



Every Child Protected Against Trafficking

# Nationality and Borders Bill: immigration outcomes for child victims of trafficking

February 2022

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## Introduction

The **Nationality and Borders Bill**<sup>1</sup> includes damaging proposals which will impact all child victims of trafficking, including those subject to immigration control. The government's stated intention is to improve support for child victims, but this is incompatible with their plans as set out. This is particularly important in light of official National Referral Mechanism (NRM) data that shows that more children than ever before were identified as potential victims of trafficking in 2021.<sup>2</sup>

There are widespread calls for Part 5 of the Bill to be removed because it conflates responses to modern slavery and trafficking with immigration, will reduce identification and protection of all victims of trafficking including British nationals and will create a damaging two-tier discriminatory system for responses to modern slavery based on immigration status.

This briefing focuses on concerns about immigration decision-making for child victims of trafficking and modern slavery in the context of the proposals to legislate, for the first time, the specific entitlement to immigration leave for confirmed victims of modern slavery – perhaps the only measure that has a place in this Bill.

In debates on Part 5 of the Bill to date, the government has stated that child victims of trafficking do not need any specific protections – contrary to its well-established legal duties.<sup>3</sup> Increasing numbers of children are being identified as victims, yet children face significant barriers to protection and recovery, including regularising their immigration status as they transition to adulthood. Child victims already struggle with the immigration and asylum process, with many remaining in immigration limbo throughout their formative years, unable to recover from their exploitation. We welcome the commitment to fulfil the UK's obligations as a signatory of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), but the Bill ignores the specific provisions to grant a residence permit to children as set out in the Convention.

**Clause 64** in Part 5 of the Bill creates statutory provision of immigration leave for victims of trafficking and modern slavery, requiring the Secretary of State to grant and deny leave in particular

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<sup>1</sup> HM Government. (2021). Nationality and Borders Bill as brought from the Commons. Available at: <https://bills.parliament.uk/publications/44307/documents/1132>

<sup>2</sup> The data shows 4,064 potential victims were exploited as children in just the first three quarters, an over 10% increase on the previous year in the same quarters.

<sup>3</sup> Parliamentary Under-Secretary of State for the Home Department. (2021). Nationality and Borders Bill (Twelfth sitting). Available at: [https://hansard.parliament.uk/Commons/2021-10-28/debates/66b1e524-3688-4227-86e0-64af2068fee9/NationalityAndBordersBill\(TwelfthSitting\)?highlight=tom%20pursglove#contribution-EA51DDC5-C300-4815-8C3D-B83C86C2E9C1](https://hansard.parliament.uk/Commons/2021-10-28/debates/66b1e524-3688-4227-86e0-64af2068fee9/NationalityAndBordersBill(TwelfthSitting)?highlight=tom%20pursglove#contribution-EA51DDC5-C300-4815-8C3D-B83C86C2E9C1)

circumstances if a person receives a positive conclusive grounds decision. Eligibility is contingent on long-term recovery needs, and on helping with prosecutions and bringing exploiters to justice – standards which are inadequate for child victims and do not fulfil the government’s obligations. **All child victims must be granted immigration leave in line with their best interests as the only standard, as per international law and UK guidance.**

The Independent Anti-Slavery Commissioner has expressed significant concern about the lack of clarity around what this clause would mean in practice for children, as acknowledged by the government in its response to the New Plan for Immigration consultation.<sup>4</sup> She re-iterated her disappointment that no further detail on this issue was included in the Bill.<sup>5</sup> UN human rights experts similarly expressed serious concern over the Bill stating: *‘We are concerned that there is no recognition of the primacy of the rights of the child, or of the State’s obligation to ensure the protection of migrant child victims of trafficking and contemporary forms of slavery, including through the implementation of best interests assessments and determination procedures in migration related decisions.’*<sup>6</sup> **The rights of the child and their particular vulnerability due to age are completely ignored and not accounted for in Part 5 of the Bill.**

Child victims of trafficking have rights to protection under the United Nations Convention on the Rights of the Child (UNCRC) and ECAT to ensure they can recover from exploitation and transition to adulthood in safety and stability. Article 14 of ECAT sets out how member states should issue renewable residence permits to victims when required, such as owing to their personal situation, in order to pursue compensation and ongoing cooperation with law enforcement.

The standard for children is clarified at Article 14 (2) which states that *‘the residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.’* The explanatory report to ECAT goes on to state at paragraph 186: *‘In the case of children, the child’s best interests take precedence over the above two requirements. The words “when legally necessary” have been introduced in order to take into account the fact that certain States do not require for children a residence permit.’*<sup>7</sup>

Amendments have been tabled crossparty at every stage of the Bill’s progress to set out this legal standard for children on the face of the Bill. Lord Stewart of Dirleton replied to concerns during the most recent debate in the House of Lords that ‘confirmed victims of all ages, including children, who do not have immigration status, will be automatically considered for **temporary leave**’ but despite commitments to enshrine Article 14 of ECAT, no account is taken regarding the specific entitlement for children under Article 14(2).<sup>8</sup> We urge the government to ensure child victims of trafficking are safeguarded and supported to achieve a stable future. In line with the government’s international

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<sup>4</sup> HM Government. (2021). Consultation on the New Plan for Immigration: Government Response. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1005042/CCS207\\_CC\\_S0621755000-001\\_Consultation\\_Response\\_New\\_Plan\\_Immigration\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005042/CCS207_CC_S0621755000-001_Consultation_Response_New_Plan_Immigration_Web_Accessible.pdf)

<sup>5</sup> Independent Anti-Slavery Commissioner. (2021). Letter to the Home Secretary on the Nationality and Borders Bill. Available at: <https://www.antislaverycommissioner.co.uk/media/1668/iasc-letter-to-the-rt-hon-priti-patel-mp-home-secretary-march-2021.pdf>

<sup>6</sup> Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. (2022). Letter to the UK Government. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26788>

<sup>7</sup> Council of Europe. (2005). Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings. Available at: <https://rm.coe.int/16800d3812>

<sup>8</sup> Lord Stewart of Dirleton. (2022). Nationality and Borders Bill Volume 818: debated on Thursday 10 February 2022. Hansard. Available at: <https://hansard.parliament.uk/Lords/2022-02-10/debates/77D527E6-362A-4F96-9CDD-1BDD25FFA5EA/NationalityAndBordersBill#contribution-354603C2-C086-4FAB-85A9-47C8CA3BB60F>

and domestic obligations towards children, reform must put children's rights and protection first and provide them with immigration outcomes consistent with their best interests:

- **all survivors of child trafficking should receive a timely decision from the NRM;**
- **child victims subject to immigration control should be granted immigration leave in line with their best interests;**
- **the length of leave granted must be granted accordingly to ensure transitions to adulthood in safety and stability – a minimum of five years and with the subsequent ability to apply for indefinite leave to remain (ILR).**

## **Current discretionary leave policy for child victims of trafficking**

The government currently has a policy to consider a grant of leave for victims of modern slavery and trafficking outside of the immigration rules following a positive conclusive grounds NRM decision in order to meet its obligations under ECAT by discretion. The policy states that the Home Office should automatically consider a grant of discretionary leave and that:

*'In cases involving children, **the best interests of the child is regarded as a primary consideration (although not necessarily the only consideration) and one that can affect the duration of leave granted.** See section 55 of the Borders, Citizenship and Immigration Act 2009 for further guidance, and Article 14(2) of the Council of Europe Convention on Action against Trafficking in Human Beings.'*<sup>9</sup>

There is no consistent public data available on the outcomes for potential child victims of trafficking but evidence shows this policy is not being implemented adequately. The Home Office reports on confirmed victims of human trafficking issued with a National Referral Mechanism (NRM) conclusive grounds decision.<sup>10</sup> This figure shows that between January 2019 and December 2020 there were 877 confirmed child victims with mean average waiting times of 435 days for a decision.

**ECPAT UK requested data through the Freedom of Information Act on the immigration outcomes for those exploited as children which shows that only 17 child victims were granted discretionary leave in the two year period from January 2019 to December 2020.**

The response found that:

- in total 2,416 decisions were made in relation to modern slavery discretionary leave to remain for victims with positive Conclusive Grounds decisions between January 2019-December 2020;
- of these, **775 decisions related to those exploited as children of which 17 were granted leave which** means that only about 2% of child-related considerations resulted in a positive decision.

**This data indicates that discretionary leave is not being granted to children as victims of modern slavery. Previous data shows that in the small number of cases where it is, the average length of**

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<sup>9</sup> Home Office. (2021). *Discretionary leave considerations for victims of modern slavery, Version 5.0*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1040852/Discretionary\\_leave\\_for\\_victims\\_of\\_modern\\_slavery.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040852/Discretionary_leave_for_victims_of_modern_slavery.pdf)

<sup>10</sup> Home Office. (2021). *National Referral Mechanism Statistics Quarter 3*. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2021-july-to-september>

**grant is short, suggesting that decisions are not being taken with their best interests as a primary consideration and as a result provide minimal stability.**<sup>11</sup>

It is unknown how many child victims of trafficking were subsequently granted Indefinite Leave to Remain (ILR) under this policy, but based on these figures we can estimate they are few. This is despite the explicit current policy that states the need to consider the length of leave, including a grant of ILR, in line with the child's best interest. As the Joint Committee on Human Rights scrutiny report on Part 5 concludes at para 89:

*"In order to comply with the UK's obligations under ECAT and the UNCRC toward child victims of slavery and human trafficking in the UK, Clause 64 should be amended to include a requirement for residence permits for child victims of slavery or human trafficking to be granted in accordance with the best interests of the child, and renewed where appropriate."*<sup>12</sup>

## **Child victims of trafficking within the asylum process**

ECPAT UK also requested data specifically for child victims of trafficking subject to immigration control, who may claim asylum. The data shows that:

- there were 2,043 asylum decisions made for people with positive conclusive grounds decisions in the same period of January 2019 to December 2020;
- **of these, 662 were child victims, of which about 488 were granted asylum which leaves 30% of child victims in indefinite limbo.**

This is hugely concerning given that previous data shows that in 2019 over one quarter of child refugees were identified as potential victims of trafficking and modern slavery.<sup>13</sup>

For some child victims of trafficking, accessing international protection can be particularly difficult. Their personal histories and experiences may not meet the Refugee Convention definition, they may receive poor quality legal advice and face difficulties disclosing their experiences of abuse. Some child victims may apply for asylum and if successful be granted refugee status for five years, with the ability to apply to stay permanently in the UK before this form of leave expires.

In previous responses from the government to data secured by ECPAT UK highlighting the issue of immigration leave for child victims, they reference the 81% grant rate for unaccompanied children but fail to mention the grant rate is lower for child victims who claim asylum.<sup>14</sup> Additionally, this figure of 81% relates only to **cases where the decision was made whilst the child was still under 18**. For unaccompanied children who receive their decision after they have reached the age of 18, the grant rate in 2020 was 65%.<sup>15</sup> Moreover, there is significant variation in positive and negative asylum outcomes by country of origin for child victims. This has a significant impact on child trafficking survivors claiming asylum, given the significant delays in the NRM and the complexity of their cases

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<sup>11</sup> ECPAT UK. (2020). Child Trafficking in the UK 2020: A Snapshot. Available at:

<https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=b92ea99a-6dd8-480c-9660-e6c0f0764acf>

<sup>12</sup> Joint Committee on Human Rights. (2021). Legislative Scrutiny: Nationality and Borders Bill (Part 5)—Modern slavery. Available at: <https://committees.parliament.uk/publications/8328/documents/84688/default/>

<sup>13</sup> Yeomans, E., and Dathan, M. (2022). Traffickers are sending of child refugees to Britain. Available at:

<https://www.thetimes.co.uk/article/traffickers-are-sending-of-child-refugees-to-britain-kdb58zqqh>

<sup>14</sup> <https://parliamentlive.tv/event/index/3402318f-b1f7-4756-b6f1-f89170c3d120>

<https://hansard.parliament.uk/lords/2020-11-16/debates/4C80A4D6-AB77-4BD7-8C6D-966D796E639A/Debate>

<sup>15</sup> Refugee Council. (2021). *Children in the asylum system*. Available at: <https://media.refugeecouncil.org.uk/wp-content/uploads/2021/03/22121107/Children-in-the-Asylum-System-Mar-2021.pdf>

often means they receive decisions past their 18<sup>th</sup> birthday which are far more likely to result in a negative decision.

In responding to our concerns about the data, the government has also said that a grant of asylum is a more generous leave provision than under discretionary leave.<sup>16</sup> **ECPAT UK is extremely concerned this suggests a government policy of asylum applications by default for children as the only means to obtain stability.** It is contradictory to a best interest approach based on the individual needs of each child as required by international law and set out in the government's own discretionary leave policy for victims of modern slavery. It is even more concerning in light of the proposals in the Nationality and Borders Bill, which will further impact on child victims seeking asylum.

The current system leaves a significant number of child victims in protracted battles to regularise their status, particularly as they transition into adulthood. Survivors of child trafficking consistently describe the significant impact this immigration limbo has on their mental health, preventing recovery from their exploitation. During this 'immigration limbo', young people are unable to undertake employment, education and training and it impacts the support they receive as care leavers. Young people supported by ECPAT UK have said this state of limbo often felt worse than the exploitation they experienced. A failure to regularise their status increases their vulnerability to going missing and being re-trafficked, particularly if they become 'appeals rights exhausted', fearing detention and removal to their country of origin.<sup>17</sup>

**For these reasons, ECPAT UK is calling on parliamentarians to ensure Clause 64 of the Nationality and Borders Bill incorporates the specific entitlement for children in line with ECAT and the UNCRC.**

Fatima,<sup>18</sup> 19, an ECPAT UK youth group member, shared the following message with decision makers: *'When you have the right to remain in the UK you're not scared anymore. You can decide what you want to do and pursue your future'*.

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<sup>16</sup> <https://parliamentlive.tv/event/index/3402318f-b1f7-4756-b6f1-f89170c3d120>

<sup>17</sup> Sigona, N., Chase, E., Humphris, R. (2017). *Understanding causes and consequences of going 'missing'*. Available at: <https://becomingadultproject.files.wordpress.com/2017/12/ba-brief-6-low-res.pdf>

<sup>18</sup> Not her real name



# Immigration Outcomes for Victims of Modern Slavery in 2019 and 2020



2,416

Total number of confirmed victims subject to immigration control



1 641

Adult Victims



775

Child Victims

102

granted  
Discretionary Leave



6%  
grant  
rate

1 539

not granted  
Discretionary Leave



17

granted  
Discretionary Leave



2%  
grant  
rate

754

not granted  
Discretionary Leave



1 023

granted asylum



74%  
grant  
rate

358

not granted asylum



488

granted asylum



71%  
grant  
rate

174

not granted asylum



- Total number of confirmed victims subject to immigration control includes 14 victims marked as 'unknown age' in 2019 and 2020 combined.

- Total number of confirmed victims subject to immigration control includes victims who did not claim asylum.

- Total number of confirmed victims subject to immigration control may not include victims subject to immigration control who received other forms of immigration leave if on or after receiving a positive conclusive grounds decision

- Asylum outcome is based on 'Latest Case Outcome' for that person's most recent asylum claim

## Case studies

**Diệp** was born in a rural village in Việt Nam. She had a difficult home life growing up following the death of the mother, caring for her father who became abusive when drinking. When she was 14, a man arrived to speak to her father and she was told she would be leaving the village for a job in the UK so she could send money home. Diệp survived a journey which took almost a year, she was made to work in a factory in Russia for several months, was sexually assaulted and in the last few months in Europe, she was made to clean different houses all day. Once she arrived in the UK, she was taken to a house and sexually exploited. She was finally identified as a child victim of trafficking a month before turning 16. Diệp was placed in care, started going to college and learning English. She was supported to claim asylum as she was terrified of the gangs finding her if she went back home. As an extremely talented artist, she was doing very well in her courses and aspired to go on to University for her degree. Her asylum claim was refused, and she spent months on end locked up in her room waiting for news about her appeal. Her mental health significantly declined; she lost all hope for the future. Diệp is 23 years old now, and she's still in limbo, never able to pursue her dreams.

**Kejsi** was born in Albania. He grew up in a household of domestic abuse perpetrated 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 Kejsi did not disclose to them the abuse he had faced growing up nor about the job that had been arranged for him. He was referred to the NRM and his social workers arranged strategy meetings with the other safeguarding partners to protect Kejsi from harm. Kejsi disclosed to an NGO who were supporting him that he was scared because the 'job' was to transport and distribute class A drugs. The NGO staff worked with Kejsi and his social workers to safeguard him and he became very settled into school and other extracurricular activities organised by the charity. Kejsi's was happy but he felt unsettled as the years passed and he did not receive a decision for his asylum claim or the NRM. He had turned 17 and was attending college when he received a positive NRM and an asylum refusal. He was devastated and terrified about what this meant. The men who were exploiting Kejsi to sell drugs had warned him that this would happen and he would be detained and removed back to Albania. To Kejsi they appeared to be right, so he got back in touch with them to go underground and 'work' to pay off his father's debts rather than face being returned to the violence he faced at home. Kejsi went missing shortly after, his social workers are convinced he has been re-trafficked and regret he was not granted leave to remain as a victim of modern slavery despite his asylum claim, as it would have been in his best interest to remain settled in his foster placement and continue thriving at college.

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