

The Modern Slavery Bill 2022: An opportunity to correct the definition of human trafficking in the Modern Slavery Act 2015

Nordic Model Now! | July 2022

We welcome the announcement in the Queen's Speech (in [May 2022](#)) for a Modern Slavery Bill to strengthen the protection and support for victims of human trafficking and modern slavery and to increase the accountability of companies and other organisations to drive out modern slavery from their supply chains.

However, we remain deeply concerned by the fact that the Modern Slavery Act 2015 (MSA) is not conformant with international law in regards to the definition of human trafficking and we urge this to be addressed in the Modern Slavery Bill.

The international definition of human trafficking

The internationally agreed definition of human trafficking (the 'international definition') is set out in Article 3 of the 'Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime', which is known as the [Palermo Protocol](#).¹ Notice the focus on women and children. This is a recognition that women and children are particularly vulnerable to being trafficked, that the profits that can be made from them are colossal, and the forms of trafficking to which they're most vulnerable are exceptionally vile.

This definition also forms the basis of the definition of human trafficking in a number of other international instruments, including the 'Council of Europe Convention on Action against Trafficking in Human Beings' (the '[CoE Convention](#)').²

The UK has ratified both of these treaties, which means that under the [Vienna Law of Treaties](#),³ we are legally bound to implement their terms.

The international definition has three key elements:

1. **Act:** This can be recruitment, transportation, transfer, harbouring, **or** receipt of persons. Any one of these acts is sufficient to meet the definition.
2. **Means:** This can be the threat or use of force, coercion, deception, fraud, abduction, **or** the abuse of power or a position of vulnerability. Again, any one of these means is sufficient to meet the definition. If the victim is under 18, there's no need to prove that any of these means have been used.

¹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

² <https://rm.coe.int/168008371d>

³ [https://treaties.un.org/doc/publication/unts/volume 1155/volume-1155-i-18232-english.pdf](https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf)

3. **Purpose:** This is always some form of exploitation, four distinct types of which are defined: (a) The exploitation of the prostitution of others or other forms of sexual exploitation; (b) Forced labour or services; (c) Slavery or practices similar to slavery and servitude; (d) The removal of organs.

Notice that sex trafficking is clearly separated from labour trafficking. This is an implicit recognition that prostitution should not be considered a form of labour and that the harms are of a different nature.

The definition states that **consent** is irrelevant in respect of the intended **exploitation**. This implies that **exploitation** is the core of the human rights abuse of human trafficking and, like all human rights abuses, whether the person consented is not relevant.

Notice the way that sexual exploitation is worded: “the exploitation of the prostitution” of the person, not the exploitation of the person. This is the same wording that is used in [Article 6](#)⁴ of CEDAW and it means benefiting or profiting from the person’s prostitution regardless how that person is treated. This is an implicit recognition that the most common motivation for sex trafficking is to profit from the victim’s prostitution or other forms of sexual exploitation, such as pornography – and that these cannot be considered normal forms of labour.

A man who coerces his girlfriend into prostitution to fund his drug habit satisfies the three elements of this definition: act (recruitment), means (coercion), in order to exploit (i.e. profit from) her prostitution. Under international law he is therefore a sex trafficker regardless whether she agreed or not.

Because the ‘means’ are not relevant if the victim is under 18, **any third party involvement** in the prostitution of a child is sex trafficking under international law. Therefore, if a 17-year-old girl apparently freely enters prostitution to pay for her boyfriend’s drug habit, she is also a victim of sex trafficking under international law.

It is of extreme concern that under the law in England and Wales, neither of these cases would be recognised as sex trafficking.

The definition of human trafficking in the MSA

Human trafficking is defined in Section 2 of the MSA. The definition is substantially different from the international definition in a number of key ways.

1. The definition is centred on the travel of the victim

The definition of human trafficking in the MSA is centred on the **travel** of the victim. Although the ‘action’ components set out in the international definition (“the recruitment,

⁴ <https://nordicmodelnow.org/facts-about-prostitution/fact-cedaw-requires-countries-to-fight-pimping/>

transportation, transfer, harbouring or receipt of persons”) are mentioned, they are only relevant in relation to the travel of the victim. This suggests that human trafficking is an immigration issue rather than a gross violation of human rights.

This means that if travel did not take place or cannot be proved, according to English law, human trafficking did not take place – even if all of the elements of the international definition are met.

The forms of human trafficking to which males are more likely to fall victim, such as forced labour on a farm or carrying drugs (‘county lines’), are framed as ‘modern slavery’ which is defined in Section 1 of the MSA without the need for travel to be proved. But sex trafficking is excluded from the definition of ‘modern slavery’ in Section 1, unless the sexual exploitation is positioned as a form of labour that is forced – in contravention of the international definition.

2. Consent

The definition of human trafficking in the MSA specifies that the consent of the victim is not relevant – but only in respect of their **travel** – and not in respect to their exploitation as set out in the international definition.

This is a grave concern because it opens the way for defendants to claim that the victim consented to the prostitution that they are exploiting. It also implicitly suggests that it is only the exploitation of ‘forced prostitution’ that is prohibited – whereas in fact the international definition makes the **exploitation** (i.e. [profiting from](#))⁵ another person’s prostitution the key factor, not whether the prostitution was ‘forced.’

This misunderstanding has been replicated and expanded upon in the government’s [NRM guidance](#)⁶ and the Home Office’s [typologies](#)⁷ of modern slavery – which refers to “forced sex work” even when the victim is a child. Furthermore, the CPS guidance on [consent](#)⁸ in sexual offences includes a long section on consent in child sexual exploitation cases, even though consent is irrelevant to child sexual exploitation offences – and to the international definition of human trafficking.

It should be noted that the restriction on the relevance of consent does not apply to Section 1 of the MSA which defines the criminal offences of slavery, servitude and forced or compulsory labour.

⁵ <https://nordicmodelnow.org/facts-about-prostitution/fact-cedaw-requires-countries-to-fight-pimping/>

⁶ <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northe#identifying-potential-victims-of-modern-slavery>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652652/typology-modern-slavery-offences-horr93.pdf

⁸ <https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-6-consent>

We are also deeply concerned by the change in language adopted by the Home Office and the National Police Chiefs' Council ([NPCC](#))⁹ who both now refer to prostitution as “sex work” – even when referring to a child trafficking victim. This sanitises the reality and obscures the need for the robust preventative action required by Article 9 of the Palermo Protocol.

3. Definition of sexual exploitation

Section 3 of the MSA defines the various forms of exploitation. While the other forms of exploitation (with the exception of organ trafficking) are fully defined in this section, the definition of sexual exploitation refers to a long list of offences in other acts, which must also be proved in order to secure a conviction.

While the list includes controlling someone's prostitution for gain and various offences related to the sexual exploitation of a child, there are many other possible offences in the list. This obscures the fact that the trafficking for the purpose of exploiting (i.e. profiting from) a woman or girl's prostitution is almost certainly the most common form of human trafficking, and that to prevent it, we therefore need to reduce men's demand for prostitution.

In addition, most of the listed offences hinge on the consent of the victim in contravention of the international definition of human trafficking, and some have other restrictions that are much narrower than the international definition. For example, most of the child sexual offences apply only if the child is under 13 or the defendant “reasonably believed” the child to be under 16 (18 in cases of child sexual exploitation). This increases the difficulty of securing convictions, because the prosecution has to prove that the defendant didn't “reasonably believe” that she was older than 15 (or 17 in sexual exploitation cases) and/or the prosecution has to prove that the defendant didn't reasonably believe that she consented to the sexual exploitation.

The MSA definition breaches international law

Any way you look at it, the MSA does not implement the terms of the international definition in regard to sex trafficking. This has been recognised as a concern, including by the [independent review](#),¹⁰ as well as by the [GRETA Committee](#)¹¹ and the [CEDAW Committee](#).¹²

⁹ <https://nordicmodelnow.org/2019/04/29/a-sexist-prism-national-police-guidance-on-policing-prostitution/>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903566/Independent_MSA_Review_Report_4_-_Legal_Application__2_.pdf

¹¹ <https://rm.coe.int/16806abdc>

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https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f8&Lang=en

This is a breach of international law because the UK has ratified the Palermo Protocol and the CoE Convention, and so is legally bound under the [Vienna Law of Treaties](#)¹³ to implement their terms.

Implementing the terms of a treaty does not necessarily mean adopting the identical text – but it involves ensuring that the essential terms are incorporated.

[US federal law](#)¹⁴ provides an example of a definition of sex trafficking that elegantly and succinctly summarises the key features of the international definition:

“Sex trafficking is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age (22 USC § 7102).”

This definition is paired with a separate definition of labour trafficking, in compliance with the international definition. This is important because, unlike working on a farm or in a nail bar, prostitution and other forms of sexual exploitation cannot be considered normal work.

The US Federal example therefore provides a good example of implementing the international definition in national law.

Conclusion

To achieve conviction under the MSA, cases of sex trafficking must either be centred on the victim’s travel or the exploitation of her prostitution must be framed as forced labour or services. Both of these options are more complicated than bringing a case of forced labour on a farm, for example.

As a result:

- The vast majority of victims of sex trafficking are not recognised in England and Wales and do not get the support and compensation they are due under international law.
- The vast majority of the perpetrators have more or less impunity.
- The scale of the problem is significantly underestimated.

It’s not surprising therefore that the [latest figures](#)¹⁵ show that since around the time of the implementation of the MSA, there has been a sea change in who is recognised as a victim. Before the MSA, significantly more sex trafficking victims were identified through the

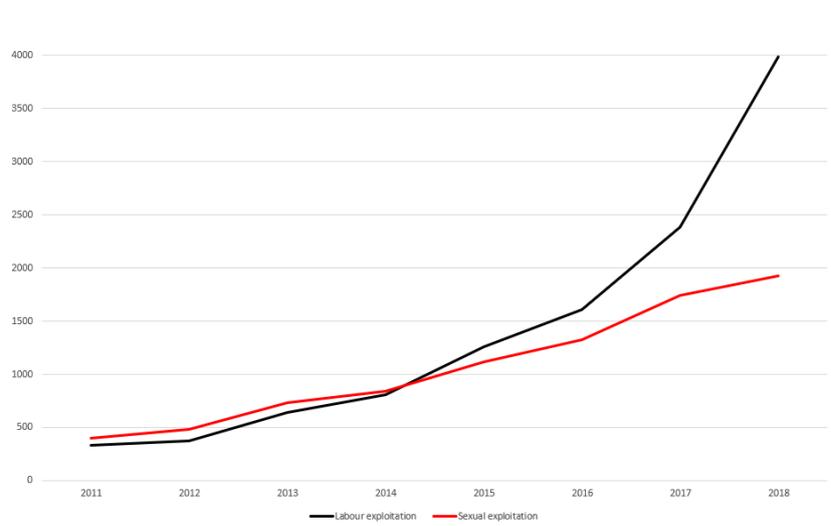
¹³ [https://treaties.un.org/doc/publication/unts/volume 1155/volume-1155-i-18232-english.pdf](https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf)

¹⁴ <https://humantraffickinghotline.org/what-human-trafficking/federal-law>

¹⁵

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/modernslaveryintheuk/march2020>

National Referral Mechanism (NRM) than labour trafficking victims. Now that’s reversed – as revealed by the following chart, which shows the data for the eight years to 2018 (the last year for which data is available).



Referrals to the NRM by exploitation type

This shows that in 2018, more than twice as many labour trafficking victims were recognised than sex trafficking victims (3, 990 labour trafficking victims vs. 1,926 sex trafficking victims). This is extremely unlikely to be due to changing criminal trends. Rather, the vast majority of victims of sex trafficking are simply not recognised as such and neither are their traffickers.

The data shows that the vast majority of recognised victims of labour trafficking are male and of sex trafficking are female, as the following chart shows.

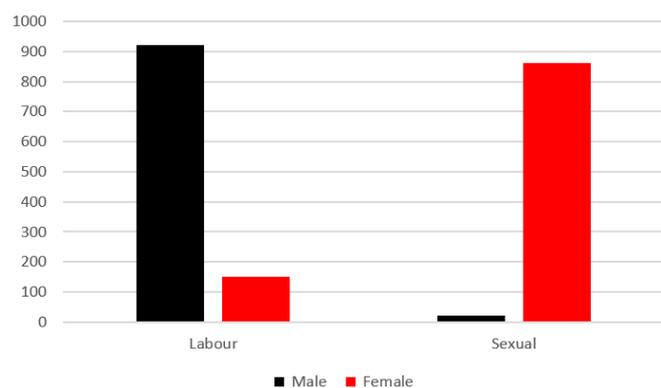


Chart showing the sex of recognised human trafficking victims by exploitation type

The MSA must therefore be seen as profoundly sexist, in violation of Article 3 of the CoE Convention, which requires the provisions to be implemented without discrimination on the grounds of sex, and Article 5, which requires a gender mainstreaming approach.

The MSA sends out a confused and confusing message and implicitly normalises prostitution and other forms of sexual exploitation and positions them as regular labour in contravention of the UK's binding obligations under international law.

This needs to be urgently remedied – as recommended by the [CEDAW Committee](#).¹⁶ The Modern Slavery Bill provides an excellent opportunity for this. We call on MPs to champion this on behalf of the most marginalised women and girls in the country.

About Nordic Model Now!

Nordic Model Now! is a secular feminist grassroots group campaigning for the abolition of prostitution and related practices, and for the Nordic Model approach to prostitution. This repeals laws that target those selling sex, provides services to help them exit, imposes tough penalties on pimps and profiteers, and makes buying sex a criminal offence, with the aim of changing attitudes and reducing the demand that drives sex trafficking. About one third of our members have lived experience of prostitution or other aspects of the sex trade.

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https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f8&Lang=en