



# The EU Mutual Learning Programme in Gender Equality

## Combatting trafficking in women and girls for the purpose of sexual exploitation

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### Comments Paper – United Kingdom



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# The Modern Slavery Act 2015 and Tackling Trafficking of Women and Girls

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## 1. Introduction

The UK's Prime Minister, Theresa May, states that she is personally committed to improving mechanisms that support vulnerable women and girls against sexual exploitation and trafficking. The UK has an established legal framework to prosecute the sexual exploitation of women and girls and fully meets the standards set by the US Department of State, being consistently ranked Tier 1 in its annual *Trafficking in Persons* (TIP) Report, and actively engaging with other countries to undertake research and develop policy on trafficking. In 2007, the UK Government launched the *UK Action Plan on Tackling Human Trafficking* after ratifying the Council of Europe *Convention on Action Against Trafficking in Human Beings*. In 2015 the UK introduced the *Modern Slavery Act* (MSA) to increase powers to prosecute traffickers and protect victims and now has an Anti-Slavery Commissioner.

### 1.1 Legislation on Prostitution

Until recently, prostitution was primarily framed as a public nuisance issue in UK law, and the sex worker's position ambiguous – the sale of sex being legal but many activities around it being criminalised. Law and law enforcement focused heavily on those who sold or profited from the sale of sex, rather than customers. In the 2000s, two governmental consultations reviewed laws relating to prostitution (Home Office, 2004, 2008), and laws and amendments were introduced criminalising as a strict liability offence those who pay or promise payment “for the sexual services of a prostitute who has been subject to exploitative conduct” (Sexual Offences Act 2003: s53A), and those who pay “for sexual services of a prostitute subjected to force, violence or exploitation” (Policing and Crime Act 2009: s14). The Modern Slavery (MS) [Strategy](#) was published in 2014 and provides the current framework for the domestic response in England and Wales. Separate legislation has been enacted in Northern Ireland and Scotland. In Northern Ireland only, the purchase of sexual services was criminalised as part of the Human Trafficking and Exploitation Act in 2015.

### 1.2 The Modern Slavery Act 2015

MSA law is the first of its kind in Europe in that it explicitly sets out a legislative framework designed to use law enforcement to end all forms of modern slavery, including trafficking for the purposes of sexual exploitation (Home Office, 2014). It frames a diverse range of disparate forms of exploitation and abuse (from forced prostitution to exploitative employment relationships in informal sector labour) as “modern slavery” and seeks to strengthen mechanisms to identify and prosecute perpetrators, deter traffickers and protect victims. The Act includes provisions for:

- a statutory defence for victims who commit crimes under compulsion (the section 45 defence), except for cases of serious sexual and violent offences;
- a specific duty for public authorities (including all police forces) to notify the Home Office of any individual encountered who they believe is a suspected victim of modern slavery or human trafficking (the Duty to Notify), with additional powers to restrict the activities of those deemed to pose a clear threat to others in respect of modern slavery and human trafficking offences.
- businesses with a turnover of more than £36 million are required to annually publish a slavery and human trafficking statement setting out steps the company has taken to ensure that slavery and human trafficking is not taking place in its business and supply chains;

The UK Government spend on modern slavery has increased year-on-year, estimated at around £39 million in 2017/18 and £61 million in 2018/19 and covers wide ranging activities:

- Independent Anti- Slavery Commissioner with an independent budget.
- National Referral Mechanism (NRM) for identification and support of victims.
- Independent Child Trafficking Advocates.
- Child Trafficking Protection Fund.
- Police Transformation Funding.
- Official Development Assistance (ODA) funding including a Modern Slavery Innovation Fund.
- Adult Victim Care Contract.
- Business Against Slavery Forum.

### 1.3 The National Referral Mechanism (NRM) and Data

The National Referral Mechanism (NRM) was introduced in 2009 to meet some of the UK's obligations under the Council of European *Convention on Action against Trafficking in Human Beings* and involves a two-stage decision making process designed to identify and support those who have been subject to trafficking or modern slavery. The first reasonable grounds (RG) decision acts as an initial filter before a final conclusive grounds (CG) decision is made. The NRM is the primary mechanism for identifying potential victims of human trafficking or modern slavery (PVoTs) and ensuring they receive the appropriate support. Within the NRM, organisations that act as first responders and can refer PVoTs include police officers, National Crime Agency (NCA), UK Visas and Immigration, Local Authorities and a number of non-government organisations (NGOs). The Home Office and the Modern Slavery Human Trafficking Unit (MSHTU) act as Competent Authorities for the NRM. They are given five working days from referral to make a RG decision and following a positive RG decision, PVoTs are entitled to support for 45 days or longer, until CG decisions are made. The NRM does not report the proportion of convictions for sex trafficking versus labour trafficking or report statistics on sentences imposed on convicted sex traffickers. It is a system for victim identification and support. In the latest quarterly NRM report in (NRM, July 2018) sexual exploitation was the second most common form exploitation after labour exploitation, accounting for 25%

of overall reports. In terms of nationality, the largest group of referrals were British citizens, 819 persons, more than double the 326 referred in 2016 (NRM, 2018). Most of these British PVoTs reporting sexual exploitation come from groups deemed vulnerable youth, i.e., from poor and marginalised populations (Berelowitz et al, 2012: National Crime Agency, 2017).

## 2. Policy Debate

Although the UK Government has focused on tackling exploitation by criminalising customers who pay for sex with persons controlled for gain in England and Wales, it has not fully adopted the Swedish model (Northern Ireland being an exception). This in part reflects vigorous opposition to the Swedish model by independent academics, as well as by sex workers and sex worker rights activists.

### 2.1 Distinctions between Trafficking and Sex work

Independent academic research and sex workers rights activists in the UK point to research with sex workers and clients<sup>1</sup> and with other stakeholders, such as lawyers, police, policy makers, educationalists, youth and community workers<sup>2</sup> contests the conflation of sex work (including sex work practised by migrants) with trafficking that is found in policy discourse (O'Neill and Jobe, 2016) and the focus on demand. The (erroneous) assumption that all women in sex work have been trafficked or coerced encourages law and policies that make individuals who have chosen sex work as an earning strategy vulnerable to harassment, prosecution, and/or detention and deportation (e.g., Mai, 2013a; O'Connell Davidson, 2014; Bowcott, 2016). Recognition of the vulnerabilities created by laws criminalising prostitution led Amnesty International to formally adopt a policy calling for the decriminalisation of adult sex work and repeal of most laws around the world controlling prostitution in 2016. In the UK, some NGOs and senior police have supported this push back against criminalisation, with the National Police Chiefs Council Guidance (2016) calling for policing which prioritises the safety of sex workers, focuses on protection not enforcement, and distinguishes between trafficking, sexual exploitation and sex work.

### 2.2 Trafficking and Immigration Control in the Global Context

It is widely recognised that there is a tension between the ideals of victim protection articulated in the MSA and the UK's current immigration law and policy, including the Immigration Acts of 2014 and 2016 (O'Connell Davidson, 2015). These Acts disqualify irregular migrants from renting housing or accessing banking services, and make illegal working a criminal offence (although this does not apply where an individual has been compelled to work). Criminalizing undocumented migrants pushes them into dependence on intermediaries and so creates vulnerability to abuse and exploitation. The "hostile environment" also encourages the authorities to prioritize immigration enforcement over the protection of migrants' rights (Kirkup and Winnet, 2012), and Detention Action (2017) recently reported that "many victims of trafficking are detained for removal after being encountered during raids on brothels, nail bars and cannabis farms. Some are being wrongly convicted of criminal

<sup>1</sup> For example the work of Teela Sanders (2008),

<sup>2</sup> For example the Sex Work Research Hub (SWRH).

offences relating to their exploitation”<sup>3</sup>. However, the UK Government would argue that the NRM provides support to those identified as PVoTs regardless of immigration status.

## 2.3 More Training and Greater Awareness to Identify Victims of Trafficking

An early assessment of the impact of the MSA on trafficked victims found ‘a high level of inconsistency’ in the way police forces have responded to the Act resulting in ‘poor outcomes for many victims’ and a lack of protection in the UK system (HMICFRS: 2017:9). O’Connell Davidson (2015) argues that poor responses continue because of definitional problems associated with the term “modern slavery”, limited understanding of the problem of trafficking, the powers given and provisions set out in MSA, and a lack of training to identify and refer victims to the NRM. Lack of support, and no automatic formal immigration status or rights in the UK have also been identified as problematic (Work and Pensions Report, 2017). The NRM has been criticised for failing to identify and protect victims of trafficking placing them in detention, with the Home Office’s conflict of interest between immigration enforcement and victim protection leading to poor quality NRM referrals and decision-making (ATMG, 2018). Once in detention, there are few effective safeguards for victims of trafficking who cannot access adequate advice or space to disclose their experiences (Detention Action, 2017). Failure to identify victims has also led to imprisonment. Little is known about victims once they leave safe houses and many do not have access to benefits or support. Some 3,804 people were referred to the NRM in 2016 compared to 714 in 2010 (Home Office, 2017) suggesting the UK measures to prevent trafficking has had an impact, but there have been challenges at governmental and local level with responding to the needs of potential victims of trafficking, evaluating the impact of measures and identifying gaps in knowledge (ATMG, 2018).

## 3. Good Practice

Some commentators consider that the UK has a number of strengths and areas of good practice:

- Most areas of the UK have some form of multi-agency partnership work in place to address modern slavery, at local, regional level. Wales stands out for best practice with six national multi-agency partnerships (Rights Lab, 2017). Single Points of Contact (SPoC) have also helped develop and disseminate best practice.
- Independent Child Trafficking Advocates (ICTAs) are specialist professionals who advocate on behalf of children who have been identified as PVoTs. On 30 January 2017, the ICTA service went live in 36 local authorities spanning three early adopter sites and will be rolled out to a third of local authorities by April 2019, as part of the Government’s commitment to national rollout.

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<sup>3</sup> The High Court’s ruling in October 2018 that a woman who was trafficked into Britain for prostitution and later locked up in an immigration centre is entitled to substantial damages from the Home Office for unlawful detention highlights the problem.

- Reform of the NRM was announced in 2017, with the aim of (Home Office, 2018e) increasing support and identification of victims. Actions include, providing places of safety, 'drop in' and 'move on' support, improved training and intelligence (Home Office, 2018e)
- Recent success of victimless prosecutions may address the disparity between numbers of PVoTs and actual prosecutions.
- Working with internet and technology companies to uncover trafficking on adult service websites.
- NHS staff training and the identification, referral and healthcare of PVoTs (Protect, 2017).
- The UK has commissioned research from the University of Bristol into the nature and prevalence of prostitution and sex work in England and Wales to inform future policy.
- Since 2006, police in Merseyside, North West England have approached crimes against sex workers as hate crime, and acknowledged sex workers as having rights. This has helped build trust and encouraged sex workers to report crimes including rape, trafficking and sexual exploitation (Campbell, 2014).
- UK aid budget to tackle modern slavery in high-risk countries to develop greater international corporation and prevention strategies.

## 4. Transferable Actions

- Spain has developed a housing programme for adult and child victims of sex trafficking.
- Asylum seekers allowed to work for six months after applying for asylum.
- The Delegation for Gender Based Violence has a virtual platform for exchanging information across the Autonomous Communities.
- Improvements in coordinating Autonomous Regions through the Equality Sectorial Conference with periodic meetings to encourage the development of the Framework Protocol in their territories.
- Committed to challenging damaging sexist stereotypes and all forms of gendered violence.

## 5. Conclusions

Efforts to better identify PVoTs and prevent sexual exploitation and trafficking can only be effective if informed by a wider and more nuanced understanding of migration and the intersectional relationship between structural inequalities that are racialised, sexualised as well as gendered. Discussions must also include sex workers and activists from the diverse sex industry to develop policies to protect and identify the vulnerable. In the UK, the welfare and the immigration regimes in particular serve to severely limit the alternatives open to poor women (especially lone parents) and to irregular migrants and migrants whose immigration status denies them the right to enter paid work (including asylum seekers). Likewise, inadequately resourced support services for drug users, the homeless, victims of

domestic violence, LGBTI, young people in and leaving care, and so on, restrict the real options open to those who are affected by such problems. In this context, there are people for whom even highly exploitative and risky forms of prostitution will appear as a lesser evil than their alternatives (O'Connell Davidson, 2009; Mai 2013b). Therefore, a criminal justice focus on demand and victim support approach alone cannot solve the problems, and in fact often works only to further penalise poor and the marginalised women and girls. A more holistic approach is required.

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