



Draft Modern Slavery Bill

1. The Prison Reform Trust (PRT) is an independent UK charity working to create a just humane and effective prison system. We do this by inquiring into the workings of the system, informing prisoners, staff and the wider public and by influencing Parliament, Government and officials towards reform.
2. We welcome the opportunity to respond to this consultation. We are pleased that the government is making a commitment to understanding and responding to the problem of slavery in the UK. We do not underestimate the complexity of tackling this problem.
3. We are commenting only on the sections of the Bill that relate to the work of the Prison Reform Trust or areas that we believe could be included in the legislation, to further strengthen and realise the government's commitment to support victims and bring traffickers to justice.
 - 1) Supporting and working with victims
 - 2) Non prosecution of victims
 - 3) Sentencing
 - 4) Civil orders
 - 5) Anti-slavery commissioner
 - 6) Duty to notify

Supporting and working with victims

4. The government has made a commitment to put victims at the heart of the criminal justice system. This Bill offers an opportunity to support victims of trafficking effectively, sensitively and humanely.
5. However, we are concerned that the Bill as currently drafted does not take the opportunity to offer this support. The Bill makes no mention of support for victims or provision for victims. The only substantive reference to victims of trafficking is connected to the duty to report (we have concerns about this provision as set out below). We note that currently knowledge about the extent of the crime of slavery is limited. To understand and respond to slavery adequately, victims need to be supported fully and have trust in the welfare and criminal justice system that are supporting them. Current provision for victims of trafficking – particularly for children- has been shown to be inadequate. The Centre for Social Justice found that 60% of trafficked children in local authority care had gone missing and it can be assumed that many of these would have been trafficked again.

6. A fundamental problem is that the UK defines many victims of trafficking, first, as violators of immigration legislation. This Bill could be seen to confirm that the main aim of the National Referral Mechanism is to use victims to help identify and punish perpetrators. In contrast, the UN High Commissioner for Refugees provides guidance on states' duties to protect and support victims of trafficking.

Guidelines 4, Paragraph 6: "Ensuring that the protection of trafficked persons is built into anti-trafficking legislation, including protection from summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and/or her/his family."

7. Protocol to Prevent Trafficking in Persons, Article 7, paragraph 1. "In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases."
8. The UN Protocol to Prevent Trafficking in Persons, especially Women and Children, makes clear that where the person has been recruited & transferred across state boundaries by means of threats, coercion, or the abuse of their vulnerability, whether the person has consented or not, does not affect the definition of their situation as a victim of trafficking.
9. Ideally the protection and support available for victims would be enshrined in statute. We hope that this Bill will place the assistance available to all potential victims on a statutory basis. This provision should set out what is available for victims including:
 - 1) the provision of information on the NRM;
 - 2) what legal assistance can be provided
 - 3) the availability of compensation
 - 4) what healthcare and specialist counselling can be provided; and crucially
 - 5) what will happen after the 45 day period, including access to accommodation and benefits.
10. The provision should specify that assistance will be offered on an informed and consensual basis; that assistance is not conditional on a person's willingness to cooperate with law enforcement; and that all assistance is gender sensitive, child sensitive and tailored to the individuals need. The protections, entitlements and support that victims are entitled to should be clearly defined in law to help ensure that victims (and the NGOs that support them) are more confident to come forward. Formalising these provisions in law should in turn increase the accountability of the agencies responsible for delivering this support.

Non-prosecution of victims

11. We note that previous DPP issued guidance has not been effective in preventing victims from being prosecuted. We welcome the current commitment

to new CPS guidance but believe this must be put into legislation to be most effective. We note that the Panel advising on the drafting of the Bill recommended that the Modern Slavery Bill included a statutory statement of the policy of non-prosecution of victims of modern slavery, creating an obligation across all sectors of the criminal justice system to make further enquiries if there is evidence to suggest that a defendant may be a victim of modern slavery.

12. There are people who have been coerced or trafficked into criminal behaviour in prison either on remand or serving a sentence. Although we welcome the Bill's intention to introduce laws which would make the organisation of slavery an aggravated criminal offence we are concerned that the provisions in this Bill will not realise this intention. Too often it is the victims of human trafficking instead of the perpetrators who end up being prosecuted and imprisoned for offences committed under the threat of violence and intimidation.
13. Two reports, one published by the Prison Reform Trust and Hibiscus,¹ and the other by the University of Cambridge, supported by the Economic and Social Research Council,² have underlined the lack of support available to foreign national women in custody in England and Wales who have been trafficked into offending. The latter by Professor Loraine Gelsthorpe and Dr Liz Hales examines the case management of migrant women in the criminal justice and immigration systems, including the identification of trafficked women. It found violence, intimidation and rape were common experiences of the women, but evidence of their suffering was often overlooked and they did not receive the protection guaranteed to them as victims of human trafficking under international law.
14. Protection for victims of human trafficking from prosecution relating to offences committed as a result of their being trafficked is enshrined in international agreements and domestic case law. The EU Directive on Trafficking, now in force, specifies that "Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking."³ The UN Protocol to Prevent Trafficking in Persons, Especially Women and Children, requires governments to ensure that trafficked persons are not punished for any offences or activities related to their having been trafficked (e.g. prostitution, immigration violations).⁴

¹ Prison Reform Trust and Hibiscus (2012), No Way Out: A briefing paper on foreign national women in prison in England and Wales, London: Prison Reform Trust. Available at

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/NoWayOut.pdf>

² Gelsthorpe, L. & Hales, L. (2012) The Criminalisation of Migrant Women, Cambridge: University of Cambridge. Available at

http://www.crim.cam.ac.uk/people/academic_research/loraine_gelsthorpe/criminalreport29july12.pdf

³ Directive 2011/36/EU Of The European Parliament And Of The Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, paragraph 14

⁴ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, United Nations, 2000

In addition, the UNOHCHR (2002) Recommended Principles and Guidelines on Human Rights and Human Trafficking: Guideline 2 Paragraph 5, states: “Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.” Despite these protections we are aware of female victims of trafficking who have been caught attempting to leave this country with false documents in an effort to return home and have been prosecuted for immigration offences and imprisoned.

15. A recent Court of Appeal decision overturning the convictions of three children and one adult woman accepted that there is a heavy onus on police and prosecutors to thoroughly investigate trafficking allegations so that unnecessary prosecutions do not happen, and that courts should stay prosecutions where there is evidence that the defendant may have been trafficked.⁵ We would like to see this decision reflected more clearly in guidance and training for police, prosecution authorities and courts. The Criminal Case Review Commission should be encouraged to review the convictions of vulnerable women, men and children in custody who may have been trafficked into offending. There should be better systems of referral for those already in prison to access the opportunity for a review of their conviction and sentence. Individual reviews of this kind would be both fair and cost-effective. If evidence of coercion were found there would be scope in many cases for voluntary repatriation. We also note and support the recent calls for improved care and support of children and young people who have been trafficked into offending.⁶
16. We are also concerned that the state is failing in its positive obligation to investigate allegations of slavery, servitude, forced or compulsory labour, as highlighted by the case *CN v UK*. This is directly relevant to the treatment of people in prison who have been coerced or trafficked into offending. We are concerned that the government is in breach of its obligations under existing international law.
17. We would also like to see the Sentencing Council revising Sentencing Guidelines to recognise trafficking, coercion, and exploitation as mitigating factors for offences for which foreign national women, men and children are most commonly charged – e.g. use of false documentation and cannabis production - as they do for drug importation.
18. Parliament should monitor compliance with the UK’s obligations under international law, including the EU Directive on Trafficking, now in force and requiring robust protection for victims of trafficking and non-punishment of petty crimes⁷ and the UN Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (Bangkok Rules), which requires

⁵ R v (1) L (2) HVN(3) THN(4) T-and-(1) The Children’s Commissioner for England (2) Equality and Human Rights Commission (interveners) Criminal Court of Appeal 201201106B2, 2012004425C1, 201204763B3, 2012 04966B4

⁶ The Observer, 8 September 2013, p23

⁷ See House of Commons Library paper on UK’s responses to human trafficking www.parliament.uk/briefing-papers/sn04324.pdf

screening of women entering prison for prior experiences of sexual abuse and domestic violence.

19. We would like government to implement an effective system of expediting National Referral Mechanism (NRM) decisions where a woman, man or child in custody has been identified as a potential victim of trafficking. People found to be coerced or trafficked into importing drugs or employment in illegal activities should be treated appropriately. Some will qualify for protection and resettlement in the UK. Others found guilty of these activities should be repatriated to a prison in their own country. Those already in prison should have their sentences reviewed for conditional early release and, where appropriate, deportation. It is regrettable that the overarching emphasis on deportation has eclipsed the need to treat people as individuals, to ensure they have the information and advice they need and can understand, and to pay proper attention to resettlement needs, here or abroad.
20. There is no clear picture of the numbers of trafficked people in prison. Identifying potential victims takes time and requires considerable expertise. However, as a snapshot, in interviews with 103 migrant women in the prison and immigration holding estate⁸, (who were detained or arrested on charges that are potentially linked with entry to or exit from the UK or work under the control of others) the researcher gathered evidence that indicated that 43 were victims of trafficking, of whom two were formally re-assessed as children whilst in the adult estate. An additional five women had entered the country independently, but had then been worked in slavery or servitude like conditions and 10 had entered the UK in the hands of agents and had been arrested resultant on the theft of their relevant documents by their smugglers. In only one of the 43 cases of suspected human trafficking identified by the researchers did victim disclosures result in a full police investigation in relation to the actions of the perpetrators.
21. This demonstrates that the numbers of victims of trafficking within certain groups of people in the prison estate may be significant. It also demonstrates that specific work with these groups and individuals and the resources and expertise to do this are necessary if they are going to be identified.
22. The legal process fails to protect people adequately and they are therefore reluctant to disclose their experiences. People who have acted under duress, or have had threats made against their children are unlikely to provide information against the organiser of their crime from a prison cell.
23. There are specific difficulties for prison officers in identifying victims of trafficking. The trauma that victims may have experienced during their time with their trafficker may be reinforced by being in a coercive environment. They may be institutionalised, used to taking instructions but unable to advocate for themselves. Some victims of trafficking may not cope well with prison – this could include being withdrawn, not eating or harming themselves. However, the challenge for prison officers is that the high levels of mental health difficulties

⁸ Gelsthorpe, L. & Hales, L. (2012) *The Criminalisation of Migrant Women*, Cambridge: University of Cambridge. Available at http://www.crim.cam.ac.uk/people/academic_research/loraine_gelsthorpe/criminalreport29july12.pdf

and complex needs among the prison population generally make identifying specific experiences difficult. Health care staff may identify signs of abuse but may not connect them with the experience of being trafficked.

24. Language also presents difficulties, for example few Vietnamese/Chinese people in prison will speak English and, of those who do they may be higher up the criminal chain and involved in the trafficking themselves. This is highly problematic if prisons use them as interpreters for other prisoners as they already have a lot of power over other prisoners. However, if they have not been prosecuted and convicted as traffickers the prison has no way of identifying them as such. Indeed some people may have been involved in criminal activity initially as victims of trafficking and later on as part of the trafficking chain.

Sentences for traffickers (clause 5 and 6)

25. We appreciate that the penalties for trafficking people can currently be lower than smuggling drugs or weapons and this could be an incentive for traffickers to move into this area. We note the low numbers of people convicted of trafficking and that the victim's testimony is always crucial to effective prosecutions. We also note that legislation to prosecute and sentence trafficking is already in place but identifying and convicting traffickers remains difficult. We understand that increasing numbers of organised crime groups are diverting into this area of criminality and that their perception is that it is a low-risk highly profitable criminal business.

26. We welcome the commitment to clarifying the legislation. Sentencing of traffickers must be proportionate and reflect the seriousness of the offence.

Slavery and trafficking prevention orders, interim slavery and trafficking prevention orders and slavery and trafficking risk orders and interim delivery and trafficking risk orders (clauses 11-28)

27. We welcome the government's intention to protect further victims of trafficking. However, we are concerned that implementing four different civil orders on top of existing legislations and provisions may be bureaucratic. We would suggest that courts setting licence conditions for people convicted of trafficking and probation officers working with people being released from prison for this offence have a menu of licence conditions that they can add to a licence or order where appropriate. We note that there are already significant public protection and risk reductions systems in place – such as the sex offenders register, MAPPA, VISOR, SOPOs etc and that licences can be varied or added to as necessary. We would also suggest that if the Bill committee feel further orders are necessary they could consider amalgamating the four proposed civil orders into one order that covers all aspects of risk, prevention and protection.

28. We would also like to see further international cooperation in this area, increased sharing of relevant information between enforcement agencies and registers of known and suspected traffickers.

Anti-Slavery Commissioner (clause 30-34)

29. Clauses 30 – 35 would establish an Anti-Slavery Commissioner whose duties would be to: ...

Encourage good practice in the prevention, detection, investigation and prosecution of offences. The role of the Commissioner would appear to focus on enforcement and criminal proceedings against traffickers. We are extremely concerned that there is no motion of supporting good practice in welfare, rights and working with victims. A commitment to uphold the Victims Charter, Protocol to Prevent Trafficking and the UNHRC's Guidelines would demonstrate a genuine interest in tackling modern slavery and make the necessary connections with the role of Victims Commissioner.

Duty to notify NCA about suspected victims of human trafficking (clause 35)

30. This clause states that specified public authorities must notify the National Crime Agency about suspected victims of trafficking. The specified public authorities are not detailed so we are unsure whether the Prison Service would have this statutory duty. We recognise the positive intentions behind this clause but remain concerned that it is not enforceable. We are also very concerned by any suggestion that this notification should happen without the permission and informed consent of the victim and hope that this will be clarified.

31. Currently, the police have status as First Responders but despite improved training and guidance there is not enough awareness and police officers are not regularly identifying potential victims and referring them for support. In fact, we believe that on occasion the defencelessness of trafficked people means they are more vulnerable to arrest.

32. We would recommend that the Prison Service be made a First Responder reflecting the reality at present there are numerous victims of trafficking in prison or detention. This would give them the power to directly refer potential victims to the competent authorities. However, this will not be workable in practice without resources and training for the Prison Service. We say this because we note that the CCRC has done considerable awareness raising work within the Prison Service and spoken to numerous people in organisations working in prisons about appealing convictions of people committing offences due to trafficking. However, the numbers of referrals to the CCRC remain low.

33. All First Responders should receive further training in identifying potential victims and making a referral. This training could be overseen by the Anti-Slavery Commissioner in order to ensure consistency, coordination and adequate resources.

