

Modern Slavery Bill

Factsheet: Defence for victims (Clause 45)

Minister for Modern Slavery and Organised Crime, Karen Bradley:

“Victims of modern slavery face terrible abuse and exploitation. When they come forward they should be protected, supported, and encouraged to give evidence so that the perpetrators cannot commit similar crimes against other innocent people.

The criminal justice system needs to target the real criminals, not victims who have often been forced to commit non-violent offences by their traffickers or slave-masters.

That is why I am so pleased that the Modern Slavery Bill contains a defence for victims to enhance their protection against prosecution.”

Background

The Government already takes very seriously our obligations not to criminalise victims of trafficking, and modern slavery. Earlier this year the Director of Public Prosecutions issued revised guidance to prosecutors to clearly set out the policy on non-prosecution of victims of modern slavery.

However, the pre-legislative scrutiny Committee heard significant evidence that victims – including child victims – were still being prosecuted for crimes they committed whilst being trafficked or enslaved.

Victims must have the confidence to come forward. So there is a strong argument for enhancing protection for victims as far as we reasonably can, without creating a loophole that might allow serious criminals to escape justice.

What we are going to do

The Modern Slavery Bill introduces a statutory defence for victims of modern slavery.

The defence will apply to a person who is a victim of trafficking or slavery and has been compelled to commit an offence as a direct consequence of being a modern slavery victim. It will be a condition of the new defence that a person in the same circumstances as the victim had no realistic alternative but to act in the way they did. In making that assessment, the age, sex and any physical or mental illnesses are taken into account by the court.

The defence will not apply to a number of serious offences – mainly violent and sexual offences – set out in the Bill. However, it will cover the offences that victims of modern slavery are typically forced to commit, such as cannabis cultivation, offences related to prostitution, and immigration offences.

The defence has been drafted to reflect that children are in a different position to adults and any compulsion may not be of the same explicit type. Compulsion can reflect all the circumstances of the case, not just explicit force by the perpetrator.

Where an offence is not covered by the defence, the CPS will still consider whether it is in the public interest to prosecute or not, considering the Director of Public Prosecutions guidance on modern slavery cases. In serious cases (such as rape or where someone had been killed), it is essential that prosecutors can look at all the circumstances of the case and consider both the victim of the offence and position of the modern slavery victim when determining whether it is in the interests of justice, that a prosecution should proceed.

Benefits

- The defence will ensure that right at the start of a case, police and prosecutors are aware that they should not be taking action against victims of modern slavery who have the benefit of the defence.
- The defence demonstrates and strengthens the Government's existing commitment not to criminalise victims.
- The defence will encourage victims to come forward and give evidence against their abusers, helping to prevent further modern slavery offences.

Q&A

Why doesn't the defence cover all offences?

- The defence will apply to the offences which victims are typically forced to commit, such as cannabis cultivation.
- The defence will not apply to certain serious offences, mainly serious sexual or violent offences, to avoid creating a legal loophole for serious criminals to escape justice.
- Where the defence does not apply because the offence is too serious, the Crown Prosecution Service must still assess whether or not it is in the public interest to prosecute, having regard to their guidance.
- And the court will be able to stop an inappropriate prosecution of a victim as an abuse of process.

Does the defence really work in cases where the victim is a child?

- The test for the defence reflects the special position of children.
- Firstly, compulsion does not need to involve any direct threats or force from the perpetrator. The court can consider the overall circumstances the victim was placed in.
- Secondly, the defence requires that a reasonable person would have had no realistic alternative but to act in the same way. When considering this the court will look at this part of the test through the eyes of a child of the same age of the victim.

**Home Office
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