

Home Affairs Committee

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From the Committee Chair

Rt Hon Sajid Javid MP
Home Secretary
Home Office
2 Marsham Street
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21 May 2019

Dear Home Secretary,

When the Modern Slavery Act came into force in 2015, it did not specify how victims of modern slavery and human trafficking were to be identified and supported. Instead a duty was placed on the Home Secretary (in Sections 49 and 50 of the Act) to provide such guidance. To date, this has not been done.

In a High Court judgement in November 2018, relating to the Government's proposed cuts to the subsistence rates received by asylum-seeking victims of modern slavery and human trafficking, the judge concluded that "It is the Home Secretary's absolute duty immediately to issue the guidance that Parliament has required of him. Any further delay would be completely unacceptable". We subsequently learned – though from stakeholders in the sector, not through any direct communication from the Home Office – that the Government intends to put forward the Section 49 guidance.

We welcome the Government's intention to finally provide this important and highly overdue guidance. However, based on what we have heard from concerned experts and stakeholders within the sector, we are completely appalled by how the Home Office has attempted to do so.

We have been told in written evidence submitted to our ongoing inquiry into modern slavery that the initial draft guidance document provided to stakeholders was only eight pages long, with the guidance itself only constituting five of these pages. For context, a draft produced by a stakeholder group in 2016 was 166 pages. Experts and professionals who provide support and guidance to victims of modern slavery and human trafficking said that the draft was inadequate and lacking in many areas. They voiced serious concerns that there were safeguarding risks due to the omission of adequate detail, that it would confuse professionals due to the lack of explicitly stated and sufficiently detailed guidance on responsibilities, and that it had been rushed through without public or expert consultation.

We understand that sectoral representatives have been denied proper consultation and the opportunity to provide adequate advice and support in the construction of the draft guidance because of the Home Office's determination to publish as soon as possible. Stakeholders have told us informally that officials stated that this initial 8-page draft was to be an interim document, with fuller guidance following. However, using the delay in providing this guidance – the responsibility for which was clearly attributed by the judge to the Home Secretary – as a reason to rush through sub-standard proposals, even if interim, is not acceptable. There is no excuse for publishing inadequate guidance, especially when those that will be affected are some of the most vulnerable in our society.

While the Modern Slavery Act does not place a duty on the Government to consult when forming this guidance we would expect that a Government department would seek to canvas the advice and expertise of those with experience of doing the work they are attempting to codify. A failure to do so would be considered seriously short-sighted.

Leading and respected figures in this field repeatedly made clear their concerns to the Home Office as to the content of the draft guidance and the approach taken by the Home Office. However, following a meeting in mid-December 2018 – at which stakeholders recommended a consultative and iterative process whereby they could engage and consult on the guidance – the Home Office's Modern Slavery Unit failed to engage further with NGOs or the sector more widely until 18 March 2019, when a letter from the Parliamentary Under Secretary of State for Crime, Safeguarding and Vulnerability, Victoria Atkins MP, advised that guidance (no longer intended to be interim) was to be drafted by the end of April 2019. The group received the new draft guidance, which now ran to 140 pages in length, on 2 April.

The group has reported – in letters to the Home Office and written evidence submitted to us – that there remain a substantial number of significant concerns over the new version and the Home Office's process:

- When receiving the letter on 2 April, NGOs were given a deadline of 17 April to consider and feed back on the draft guidance. Two weeks is not enough time to meaningfully consult on a 140-page document when previous versions have already been found to be severely inadequate.
- The draft was incomplete, with large sections entirely absent with just a note saying 'TBC'.
- The guidance introduced new and previously unannounced policies which make serious and contentious changes to the processes involved in identifying and supporting victims of slavery and trafficking. Stakeholders cannot adequately critique new policy proposals – which may require wider consultation in their own right – while also attempting to fix and improve the more general guidance document.

- The issue of new proposals being slipped in to this document is exacerbated by the fact that the Home Office has not presented any policy paper explaining the approach and intent of the draft guidance, and how the policies it includes meet the objectives of the Modern Slavery Act in improving the identification, protection and support of victims of modern slavery.
- There has been a lack of transparency in the consultation process, with stakeholders unclear as to who has been invited to engage with the draft guidance. As a result there are likely to be significant gaps in expertise. The issues and policies involved require the input of multiple government agencies and non-governmental stakeholders to ensure complete and accurate coverage of provision, but we have been told that the approach taken so far has been “piecemeal, disjointed and contrary to the spirit of collaboration”.
- We were told that the document appears to have been constructed in a rushed manner, with much of the draft copied and pasted from other documents and demonstrating an inconsistency in terminology and definitions. We have been told that there also needs to be more clarity over the use of words such as ‘must’, ‘should’, ‘may’ and ‘can’, as these have legal significance in application.

Stakeholders fear that “without additional time and facilitation of engagement in the draft this guidance will not be fit for purpose”.

Throughout this whole process, our Committee – whose role it is to scrutinise the Home Office on behalf of the House of Commons and which is currently undertaking an inquiry into modern slavery – has not been provided by the Government with any copy of the draft guidance. This is completely unacceptable. It is now imperative that we are provided with a copy of the current draft guidance.

The impression given by this debacle is that the Home Office is either incompetently rushing through inadequate guidance while ignoring the views and experience of experts, or that it is wilfully attempting to avoid proper scrutiny, from Parliament and from the sector, to force through new guidance and policies which will be to the detriment of an exceptionally vulnerable group of people.

In your reply please provide responses to the following points:

- Whether the Government will publish the draft Section 49 guidance and establish a formal public consultation process before implementation, giving all stakeholders a reasonable time period in which to consider, consult on and respond to the draft guidance;
- Please provide us with a clear account of the process undertaken by the Home Office in the preparation of this guidance, explaining why it has failed to consult properly and why the documents produced so far have been so inadequate;

- Please also provide us with a copy of the draft guidance.

Please reply by 4 June.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Yvette Cooper', written in a cursive style.

Yvette Cooper MP