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Submission to UK  
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Committee on  
Human Rights (JCHR)  
on Human Rights at  
Work

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# **MODERN SLAVERY & HUMAN RIGHTS** | POLICY & EVIDENCE CENTRE

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## **Authors' Biographical Notes**

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## INTRODUCTION

This policy brief was submitted in response to the Joint Committee on Human Rights (JCHR) inquiry on Human Rights at Work (30 March 2023). It addresses the questions in the section of the inquiry focusing on Labour market exploitation. Whilst recognising the focus of this inquiry is *'human rights at work'*, this response focuses on labour exploitation severe enough to amount to modern slavery.



## LABOUR MARKET EXPLOITATION

**Q1: What is the current legal and policy framework for tackling labour exploitation in the UK? Is that framework effective to protect workers' rights under Article 4 ECHR, which prohibits slavery, servitude and forced or compulsory labour?**

- 1. Research demonstrates that forced labour and non-compliance occur on a continuum that ranges from deviations from “decent work” standards set by the International Labour Organization (ILO) to forced labour and labour exploitation that meet the definition of the crime of modern slavery.**<sup>1</sup> There is insufficient evidence to determine with certainty whether conditions operating on the indecent work end of the continuum lead directly to the end of the continuum that constitutes modern slavery. There is a need for more evidence on labour market non-compliance and we welcome the research funded by the Economic and Social Research Council (ESRC) and the Department for Business, Energy & Industrial Strategy (BEIS), commissioned by the Director of Labour Market Enforcement, which is being carried out by Drs Ella Cockbain and Chris Pósch to assess the scale and nature of labour market non-compliance in the UK. The study is expected to be completed in 2024.<sup>2</sup>
- 2. There are far fewer prosecutions for modern slavery offences than there are potential victims referred to the National Referral Mechanism (NRM).**<sup>3</sup> In the year ending September 2022 in England and Wales, 14,685

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<sup>1</sup> Skrivankova, K. (2010) [‘Between decent work and forced labour: examining the continuum of exploitation’](#)

<sup>2</sup> UCL (ND) [‘Human Trafficking, Smuggling and Exploitation Research Group’](#)

<sup>3</sup> The National Referral Mechanism (NRM) is the system the UK uses to identify, support, and protect potential victims of modern slavery. Groups designated by the Home Office as First Responder Organisations (such as divisions of the Home Office, the police, and particular charities) can refer people into the NRM if they suspect that they are a victim of modern slavery. People cannot refer



potential victims of modern slavery (of any exploitation type) were referred into the NRM,<sup>4</sup> during the same period there were 417 completed prosecutions related to modern slavery, of which 290 led to conviction.<sup>5</sup> The prosecutions data covers all forms of modern slavery and is not disaggregated by type (e.g. labour exploitation).

3. **Evidence shows that effective labour market enforcement is hampered by under-resourcing,<sup>6</sup> a fragmentary approach, a commitment to maintaining a flexible labour market,<sup>7</sup> and an over-reliance on private enforcement<sup>8</sup> through individual legal proceedings.<sup>9</sup>** The labour market enforcement landscape is complex and “made up of multiple legal regimes, conflicting political demands, varying levels of public support and linkages with other interests”,<sup>10</sup> marked by, for instance, a tension between the policy aims of immigration compliance and protecting victims with insecure

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themselves into the NRM, and adults cannot be referred without their consent. For more information see UK Home Office and UK Visas and Immigration (2022) [‘National referral mechanism guidance: adult \(England and Wales\)’](#)

<sup>4</sup> Calculated from Q4 2021, Q1-3 2022: UK Home Office (2022) [‘National Referral Mechanism Statistics Collection’](#)

<sup>5</sup> Crown Prosecution Service (2023) [‘CPS data summary Quarter 2 2022 – 2023: Prosecution Crime Types Data Tables Year Ending September 2022 \(Excel spreadsheet\)’](#)

<sup>6</sup> For instance, the GLAA only had 119 employees in the year ending March 2022, and The Migration Advisory Committee (MAC) illustrated concerns about ineffective enforcement by noting that, on average, a firm is inspected by HMRC for National Minimum Wage enforcement every 250 years, and prosecuted once in a million years: GLAA (2022) [‘Annual Report and Accounts’](#); Migration Advisory Committee (2014) [‘Migrants in low-skilled work’](#)

<sup>7</sup> Balch, A. (2012) [‘Regulation and enforcement to tackle forced labour in the UK: a systematic response?’](#)

<sup>8</sup> Private enforcement refers to litigation that is initiated by an individual seeking redress where, for instance, their employer has violated the law.

<sup>9</sup> Department for Business Innovation & Skills (2015) [‘Employment Status Review’](#); Fudge, J. (2018) [‘Illegal Working, Migrants and Labour Exploitation in the UK’](#)

<sup>10</sup> Balch, A. (2012) [‘Regulation and enforcement to tackle forced labour in the UK: a systematic response?’](#)



immigration status.<sup>11</sup> The three main enforcement bodies<sup>12</sup> and other bodies in the enforcement system such as the police have different and overlapping responsibilities, aims, and resources. As the Director of Labour Market Enforcement states, “[w]orkers who need help or who wish to pursue complaints require extensive understanding of the respective remits of the bodies and routes to pursue their claims.”<sup>13</sup> Reliance on private enforcement is inadequate, in part because access to private enforcement is not always available or accessible due to discrepancies in workers’ knowledge of their rights and access to legal advice. Evidence shows that particular groups of workers – such as seasonal migrant workers – may be hesitant to come forward due to their irregular status and a fear of deportation, short stay in the UK and practical obstacles to continuing proceedings from outside the UK, language barriers, social and cultural reasons, and/or lack of access to legal aid.<sup>14</sup>

**4. Modern Slavery-PEC funded research has identified a number of common issues hindering the effectiveness of the NRM in terms of post-exploitation support, relevant to those who have been referred for labour exploitation, including:**

- a. Uncertainty around survivors’ entitlements;<sup>15</sup>

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<sup>11</sup> ODLME (2021) [‘Executive Summary: United Kingdom Labour Market Enforcement Strategy 2021/22’](#)

<sup>12</sup> These are HRMC National Minimum Wage, the Gangmasters and Labour Abuse Authority, and the Employment Agency Standards Inspectorate.

<sup>13</sup> ODLME (2023) [‘United Kingdom Labour Market Enforcement Strategy 2022/23’](#)

<sup>14</sup> Hastie, B. (2017) [‘The Inaccessibility of Justice for Migrant Workers: A Capabilities-Based Perspective’](#); Gauci, J.-P., Magugliani, N., and J. Trajer (2023) [‘Impacts of a lack of legal advice on adults with lived experience of modern slavery’](#)

<sup>15</sup> Ibid.; Murphy, C., Heys, A., Barlow, C., Gleich, L., and S. Wilkinson (2022) [‘Protecting British nationals from modern slavery’](#); Findings based on academic study led by Thomas, S., Dang, M., Barrow, J., Johannes, K., Esiovwa, N., and Professor Bradbury-Jones, C., Semione, J., and N. Wright, Policy brief led by Brotherton, V., (forthcoming) [‘Placing Survivor Wellbeing on the Policy and Evidence Map’](#)





- b. Barriers to accessing entitlements;<sup>16</sup>
- c. Procedural delays in NRM decisions and criminal prosecutions, exacerbated by the pandemic, negatively impacting on survivors' wellbeing;<sup>17</sup>
- d. A need to improve linkages between specialised modern slavery services and wider systems affecting survivors' lives such as housing, mental health services, and the immigration and asylum system.<sup>18</sup>

For more detail, see the Modern Slavery PEC's submission to the JCHR inquiry on the human rights of asylum seekers.<sup>19</sup>

5. **Effective labour market enforcement is hampered by structural issues – including the unintended harms of current laws and policies – that increase the susceptibility of certain groups to labour exploitation.** For instance, evidence suggests that, in some circumstances the conditions attached to certain work visas which 'tie' migrants to their employer can increase workers' susceptibility to exploitation.<sup>20</sup> Much of the research on this topic was conducted prior to the introduction of the current points-based immigration system,<sup>21</sup> with some notable exceptions including

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<sup>16</sup> Ibid.; Gauci, J.-P., Magugliani, N., and J. Trajer (2023) ['Impacts of a lack of legal advice on adults with lived experience of modern slavery'](#); Hesketh, O., and O. Johnstone (2021) ['Impact of the Covid-19 pandemic on modern slavery'](#)

<sup>17</sup> Ibid.; Findings based on academic study led by Thomas, S., Dang, M., Barrow, J., Johannes, K., Esiovwa, N., and Professor Bradbury-Jones, C., Semione, J., and N. Wright, Policy brief led by Brotherton, V., (forthcoming) ['Placing Survivor Wellbeing on the Policy and Evidence Map'](#)

<sup>18</sup> Ibid.; Gauci, J.-P., Magugliani, N., and J. Trajer (2023) ['Impacts of a lack of legal advice on adults with lived experience of modern slavery'](#); Hynes, P., Connolly, H., Durán, L., Durr, P., Matar, E., and P. Haydon (2022) ['Creating stable futures: human trafficking, participation and outcomes for children'](#)

<sup>19</sup> The Modern Slavery PEC (2023) ['Written Evidence by the Modern Slavery and Human Rights Policy and Evidence Centre \(ASU0072\)'](#)

<sup>20</sup> Demetriou, D. (2015) ['Tied Visas' and Inadequate Labour Protections: A formula for abuse and exploitation of migrant domestic workers in the United Kingdom'](#); Mantouvalou, V. (2015) ['Am I Free Now?' Overseas Domestic Workers in Slavery'](#)

<sup>21</sup> The Modern Slavery PEC is funding research examining whether – and if so, how – the conditions attached to the Seasonal Worker and Health and Social Care visas increase susceptibility to labour



research led by Dr Caroline Emberson with migrant live-in care workers on the Health and Care Visa, which found that their working and immigration conditions increased their vulnerability to modern slavery.<sup>22</sup> In addition, the UK Government recognises that, for example, Seasonal Workers visa holders “may be more vulnerable and open to exploitation than other workers”.<sup>23</sup> The evidence suggests a need to consider how laws and policies including and beyond labour market policy can be designed to reduce the risks of forced labour and take account of the impact on vulnerable groups.

## **Q2: Are there any improvements that could be made to better tackle exploitative labour practices which are contrary to Article 4 in the UK?**

- 6. The effectiveness of the framework would be improved through meaningful engagement with people with lived experience of labour exploitation.** Policymakers and enforcement agencies should take a strategic approach to engagement that draws on emerging best practice of being non-tokenistic, trauma-informed, and preventing harm, and should set short-, medium- and long-term objectives for survivor inclusion<sup>24</sup> and inclusion of people in at-risk groups, such as migrant workers in sectors with a high prevalence of labour exploitation.
  
- 7. Improvements can be made to (1) the structures contributing to the drivers of and vulnerabilities to exploitation, and (2) to address**

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exploitation: Thiemann, I., Polomarkakis, K. A., Sedacca, N., Jiang, J., Dias-Abey, M., Åhlberg, M., Granada, L., and C. Boswell (2022) [‘UK agriculture and care visas and vulnerability to exploitation’](#)

<sup>22</sup> Åhlberg, M., Emberson, C., Granada, L., Hussein, S., and A. Turnpenny (2022) [‘The vulnerability of paid, migrant, live-in care workers in London to modern slavery’](#)

<sup>23</sup> UK Home Office and UK Department for Environment Food & Rural Affairs (2021) [‘Seasonal workers pilot review 2019’](#)

<sup>24</sup> Asquith, W., Kiconco, A., and A. Balch (2022) [‘Promising practices in the engagement of people with lived experience to address modern slavery and human trafficking’](#)



**exploitation after it has occurred and to prevent re-trafficking**, through e.g., better identification or post-exploitation support. We highlight three key areas:

## Enforcement

8. **Given the complex labour market enforcement landscape, the establishment of a Single Enforcement Body (SEB), alongside adequate funding and resourcing, would provide an opportunity to improve the effectiveness of enforcement activity.** Research has identified how the SEB could address current insufficiencies and issues impeding effective enforcement.<sup>25</sup> Further, the Group of Experts on Action Against Trafficking in Human Beings (GRETA) have stressed the importance of an SEB with a clear remit and adequate funding for effectively preventing and combating labour exploitation.<sup>26</sup>

## Labour Market Conditions

9. **Labour market conditions could be improved via legislation and policy aimed at addressing and preventing modern slavery in supply chains,** including UK-based supply chains. There are a wide range of levers that could be explored, (e.g., via amendments to Section 54 of the Modern Slavery Act 2015) including:
  - a. Public procurement measures;<sup>27</sup>
  - b. Mandatory human rights due diligence measures;<sup>28</sup>

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<sup>25</sup> University of Nottingham Rights Lab (2023) [‘Restating the case for a Single Enforcement Body’](#)

<sup>26</sup> GRETA (2021) [‘Evaluation Report: United Kingdom’](#)

<sup>27</sup> Gonzalez de Aguinaga, S., Johnstone, O., and O. Hesketh (2022) [‘Effectiveness of public procurement measures in addressing modern slavery’](#)

<sup>28</sup> Johnstone, O., and O. Hesketh (2022) [‘Effectiveness of mandatory human rights and environmental due diligence’](#)



- c. Forced labour import bans;<sup>29</sup>
- d. Measures and frameworks targeting investors and other finance actors.<sup>30</sup>

The UK Government should monitor and assess the evidence around the effectiveness of measures in the above areas to inform its ongoing approach to addressing modern slavery in supply chains.

## Visa Regimes and Migration Control

**10. Visa regimes should be designed to prevent and address modern slavery risks.** Research on the Seasonal Worker visa, for instance, has shown that workers are dependent on intermediaries, with many incurring significant debt as a result of excessive recruitment fees, and face poor working and living conditions, as well as practical obstacles to changing employers.<sup>31</sup> As mentioned above, in paragraph 5, similar issues with the Health and Social Care visa have been shown to increase susceptibility to exploitation.<sup>32</sup> Further, various construction sector jobs (a high-risk industry for modern slavery)<sup>33</sup> have recently been added to the Shortage Occupation List, following the Migration Advisory Committee's (MAC) recommendations.<sup>34</sup> The conditions attached to visas, and the processes for, e.g., changing employers, should be informed by research and input from people with lived experience of exploitation, as well as in consultation with

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<sup>29</sup> Pietropaoli, I., Johnstone, O., and A. Balch (2021) [‘Effectiveness of forced labour import bans’](#)

<sup>30</sup> Financial Sector Commission on Modern Slavery and Human Trafficking (2019) [‘A Blueprint for Mobilizing Finance Against Slavery and Trafficking’](#); Crates, E. (2021) [‘The role of the financial sector in eradicating modern slavery: CEOs respond to the Independent Anti-Slavery Commissioner’](#)

<sup>31</sup> See, e.g., Mantouvalou, V. (2022) [‘The UK Seasonal Worker Visa’](#)

<sup>32</sup> For further detail on this and the vulnerabilities associated with the seasonal worker visa scheme, see the submission to this inquiry by members of the research project ‘Access to protection, enforcement & redress? Effects of visas for agriculture & care on migrant workers’ vulnerabilities in the UK workforce’.

<sup>33</sup> IASC (2022) [‘Operation Cardinas and Beyond: Addressing exploitation risk in the construction sector’](#)

<sup>34</sup> Migration Advisory Committee (2023) [‘Construction and hospitality shortage review’](#)



experts on modern slavery. This consultation and assessment of forced labour risks should also be completed by the MAC during reviews of the Shortage Occupation List, similarly to their current inquiry into the Seasonal Worker visa that considers the “potential for exploitation”.<sup>35</sup>

- 11. Enforcement of immigration rules should not prevent or deny human rights protections for victims of modern slavery.** The Home Office recognises that some migrants do not report violations of their rights due to a fear of immigration enforcement action.<sup>36</sup> While experts have recommended a firewall between immigration enforcement and policing,<sup>37</sup> the Home Office considered this and opted to establish a Migrant Victim Protocol which would protect survivors from immigration enforcement “while they receive the support they need”.<sup>38</sup> As migrant potential victims are already protected from removal while receiving NRM support,<sup>39</sup> it is unclear how the proposed Protocol differs from the protections already conferred to potential victims under the Modern Slavery Act 2015. Further, the Migrant Victim Protocol has yet to be implemented and appears at odds with the

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<sup>35</sup> Migration Advisory Committee (2023) [‘Letter to Immigration Minister regarding MAC inquiry into Seasonal Worker visa’](#)

<sup>36</sup> See, e.g., UK Home Office (2021) [‘Review of data sharing: migrant victims and witnesses of crime’](#) and UK Home Office (2021) [‘New Plan for Immigration: Policy Statement’](#)

<sup>37</sup> International Labour Organization (2022) [‘Labour Inspection and Monitoring of Recruitment of Migrant Workers’](#), p. 10; International Labour Organization (2021) [‘Protecting the Rights of Migrant Workers in Irregular Situations and Preventing Irregular Labour Migration: A Compendium’](#), p. 35, 52; European Commission against Racism and Intolerance (2016) [‘ECRI General Policy Recommendation N°16 on Safeguarding Irregularly Present Migrants from Discrimination’](#); For specific concerns regarding the situation in the UK, see e.g. GRETA (2021) [‘Evaluation Report: United Kingdom’](#), p. 20, 61; Crépeau, F., and B. Hastie (2015) [‘The Case for ‘Firewall’ Protections for Irregular Migrants: Safeguarding Fundamental Rights’](#)

<sup>38</sup> UK Home Office (2021) [‘Review of data sharing: migrant victims and witnesses of crime’](#)

<sup>39</sup> This protection is withdrawn for those disqualified by the Home Office under public order or bad faith grounds, as of 30 January 2023: UK Home Office (2023) [‘Modern Slavery: Statutory Guidance for England and Wales \(under s49 of the Modern Slavery Act 2015\) and Non-Statutory Guidance for Scotland and Northern Ireland’](#)



Illegal Migration Bill.

12. **The Illegal Migration Bill, if enacted as presented to Parliament, would likely increase susceptibility to modern slavery and impede efforts to identify potential victims**, among other potential harms. It provides for the denial of support and would lead to the detention and deportation of people who are recognised to be potential victims of modern slavery, impacting on their safety from traffickers, their recovery from exploitation and affecting engagement in prosecutions in breach of the positive obligation to protect in Article 4 ECHR. For a more detailed analysis of these harms, see the Modern Slavery PEC's explainer.<sup>40</sup>

**Q3: Do workers from particular groups or in precarious employment disproportionately experience labour market exploitation? Does this raise concerns under Article 14 ECHR (freedom from discrimination)?**

13. **There are certain sectors in the UK that are recognised as high-risk, in terms of the conditions that foster and enable exploitation and/or the prevalence of exploitation.** The UK sectors identified as high-risk by GRETA include the garment industry, construction, hospitality (including cleaning and catering), domestic work, car washes, nail bars, waste management, and logistics and warehousing (including packaging).<sup>41</sup> For instance, the 'family worker exemption' excludes live-in domestic workers – who are predominantly women – from the National Minimum Wage. Evidence shows that this exemption is a 'loophole' for exploitation.<sup>42</sup> The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (at the time) committed to remove the exemption,<sup>43</sup> but at the time of writing it

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<sup>40</sup> The Modern Slavery PEC (2023) '[Explainer: The Illegal Migration Bill modern slavery provisions](#)'

<sup>41</sup> GRETA (2021) '[Evaluation Report: United Kingdom](#)'

<sup>42</sup> Low Pay Commission (2021) '[2021 Report – Summary of Findings](#)'

<sup>43</sup> Scully, P. (2022) '[Draft National Minimum Wage \(Amendment\) Regulations 2022](#)' HC Deb. Cols.4/5



remains in force. In addition, the Director for Labour Market Enforcement has noted that sectors with “disproportionate numbers of migrant workers” often rely on precarious, low-paid job roles with contracts that lead to lower protections, lower predictability of work and income, and a “lower level of rights”.<sup>44</sup>

- 14. Migrants make up the majority of people referred to the NRM as potential victims of labour exploitation.** In 2022, 1,225 individuals were referred for labour exploitation which took place in the UK, of which 93% (1,144 people) were non-British nationals.<sup>45</sup> However, non-British nationals comprised 9% of the total population in 2021,<sup>46</sup> and comprised 12% of those recorded as employed in the UK between October and December 2022.<sup>47</sup>

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<sup>44</sup> ODLME (2021) [‘Executive Summary: United Kingdom Labour Market Enforcement Strategy 2021/22’](#)

<sup>45</sup> Non-British nationals excludes UK dual nationals. Figures include cases where the only exploitation type recorded was labour exploitation and where the exploitation took place in the UK only. Based on analysis undertaken by the Modern Slavery PEC on dataset, ‘Home Office, Modern Slavery Research & Analysis. (2023). National Referral Mechanism and Duty to Notify Statistics, 2014-2022. 7th Edition. UK Data Service. SN: 8910, DOI: 10.5255/UKDA-SN-8910-7. Data accessed 05/03/22.

<sup>46</sup> ONS (2021) [‘Census 2021: Population of the UK by country of birth and nationality: year ending June 2021’](#) and ONS (2021) [‘Census 2021: Population estimates for the UK, England, Wales, Scotland and Northern Ireland: mid-2021’](#)

<sup>47</sup> ONS (2023) [‘Dataset: EMP06: Employment by country of birth and nationality’](#)