"Taking back control of our borders?"

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The impact on modern day slavery

Human Trafficking Foundation

'Taking back control of our borders?'
The impact on modern day slavery

Foreword

In 2010, when I launched the Human Trafficking Foundation with Baroness Butler-Sloss and Rt Hon Clare Short, there were fewer than 700 victims of human trafficking found in the United Kingdom. Ten years later, that figure has increased year on year, is now over 10,000. The police believe the real figure may be ten times that number, with victims of modern slavery remaining hidden and silent.

The UK is now presented with a unique opportunity by 'taking back control of its borders'. We should therefore be able to keep out those with previous criminal records, and prevent traffickers from entering our country. However, if the Government cannot maintain links to existing EU intelligence sources Europol, Eurojust, the Schengen Information System and the Passenger Name Records data, we will be putting the country at increased risk. This is because when someone presents themselves at one of our border controls after 1 January, the official or immigration officer will have no idea of the antecedents of the person asking permission to enter. And with the development of eGates, scrutiny becomes even more difficult. Far from keeping trafficking out of the UK, we must expect to see a dramatic increase, not only in those engaged in criminal activity but also the numbers of people trafficked into the UK. In effect, the intelligence networks built up over fifty years throughout the EU will be thrown away. This report highlights what needs to be done now to avoid increasingly porous borders.

My gratitude to David Heathcoat-Amory, former Treasury Minister, one of the Foundation trustees, who has highlighted this critical moment in our history and the opportunity it provides. And thanks to other trustees for reading the proofs and offering prudence and insight. A huge thank you to retired Detective Superintendent Phil Brewer for chairing this initiative with good humour and firmness, and to Louise Gleich, the principal author of this report, for the many hours she's spent bringing together the many interviews she's conducted, and for the way she's handled conflicting views on the report content. Finally, the Human Trafficking Foundation staff, Tamara Barnett, Katy Parker and Rachel Smith, who have assumed many different roles from drafting, editing, proofreading, interviewing and generally keeping the show on the road.

It's a critical moment for our fight against modern-day slavery in the UK. Our sincere hope is that the current Home Secretary won't preside over, however unwittingly, a situation where we allow the last ten years' hard graft in highlighting the growth of human trafficking and modern-day slavery in Britain to have been in vain.

Anthony D. Steen
Chairman

Setting the scene

In 2010, 710 potential victims of human trafficking were referred to the National Referral Mechanism (NRM).[1] In 2019, with increased awareness and identification, there were 10,627 referrals.[2] While improved identification and awareness contribute to increased referrals, nonetheless these figures highlight that victims continue to be brought into the UK in large numbers.

In 2018, the Government published its Immigration White Paper setting out the framework for a new immigration policy following the UK's withdrawal from the European Union. The White Paper also reaffirmed the Government's commitment to tackling modern slavery, saying: 'We are committed to stamping out modern slavery,' a sentiment reiterated in the February 2020 policy paper fleshing out the new points-based immigration system.

We all want to make our borders safe. This is an issue that unites politicians of all parties and persuasions. But there are different understandings of what is meant by 'safe'.

There is also a general confusion among the public, the media and even policymakers about the difference between human trafficking and people smuggling, which poses a challenge for policymakers. With this paper we have sought to identify the risks which, if nothing is done, could mean that both traffickers and victims of human trafficking continue to come to the UK embroiled in modern-day slavery undetected.

In writing this paper we are conscious that the UK has left the EU and that this will necessarily have implications for immigration policy at the end of the implementation period (31 December 2020). Our purpose with this paper is not to revisit the debates about the merits of withdrawal, rather to consider what is needed for the future. By leaving the EU, Britain need not cut itself off from the rest of the world. Rather, we must reshape our immigration system to meet our own needs and create a system that regulates immigration but is welcoming and decent to incoming workers and vulnerable people needing protection. The UK now has the opportunity to take control of immigration policy and border security. But that also means that the responsibility for the success or failure of the system will now rest on the shoulders of the UK Government alone – including its success at apprehending traffickers and safeguarding victims.

With just weeks until the implementation period ends and the new post-Brexit era begins, the UK risks becoming a haven for exploitation.

This paper considers how the UK can become more hostile to traffickers and at the same time more compassionate to victims.

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[1] Paragraph 2.8 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_
data/file/118116/human-trafficking-report.pdf

[2] Paragraph 1.5 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_
data/file/927111/FINAL-_2020_Modern_Slavery_Report_14-10-20.pdf

The UK is currently establishing a new immigration and border security system fit for the country's future outside the EU. This is a unique opportunity to shape the new system to prevent human trafficking and modern slavery – one which must not be missed. While modern slavery is not predominantly an immigration problem, since a large number of victims are foreign nationals the immigration system is a vital tool to prevent this crime. As things currently stand, the border control measures and the immigration system may not be adequate to meet this challenge. In fact, the system achieves the opposite of what it claims. It does next to nothing to prevent traffickers coming in, but acts as a hostile place for foreign national victims of modern slavery once identified. Indeed, a lack of safeguards means that the changes to the immigration system are likely to result in increased, rather than decreased human trafficking. Effective border controls, alongside a safer, more legal business framework and safe, legal and fair routes to the UK, are needed to make the UK more hostile to traffickers and to safeguard potential victims.

Summary and recommendations

The UK seeks to be a leader in the fight against modern slavery. The present border system is demonstrably not good enough at preventing traffickers getting through and safeguarding victims. Meanwhile, without a new determination for action, convictions of traffickers will remain stagnant. Evidence examined in this report shows that initial 'toughness' at borders alone can do little to reduce trafficking and illegal immigration.

Traffickers will always circumvent existing obstacles; although if we get it right, they will have to overcome increased hurdles and they will in turn be less enthusiastic to engage in modern slavery in the UK. The Government now has a unique opportunity to reshape immigration policy and so put in place measures that will effectively prevent traffickers from exploiting people in the UK.

Findings in this report also reveal the UK has a number of weak and unenforced business regulations that allow it to act as a base for companies that have a semblance of engaging in lawful pursuits, whereas some are also engaged in the trafficking of human beings. Policymakers must make the UK a less attractive business prospect to traffickers by creating a dynamic business regulation framework that rewards and supports honest British and foreign companies. The creation of safe routes into business sectors at potential risk of modern slavery is crucial to reduce reliance on cheap labour, which is a breeding ground for exploitation.

Our conclusion is that the only way to tackle transnational modern slavery effectively is to do so in two ways: (i) effective border control and identification processes – that means exit checks, better databases, and better checks at countries of origin in issuing visas – alongside (ii) safe, legal and fair routes into the UK, promoting good business practice and in all situations prioritising the safety of those who might be trafficked.

A Preventing trafficking through effective and more thorough border control

Finding 1

– Ineffective or absent data collection and failure to secure access to shared intelligence simply increases the risk and scale of trafficking

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As of 11 November 2020, the UK had not secured access to EU intelligence sources and security cooperation. Current access to intelligence about foreign national offenders travelling to the UK derives from membership of Europol. UK agencies expect to lose access to the Schengen Information System (SIS), 'the most widely used and largest information sharing system for security and border management in Europe', and SIS alerts, which not only contain information but also instructions on what to do when the person has been found. **Without access to this intelligence, Border Force officers and Police will have no knowledge of convicted or suspected traffickers seeking to enter the UK.**

UK authorities are presently participating in a number of Joint Investigation Teams with EU member states facilitated through Eurojust. No agreement for continued participation in Eurojust has been secured.

These data sources alongside collaborative working are known to be effective in bringing traffickers to justice. Without them, all efforts to disrupt and deter trafficking into the UK will be severely hampered.

Border Force does not have direct or routine access to all police databases, and access to other Government intelligence is often limited to specialist teams. Increased data sharing and cooperation is needed to help identify more traffickers and safeguard potential modern slavery victims.

Without seamless access to shared intelligence or cooperation domestically and within Europe, human trafficking into the UK will inevitably increase.

Data collection and analysis of the immigration status of both traffickers and victims of modern slavery is weak. Governments in England, Wales and Scotland appear not to routinely collect and analyse nationality data of modern slavery offenders, nor where and how victims of trafficking enter the UK. Without this information, UK authorities will struggle to identify and mitigate potential challenges arising from a changed immigration system and a changed relationship with EU member states. **This absence of strategic analysis will lead to an increase in trafficking as organised criminals exploit the emerging gaps in the system**.

Recommendations:

1 The UK Government must secure access for UK border and law enforcement to European and domestic intelligence sources from 1 January 2021, including:

A Continued sharing of intelligence and collaboration with European agencies and countries bilaterally must be secured before 31 December 2020 with seamless continuity, including Europol, Eurojust, Schengen Information System, Passenger Name Record data

B Data sharing between UK agencies must be increased, including easy, 24/7 access for Border Force to Police National Computer, Police National Database and Government Agency Intelligence Network (GAIN)

C Issuing new guidance for Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders to increase their effective use, including as a means to prevent entry/return to the UK of suspected traffickers

D Police forces establishing a consistent and coordinated process for applying for and monitoring Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders

2 The Home Office and Department of Justice must start to collect and regularly publish relevant data on nationality, residence, offenders' criminal history and immigration journey of modern slavery offenders and victims

Finding 2

– Current entry checks are ineffective; consistent and meaningful exit checks at the border are non-existent

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Current entry check systems are ineffective and inadequate for identifying both traffickers and potential victims. In particular, the use of eGates presents a significant problem. EGates rely on the watchlist in order to flag suspected traffickers, but will not identify anyone not already marked. This process will become even more ineffective if access to EU data is lost. There are also questions about the capacity of roving officers monitoring the gates and follow-up by Immigration Enforcement is necessary to safeguard victims and pursue more offenders. Entry checks are not routine for EU nationals. **Proposed visa-free entry for EU nationals combined with eGates will in effect be an open door for traffickers,** yet the Government appears to have no clear strategy for mitigating this and no date for implementing the proposed Electronic Travel Authorisation (ETA) scheme to scrutinise visa-free travel. With no legislative proposal currently before Parliament this is unlikely to be implemented well into 2021 at the earliest.

Visitor visas are already exploited by traffickers. There is inadequate scrutiny of visa processing outsourced to private companies. Some victims enter with forged documents, others with genuine visas – although these may be obtained using false information. Victims are also known to enter via seaports and the Common Travel Area (i.e. Republic of Ireland, Channel Islands and Isle of Man) where checks are fewer.

The UK has neither consistent nor effective exit checks despite the introduction of digital checks in 2015. As a result, UK authorities have no reliable or accurate data on who has left the country, cannot easily track the movement of traffickers and are unable to identify red flags for potential victims, such as overstaying a visa, or whether the person is being paid in accordance with their visa requirements.

There is no guarantee that 'convicted traffickers' from another country will be refused entry to the UK under the current system and the Government does not collate data on how many such 'convicted criminals' actually have been refused entry. New simpler rules to come into effect from 1 December 2020 will refuse entry to all offenders sentenced to at least 12 months' imprisonment or where the offence caused 'serious harm'. This may increase the number of convicted traffickers being refused entry, but guidance should specify modern slavery and similar offences as causing 'serious harm' to ensure they result in mandatory refusal even where sentences are shorter. Effective implementation, however, also depends on meaningful entry checks and access to international data. European nationals with convictions are often targeted by traffickers and become victims of modern slavery. They may be refused entry under the new rules or wrongly sent home for illegal entry that was in fact caused by their exploitation in the first place. In view of the statutory defence in section 45 of the Modern Slavery Act, the need to safeguard such potential victims is obvious.

Shared Schengen Information System (SIS) alerts have been particularly useful in respect of Slavery and Trafficking Prevention and Risk Orders and these orders have been most effective when they have contained conditions linked to travel and arranging travel, but these are not generally being used effectively or often enough.

Whilst traffickers will always look to circumvent increased border controls, if applied appropriately border control measures can increase the number of victims safeguarded at the border. Increased scrutiny prior to arrival through Electronic Travel Authorisations (ETAs) and better screening of visa applications would help prevent trafficking by identifying vulnerable persons and suspicious activity before they get to Britain.

Recommendations:

3 | **Effective entry and exit checks must be carried out for all passengers, including arrivals from the Common Travel Area. This will require:**

A Establishing a system for Electronic Travel Authorisations for visitors from all countries with visa-free travel (including EU) as proposed in the white paper, operational by 1 January 2021

B Providing guidance for Border Force on eGates and the checking and recording of purpose of travel for EU nationals before 1 January 2021 in consultation with Border Force safeguarding team

C More in-person checks – digital systems must only be used where they will provide real-time cross-referencing with entry data (for exit checks) and watchlist and re-direction to border officials where concerns are flagged

D Reviewing the process for providing visas through outsourcing and increasing involvement of consulates overseas in scrutinising applications for visas

E Increasing entry/exit checks at seaports

F Data systems that will create alerts if a person does not exit on the expiry of their visa/visa-free entry period

4 Convicted and suspected traffickers should be refused entry to the UK. This will require:

A Issuing new guidance for Border Force stating that it shall be mandatory for individuals with convictions for modern slavery, human trafficking or similar offences to be refused entry to the UK

B Issuing guidance for the relevant authorities that all individuals with convictions for modern slavery (UK residents or from international intelligence) must be added to the 'watchlist' so they will be flagged at the border

C Issuing guidance to relevant authorities to ensure victims of trafficking are not routinely removed from the UK if they possess minor criminal records, are sleeping rough or have committed enforced criminality by their exploitation

D Increasing Immigration Enforcement activity at the border to enable investigations into suspected traffickers arriving at the border

B — Preventing trafficking through safe, legal and fair routes into the UK

Finding 3

– Restriction to 'skilled' migration could create an international hub of modern slavery in the low-wage sector

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Potential victims are unlikely to be deterred from coming to the UK by changes to the immigration system alone: The majority of potential victims referred to the NRM come from countries which already require a visa. Poverty and civil instability will continue to cause people to seek a more secure future elsewhere. Vulnerable victims from EU countries are unlikely to be aware of the changes to the immigration system and are liable to believe what they are told by their contacts or unscrupulous recruitment agencies.

Demand for low-waged workers will continue: Many sectors of the economy, including transport, hospitality, construction, manufacturing, warehousing and agriculture have been heavily reliant on low-waged migrant workers from the EU with wages below the threshold for the new points-based worker visa. **Many employers are unprepared for the end of free movement, resulting in a risk that traffickers will fill the labour supply gap. These sectors are existing locations of modern slavery and undocumented migrant workers are known to be targeted for exploitation.** We were surprised that the likely impact of the points-based system on modern slavery has not been considered by either the Migration Advisory Committee (MAC) or the Home Office Impact Assessment, despite the UK's obligation under Article 4 of the European Convention on Human Rights (ECHR) to ensure that immigration rules do not incite, aid, abet or tolerate human trafficking.

Employers' lack of awareness of the rights of EU nationals with settled status creates the risk of discrimination, leading to desperate workers falling prey to unscrupulous employers, especially where they have limited English language skills or are not aware of their employment rights.

Revised Immigration Rules published in October 2020 provide a temporary worker visa for seasonal agricultural workers. However, there is no low-wage migration route for other sectors. Moreover, there are well-known risks that visas tied to a single employer can lead to modern slavery and prevent victims from seeking help.

The UK should provide more safe routes for people to apply for asylum from their home country or a refugee camp under the auspices of relevant British Embassies known for their fairness. This could prevent many people seeking dangerous sea crossings or falling prey to the deception of traffickers and people smugglers. Such a proposal is in line with the Government's reported intention to create new legal routes for those who are at genuine risk of harm. Conversely, proposals to deny asylum to those who arrive in the UK illegally and deport foreign nationals who have been sleeping rough will harm victims of trafficking if formal exemptions are not created. **Creating safe, durable solutions for those identified as victims by the NRM will prevent survivors being re-trafficked after leaving the NRM both in the UK through a designated visa and through safe and supported voluntary returns to victims' home countries. This will also relieve pressure on the asylum system.**

Recommendations:

5 Create legal routes for low-wage migration to enable agriculture and other sectors to flourish while protecting against exploitation, including:

A Safeguards against exploitation, at a minimum:

- Mandatory multilingual information sessions and resources to advise on employment rights
- Independent sources of help for migrants on all worker visas and EU settlement scheme
- Allowing workers to change employer

B Department for Business, Energy and Industrial Strategy (BEIS) must work with employers – especially in shortage and known risk sectors – on awareness of exploitation, awareness of EU settlement scheme, training for UK resident workers and alternatives

C Migration Advisory Committee (MAC) should monitor the impact of the immigration system on exploitation in the labour market and specifically on the nature and trends of modern slavery and provide an urgent initial impact report on first six months of operation

6 Set up arrangements for asylum seekers to apply for asylum from outside the UK and facilitate their safe travel to reduce people smuggling and prevent trafficking or exploitation of asylum seekers on the way

7 Create simplified and safe durable solutions for survivors of modern slavery to alleviate pressure on the asylum system and prevent re-trafficking by:

A Considering the benefits of a separate visa for survivors of modern slavery to remain in the UK

B Developing safe and supported voluntary returns processes for survivors returning to their home country or safe third country

Finding 4

– Companies House and HMRC need to take further action to tackle exploitative workplaces likely to harbour modern slavery

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Preventing modern slavery requires efforts to make the labour market more hostile to traffickers. **There is significant overlap between sectors where victims of modern slavery are found and those sectors where lesser violations of employment law (such as non-payment of minimum wage and unlawful deductions from wages), health and safety law, and business and tax regulations occur.** Enforcement by HMRC and regulation by Companies House need to be strengthened to enable identification of companies involved in trafficking. The Government has recently consulted on proposals to increase corporate transparency and reform the role of Companies House. These proposals should be implemented swiftly and further consideration given to the role of transparency in identifying and preventing modern slavery.

The Gangmasters and Labour Abuse Authority (GLAA) provides a greater level of scrutiny in sectors that fall under its remit; however, it lacks the resources needed to provide effective oversight of the expanded range of businesses nationwide. The proposed single enforcement body for employment rights has the opportunity to make a big difference to the scrutiny of employment standards if it pulls together all the relevant aspects of employment, including tax, and covers all sectors of the labour market vulnerable to modern slavery. However, to be effective it will need the resources and powers to be proactive in inspecting and investigating thousands of businesses and bring about redress for victims of modern slavery and other workers whose employment rights are breached.

There is also a lot more that businesses can do themselves to address modern slavery in their supply chains; however, it is difficult to bring criminal prosecutions for modern slavery offences against companies and it needs to be easier for exploitative companies to be held accountable through non-criminal as well as criminal proceedings. Non-criminal sanctions, including those in Article 6 of the EU Anti-Trafficking Directive, must be made available for companies that engage in modern slavery or who fail to publish a modern slavery statement under section 54 of the Modern Slavery Act.

Recommendations:

8   **Incorporate in the Modern Slavery Act a wider range of sanctions and safeguards for businesses that engage in exploitation as per Articles 5 and 6 of the EU Anti-Trafficking Directive, and implement through strengthening the existing infrastructure, including:**

A   Connecting all immigration records with national insurance numbers (as has been done with the EU Settlement Scheme) to enable monitoring by the proposed Single Enforcement Body and HMRC of the level of payment to migrant workers and entitlement to welfare benefits

B   Non-criminal sanctions for companies who engage in modern slavery or fail to publish modern slavery statements under section 54 of the Modern Slavery Act

C   The expansion and extra resourcing of the Gangmasters and Labour Abuse Authority (GLAA) so it can take on more cases, including investigating umbrella companies

D   More checks by Companies House when phoenix companies are created

E   Proactive investigations by HMRC into businesses with poor working practices that could be evidence of links to exploitation

F   Close collaboration and information-sharing between the proposed Single Enforcement Body and HMRC

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