

Summary: Evidence Review of Section 45 of the Modern Slavery Act

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Author: Dr Alicia Kidd

Context

Section 45 of the Modern Slavery Act offers a defence for those who are faced with criminal liability for a criminal act that they committed as a consequence of their modern slavery or human trafficking experience. The statutory defence was designed to reassure people exploited in modern slavery that they could give evidence against their abusers without fear of being convicted for offences they had committed as part of their exploitation.

If the person is aged 18 or over, then they may use the defence if they were compelled to commit the criminal act, if the compulsion is attributable to their exploitative situation, and if a reasonable person in the same situation with relevant characteristics would have no realistic alternative to committing the act. In the case of children, the threshold is slightly lower: they may use the defence if the criminal act was a direct consequence of their exploitation and if a reasonable person in the same situation with relevant characteristics would have also committed the act.

This evidence review has analysed case law, independent reviews and academic literature to generate an understanding of how Section 45 is currently used and understood.

Key findings

- The evidence regarding the implementation of Section 45 is extremely limited and much more research is required to understand how it is used in practice and whether it is fit for purpose. Nearly all the evidence on Section 45 comes from two government-commissioned reviews of the Modern Slavery Act and one report on Section 45 by the Independent Anti-Slavery Commissioner's Office. The quality of the evidence available regarding Section 45 is rated red, which means that there is very little robust evidence on this issue.¹
- There is a lack of engagement of people with lived experience in the production of available evidence.

¹ The Modern Slavery Policy and Evidence Centre uses a traffic light system to rate the quality of available evidence. Green: evidence base is robust and well-established. Amber: there is some robust evidence but there remain gaps in understanding. Red: there is very little robust evidence.

- There is no quantitative data collected on the use of Section 45, meaning that there is no accurate insight into the outcomes of its use, barriers to success, or the types of crimes it is used to defend. However, a call for evidence by the Independent Anti-Slavery Commissioner indicated that Section 45 is predominantly used in cases relating to drug trafficking.
- Adequate training for police, lawyers and the judiciary is fundamental if Section 45 is to be used in the way it was intended: to serve the best interests of victims of modern slavery. This should include insights into potential bias based on notions of the 'ideal victim'. The importance of training is highlighted in both the 2016 and 2019 reviews of the Modern Slavery Act, as well as the 2020 report by the office of the UK's Independent Anti-Slavery Commissioner.
- Section 45 refers to crimes committed as a 'direct consequence' of modern slavery or human trafficking, but the Modern Slavery Act does not define the term 'direct consequence'. This means there is a lack of clarity within the legislation around how closely the offence should be associated with the modern slavery situation for the defence to be applicable.
- The Modern Slavery Act lists over 100 crimes that the defence cannot be used for, yet some of these are recognised as crimes that victims of modern slavery are known to be coerced into through their exploitative situations, such as the possession of a prohibited firearm, or modern slavery itself.

Recommendations

From this evidence review, there are a number of key recommendations that could improve both the use and the understanding of Section 45 of the Modern Slavery Act.

- Collection of quantitative data on the use and outcomes of the Section 45 defence should be a priority in order to understand the types of cases in which it is used, barriers to success, and how it might be vulnerable to misuse.
- Adequate training for police, lawyers and the judiciary is fundamental if Section 45 is to be used in the way it was intended: to serve the best interests of victims of modern slavery. This should include insights into potential bias based on notions of the 'ideal victim'.
- Reviews of any legislation should offer clarity regarding the commissioning process and methodologies used.
- Reviews into the practical use of the Modern Slavery Act should involve insights from academics working in relevant fields, and should always seek the input of survivors who have lived experience.

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