nationality and Borders Act 2022, which provides legislative clarity for victims of modern slavery and for decision-makers on victims’ rights. I therefore commend the regulations to the Committee.

2.35 pm

Jess Phillips (Birmingham, Yardley) (Lab): It is a pleasure to serve under your chairship, Ms Bardell.

The Minister has laid out what she believes the regulations will do, and has tried to quell some of the criticism that they have already faced. She said that the proposed definitions are already recognised by practitioners, which will be news to those I spoke to this morning and yesterday—in fact, I was one for many years as a first responder in the national referral mechanism. I and the Labour party, together with many stakeholder organisations, believe that the draft definitions will have deeply damaging

consequences for victims of trafficking and modern slavery—the very people the legislation is apparently trying to protect.

The definitions are not in alignment with international law, such as the European convention on action against trafficking in human beings—ECAT—and the Palermo protocol, to which the Minister referred. The proposed definitions narrow the definition of a victim to the extent that some of the most marginalised and vulnerable people could very easily fall outside of its scope. The Government might have known that had they followed the appropriate process and ensured that there was consultation with anti-trafficking organisations prior to the introduction today of the draft regulations. Instead, they published a legal document that anybody with experience of modern slavery survivor support and care, or the national referral mechanism, picked holes in immediately. If anti-trafficking organisations had had the opportunity to give feedback on the proposed definitions before their publication, we might not be in this position. I am fairly certain that their lordships will feel the same.

I presume no one here needs me to clarify why this matter is so important: the definition in question will decide who will be protected and supported as a victim, and who will not. The NRM is how victims access support services, including accommodation and legal advice. For children, that mechanism is the means by which they access independent child trafficking guardians. Not being identified as a victim can leave someone alone, without care and support, and at risk of deportation, destitution and further exploitation and re-trafficking. It has appalling consequences, ones that I have seen with my own eyes.

Let me go through some of the issues arising from the proposed complex, contradictory and damaging definition. First, the definition of a victim of trafficking in the regulations is not in alignment with international law, as understood in ECAT. The Government state in their explanatory memorandum that they intend to align with ECAT, and the Minister said that herself, but the legislation before us does not do so. The Government are not fulfilling their obligations under international law. *[Interruption.]* The Minister speaks from a sedentary position—feel free to intervene at any point.

Secondly, the draft regulations raise the threshold for identification. As the Minister herself said, they demand that someone must have personal circumstances that “significantly impair” their ability to protect themselves from slavery, servitude and forced labour. That definition, which does not marry up with others, seemingly places some sort of responsibility on the victims to look after themselves. The Modern Slavery Act sets a much lower threshold, referring only to circumstances

“which may make the person more vulnerable than other persons”.

Why has that changed? Who, in what room and for what reason, has introduced that new higher threshold, placing the burden of proving their significant impairment on the victims? What defines a significant impairment?

Thirdly, the definition of exploitation is far too narrow. The definitions in the draft regulations are prescriptive and static—for example, tying sexual exploitation to specific offences in UK law. Article 4 of ECAT and the Palermo protocol make it very clear that their definitions of exploitation should be a minimum, so that as new

forms of abuse and exploitation emerge, states can adjust and evolve to make sure victims are protected. I will cite a real-life example to prove my point—I will use a number of real-life examples in this speech, all of which are a composite of real-life clients of the Anti Trafficking and Labour Exploitation Unit, some of whom I have come across directly myself.

A young woman, Mary, is orphaned and has grown up in poverty. She grew up being sexually abused by older males in her wider family. When she is 18, an older woman says she has work for Mary in England in an office, and arranges her travel. Mary arrives in England to find out she will be working as a housemaid for a much older man. She is kept in his house. He says she is illegal here, and if the police find out, she will be deported. She is scared to go back to her country, where she faces more abuse. She agrees to stay. The man keeps her passport. She does housework all day for him. He does not pay her or let her go out when she wants, but he says he loves her and asks her to be his girlfriend. She agrees, as she does not want to be destitute and on the street. He rapes her and uses her for sex in any way he wishes. This goes on for months, until she tells a friend, who helps her escape.

The man denies it all—as we know, that usually goes in their favour—and says that Mary was his partner and the sex was consensual. The police do not bring charges under the criminal law for the sexual exploitation Mary has suffered, much like they did not bring charges in 65,000 of the 66,000 cases in the United Kingdom last year. There are no independent witnesses, and it is her word against that of her employer. Is this woman a victim of sexual exploitation, even though an offence has not been made out to the criminal standard under the Sexual Offences Act 2003?

Furthermore, the regulations do not include any reference to criminal exploitation, which makes absolutely no sense, as suspected criminal exploitation was the single most common reason last year for a child being referred to the national referral mechanism. Criminal exploitation accounts for the largest group of people suspected of having been trafficked in the United Kingdom this year, as well as last year and the year before, but it is not mentioned in the regulations.

I will cite another example: the case of Kejsi, who was born in Albania and was abused by his father. At the age of 14, Kejsi left home to work in the UK on a job arranged by friends of his father to repay his dad’s gambling debt. He arrived as an unaccompanied child, was referred to children’s services in a London borough, and was told to claim asylum. His social workers were concerned about Kejsi, as he would often go missing from his placement for full days. They suspected he was being exploited, but he did not disclose to them the abuse he had faced growing up, or the job that had been arranged for him.

Kejsi was referred to the national referral mechanism, and his social workers arranged strategy meetings with the other safeguarding partners to protect him from harm. He disclosed to a non-governmental organisation that was supporting him that he was scared, because his job was to transport and distribute class A drugs. The NGO staff worked with him and his social workers to safeguard him and he became very settled into school and other extracurricular activities organised by the charity.

[*Jess Phillips*]

Kejsi was happy, but he felt unsettled as the years passed and he did not receive a decision on his asylum claim or the NRM. Adults and children alike currently wait more than a year for an NRM decision, if they are lucky—the Minister might be able to give more accurate, up-to-date figures. Under the statutory guidance definitions, Kejsi would likely be found to be a victim of criminal exploitation, yet that guidance will change, and a definition for criminal exploitation as an exploitation category is not included in the draft regulations before us. The Government may therefore refuse to recognise as victims those who are exploited for criminal activities, including children.

Rachel Maclean: Will the hon. Lady give way?

Jess Phillips: I absolutely will. I see that the Minister has a note.

Rachel Maclean: No—I am afraid the hon. Lady is taking us down a path that is inaccurate. Nothing in the draft regulations, the Modern Slavery Act or the Nationality and Borders Act prevents the Government from offering the generous support of this country to child victims of criminal exploitation. She knows that, yet she is conflating a number of issues, which I am afraid is inaccurate. I must correct the record.

Jess Phillips: I appreciate the Minister—I will tell her some of the things that I know about criminal exploitation in this country and about what she has just described as being incredibly generous.

At the moment, I am working with a young woman who has been exploited both criminally and sexually in this country since the age of 13. She is now 23 years old. The Minister will be surprised to hear that she is waiting for court dates, and she has been waiting a while. Does the Minister know how long that young woman had to wait for any NRM support? Does the Minister know how many times she has been criminalised, even though she is a victim of human trafficking?

Rachel Maclean: Will the hon. Lady give way?

Jess Phillips: I absolutely will. I look forward to another lecture on something I know a lot about.

Rachel Maclean: We are all benefiting from the hon. Lady's experience. She is talking about many matters that she has experience in, but they are not relevant to the specific piece of legislation before us. We have put into law the definition of how we will help victims of child criminal exploitation. She is conflating a lot of other issues to do with our criminal justice system, which we debate regularly across the Dispatch Box at Home Office questions and elsewhere. They are not relevant to this debate. We have one of the most generous systems in the world and we are fully compliant with all our international obligations. Perhaps she would like to withdraw the comment she made earlier and correct the record on that point.

Jess Phillips: That was a long intervention, wasn't it? I will not withdraw my comments at all, because I am talking about the draft regulations. Would the Minister like to intervene on me again and show me where they say "criminal exploitation"?

Rachel Maclean: If the hon. Lady would like to study the Nationality and Borders Act—which, by the way, her party voted against, and which sets up a firm but fair immigration system and controls our borders—she will find many references to "criminal exploitation", as she will in the NRM and the statutory guidance for our partners.

Jess Phillips: I note for the record that the Minister could not point out where "criminal exploitation" is included in the definition of "human trafficking victim" in the draft regulations. She might want to do that, or she might want to conflate it with many other issues. No, the Minister does not want to show me where it says "criminal exploitation" in the regulations—it would be hard for her, because it does not.

I therefore do not retract. I meet children who have been criminally exploited all the time. As I have said, that is the greatest reason for referrals to the national referral mechanism in our country, yet it is not included in the draft regulations. I do not even confer bad faith on the Government in this. I imagine that, had they bothered to send the regulations to the experts in the field, including those who operate the national referral mechanism and offer this generous support—I do not need to take any lectures about that, because I ran those services for years—they would include the words "criminal exploitation".

The case that I have outlined, which is exactly about these regulations, means the Government may refuse to recognise as victims those who are exploited for criminal activities, including children. Again, that is hugely worrying, given that criminal exploitation is the most commonly reported form of abuse. Why would it be missing from the definition? Why not explicitly write into the definitions the most common form of exploitation in our country? I would love to know the answer; I cannot come up with one. Minister, please feel free to tell me why it is missing, rather than trying to make out that I am acting in bad faith. I am doing this because I care about child victims of criminal exploitation, as I am certain the Minister does, but the people who drafted the measure forgot them.

Another deeply concerning issue is that the draft regulations do not distinguish between adult and child victims. They merely suggest that age is a consideration when deciding whether a person is a victim of slavery. As a society we rightly treat children entirely differently from adults when it comes to their vulnerability and capacity to consent. Under international standards—and, I would argue, the commonly accepted ethical position of everybody in the country—children can never legally consent to their own exploitation, abuse, oppression, or injury. They can never consent to that.

Furthermore, the definition introduces the language of means—how a person came to be a victim—into what exploitation is. This, again, is narrower than the criminal law definition. The Minister made out that the definition was being put on the table because it would not be fair—she is not wrong about this—to use criminal law definitions. However, this definition is narrower in the case of children and in the test of the means of how somebody ended up in that situation than the criminal law definition of exploitation, which currently does not require a means element to be proven, so the threshold of proof is higher.

I have conferred good faith on the Government up to this point. It seems to me that the thresholds are higher because they want to identify fewer victims of human trafficking. It is a numbers game. That does not make any fewer victims of human trafficking, but locking up some of the perpetrators would. The Minister can intervene on me again if she would like to tell me how many child grooming and trafficking perpetrators were convicted last year—it was one. There were 4,000 children identified as victims of human trafficking in the United Kingdom last year and one conviction.

Finally—this is the end of quite a list—the current definition over-emphasises “arranging or facilitating travel”. As a practitioner in the field, I thought that that was long gone, and it does not feature “practices similar to slavery”. A final example will help demonstrate the failings of the definition. 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. They very often do consent to travelling to the UK. 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, for example—or through abuse of their vulnerability, the draft regulations risk not assisting them. They require decision makers to disregard consent only if it is about travel. The regulations would then undermine the benefit presented by the national referral mechanism, which should offer domestic workers recognition and a viable option for protection from an abusive employer.

Another case relates to Farah. Her husband lost his job. She had three children under 18. There were no jobs anywhere. She sold sweets on the roadside but could not pay their rent. She was told she could work as a housemaid in the Gulf. She agreed to go and when there, her employers said they had chosen her to accompany them to the UK on holiday. She agreed as she believed she should show willing for her new employers. She desperately needed that job to feed her family. She arrived in the UK and her passport was removed from her. She worked seven days a week, for 12 hours each day. She was paid £200 per month, which was sent back to her family. This is what she was told she would earn and did not know she was entitled to more.

Farah was also on call at night to look after a baby, sleeping on the floor next to his cot. Her belongings were kept in a small bag and she rolled up her mat in the mornings. She did not have her own space. She was not allowed to call her own children. She was locked in the house when the employers went out and was given their leftovers from restaurant meals to eat when they came back. She burnt some toast for her employer one day and was screamed at and called a donkey and a stupid woman. She was scared. She slipped cleaning one day, but was not taken to a doctor, just given paracetamol.

Farah agreed to that work; she agreed to her wages; she agreed to her travel. Is she a victim of trafficking? Under the proposed regulations, there is a chance that she might not be. The Minister will almost certainly say that in every single case example I have given those people would be considered victims of human trafficking, and I will really welcome that. But I have seen plenty of cases where they were not. The regulations are about numbers and, unless we get the definition right, they

will cost the Government loads in needless court cases. I am always hearing about how everybody hates the activist lawyers; well let me tell the Minister that any one of the cases I have cited will be subject to scrutiny—in fact one is already.

When I went to Yarl’s Wood detention centre about three years ago, I found three victims of human trafficking in there. I was able to identify them because I was a first responder in the NRM, and they were removed from detention. So much for the idea that this does not happen. The Minister may say, “Of course those cases you have cited, Jess, will get through,” but the reality is quite different. We know what a grave problem modern slavery is in this country and we should be rightly proud, as should the Government, of trailblazing legislation.

In the past year, 10,685 individuals were referred to the NRM. Of those, 4,646 were children, accounting for 43% of all referrals. Although that figure remains steady in comparison with the previous year, at 4,700, the number of children identified rose substantially from 3,338 in 2018 and 2,418 in 2017. Meanwhile, we do not have a cracking track record for prosecuting the perpetrators, and convictions in those years, at their highest, reached the heady number of 21 a year. That conviction rate has fallen year on year every single year, and there were just two prosecutions and one conviction last year—just one. It is shameful: the number of victims rises while the number of convictions falls.

The proposed definition is confusing, complex and contradictory. It will lead to victims who clearly fall within the international definitions of victims of slavery not being identified and therefore being excluded from the vital protection, support and care that they desperately need. For all the reasons that I have outlined, I would never vote for the regulations.

2.59 pm

Tony Lloyd (Rochdale) (Lab): My hon. Friend the Member for Birmingham, Yardley has made a powerful case, and the Minister needs to give a detailed response.

Frankly, I am surprised that, as the explanatory memorandum tells us, we did not undertake a formal consultation. There are many expert groups, some of which I have dealt with over the years. The Greater Manchester police, for example, has a very good record of trying to investigate modern slavery but they, in turn, work with some very good NGOs and other organisations that have strong views. It is not so much that they have strong views; they have practical experience of the importance of the definition of a victim, so it is quite astonishing not to consult on the regulations. I hope the Minister can explain why that decision was made, because there clearly was a decision not to have a formal consultation.

The whole point about having a definition of a victim is that it gives victims protection, but there is something else that my hon. Friend referred to a few moments ago: once we begin to give protection to victims, there is a genuine possibility that they may become co-operative in identifying the perpetrators. That is of fundamental importance, so if get the definition wrong, we are not simply letting down the victims but preventing our criminal justice system from acting forcibly against those who we would want to see taken out of business. This is not a trivial issue.

[Tony Lloyd]

I share my hon. Friend's concerns, because I have come across cases—these are commonplace and commonly known—of young people brought in from Vietnam, where we know there is financial coercion, but it is almost impossible to prove in the context of the United Kingdom. Those young people would not necessarily see themselves as being coerced. It becomes extremely difficult when they fear that they will be deported back to Vietnam, where there is a strong possibility that there will be pressure on their families and on them as individuals, so it matters that we get the definition right, and not only for young people. An 18-year-old is as vulnerable as a 17-and-a-half-year-old.

Sarah Owen (Luton North) (Lab): Without taking a formal consultation, how is it that the impact assessment can say that there is no impact on charities or voluntary bodies, when the regulations will actually have a significant impact on who they can help and how they can help? Does my hon. Friend agree that there is a worrying lack of detail here, and a worrying lack of consultation?

Tony Lloyd: I can only agree. I hope that the Minister will respond to the point that has now been raised by three hon. Members, because it is not trivial and it really matters.

Another case I want to raise is that of women who are trafficked, ultimately for the purpose of prostitution. We know that some of those women, or even men, would technically consent to being trafficked, so it is not clear that they would be covered under the definition of victim in a way that would allow them to be given the kind of protection that we ought to provide in our society. We ought to protect people engaged in prostitution, who are ultimately given very little choice but who may not meet the definitions included in the regulations. Again, not only is that about the victims themselves; importantly, it is also about the breaking the control of the traffickers. If we are not clear about definitions, we will not give protections to victims and allow the authorities to gain the confidence of trafficked women and men in order to begin the process of unpicking who are the perpetrators.

I hope the Minister will take the comments from my hon. Friend the Member for Birmingham, Yardley seriously. She put them very forcefully, and I can see the extent to which that challenged the Minister, but it is not a question of whether the Minister is challenged; it is a question of whether we have got the regulations right. I hope the Minister will respond to what are legitimate concerns and challenges, and give the Committee a fuller account of why she can be certain that avoiding the definitions in the European convention and the Palermo protocol is a satisfactory way to deal with this problem. I hope she can guarantee that the concerns that have been raised about the regulations before us are not well founded. These are serious matters and the Committee should not simply brush them away and ignore them.

3.5 pm

Steven Bonnar (Coatbridge, Chryston and Bellshill) (SNP): It is a pleasure to see you in the Chair, Ms Bardell, for the first time, I think, since I came here in 2019.

I thank the Minister for laying out the Government's position on these regulations. I have just a few brief comments, because I am in total agreement with the hon. Member for Birmingham, Yardley, and I share many of the concerns that she raised eloquently. However, I would like to reinforce a few of those points.

This draft SI seeks to align the definitions of victims of slavery and victims of human trafficking with existing statutory guidance and international obligations, without a dependence on criminal activity. It will therefore enable victims to be identified as such, whether or not a threshold of criminal activity has been evidenced, through the use of definitions that align with ECAT. The definitions focus on victim identifiers such as the threat or use of force and other types of deception. They will not change the definitions in the Modern Slavery Act, and so will not be used by the criminal justice system. Rather, they will apply to the modern slavery provisions in the Nationality and Borders Act to ensure the term is not undefined in the Act and to align it with international definitions. The Home Office claims that is needed for operational purposes, but it is a major red flag for the rest of us.

These draft regulations combine the categories of slavery, servitude and forced labour into one single definition. They set the definition of exploitation far too narrowly. They make no distinction between adult victims and child victims of slavery. They introduce a standard of including children in the deliberation of the means test. That is very troubling. The means test element within ECAT does not apply to children because legally, as we all know, children can never consent to their own exploitation. The regulations are defective in respect of the means element of human trafficking, linking consent regarding adult victims to the travel, rather than the international standard, which sets out the means element of the definition, as related to the exploitation or purpose.

The definitions of exploitation do not include practices similar to slavery, as the hon. Member for Birmingham, Yardley outlined well. They set a completely inappropriate standard for victim identification, overemphasising the arranging or facilitating of travel. They will prove to be unworkable in practice.

3.7 pm

Rachel Maclean: I want to start with what I hope is a point of agreement: we all take these concerns seriously. I take everything that the hon. Member for Birmingham, Yardley says extremely seriously, as I do for other members of the Committee. We all agree that modern slavery is absolutely appalling in all its forms, whether it involves the cases that the hon. Lady set out, the many other cases that I have heard of at first hand when I have been working with victims, as we all do in the Home Office, or other cases that Members have had in their constituency work.

The hon. Lady said that the Government should be proud of our record, and we are. We are the Government who introduced the Modern Slavery Act. We are the Government who invested in the NRM. I accept that it has problems—the hon. Lady highlighted some of them, and I know of many more—but we are determined to improve it. That is part of the work that we are doing. We want the people the hon. Lady spoke about to be rescued, as many others are.

We work closely with the police and our amazing officers. I am sure the hon. Lady would really enjoy visiting our regional organised crime unit in Birmingham and hearing about the incredible work it does and how it works with the intelligence community, the organised exploitation units and our operational partners. Of course, we in the Home Office do not know everything—how could we? We work with our partners, who have decades of experience—the victims’ charities, the NGOs and the people on the frontline, such as the hon. Lady in her past life. We work with them and listen to them. The legislation that we introduce to the House is based on the frontline experience.

Jess Phillips: Will the hon. Lady give way?

Rachel Maclean: I am about to come on to the point that the hon. Lady challenged me on in the consultation. If she will forgive me, I hope to address all the points and then she can intervene.

On engagement, as we have done all the way through the process of the Modern Slavery Act in the first place and then the Nationality and Borders Act 2022, we have worked closely with victim support charities, NGOs and support providers, including members of the Modern Slavery Strategy Implementation Group for Victim Support. During our engagement, our approach to align the definition with the European convention on action against trafficking in human beings and the United Nations Palermo protocol was welcomed. There has been a thorough engagement process within the Home Office and with partners, such as the police and other first responder organisations, to identify the potential risks and ensure there are no unintended consequences or impacts from the regulations, because none of us wants them, we do not want them and the people who work on the frontline do not want them either. That is why we listen to those people.

Sarah Owen: I thank the Minister for giving way. When it comes to impacts, it says here that an equality impact assessment has been completed. Can the Minister tell us the results of the equality impact assessment on child sexual exploitation specifically?

Rachel Maclean: If the hon. Lady will forgive me, I will write to her on that point because we are considering specific legislation here.

I have been challenged on international obligations and I want to put on record—

Sarah Owen: Will the Minister give way?

Rachel Maclean: If the hon. Lady will allow me, I will proceed to the end of my comments.

As I have said, the definitions set out in these regulations are compliant with our international obligations and existing operational practices, including ECAT. They ensure that victims and those involved in identifying victims have clear parameters and terms to rely on. The activities and forms of exploitation mentioned in ECAT are covered by the draft regulations and include all forms of exploitation, including sexual exploitation of

women, because we recognise that that is a common pattern of exploitation. It was well discussed in the debates in Parliament.

Sarah Owen: Will the Minister give way?

Rachel Maclean: No, I will not give way. We have intentionally avoided including reference to specific forms of exploitation in recognition of the evolving nature of trafficking and modern slavery and so as not to exclude victims of what may currently be unknown forms of exploitation. As frontline partners have reminded us and as anybody who works on the frontline knows, it is always changing and we have to be ready. That is consistent with our current statutory guidance and operational practices.

Dr Caroline Johnson (Sleaford and North Hykeham) (Con): I thank the Minister for giving way. She is making an interesting speech. The hon. Member for Birmingham, Yardley posed a serious case where she described a young woman being imprisoned in her home, forced into sexual activity that she does not want and paid a pittance while working all the hours God sends. Can the Minister confirm that such an individual would be considered a victim of modern slavery?

Rachel Maclean: The short answer is an absolute yes. That is what our modern slavery system already does and has been doing since we introduced the 2015 Act. We are a country that complies with all our international obligations and leads the world in our response to victims, spending something like £370 million on providing support to victims in exactly those situations. Our police officers and our law enforcement and intelligence agencies work tirelessly. The debate today is not about that.

Jess Phillips: Will the Minister give way?

Rachel Maclean: If the hon. Lady will forgive me, I want to finish my comments. We are putting into law the definition of “victim” because we want to identify more victims.

Jess Phillips: On that point, will the Minister give way?

Rachel Maclean: If the hon. Lady does not mind, I will finish my comments on this point and then I will give way. I do not want to detain the Committee excessively. I want to emphasise why we are not changing—
[*Interruption.*]

The Chair: Order. If the Minister wants to give way, she will. Give her the opportunity to do that. If she is not going to give way, you must also unfortunately respect that too. Let her continue with her comments without interruption, because it is important that we and those who are watching this Committee and its proceedings hear them.

Rachel Maclean: Thank you, Ms Bardell. I do want to make my points, because I think that they will answer the questions that hon. Members are putting to me.

[Rachel Maclean]

That is why I want to complete my remarks on this point. I emphasise that we are not changing the definition of “victim” for the purposes of identification and support; nor are we expanding or narrowing the scope of the existing definitions. Rather, we are putting the definition, which we currently take from our international obligations, as reflected in modern slavery statutory guidance, into one arena—namely, secondary legislation—which provides clarity for victims and our operational partners, who have welcomed this.

I will give way to the hon. Member for Luton North, and then to the hon. Member for Birmingham, Yardley, on the Front Bench.

Sarah Owen: I thank the Minister for giving way. The reason why I asked the specific question about whether children were included in the equality impact assessment is that the Minister has told us today that children are also included in this legislation, although there is no mention of them. It is really important that we get that right. We need to know the impact that this will have on very young vulnerable people.

Rachel Maclean: Does the hon. Member for Birmingham, Yardley also want to come in?

Jess Phillips: No, the Minister can answer and then I will come in.

Rachel Maclean: I thank the hon. Lady.

The Chair: The Minister must respond, having taken an intervention.

Rachel Maclean: As the hon. Member for Luton North knows, every piece of Government legislation is subject to stringent equality impact assessments.

Sarah Owen: Does it include children?

Rachel Maclean: Yes, it covers all groups under the equalities legislation. That is why I said I will write to the hon. Lady on that. I am coming on to speak about children, if she will allow me.

I now want to speak about the concerns—

Jess Phillips: Will the hon. Lady give way?

Rachel Maclean: Yes.

Jess Phillips: I feel like this might have been better in real time, but on the question asked by the hon. Member for Sleaford and North Hykeham about whether the woman in the case that I raised would be considered a victim of human trafficking within these regulations, it would, to be fair to the Minister, be impossible to answer that question, because she is not a first responder and is not looking at all the details of the case. However, the point that I was making specifically on that case is that the threshold in the legislation that we have been asked to look at today is a threshold in sexual offences law—specifically within the criminal law of sexual offences. They are literally listed in this document. Therefore, if no sexual offences in criminal law were found to have

occurred, would the rapes and sexual exploitation that the woman had suffered mean nothing, seeing as those criminal offences have been listed in this legislation?

Rachel Maclean: May I repeat one more time, for the avoidance of doubt, because the hon. Lady has now challenged me several times on different forms of exploitation, including sexual exploitation—[*Interruption.*] I am about to explain to her, if she will allow me to finish. She mentioned child exploitation; I will come on to that. She mentioned sexual exploitation. All of those are covered under ECAT. The activities and forms of exploitation mentioned in ECAT are covered by our regulations. We have intentionally avoided including reference to specific—

Jess Phillips: I know it is in ECAT.

Rachel Maclean: We are aligned with ECAT—that is the point. We have intentionally avoided including reference to specific forms of exploitation, such as sexual exploitation, which is well established in our statutory guidance, and child exploitation, which is also well established. That is why we have had incredible success in rescuing children from county lines already. I have met women in our safe houses who have been rescued from sexual exploitation. The system is incredibly effective. It does not work as well as we would all like it to do; we all know that. But with great respect to the hon. Lady—

Jess Phillips: You can stop saying that. It does not matter whether you respect me or not.

The Chair: Order.

Jess Phillips: I apologise, Ms Bardell.

The Chair: I ask hon. Members, for the sake of those watching our proceedings and for the sake of *Hansard*, to respect the rules of the House. There are important points to be made, and if Members want to make them, please intervene formally. If we can respect the rules of the House, so that people can follow the proceedings and, when they read them back, they reflect properly what everyone has said, I will be very grateful.

Rachel Maclean: Thank you, Ms Bardell. I do want to finish my points. I have quite a few things to get on the record that may be of great assistance to Members who are interested in this matter.

The concern has been expressed that we are narrowing the scope of the definition and failing properly to consider the age of the victim—that is what the hon. Member for Birmingham, Yardley has said to me. It is important that a range of factors are taken into account when considering whether an individual is a victim of slavery. That does not diminish the consideration of age. The regulations explicitly state that “regard may be had to all the circumstances”.

That includes

“the person’s age, the person’s family relationships, and any physical or mental disability or illness”.

Of course, when drafting this way, the list is inexhaustive and allows decision makers to bring in various other conditions or factors relating to the individual’s circumstances, including their age.

Jess Phillips: Will the hon. Lady give way on that sentence?

Rachel Maclean: I am afraid I—

Jess Phillips: It is literally on that sentence.

Rachel Maclean: Yes.

Jess Phillips: I appreciate the Minister giving way. She just read out that particular sentence from regulation 2(2)(a), which is followed by the words: “that significantly impair the person’s ability to protect themselves”. So, those things that she just mentioned—“age” and everything else—will be taken into account where they “significantly impair the person’s ability to protect themselves”. Can she explain to me what “significantly impair” means?

Rachel Maclean: I will come on to that, because now I am going to talk about vulnerability.

Another concern that has been raised is that the definition may impose a duty on a person to protect themselves from vulnerability, which is not the case. So, that is vulnerability in respect of age or any other factor that all victims of modern slavery suffer from, because, of course, our approach is to take that trauma-informed approach to those victims, which is what we need to do.

It is not the case that the definition imposes a duty on the person to protect themselves from vulnerability, and I would like to clarify that regulation 2(2) of the draft regulations sets out a definition of vulnerability. It is clear that there is no expectation nor duty for an individual to protect themselves from their vulnerability—quite the opposite. Being vulnerable means that their circumstances are such that they cannot protect themselves from predatory approaches, for example because their age means that they may naively believe, through lack of life experience, some things that someone says. The statutory guidance will be unchanged on this point and the position remains the same. That means that the kind of circumstances and conditions that make individuals vulnerable to modern slavery will remain the same.

Finally, and this is an important point, I understand that there is concern about the use of the term “travel”; the hon. Member for Birmingham, Yardley has questioned me on it, asking whether this may be limited to “travel” across international borders. Let me reassure all members of the Committee that it is the policy intention, and it is clear from the natural meaning of the word “travel”, that the term includes any travel, whether internationally or inside a country’s borders. Indeed, recruiting, transporting or transferring, harbouring or receiving, transferring or exchanging control, as set out in regulation 3(2), does not specify the scope of that travel and applies to travel that occurs within state borders, including county lines exploitation—

Jess Phillips: Does it include travel from one room to the next?

Rachel Maclean: Yes.

I thank the members of the Committee again for their interest in these regulations. I hope that my response today clarifies the points raised in the report. I will detain the Committee for just a couple of moments to talk about the child victims of slavery.

Members of the Modern Slavery Strategy and Implementation Group who work with the Home Office and advise us agree that ECAT and the Palermo protocol accurately represented their understanding of a “victim” and we have reflected this within the draft definition. We are clear that the activities mentioned in article 4 of ECAT, which relates to trafficking in human beings, are covered by the regulations as drafted.

I will set out how the regulations achieve that. Article 4(a) states that:

“‘Trafficking in human beings’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

Therefore, article 4(a) requires the recruitment, transportation, transfer, harbouring or receipt of persons, by the means specified in that article, for the purpose of exploitation. In relation to children, article 4(c) makes it clear that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking, irrespective of the means used. Regulation 3(5)(b) of the draft regulations does the same.

Exploitation under article 4 includes forced labour or services. In order to come within the definition of “trafficking”, regulation 3(6)(d) of the draft regulations provides that the services could be provided under force, threat or deception. As set out in the draft regulations, where there is any element of force, deception or threat to induce an individual to provide that service, it is exploitation. That is the effect of regulation 3(6)(d). When considering the individual circumstances of a case, a person’s age, as well as other factors, will affect what amounts to force, threat or deception.

I should add that the regulations do not have any impact on the definitions of slavery and trafficking in section 56 of the Modern Slavery Act 2015, which are based on sections 1 and 2 of that Act for the purposes of investigations and prosecutions. The definitions of “victim of slavery” and “victim of human trafficking” in the regulations are for the purposes of identification and support. That means that the regulations are applied by the Nationality and Borders Act 2022 to sections 48 to 53 of the Modern Slavery Act 2015 only. Put simply, they do not impact on how the definition of a victim is applied by our criminal justice partners.

As I hope I have made clear to alleviate Members’ concerns, the regulations provide definitions of human trafficking and slavery for the purposes of identification and support, so that we can identify more victims and give them the support, help and justice they deserve. Those definitions align with our existing operational practices set out in statutory guidance and, crucially, our international obligations under ECAT and the Palermo protocol. The provisions are necessary to support implementation of part 5 of the Nationality and Borders Act while also providing clear parameters and legal certainty to victims, which is what they need and want.

[Rachel Maclean]

That is what we hear from the first responders who work with victims, and from our operational partners who work with them and use those definitions. I hope hon. Members agree that these regulations are therefore a key step in providing clarity to victims of modern slavery and decision makers on victims' rights.

Jess Phillips: The Minister is saying that criminal exploitation is covered. I am saying that it is not, and I have myself spoken to some first responders and experts in the field who have said it is not, so for the record—so that I can be completely clear—which first responder organisation did the Minister speak to?

Rachel Maclean: I will be happy to provide the hon. Lady with a list in writing of all the partners that have worked with the Home Office and the team on these regulations.

I therefore commend the regulations to the Committee.

Question put.

The Committee divided: Ayes 10, Noes 6.

Division No. 1]

AYES

Henry, Darren
Johnson, Dr Caroline
Maclean, Rachel
Mann, Scott
Moore, Damien

Moore, Robbie
Randall, Tom
Russell, Dean
Thomas, Derek
Vickers, Matt

NOES

Bonnar, Steven
Elmore, Chris
Lloyd, Tony

Owen, Sarah
Phillips, Jess
Spellar, rh John

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Slavery and Human Trafficking (Definition of Victim) Regulations 2022.

3.28 pm

Committee rose.