Modern slavery definitions

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Servitude, forced or compulsory labour and human trafficking are all forms of modern slavery. The following definitions have been sourced from the **Modern Slavery Act 2015**, **Crown Prosecution Service (CPS)**, Modern Slavery Human Trafficking Centre (MSHTC) and the **Palermo Protocol**, which is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

For further information see:

- **Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims**
- **Crown Prosecution Service: Slavery, Servitude, Forced and Compulsory Labour**

Slavery

Slavery is described as the status or condition of a person over whom any, or all, of the powers attaching the right of ownership are exercised. In essence, characteristics of ownership and indoctrination need to be present for a state of slavery to exist.

Servitude

Servitude is linked to slavery, but is much broader than slavery. In **Siliadin v France [2006] 43 EHRR 16**, the European Court of Human Rights (ECtHR) reaffirmed that servitude is a ‘particularly serious form of denial of freedom’. It includes, in addition to the obligation to provide certain services to another, the obligation on the ‘serf’ to live on the other’s property and the impossibility of changing his or her status.

Forced or compulsory labour

Section 1 of the Forced Labour Convention, 1930 (No. 29) defined forced or compulsory labour as being ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’. Case law suggests that **indicators of forced or compulsory labour** include recruitment by deception, coercion and/or abuse, exploitation at work, and coercion at destination.

Human trafficking

This is defined in the Modern Slavery Act 2015 s 2 (applicable to England and Wales) and in the **Palermo Protocol Article 3** (applicable to 117 signatories of the Protocol).

Section 2 of the Modern Slavery Act 2015

This states that a person commits an offence if they arrange or facilitate the travel of another person, to exploit them. It is irrelevant whether the exploited person, adult or child, consents to the travel.

A person may arrange or facilitate the exploitation of another by recruiting them, transporting or transferring them, harbouring or receiving them, or transferring or exchanging control over them.

‘Travel’ means arriving in, or entering, any country; departing from any country; and travelling within any country.

A person who is a UK national commits an offence under section 2 regardless of where the arranging or facilitating takes place, or where the travel takes place.

A person who is not a UK national commits an offence under section 2 if any part of the arranging or facilitating takes place in the United Kingdom, or the travel consists of arrival in or entry into, departure from, or travel within, the United Kingdom.

Article 3 of the Palermo Protocol

To meet the definition for victims aged 18 years and over, subparagraphs (a), (b) and (c) of Article 3 must be satisfied. If the victim is under the age of 18, they are considered to be a child. In determining whether or not a child is a victim of trafficking, their consent to being trafficked is irrelevant and how they are trafficked is also irrelevant. Only the act and the purpose need to be

present – it is not necessary to prove coercion or any other inducement.

Subparagraph (a) describes **what** is done, that is, the act –

> *The act is the recruitment, transportation, transfer, harbouring or receipt of persons.*

Subparagraph (b) describes **how** it is done, that is, the means –

> *By means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.*

Subparagraph (c) describes **why** it is done, that is, the purpose –

> *For the purpose of exploitation, which includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, forced criminality, servitude or the removal of organs.*

The trafficking of children can be defined as the movement of children for the purpose of exploitation. As with adults, this movement can be arriving in, travelling within, or departing from any country.

Note – slavery, servitude, forced or compulsory labour and human trafficking are not immigration crimes.

Distinction between human smuggling and human trafficking

Human smuggling (also called people smuggling) is not human trafficking or a form of modern slavery.

The purpose of human smuggling is to move a person across a border illegally, and it is regarded as a violation of state sovereignty.

The purpose of human trafficking is to exploit the victim for financial gain or other benefit, and is regarded as a violation of that person's freedom and integrity.

Human smuggling occurs when a person seeks the help of a facilitator to enter the UK illegally, and the relationship between both parties ends when the transaction is complete. It is a consensual agreement.

A smuggled person is, however, a potential victim who may be **vulnerable** to being trafficked at any point in their journey, and the distinction can be blurred. Perpetrators may smuggle people with the intention of **exploiting** them, or with the intention of facilitating exploitation. Alternatively, the smuggled can become vulnerable to traffickers upon arrival at their destination and subsequently be exploited and/or harmed.

For further information see:

- **Home Office: Victims of modern slavery – Competent authority guidance, version 3.0.**
- **Forced Migration Review article: 'Smuggled or trafficked?' by Jacqueline Bhabha and Monette Zard.**

Checklist

There are several factors which help distinguish human smuggling and trafficking.

- With trafficking, a victim's entry into a state can be legal or illegal, but smuggling is characterised by illegal entry.
- Trafficking can take place both within and across national borders, but international travel is required for smuggling.
- Trafficking is carried out with the use of force and/or deception, smuggling is not.
- Trafficking involves the intended exploitation of people while the services of smugglers usually end when people reach their destination and the transaction ends.

Tags

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