

Explainer: The Illegal Migration Act modern slavery provisions

Version: 11 September 2023



Context

Receiving Royal Assent on 20 July 2023, the Illegal Migration Act's provisions amend immigration, asylum, and modern slavery legislation. The purpose of the Act is to "prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes".¹

This Explainer aims to answer common questions about the modern slavery provisions in the Act.² It is based on a rapid assessment of what is known from research, evidence and data about the rationale for the modern slavery provisions and their potential implications and a legal analysis of the human rights compatibility of the Act's modern slavery provisions, undertaken by Dr Marija Jovanovic and available on the PEC website. This Explainer was produced by the Modern Slavery PEC's policy impact team, alongside the PEC's lived experience engagement team.

The authors are grateful to Dr Patrick Burland, Senior Project Officer, International Organization for Migration, and Dr Marija Jovanovic for detailed comments on a draft of this Explainer.

The first version of this Explainer was published on 28 March 2023, after the Illegal Migration Bill was introduced to Parliament on 7 March 2023. The Explainer was continuously updated as the Bill progressed through Parliament. This version analyses the final Illegal Migration Act that received Royal Assent on 20 July 2023.

While the terms 'survivor of modern slavery' and 'people with lived experience of modern slavery' are generally preferable when talking about the people most directly affected by this form of exploitation, this Explainer uses the terms 'potential victim' and 'victim' in places, given they are used in the Modern Slavery Act 2015, the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) and many other official documents and statistics.

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¹ Section 1 of the [Illegal Migration Act 2023, c.37](#)

² The information contained in this document is not intended to be used for legal or casework purposes. Legal advice should be sought to definitively clarify individuals' legal rights and entitlements.

Summary

- The Illegal Migration Act presents serious implications for large numbers of people who are victims of modern slavery. It provides for the denial of support, and for the detention and deportation or removal of people who are recognised to be potential victims of modern slavery.
- Thousands of potential victims of modern slavery will be denied protections by the modern slavery provisions in the Act, when commenced. This includes people for whom their entry to the UK is an integral element of the criminal offence of trafficking committed against them (see paragraphs 7-8).
- The need for these provisions is predicated on the UK Government's assumption that people are 'abusing' the modern slavery system, and that the system is an incentive for illegal migration to the UK. The available evidence questions both of these assumptions (see paragraphs 5-6; 9-17).
- The modern slavery measures in the Act are incompatible with the UK's obligations under Article 4 of the European Convention on Human Rights (ECHR), which are part of UK law under the Human Rights Act 1998 (HRA), and its obligations in international law under the European Convention Against Trafficking (ECAT) (see paragraphs 18-25).
- The modern slavery provisions provide for the denial of protection and support for potential victims, and for their removal from the UK before the victim identification process has been completed, impacting on their safety from traffickers and their recovery from exploitation. The Act itself provides some exceptions for those supporting investigations and prosecutions, and Section 22(5) creates a presumption that survivors' presence in the UK is not required to provide this support, unless the Home Secretary determines there are compelling circumstances. This is very likely to reduce survivors' willingness and ability to cooperate with authorities in criminal proceedings, which often plays a central role in successful prosecutions (see paragraph 27). The Government has committed to set out in Statutory Guidance further exceptions for people exploited in the UK, but more detail is needed on how this will operate and interact with Section 22(5) of the Act (see paragraph 31).
- The measures that are not specific to modern slavery may directly harm people affected by modern slavery who seek asylum or humanitarian protection by increasing their susceptibility to exploitation and trafficking, and by exposing them to long-term psychological harm through, for example, detention (see paragraph 29).

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The Modern Slavery Provisions

What are the modern slavery provisions in the Act?

1. **The modern slavery provisions (Sections 22-29) automatically disapply legislative protections for potential victims of modern slavery who the Government deems as having arrived in the UK irregularly.**³ The provisions apply to people for whom the Home Office has determined that there are reasonable grounds to believe they are a victim of modern slavery,⁴ who arrived in the UK without valid authorisation (such as a visa) after 20 July 2023 (the day the Act passed into law), and who did not arrive directly from a country where they fear persecution. This includes people arriving by various methods including small boat, lorry, plane, car, or train. The Act also disapplies these protections for any potential victim of modern slavery who entered the UK as an 'excluded person',⁵ as well as for those deemed liable to be deported, regardless of when they arrived in the UK, or if they arrived with or without permission. In addition, these protections are disapplied for people who are not British citizens who have been convicted in the UK of an offence and have been sentenced to a period of immediate imprisonment, regardless of when they arrived in the UK, or if they arrived with or without permission. The provisions of the Illegal Migration Act do this by extending the already-existing public order disqualification from the Nationality and Borders Act 2022⁶ (NABA) to people who meet the criteria specified in Section 63(3) of NABA, unless they are cooperating with the authorities investigating their case and the Secretary of State deems that there are compelling circumstances that mean they need to be in the UK to do so.⁷
2. **The public order disqualification revokes certain protections:**
 - a. Potential victims' right not to be removed during the recovery and reflection period (the period of time between a positive reasonable grounds decision, and a final conclusive grounds decision),
 - b. their right to specialist support services,
 - c. the Secretary of State's duty to grant them temporary permission to stay in particular circumstances, in all UK nations and,

³ Other sections of the Act are predicted to have significant harmful impacts on people affected by modern slavery. These impacts are addressed in response to the question on the potential harms of the Act, below.

⁴ When someone is referred into the NRM, Home Office caseworkers begin a two-stage decision-making process to determine whether they will be recognised as a victim of modern slavery (victim status). See the Appendix for a summary of the current modern slavery system, including the decision-making process for identifying and confirming victims of modern slavery, and the protections and support to which they are entitled at particular periods.

⁵ An 'excluded person' refers to the meaning specified under Section 8B of the Immigration Act 1971.

⁶ The public order disqualification, as introduced by the Nationality and Borders Act, is currently subject to a legal challenge. In July 2023, the High Court ruled that certain aspects of the public order disqualification are unlawful. A further hearing of its lawfulness is expected in October 2023. See Taylor, D. (2023) ['Home Office ordered to change rules that restrict help for trafficking victims'](#) 26 July 2023.

⁷ See paragraph 27c for discussion.

- d. a conclusive grounds decision (the final decision confirming whether or not they will be recognised as a victim) will not be made.⁸
3. **The Home Office’s Child’s Rights Impact Assessment for the Bill⁹ clarifies that where the Home Secretary does not seek to use the powers the legislation confers to remove an unaccompanied child from the UK, the unaccompanied child would continue to receive modern slavery protections until the age of 18.** This includes the Independent Child Trafficking Guardians service, which is currently operational in two-thirds of local authority areas in England and Wales. The Government intends for accompanied children who meet the criteria in Section 2 of the Act to fall in scope of the public order disqualification and therefore would not receive modern slavery protections.
4. **The Immigration Minister, Robert Jenrick, made a commitment on 11 July 2023 that future modern slavery statutory guidance will provide for exceptions to be made for individuals whose exploitation occurred in the UK.** He stated that “an individual who has arrived in the UK illegally and has a positive reasonable grounds decision based on an incident that has taken place in the UK, will be afforded 30 days from that positive decision to confirm that they will co-operate with an investigation relating to their exploitation,” during which time they would not be removed. The Minister stated that should an individual continue to co-operate with an investigation, they would continue to be entitled to NRM support and protections, and that the time-period would be extendable should further time be required beyond the initial 30 days.¹⁰ This commitment would provide protections for some victims who would otherwise not have been afforded protection under the Act, and to that extent ameliorates its impact. However, it creates a distinction between victims based on the location of their exploitation which is at odds with obligations arising from ECHR and ECAT, as outlined in paragraphs 24-25. Further detail is needed about how this proposed exception will interact with the exceptions set out in Section 22 of the Act (see paragraph 31), including the presumption that individuals need not be in the UK to cooperate with investigations, as set out in Section 22(5).

For how long will the Act’s modern slavery provisions apply?

5. **These provisions are intended to be temporary measures in use only during “exceptional circumstances relating to the illegal entry into the UK.”** They are described by the UK Government as “radical” measures that can be suspended and revived by Parliament,¹¹ or by the Secretary of State in times of urgency, such as “in response to a new wave of small boat arrivals over the parliamentary summer recess.”¹² Without parliamentary or Government intervention, the Government

⁸ 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’](#), pg.169; Note that points ‘a’ and ‘c’ are provisions included in NABA Section 63(2), and points ‘b’ and ‘d’ are provided for in the above-cited Statutory Guidance.

⁹ UK Home Office (2023) [Child’s Rights Impact Assessment](#), 5 July 2023

¹⁰ Jenrick, R. (2023) [‘Illegal Migration Bill’](#) HC Deb. Vol.736 col.207.

¹¹ HM Government (2023) [‘Illegal Migration Bill: European Convention on Human Rights Memorandum’](#)

¹² HM Government (2023) [‘Illegal Migration Bill Explanatory Notes’](#)

intends for these measures to automatically expire two years after the relevant modern slavery provisions come into force.

6. **The automatic application of the public order disqualification is based on several factors, which include (1) the pressure placed on public services, (2) a large number of 'irregular' arrivals, and (3) the loss of life resulting from "illegal and dangerous" journeys.**¹³ The Explanatory Notes suggest that the Secretary of State and Parliament will keep the proportionality of the modern slavery provisions under constant review, and will use these factors, possibly among others, as measures to determine whether – and when – to suspend or revive the relevant clauses. The Explanatory Notes do not clarify how the pressure on public services itself will be measured, nor do they provide a specific threshold that must be met in relation to the three factors, i.e., the number of arrivals, or number and/or cause of deaths, in order to justify the automatic application of the public order disqualification.

Who will be affected by the modern slavery provisions in the Act?

7. **The potential victims of modern slavery will not receive protection under this Act may have experienced different forms of exploitation either in and/or outside of the UK, including where entry to the UK is an integral element of the criminal offence of trafficking committed against them.** Modern slavery encompasses human trafficking and slavery, servitude and forced or compulsory labour, the definitions of which are set out in international law and transposed in the domestic legal framework. These legal definitions are also explained in the Statutory Guidance.¹⁴ The definition of trafficking makes it clear that such an offence involves a range of actions that might be committed by different individuals in different geographical places and at different times. For some, their entry to the UK is an integral element of the criminal offence of trafficking committed against them. By definition, trafficking involves deception or coercion so people may not have consent over the country that they are trafficked into. For others, an historical experience of modern slavery may be indirectly linked to their flight and entry to the UK. In turn, being a victim of modern slavery may or may not form part of a person's claim for asylum. Furthermore, there can be situations which are perceived as economic

¹³ HM Government (2023) '[Illegal Migration Bill Explanatory Notes](#)'

¹⁴ To meet the definition of **human trafficking**, three components must be present in the case of an adult: **action** (recruitment, transportation, transfer, harbouring or receipt, which includes an element of movement whether national or cross-border) achieved by a **means** (threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability), and for the **purpose** of exploitation, which includes scenarios where a person has not yet been exploited, but trafficked for that purpose. Exploitation can take a number of different forms, including sexual exploitation, criminal exploitation, forced labour and domestic servitude. For children, only the 'action' and 'purpose' elements need to be present to meet the definition (ECAT).

Slavery: 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised' (The 1926 Slavery Convention).

Servitude: an obligation to provide a service that is imposed by the use of coercion.

Forced or compulsory labour: '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' (UN Convention No. 29 concerning forced or compulsory labour).

The meaning of 'modern slavery' derives directly from the Modern Slavery Act 2015, and corresponds to the scope of Article 4 ECHR even though the European Court of Human Rights never uses the term 'modern slavery'.

migration,¹⁵ or people smuggling,¹⁶ but where an individual is in an exploitative situation such as being forced to work off their debts.¹⁷

8. **Due to limited published data, it is challenging to put a precise figure on how many potential victims of modern slavery will be deprived of protections by these provisions in the Act, but potentially thousands of people will be affected.** In 2022, 12,350 foreign nationals were referred to the National Referral Mechanism (NRM),¹⁸ (73% of all referrals) of whom 8,016 (65%) were adults.¹⁹ However, data on the time lag between entry to the UK and referral to the NRM, and the entry method to the UK is not published for all people referred to the NRM.²⁰ Data is also not published on whether the direct entry into the UK was integral to the trafficking offence. The majority of foreign nationals referred to the NRM are for potential exploitation which took place overseas only (6,910 in 2022) or both overseas and in the UK (1,731 in 2022).²¹ In addition, there are thousands of foreign nationals each year who First Responder Organisations think could be victims of modern slavery who decide not to give consent to enter the NRM.²² These cases are recorded by public authorities as Duty to Notify Referrals (DtN),²³ and foreign nationals represented 91% of these referrals in 2022 (4,152).²⁴ These figures do not

¹⁵ **Economic migrants** are defined by [UNHCR](#) as those who voluntarily leave their country in order to take up residence elsewhere, motivated exclusively by economic considerations. Should they elect to return home they would continue to receive the protection of their government. UNHCR explains that there can be blurred distinctions between economic migrants and refugees as there may be racial, religious or political aims or intentions underpinning economic measures affecting a person's livelihood and if those measures destroy the economic existence of a particular section of the population (e.g., discriminatory or excessive taxation of a specific ethnic group), the victims may according to the circumstances become refugees on leaving the country.

¹⁶ Human trafficking is distinct from **people smuggling** which occurs when a person seeks help to be moved across a border illegally. Smuggling is a voluntary, transactional arrangement which typically ends once the person enters their destination country.

¹⁷ See 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](#)', para 2.5

¹⁸ The NRM is the system the UK uses to fulfil these obligations. 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 themselves into the NRM, and adults cannot be referred without their consent. For more detail, see the Appendix.

¹⁹ These differ from published statistics as these figures exclude UK dual nationals. Data analysed from 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.

²⁰ Published statistics indicate that a small proportion of people (7%, (6,210)) who arrived in the UK on a small boat between 2018 and 2022 have been referred to the NRM at any stage after arrival in the UK and the positive reasonable grounds decision rate for this group (85%) is broadly in line with the average. See: UK Home Office (2023) '[Irregular migration to the UK, year ending December 2022](#)'

²¹ ECHR places a positive obligation on States to identify and support any potential victim in their territory, irrespective of whether the exploitation occurred outside of their territory. See *J and Others v Austria* (Application No. 58216/12, 17 January 2017).

²² Figures exclude all UK nationals, including those with multiple nationalities. See Table 29 in the data tables:

UK Home Office (2023) '[Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022](#)'

²³ In cases where adults do not give consent for a referral, or where there is missing information, public authority First Responder Organisations in England and Wales have a statutory 'Duty to Notify' the Home Office when encountering a 'potential victim' of modern slavery.

²⁴ Figures exclude all UK nationals, including those with multiple nationalities. See Table 29 in the data tables:

UK Home Office (2023) '[Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022](#)'

include the number of people who are victims of modern slavery but are not formally identified or supported through the NRM.²⁵ The Home Office's Impact Assessment of the Bill did not include an assessment of the number of people the Home Office expects will be deterred from entering the UK as a result of the legislation²⁶, so it is not possible to quantify whether the number of foreign national victims of modern slavery coming to the UK will reduce.

What are the UK Government's stated rationale and policy objectives for the modern slavery measures, and how do these align with existing evidence?

9. **The UK Government has claimed that people are 'abusing' the modern slavery support system to prevent their removal from the UK.**²⁷ During the Second Reading debate on the Bill, the Home Secretary stated that "[t]he fact is that our modern slavery laws are being abused" and that some people referred into the NRM were referred from detention and slated for removal.²⁸ A Home Office 'factsheet' on the modern slavery provisions states that "[t]he protections that the NRM provide are open to misuse and could act as an incentive for those making dangerous journeys" and that removing this incentive is "due to the unprecedented threat to public order through loss of lives and pressure on public services that illegal entry to the UK is causing".²⁹ This indicates that the Act's purpose, in part, is to avoid future misuse of the modern slavery system as an incentive to travel to the UK and as means to frustrate removal from the UK. However, there is no available evidence that NRM protections are an incentive to make dangerous journeys to the UK, nor any published evidence of widespread abuse of the NRM, as is set out below.
10. **The Home Office 'factsheet' also states that the number of NRM referrals for Albanian nationals is an important reason to implement the Act's modern slavery measures.**³⁰ The 'factsheet' states that "[i]n 2022, the most commonly referred nationality into the NRM was Albanian nationals, 27% (4,613) of all people referred, which is a safe European country, signatory of ECAT, and NATO ally." The overall 'safety' of a country for the general population does not preclude the presence of trafficking risks for some individuals in that country. For instance, the UK is also a 'safe' European country, NATO member, and ECAT signatory, and in 2022 4,185 UK nationals were referred into the NRM (25% of all referrals).³¹ As noted by the Home Affairs Committee in their June 2023 report on asylum and migration from Albania, while Albania is a relatively 'safe' country, there are "unquestionably cases of Albanian citizens being trafficked to the UK, whose protection must be guaranteed before they are returned to Albania" (see paragraph 30c for further detail).³² Further, under ECAT and ECHR, the state has a positive

²⁵ As the Office for National Statistics states, the "hidden nature" of modern slavery impedes accurate estimates of prevalence. See ONS (2020) '[Modern slavery in the UK: March 2020](#)'

²⁶ UK Home Office (2023) '[Impact Assessment, The Home Office: Illegal Migration Bill](#)'

²⁷ UK Home Office and Prime Minister's Office (2023) '[Ground-breaking new laws to stop the boats](#)'; Jenrick, R. (2023) '[Illegal Migration Bill](#)' Answer to Question for the Home Office UIN 161356, tabled on 8 March 2023; and UK Home Office (2023) '[Illegal Migration Bill: overarching factsheet](#)' 20 July 2023

²⁸ Braverman, S. (2023) '[Illegal Migration Bill](#)' HC Deb. Vol.729 col.579.

²⁹ UK Home Office (2023) '[Illegal Migration Bill: Modern slavery factsheet](#)' 20 July 2023

³⁰ Ibid.

³¹ This figure excludes UK dual nationals. UK Home Office (2023) '[Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022](#)'

³² Home Affairs Committee (2023) '[Asylum and migration: Albania](#)'

obligation to identify and protect any victim of trafficking in their territory, regardless of where the exploitation occurred, and whether they are a national of an ECAT signatory country.

11. **The UK Government has published data indicating that the pattern of NRM referrals for people who arrive on small boats has changed, but this change is not in itself indicative of abuse. Claims that the system is being abused are contradicted by other evidence.** Only a small proportion (7%) of people who arrived on a small boat between 2018 and 2022 have been referred into the NRM (6,210 individuals).³³ Of those who received conclusive grounds decisions (505 people), 85% were confirmed as victims of modern slavery (427 people), which is broadly in line with the average for all NRM referrals until 2022.³⁴ While the number of NRM referrals for people who have arrived by small boat has increased (1,535 referrals from January to September 2021 versus 2,401 in the same period of 2022), the proportion of arrivals who are referred has decreased (9% of arrivals to 7% of arrivals).³⁵ In the 4 May 2023 release of these statistics and an accompanying analysis, the Home Office states that, “This analysis demonstrates that the behaviour of asylum claimants and those arriving on small boats [...] does not appear to be drastically changing [...] However, these populations are increasing within the NRM as a number and a proportion of all NRM referrals (for small boat arrivals only), placing increasing demands on the NRM system”.³⁶ The average rate of increase of total NRM referrals year-on-year has remained similar since 2016 (39%, except in 2020-21 due to the Covid-19 pandemic).³⁷ Previous UK Government publications state that increasing overall referral numbers are “likely due to greater awareness of the NRM process, though higher incidence of modern slavery cannot be ruled out”.³⁸
12. **The Home Office determined there are reasonable grounds to believe that 93% of those referred to the NRM while detained for removal between January and September 2022 after arriving on a small boat are victims of modern slavery** and, as such, has given them positive reasonable grounds decisions. During debates on the Bill as it passed through Parliament, the Home Secretary and Minister for Immigration cited published data on the proportion of people referred into the NRM while detained for removal as evidence of ‘abuse’: in 2019, 6% of detentions involved a referral (50 people), in 2020 this was 53% (520), in 2021 this was 73% (294), and between January and September 2022 this was 65% (842).³⁹ However, the proportion of people in this dataset who received a positive reasonable grounds decision (93% in 2022) is a higher proportion than that of all NRM referrals for adults for whom decisions were made in the same period (January to September, 2022), of whom 88% received a positive reasonable

³³ This is also true of the most recent period for which there is data. ‘During January to September 2022, 2,401 of the people who arrived on small boats entered the NRM, a relatively small proportion at 7% of arrivals.’ See UK Home Office (2023) [‘Annex: analysis of modern slavery NRM referrals from asylum, small boats and detention cohorts’](#)

³⁴ UK Home Office (2023) [‘Irregular migration to the UK, year ending December 2022’](#)

³⁵ UK Home Office (2023) [‘Annex: analysis of modern slavery NRM referrals from asylum, small boats and detention cohorts’](#)

³⁶ Ibid.

³⁷ Based on analysis of Table 1 in the data tables: UK Home Office (2023) [‘Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022’](#)

³⁸ See, e.g., HM Government (2020) [‘2020 UK Annual Report on Modern Slavery’](#)

³⁹ Years refer to the year of exit from detention; UK Home Office (2023) [‘Modern slavery referrals for people detained for return after arriving in the UK on small boats’](#)

grounds decision.⁴⁰ The Home Office statistical release does not include data on conclusive grounds decisions, as “[m]ost people in this analysis are yet to receive a ‘conclusive grounds’ decision.”

13. There are a number of factors that may be contributing to the higher proportion of NRM referrals made by Immigration Enforcement for people detained for removal, compared to those who are not detained for removal.

This could include an increase in the number of people who are victims of modern slavery who are prosecuted for immigration offences (which individuals may have been compelled to commit as part of their exploitation); an increase in identification of victims by relevant agencies; improved functioning of safeguards (the ‘Adults at Risk in immigration detention’ policy); as well as an increase in survivor self-identification, for example via being able to access relevant legal advice or other support whilst in immigration detention that may have been inaccessible or unavailable previously.⁴¹ Evidence suggests that potential victims of modern slavery in immigration detention are being under-identified, due to poor training, under-resourcing, and misunderstandings about who was responsible for NRM referrals, among other issues.⁴² The Home Secretary has stated that, “[i]n 2021, 73% of people detained for removal put forward a modern slavery claim, which compares with a figure of just 3% for those not in detention.”⁴³ These two figures are not necessarily comparable. The latter figure (‘3%’) refers to the proportion of people arriving on a small boat in 2021 who were referred into the NRM *within the first three months of their arrival*, who were not detained for removal. On the other hand, the 73% figure relates to people who exited detention in 2021 who had arrived on a small boat at any point in the past, and had been referred into the NRM while they were detained for removal. Within this group, the Home Office has determined there are reasonable grounds to believe 95% are victims of modern slavery but there is no published data yet on their conclusive grounds decision outcomes.⁴⁴ It is important to note that people cannot “put forward a modern slavery claim” – they are referred by a first responder which, in immigration detention, is usually Home Office Immigration Enforcement.⁴⁵

14. There is no available evidence indicating that the protection from removal and the support conferred to potential victims of modern slavery are incentives to migrate to the UK without valid authorisation. In order for these to be incentives, they would need to be known to people migrating before they choose the UK as a destination country, and to be factored into their decision-making. Home Office analysis of the evidence found that people who seek asylum have limited to no accurate knowledge about the welfare or immigration policies of destination

⁴⁰ UK Home Office (2023) [‘Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022’](#)

⁴¹ Research from Bail for Immigration Detainees described the challenges of accessing immigration advice in mainstream detention facilities. See: Bail for Immigration Detainees (2022) [‘Catch 2022 – accessing immigration legal advice from prison’](#);

This analysis by the Modern Slavery PEC first appeared in a PEC submission on the Nationality and Borders Act. See: The Modern Slavery PEC (2021) [‘Written Evidence from Modern Slavery Policy and Evidence Centre NBB0049’](#)

⁴² The Independent Chief Inspector of Borders and Immigration (2022) [‘Third annual inspection of ‘Adults at risk in immigration detention’](#)

⁴³ Braverman, S. (2023) [‘Illegal Migration Act’](#) HC Deb. Vol.729 col.579.

⁴⁴ UK Home Office (2023) [‘Modern slavery referrals for people detained for return after arriving in the UK on small boats’](#)

⁴⁵ Ibid.

countries.⁴⁶ Further research shows that potential victims of modern slavery are often unaware of how the NRM system operates, nor of their entitlements.⁴⁷ A large body of evidence has found that people who seek asylum do not make decisions about where to migrate based on an objective evaluation of pros and cons.⁴⁸ Decisions about destination country are based on limited options, family ties, language, chance, smuggling routes, colonial histories and diaspora communities, and other factors that are specific to the individual seeking asylum.⁴⁹

15. **The Home Office’s Impact Assessment (IA) of the Bill, before it received Royal Assent, states that an estimate of the total costs or benefits of the legislation’s measures cannot be made due to uncertainties surrounding their potential deterrent effect.**⁵⁰ The IA states that, “[t]he academic consensus is that there is little to no evidence suggesting changes in a destination country’s policies have an impact on deterring people from leaving their countries of origin or travelling without valid permission, whether in search of refuge or for other reasons.” As the Migration Observatory have pointed out, since the IA concludes that the cost of removing an individual to Rwanda is higher than the cost of processing their claim in the UK, “any estimate of the cost of the relocation policy depends in large part on how many people would be deterred by it.”⁵¹ The IA suggests that policy changes can and do impact the choice of destination country for people who migrate, citing several international examples. However, the examples listed do not identify either the relevant cause or effect of the changes in question and as such are not directly comparable to the Act’s policy changes. For instance, the IA cites the Australian Pacific Solution and Operation Sovereign Borders as examples of successful deterrents, however evidence suggests that boat arrivals to Australia were virtually eliminated due to Australian maritime intervention (‘pushbacks’) and Australia’s functional bilateral removal agreements, and there is very little evidence that the policy changes themselves had a deterrent effect on migrant behaviour, including choice of destination country.⁵² The IA’s examples of changes in other regions, such as along the Spain-Morocco border and in Scandinavia, similarly evidence a drop in arrivals that coincided with increased interceptions, border securitisation, and other

⁴⁶ UK Home Office Analysis and Insight (2020) [‘Sovereign Borders: International Asylum Comparisons Report’](#)

⁴⁷ See, e.g., Anti Trafficking and Labour Exploitation Unit (ATLEU) (2022) [‘It has destroyed me’: A legal advice system on the brink’](#)

⁴⁸ For a comprehensive review of the relevant research see: Mayblin, L. (2016) [‘Complexity reduction and policy consensus: Asylum seekers, the right to work, and the ‘pull factor’ thesis in the UK context’](#);

See, e.g., Koikkalainen, S., Kyle, D., and T. Nykänen (2019) [‘Imagination, Hope and the Migrant Journey: Iraqi Asylum Seekers Looking for a Future in Europe’](#)

⁴⁹ Ibid.;

Crawley, H., and Hagen-Zanker, J. (2018) [‘Deciding Where to go: Policies, People and Perceptions Shaping Destination Preferences’](#);

Tecca, V. (2022) [‘To Where the Clock Changes: Migrant Illegalisation and its Consequences on the France-UK Border’](#)

⁵⁰ UK Home Office (2023) [‘Impact Assessment, The Home Office: Illegal Migration Bill’](#)

⁵¹ Migration Observatory (2023) [‘Why the government’s economic Impact Assessment of the Illegal Migration Act tells us little about the Act’s economic impact’](#)

⁵² See, e.g., Gleeson, M. and N. Yacoub (2021) [‘Policy Brief 11: Cruel, costly and ineffective: The failure of offshore processing in Australia’](#);

Spinks, H. (2013) [‘Destination anywhere? Factors affecting asylum seekers’ choice of destination country’](#);

McAuliffe, M. and D. Jayasuriya (2016) [‘Do asylum seekers and refugees choose destination countries? Evidence from large-scale surveys in Australia, Afghanistan, Bangladesh, Pakistan and Sri Lanka’](#)

enforcement mechanisms that aimed to stop arrivals at the border. As the IA itself states at various points, the IA case studies do not cite evidence of behavioural changes, and the policy examples included are dissimilar to the provisions in the UK Act (which aim to have an indirect, behavioural effect on future arrival numbers).

16. **Many people who are trafficked into the UK are deceived or forced into entering the UK.** There is no evidence to suggest that measures aimed at influencing their choice of destination country are likely to be effective, as in these cases people have limited to no choice about whether or how to enter the country.
17. **Data published on 10 August 2023 indicates that during Q2 2023 (April-June) the proportion of positive reasonable grounds decisions for all NRM referrals was 48%.⁵³ This compares to previous years in which the proportion of positive reasonable grounds decisions remained relatively stable, at around 90%.** The Home Office stated this lower positive decision rate is likely due to changes to the reasonable grounds threshold introduced in January 2023.⁵⁴ Following a legal challenge, the Home Secretary issued revised Statutory Guidance on 10 July 2023 which amended the previous Guidance on Reasonable Grounds decisions.⁵⁵ Further data and evidence are needed to fully understand how changes to the Statutory Guidance are affecting the positive reasonable grounds decision rate. For example, data on the number of reconsiderations of negative decisions and the reasons for negative reasonable grounds decisions are not published. Those who receive negative decisions are not necessarily abusing the system; as the Home Secretary stated in March 2023, “[a] negative reasonable grounds or conclusive grounds decision does not mean a claim is not genuine.”⁵⁶ For instance, an individual may have presented indicators of trafficking that led to an NRM referral and were assessed as credible and evidenced, but their experience may not have met the legal definition of modern slavery. The Modern Slavery PEC will continue to monitor available evidence and data.

Are the modern slavery measures compatible with the UK’s human rights obligations?⁵⁷

18. **Sections 22-29 of Act are incompatible with the UK’s obligations under Article 4 of the European Convention on Human Rights (ECHR), which are also part of UK law through the Human Rights Act 1998 (HRA).** In interpreting Article 4 ECHR obligations, the European Court of Human Rights draws expressly on the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT), which came into force in respect of the United Kingdom on 1 April 2009. Therefore, Sections 22-29 of the Act would, when commenced, contravene both the UK’s domestic human rights law and its international obligations under both the ECHR and ECAT. In their legislative scrutiny report on the Bill before it was

⁵³ UK Home Office (2023) [‘Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2023 – April to June’](#)

⁵⁴ Ibid.

⁵⁵ 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’](#)

⁵⁶ Braverman, S. (2023) [‘27 March 2023 Letter to Dame Diana Johnson MP’](#)

⁵⁷ This section draws directly from a legal analysis produced by Dr Marija Jovanovic, and commissioned by the Modern Slavery PEC. For further detail see Jovanovic, M. (2023) [Legal Analysis of the Human Rights Compatibility of the Modern Slavery Sections in the Illegal Migration Act \(Sections 22-29\).](#)

enacted, the Joint Committee on Human Rights stated that the evidence they received “was overwhelmingly clear that [the modern slavery provisions] would be in breach of the UK’s obligations under [ECAT] and Article 4 of ECHR.”⁵⁸

19. **Under Article 4 ECHR, states have three core obligations.** First, an obligation to put in place a legislative and administrative framework providing real and effective protection of the rights of victims.’ This duty extends to the general legal and administrative framework, including the adequacy of immigration policy. In addition to this general obligation, states have two specific obligations which are owed to any potential victim of modern slavery (the definitions of which are set out in paragraph 7): a duty to take operational measures to protect victims, or potential victims and a procedural obligation to investigate potential situations of modern slavery and punish the perpetrators. The last two obligations do not depend on a victim’s report – the authorities must act of their own motion once the matter has come to their attention.
20. **The obligation to protect victims, or potential victims, of modern slavery established under Article 4 ECHR includes ‘facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery.’ Article 4 ECHR is a non-derogable right, even in times of extreme crisis or emergency.** In interpreting Article 4 ECHR obligations, the European Court of Human Rights draws expressly on Article 10 ECAT which stipulates that such victims ‘shall not be removed from its territory until the identification process as victim (...) has been completed by the competent authorities’. While the obligation to protect victims, or potential victims, is not unlimited – the appropriate measures required from national authorities must be within the scope of their powers and must not be interpreted to impose ‘an impossible or disproportionate burden’ on them – it must be acknowledged that the right not to be held in slavery or servitude in Article 4 ECHR is one of the ‘absolute’ rights in the Convention, which does not allow for any limitations or balancing against the broader public interest and cannot be derogated from even in times of emergency and situations of extreme crisis such as a time of war. The language used by the UK Government in the Explanatory Notes to justify the modern slavery provisions refers to “radical” measures and “exceptional circumstances”. Such language is similar to that used in the ECHR jurisprudence on Article 15, which allows for some flexibility for States dealing with crises by derogating from certain Convention obligations. However, no such derogation is allowed from Article 4 obligations.⁵⁹
21. **Sections 22-29 of Act are incompatible with all three core obligations in Article 4 ECHR mentioned above.** They automatically exclude from protection any potential victim of modern slavery who has arrived in the UK irregularly. Under Section 22, an individual with a ‘positive reasonable grounds decision’ – a decision made when a competent authority finds that there are reasonable grounds to believe that the person is a victim of modern slavery – will be automatically removed (subject to a very narrowly defined exception) before the victim identification process has been completed (i.e., before the competent authority has reached a ‘conclusive grounds decision’ which is a final decision on one’s victim status in the UK). This will violate an express obligation to identify every victim of modern

⁵⁸ The Joint Committee on Human Rights (2023) ‘[Legislative Scrutiny: Illegal Migration Bill](#)’

⁵⁹ The Modern Slavery PEC (2023) ‘[Written Evidence by Modern Slavery and Human Rights Policy and Evidence Centre \(IMB0011\)](#)’

slavery, before their return to the country of origin could be considered. Removal of potential victims will also likely lead to a breach of an obligation to investigate and prosecute the perpetrators of this offence because without the victim's cooperation it will be difficult to gather relevant evidence to prove the offence of modern slavery.

22. **Section 29 of the Act excludes from protection all non-British nationals sentenced to a period of imprisonment, which contradicts an express obligation to identify victims regardless of whether they have been convicted of a criminal offence.** As outlined in paragraph 1, Section 29 amends Section 63 NABA to disqualify from protection all non-British nationals liable to deportation or who have been sentenced to a period of imprisonment of any length, for any offence. Namely, Section 63(1) NABA originally stipulated that a person with a reasonable grounds decision (potential victim) *may* be disqualified from protection if the competent authority is satisfied that the person is a “threat to public order” or has claimed victim status in “bad faith”.⁶⁰ Section 29 of the Act now *mandates* rather than permits competent authorities to disqualify such victims from the recovery period and relevant support unless there are compelling countervailing circumstances. Section 29 also amends Section 63(3) NABA, which enumerates the circumstances in which a person is considered a threat to public order. In particular, Section 63(3)(f) now disqualifies from protection anyone who is not a British citizen and has been sentenced to a period of imprisonment for *any* offence or is “liable to deportation from the United Kingdom under any provision of, or made under, any other enactment that provides for such deportation”.⁶¹ Section 63(2) of the NABA, as amended by Section 29(3) of the IMA, authorises a competent authority to not apply automatic disqualification from protection available to modern slavery victims on public order grounds if they consider that “there are compelling circumstances which mean that subsection (2) should not apply to the person.”
23. **The Act permits a very narrow exemption from the automatic disqualification from the victim identification process and access to assistance and support for people cooperating with law enforcement authorities. Still, potential victims will need to make a decision on such cooperation without benefiting from a 30-day recovery and reflection period guaranteed by Article 13 ECAT,** which is explicitly intended to allow potential victims some time to recover and come to a decision on cooperating with the law-enforcement authorities in a prosecution of the traffickers. As outlined in paragraph 4, it is unclear how this exemption will interact with a Government commitment to exempt those whose exploitation took place in the UK from the public order disqualification. The following paragraph (24) provides further detail.
24. **The Government commitment, made in July 2023, to allow an exemption from the automatic disqualification for individuals with a positive reasonable grounds decision whose exploitation took place in the UK** (see paragraph 4),⁶² **addresses some, but not all, of the incompatibility with obligations arising out**

⁶⁰ See Section 63(1) of [The Nationality and Borders Act 2022, c. 36](#).

⁶¹ This may also exclude from protection victims for whom the statutory defence provided for by [Section 45 of the Modern Slavery Act 2015](#), and equivalent provisions in [the legislation in Scotland](#) and [Northern Ireland](#) was not available. These provisions provide a defence for victims compelled to commit criminal offences by their traffickers/exploiters in line with the non-punishment principle enshrined in ECAT. There is very little available evidence on the use of the statutory defence, including on its outcomes of use, barriers to success, or the types of crimes it is used to defend. See, e.g., Kidd, A. (2022) '[Section 45 of the Modern Slavery Act: evidence review](#)'.

⁶² Jenrick, R. (2023) '[Illegal Migration Bill](#)' HoC Deb. Vol. 76 col. 207.

of ECAT and ECHR. Limiting the entitlement of the recovery and reflection period to situations where a positive reasonable grounds decision is “based on an incident that has taken place in the UK”⁶³ is ambiguous (considering that trafficking is a process that often includes recruitment, transportation, harbour, receipt, and exploitation of persons) and at odds with human rights obligations. According to the case law of the European Court of Human Rights, states’ obligations under ECHR arise the moment state authorities are “aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and imminent risk of being, trafficked or exploited within the meaning of art.3(a) of the Palermo Protocol and art.4(a) of [ECAT]”.⁶⁴ As such, to count as a victim and to trigger states’ positive obligations towards such a victim, exploitation needs not to have started. Further, any discrimination between different categories of victims (here being based on location of exploitation) is expressly prohibited by Article 3 ECAT.

25. **The proposed practice of providing protection beyond the 30-day reflection and recovery period on the condition of continued cooperation with a criminal investigation does not contradict the letter of ECAT, but may not be in line with its spirit.** In that respect, the Council of Europe expert body tasked with monitoring compliance with ECAT (GRETA)⁶⁵ has noted that providing lawful residence conditional on a victim’s cooperation “undermines the unconditional nature of assistance to victims” particularly as “[t]here are situations in which victims might be afraid to cooperate in the investigation because of threats from the traffickers”.⁶⁶

What are the potential harms of the Act?

Direct potential harms of modern slavery measures

26. **Section 22 of the Act provides for the removal of potential victims from the UK before the victim identification process has been completed.** The provisions will affect people who entered the UK illegally against their will, because they were trafficked and exploited, who do not meet the narrow exception from the automatic public order disqualification. The Act sets out that in reaching such a decision, a competent authority will apply Statutory Guidance, the current version of which stipulates that when the public order disqualification applies, no Conclusive Grounds decision will be made.⁶⁷ This means that such people can be removed from the UK before a Conclusive Grounds decision is made i.e., before a person is identified as a victim in the UK. This would be incompatible with the UK’s obligations under both Article 4 ECHR and Article 10 ECAT (see paragraphs 18-25).

⁶³ Ibid.

⁶⁴ *Rantsev v Cyprus and Russia*, para 286. This is also established by other international courts, see Inter-American Court of Human Rights, *Workers of the Hacienda Brasil Verde v Brazil*, Preliminary Objections, Merits, Reparations and Costs, Series C No. 318, 20 October 2016, paras 323 – 324; *Malawi African Association and Others v Mauritania*, 13th Annual Activity Report (1999-2000) paras 132 – 135.

⁶⁵ Group of Experts Against on Action Against Trafficking in Human Beings.

⁶⁶ GRETA, ‘9th General Report on GRETA’s Activities’ (March 2020) para 161.

⁶⁷ See, 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’](#), para 14.231

27. **Sections 23-25 of the Act provide for the denial of protection and support for potential victims, impacting on their (a) recovery from exploitation and (b) affecting engagement in prosecutions.**

- a. **The automatic application of a public order disqualification for those who meet the criteria will deny potential victims a recovery and reflection period, thereby excluding them from specialised support they are entitled to under international law.** Article 13 ECAT intended two purposes for the minimum recovery and reflection period: to allow a person to recover and escape the influence of the traffickers and to make an informed decision as to whether to cooperate with law enforcement in a prosecution of the traffickers. By not providing the recovery and reflection and required assistance to survivors of modern slavery, the UK will be in breach of its international obligations to protect potential victims and to investigate and prosecute the perpetrators (see paragraphs 18-25). Consensus-driven participatory research with adult survivors of modern slavery identified long-term and consistent support as a key outcome for recovery.⁶⁸ Research also indicates a lack of rehabilitation and effective long-term support among the factors that may facilitate re-trafficking.⁶⁹
- b. **Furthermore, despite the carve out to exempt a narrow group of people from the automatic disqualification** (for people cooperating with law enforcement authorities, where their presence in the UK is deemed necessary for that cooperation, and where the public interest of that cooperation outweighs any risk of serious harm to the public), **denying a recovery and reflection period to aid that decision⁷⁰ will likely impact on people’s decisions to support such prosecutions**, which are already currently much lower than the number of referrals to the NRM. Between April to December 2022, less than 5% of modern slavery offences in England and Wales had resulted in individuals being charged or summonsed.⁷¹ The CPS recognises challenges in supporting victims in modern slavery cases and that “many victims take significant risks in giving evidence”.⁷² It is considered that a lack of support for victims during modern slavery investigations is a “serious factor” impacting on engagement with the police, and which helps to explain the low number of prosecutions.⁷³ Furthermore, the police describes modern slavery investigations as “typically complex”,⁷⁴ and it may well be the case that by the time a decision to prosecute is taken, under the Act’s measures an individual may have been already disqualified on public order

⁶⁸ Paphitis, S., Jannesari, S., Witkin, R., Damara, B., Joseph, J., Triantafillou, O., Dang, M., Howarth, E., Katona, C., Wright, N., Sit, Q., and S. Oram (2023) [‘The Modern Slavery Core Outcome Set’](#)

⁶⁹ The University of Nottingham and the Independent Anti-Slavery Commissioner (2021) [‘Re-trafficking: The current state of play’](#)

⁷⁰ As outlined in paragraph 4, the Government has committed to providing a 30-day reflection and recovery period to people with a positive reasonable grounds decision whose exploitation took place in the UK.

⁷¹ UK Home Office (2023), [‘Crime Outcomes in England and Wales, Open Data April 2022 – December 2022’](#)

⁷² Crown Prosecution Service (updated 2022) [‘Modern Slavery, Human Trafficking and Smuggling Guidance’](#)

⁷³ HM Inspectorate of Constabulary and Fire & Rescue Services, the College of Policing and the Independent Office for Police Conduct (updated 2021) [‘The hidden victims: Report on Hestia’s super-complaint on the police response to victims of modern slavery’](#)

⁷⁴ Modern Slavery and Organised Immigration Crime Programme (2022) [‘Annual Report 2021-22’](#)

grounds owing to the entry method to the UK, detained and potentially removed, directly impacting on their willingness and ability to cooperate. For this exemption to function it assumes that survivors have been able to share their experiences with the relevant authorities.

Practitioners indicate that it can take time for survivors to build trust with a legal representative and that it may take months or even years for a person to disclose a history of trauma and exploitation.⁷⁵ The experience of one individual with lived experience of modern slavery illustrates this well. In a piece written about the potential impacts of the legislation, she discusses the factors that had delayed her disclosure of her experiences: “I worried about what the authorities would do with me, what he [the trafficker] would do if he found out, if his other victims would be OK, whether I had broken the law and would be deported. But mostly, I just wondered if anyone would believe me”.⁷⁶ This individual states that the support to which she was entitled upon entering the NRM was instrumental in her decision to support the prosecution of her trafficker – and that even with this support, it took years to rebuild her life. Echoing her experience, the College of Policing considers that “approaching victims too early could expose them to potential harm” and that it may take “many months” to obtain evidence from them.⁷⁷

- c. **Section 22(5) of the Act states that the Secretary of State must assume that the individual need not be in the UK to cooperate with authorities, except if compelling circumstances render their presence necessary.**⁷⁸ As noted by GRETA and highlighted by the individual quoted in paragraph 27c above, victims are “sometimes afraid or reluctant to make depositions because of threats of revenge from the perpetrators or lack of trust in the effectiveness of the criminal justice system”.⁷⁹ If victims are returned to their home country or a ‘safe’ third country, fear of retribution or distrust of the authorities may be further heightened, further reducing the likelihood of engagement in prosecutions. In addition, research indicates survivors fearing direct retribution from traffickers as among the vulnerabilities that may facilitate re-trafficking.⁸⁰ Furthermore, survivors cooperating with prosecutions from outside the UK would likely be doing so without specialised support, which as explained above would further impact on engagement. For some, the demands of supporting a prosecution are “tantamount to a part time job”; the assumption that such support could be provided by people affected by modern slavery is complicated by the basic realities involved, such as communicating from incongruent time zones and

⁷⁵ Currie, S. and M. Young (2021), [‘Access to legal advice and representation for survivors of modern slavery’](#); 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’](#), para 13.18

⁷⁶ Anonymous (2023) [‘My trafficker is behind bars, but if the UK’s new migration bill passes, my story would have ended very differently’](#)

⁷⁷ College of Policing (updated 2022) [‘Modern slavery investigation’](#)

⁷⁸ The implications of this are unclear for the Government’s commitment to exempt individuals from the public order disqualification if they received a reasonable grounds decision and their exploitation took place in the UK. This is discussed further in paragraph 31.

⁷⁹ Group of Experts on Action against Trafficking in Human Beings GRETA (March 2020), [‘9th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2019’](#)

⁸⁰ The University of Nottingham and the Independent Anti-Slavery Commissioner (2021) [‘Re-trafficking: The current state of play’](#)

from countries that do not offer specialised support (see paragraph 30d below for evidence demonstrating the increased risk of homelessness and destitution for people post-removal).⁸¹

Indirect potential harms of modern slavery measures in the Act for people affected by modern slavery

28. Measures designed to restrict access to human rights protections are likely to impact on survivors' trust and engagement with the authorities. Even before these measures were enacted, the announcement of the Bill may have already impacted how foreign nationals currently in a situation of exploitation and with precarious immigration status view and engage with public authorities in the UK. Evidence provides insights about the ways in which trauma makes the process of identification of victims of crime, particularly violent crime, more challenging for authorities. The distorting memory experienced by survivors can lead to an under-reporting of crime and high attrition rates, particularly for sexual violence-related crimes,⁸² and some behaviours might be difficult for authorities or law-enforcement that are not adequately trained to understand and to correctly identify victims.⁸³ Survivors may also have a fear of authority figures and/or a fear of detention and removal, and research from the US has indicated a “chilling effect” of immigration enforcement felt within other policy systems, whereby there has been lower reporting of crime and declining usage of welfare safety-nets by immigrants who are eligible to access them, due to fear of detection and deportation by authorities. This effect has been strongest within communities targeted by immigration enforcement.⁸⁴ This may impact both on victim identification, decisions to enter the NRM and people’s willingness to support prosecutions. The Home Office recognises that fear of immigration action being taken against them can make victims more reluctant to seek help for crimes and that “fear of data sharing can be a contributing factor influencing the decisions of migrant victims not to report a crime”.⁸⁵ The Home Office considers that “For some victims, certainty over their immigration status is a crucial enabler to their recovery and to assisting the police in prosecuting their exploiters”.⁸⁶ In 2021 the Home Office announced further funding to improve prosecutions including a focus on ensuring that victims “receive the support they need to engage in the criminal justice system”.⁸⁷ People affected by modern slavery have noted that the Act’s introduction as a Bill in March 2023 may already have affected people’s propensity to engage with the authorities and seek support, even before being enacted and coming into force. As the individual quoted in paragraphs 27b-c states, were she deciding whether to seek support today, “In my home country there is still no law addressing trafficking happening on its own soil, let alone provisions for citizens returning to recover from these experiences

⁸¹ Anonymous (2023) [‘My trafficker is behind bars, but if the UK’s new migration bill passes, my story would have ended very differently’](#)

⁸² Hardy, A., Young, K., and E. A. Holmes (2009) [‘Does trauma memory play a role in the experience of reporting sexual assault during police interviews? An exploratory study.’](#)

⁸³ Franklin, C. A., Garza, A. D., Goodson, A., and L. Allen Bouffard (2019) [‘Police Perceptions of Crime Victim Behaviors: A Trend Analysis Exploring Mandatory Training and Knowledge of Sexual and Domestic Violence Survivors’](#)

⁸⁴ Pedraza, F. I., and L. Zhu (2015) [‘The “Chilling Effect” of America’s New Immigration Enforcement Regime’](#)

⁸⁵ UK Home Office (2021) [‘Review of data sharing: migrant victims and witnesses of crime’](#)

⁸⁶ UK Home Office (2021) [‘New Plan for Immigration: Policy Statement’](#)

⁸⁷ Ibid.

elsewhere... If I had gone home I would have taken a broken chapter of my life with me.”⁸⁸

Direct potential harms of broader measures in the Act for people affected by modern slavery

29. **The Modern Slavery PEC has yet to conduct a comprehensive analysis of the measures of the Act that are not specific to modern slavery.** We will therefore expand on the following section as appropriate.
30. **The broader measures in the Act will directly harm people affected by modern slavery who seek asylum or humanitarian protection by (a) denying them a response to their claim, (b) removing their ability to regularise their immigration status, (c) potentially returning them to ‘safe’ home countries, (d) potentially returning them to third countries, (e) by leading to their long-term detention, and (f) due to concerns around how they will supported.**
- a. **People affected by the Act will have their claims to protection deemed inadmissible under Section 5,** regardless of whether a third country has agreed to receive them and process their claim elsewhere. The Home Office’s inability to compel third countries to agree to removals and the fact that there are questions around capacity within Rwanda, and the lawfulness of the scheme,⁸⁹ means that the majority of those affected will be left in indefinite limbo in the UK without leave to remain, which has been shown to have long-term, harmful psychological and socio-economic repercussions,⁹⁰ including by increasing known drivers of exploitation such as homelessness and poverty. In addition, the Government’s Impact Assessment (IA) states that any deterrence effect of the provisions relies on the Government’s capacity to detain and remove a sufficient proportion of individuals in scope. The current lack of tenable bilateral removal agreements significantly reduces the Government’s ability to deliver the Act as intended.
- b. **The Act may increase people’s susceptibility to exploitation by removing their ability to regularise their status in the UK under Sections 30-37,** except in exceptional circumstances. Without leave to remain, they will be subject to the suite of laws known as the hostile or compliant environment. Evidence suggests that the hostile environment – in barring people with irregular immigration status from the right to work, to rent accommodation, and to open a bank account, as well as the threat of removal, deportation and forced return among other things – creates and/or

⁸⁸ Anonymous (2023) [‘My trafficker is behind bars, but if the UK’s new migration Act passes, my story would have ended very differently’](#)

⁸⁹ On 29 June 2023, the Court of Appeal ruled that it is unlawful to remove people seeking asylum to Rwanda because Rwanda is not a ‘safe third country’ (AAA (Syria) & Ors, R (On the Application Of) v Secretary of State for the Home Department [2023] EWCA Civ 745, 29 June 2023). The Government has already expressed its intention to seek leave to appeal the decision at the Supreme Court (Quinn, B. and D. Taylor (2023) [‘The Rwanda appeal court ruling: what does it mean for Sunak’s plans?’](#))

⁹⁰ See, e.g., Jacobsen, C. M., Karlsen, M.-A., and S. Khosravi (eds.) (2021) [‘Waiting and the Temporalities of Irregular Migration’](#) Routledge;

See, e.g., Hartonen, V. R., Väisänen, P., Karlsson, L., and S. Pöllänen (2021) [‘A stage of limbo: a meta-synthesis of refugees’ liminality’](#);

See, e.g., for how this feeling of limbo impacts survivors, specifically: Hesketh, O., and O. Johnstone (2021) [‘Impact of the Covid-19 pandemic on modern slavery’](#)

fosters the conditions that enable exploitation and re-trafficking to occur,⁹¹ in the UK⁹² and in countries with similar policies.⁹³ For example, people with refused asylum claims who have experienced labour exploitation in the UK have cited their illegalisation as a barrier to exercising employment rights, and the risk and pervasive fear of deportation as constraining their choices as they sought employment in the informal economy.⁹⁴ In addition, evidence shows that being barred from the right to work and rent is a contributing factor to destitution and homelessness, particularly among people whose asylum claims have been refused.⁹⁵ As such, they are particularly vulnerable to exploitation, including modern slavery.⁹⁶

- c. **Potential victims fearing re-trafficking in their home country will be removed there (Sections 2, 5, 6, and 59).** Nationals from countries designated in Section 59 as ‘safe’, such as Albania, will have their claim to refugee protection deemed inadmissible, including those with positive reasonable grounds decisions. Section 5 provides that the Secretary of State has a duty to remove someone to their ‘safe’ home country regardless of whether they have legally challenged their removal (via an application for judicial review). This means that some people will be removed, and their challenge against removal will continue while they are outside the UK. This may mean for example that potential victims of modern slavery with a well-founded fear of persecution owing to their particular social group as a victim of trafficking are returned to their country of origin where the exploitation occurred, if that country is listed in the Act as a ‘safe state’. This is despite the Home Office assessing that “female victims (women and girls) who return to Albania may face discrimination and stigma, and a risk of re-trafficking, depending on their particular circumstances” in line with country guidance case law.⁹⁷ This is reflected in initial grant rates of protection for

⁹¹ The University of Nottingham and the Independent Anti-Slavery Commissioner (2021) [‘Re-trafficking: The current state of play’](#)

⁹² Lewis, H., Dwyer, P., Hodkinson, S., and L. Waite (2013) [‘Precarious Lives: Experiences of forced labour among refugees and asylum seekers in England’](#);
Webber, F. (2019) [‘On the creation of the UK’s ‘hostile environment’](#)’;
Griffiths, M., and C. Yeo (2021) [‘The UK’s hostile environment: Deputising immigration control’](#);
Bloch, A., Kumarappan, L., and S. McKay (2014) [‘Employer sanctions: The impact of workplace raids and fines on undocumented migrants and ethnic enclave employers’](#)

⁹³ See, e.g., in France: May, P. (2020) [‘Exercising agency in a hostile environment: How do refused asylum seekers find work?’](#);

See, e.g., this review of court and tribunal cases in Australia, Canada, the UK, and the United States: Boucher, A. (2021) [‘What is exploitation and workplace abuse? A classification schema to understand exploitative workplace behaviour towards migrant workers’](#);

See, e.g., in the United States: Holmes, S. (2013) *‘Fresh Fruit, Broken Bodies: Migrant Farmworkers in the United States’* University of California Press.;

See, e.g., in Greece: Sampethai, V. (2022) [‘Workers, Migrants, and Queers: The political economy of community among illegalised sex workers in Athens’](#)

⁹⁴ Waite, L. (2017) [‘Asylum Seekers and the Labour Market: Spaces of Discomfort and Hostility’](#)

⁹⁵ Allsopp, J., Sigona, N., and J. Phillimore (2014) [‘Poverty among asylum seekers in the UK: an evidence and policy review’](#);

Bloom, T. (2015) [‘London’s ‘Ghosts’: The Capital and the UK Policy of Destitution of Refused Asylum-Seekers’](#);

Gillespie, M. (2012) [‘Trapped: destitution and asylum in Scotland’](#)

⁹⁶ The Passage (2017) [‘Understanding and Responding to Modern Slavery within the Homelessness Sector’](#)

⁹⁷ [TD and AD \(Trafficked women\) CG \[2016\] UKUT 92 \(IAC\)](#) found that: “Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the

Albanian women: 88% of adult women seeking asylum from Albania received a positive initial decision in 2022.⁹⁸ In line with previous legislation,⁹⁹ Section 6 states that individuals due to be removed to their home country will instead be removed to a third country if (1) they have made a claim to protection or human rights claim¹⁰⁰ and (2) the Secretary of State considers that there are 'exceptional circumstances' preventing the individual's removal to their home country.

- d. **The Act expands pre-existing provisions that enable the removal of people to third countries with which they have no connection (Sections 2 and 6).** While the ability to remove people to third countries was already part of primary legislation before the Act, the Act intends to expand this practice, regardless of whether individuals have a connection to the country to which they are removed. While there is only limited research with people removed to countries with which they have no connection,¹⁰¹ the research available demonstrates that, upon removal, they often experience poverty, homelessness, and isolation due to a lack of social ties or support.¹⁰² Many people quickly migrate onwards upon their removal to a third country, and often return to the country that removed them in a cycle of deportation and return.¹⁰³ Research indicates that factors increasing the risk of re-trafficking include the risk of homelessness, a lack of support and community networks, and irregular immigration status,¹⁰⁴ – factors associated with third country removal.

Research also indicates that people claiming asylum from Eritrea and Sudan transferred from Israel to Uganda and Rwanda under Israel's 2013 'Voluntary Departure' policy were not given the opportunity to apply for asylum and that their insecure status "exposed them to robberies, threats and arrest leading them to embark on a dangerous journey".¹⁰⁵ According to UNHCR, "[a]long the way they suffered abuse, torture and extortion before risking their lives once again by crossing the Mediterranean to Italy".¹⁰⁶ Other asylum seekers sent to Rwanda were "coerced into being smuggled into

initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations."

⁹⁸ Walsh, P. and K. Oriishi (2023) '[Albanian asylum seekers in the UK and EU: a look at recent data](#)'

⁹⁹ See Section 80A of The Nationality and Borders Act 2022: [The Nationality and Borders Act 2022, c. 36](#).

¹⁰⁰ A human rights claim is distinct from a claim to asylum, and refers to a claim based on the risk of torture and human or degrading treatment (Article 3 ECHR) or the right to private and family life (Article 8 ECHR).

¹⁰¹ Turnbull, S. (2017) '[Starting Again: Life After Deportation from the UK](#)'

¹⁰² Ibid.;

Golash-Boza, T., and Y. Cecilia-Navarro (2019) '[Life After Deportation](#)'

¹⁰³ Khosravi, S. (2016) 'Deportation as a Way of Life for Young Afghan Men' In: *Detaining the Immigrant Other*. Oxford University Press.

¹⁰⁴ The University of Nottingham and the Independent Anti-Slavery Commissioner (2021) '[Re-trafficking: The current state of play](#)'

¹⁰⁵ Shoham, S., Bolzman, L. and L. Birger. Shahar (2018) '[Moving under Threats: The Treacherous Journeys of Refugees who 'Voluntary' Departed from Israel to Rwanda and Uganda and Reached Europe](#)'

¹⁰⁶ UNHCR (2018) '[UNHCR appeals to Israel over forced relocations policy](#)'

Uganda”.¹⁰⁷ In the recent case of *AAA and others* the Court of Appeal did not agree with the Secretary of State’s submission that UNHCR’s evidence as to the Israel/Rwanda agreement was irrelevant: *Mr Bottinick [High Commissioner’s Senior Legal Officer in the UK] explained that it was illustrative of the “danger and suffering that are, in UNHCR’s view, liable to arise from the UK’s externalisation plan”. Mr Bottinick concluded that the “UNHCR considers that the UK-Rwanda Agreement creates serious risks of (a) increased people smuggling, and (b) an increase in asylum seekers being exposed to dangerous journeys and life-threatening conditions”.*¹⁰⁸ While Sections 5, 8, and 38-42 in the Act provide scope for people issued with third country removal notices to make a suspensive claim (i.e., a claim that would pause their removal) related to, for instance, the fear of re-trafficking, it is unclear what would constitute “compelling evidence” of this risk (see paragraph 33).

- e. **The Act will likely lead to the long-term detention of people affected,** particularly for those who cannot be removed from the UK to their citizenship country (due to a fear of persecution) or to a third country (due to a lack of bilateral removal agreements that would facilitate their removal). Research with people in immigration detention demonstrates that detention produces extreme uncertainty, trauma, and terror and has long-term psychological repercussions.¹⁰⁹ The Home Office’s position is that people with lived experience of modern slavery are particularly vulnerable to these and other harms associated with detention.¹¹⁰ In addition, for people with lived experience of modern slavery the prospect and experience of immigration detention – and the associated “state of limbo, and dehumanisation”¹¹¹ – is an expected deterrent to cooperating with the authorities in criminal proceedings against offenders (see paragraph 27 above). While a Home Office ‘factsheet’ states that the ‘Adults at Risk in Immigration Detention’ policy will continue to apply,¹¹² it is unclear how this will safeguard against harm for those subject to the public order disqualification. The policy dictates that decisions regarding whether to release people involve a case-by-case assessment of whether they can access NRM support in detention. If they are released, their release is often coordinated alongside The Salvation Army to ensure the individual has appropriate accommodation and other specialised support. Without any access to specialised support – within or outside of detention – due to being subject to the public order disqualification, it is unclear how this policy will safeguard people with lived experience of modern slavery who are vulnerable to the harms of detention.

¹⁰⁷ International Refugee Rights Initiative (2015) [“I was left with nothing”: “Voluntary” departures of asylum seekers from Israel to Rwanda and Uganda](#)

¹⁰⁸ *AAA (Syria) & Ors, R (On the Application Of) v Secretary of State for the Home Department* [2023] EWCA Civ 745 (29 June 2023)

¹⁰⁹ Griffiths, M. (2013) [‘Living with Uncertainty: Indefinite Immigration Detention’](#);

Bosworth, M. (2014) *‘Inside Immigration Detention’* Oxford University Press.;

Tecca, V. (2022) [‘To Where the Clock Changes: Migrant Illegalisation and its Consequences Along the France-UK Border’](#);

Whyte, Z. (2011) [‘Enter the myopticon: uncertain surveillance in the Danish asylum system’](#);

Hall, A. (2012) *‘Border Watch: Cultures of Immigration, Detention and Control’* Pluto Press.

¹¹⁰ UK Home Office (2023) [‘Adults at risk in immigration detention’](#)

¹¹¹ Anonymous (2023) [‘My trafficker is behind bars, but if the UK’s new migration bill passes, my story would have ended very differently’](#)

¹¹² UK Home Office (2023) [‘Illegal Migration Bill: detention and bail factsheet’](#) 20 July 2023

- f. **Previous Home Office accommodation designed to house large numbers of people seeking asylum has been deemed unfit for purpose and has led to serious safeguarding concerns, including concerns that some individuals may have been subjected to inhuman and degrading treatment at Manston.**¹¹³ Section 9 of the Act makes people whose claims are rendered inadmissible by Section 5 of the Act eligible to receive Section 4 destitution support.¹¹⁴ People with inadmissible claims who cannot be removed will likely need Section 4 support indefinitely to avoid destitution – it is unclear where they will be housed, although the Home Office has secured – and is seeking additional – cruise liners, ferries, and barges to house asylum seekers.¹¹⁵ Serious safeguarding concerns and legal challenges have been raised about the harms of housing potential victims of modern slavery and other vulnerable groups at previous Ministry of Defence sites Napier Barracks, Penally Camp, and Manston.¹¹⁶ Further, hotels housing people seeking asylum have been targeted by far-right extremist groups, leading to violent assaults against those housed,¹¹⁷ and hotels have been targeted by traffickers targeting vulnerable unaccompanied children.¹¹⁸

What further information and detail is needed on the modern slavery measures?

31. **How the exception for those co-operating with law enforcement investigations will operate in practice – for both those whose exploitation occurred in and outside of the UK.** There is a tightly drafted exception to applying the automatic disqualification for people cooperating with law enforcement authorities, where their presence in the UK is deemed necessary for that cooperation, and where the public interest of that cooperation outweighs any risk of serious harm to the public. It is unclear whether the exemption would apply in a scenario in a victim is willing to support a prosecution, but the police or CPS discontinue it for other reasons e.g., because they do not think there is a realistic chance of conviction. Further, as discussed in paragraphs 4 and 24 above, the Immigration Minister has committed to including an exception for those whose exploitation occurred in the UK in

¹¹³ Council of Europe (2023) [‘Report to the United Kingdom Government on the ad hoc visit to United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)’](#)

¹¹⁴ Currently, people whose asylum claims have been refused can apply for Section 4 support (accommodation and/or financial support) if they are destitute, under Section 4(2) of the Immigration and Asylum Act 1999. The eligibility criteria for Section 4 support requires that the individual satisfies one or more of the following: (1) they are taking all reasonable steps to leave the UK, (2) they are unable to leave the UK due to a physical impediment, (3) there is no viable route of return according to the Secretary of State, (4) they are applying for judicial review and/or have been granted permission or leave to proceed, or (5) accommodation support is necessary to avoid breaching the individual’s human rights under the ECHR and Human Rights Act 1998. See: UK Home Office (2022) [‘Asylum support, section 4\(2\): policy and process’](#).

¹¹⁵ The Guardian (2023) [‘Home Office to acquire fleet of ships to house asylum seekers’](#) 1 May 2023; UK Home Office (2023) [‘Promotional material: Asylum accommodation factsheets’](#) 10 August 2023.

¹¹⁶ ICIBI (2021) [‘An inspection of contingency asylum accommodation: HMIP report on Penally Camp and Napier Barracks’](#);

BBC (2022) [‘Manston migrant centre: What were the problems?’](#) 21 December 2022;

Tobin, J. (2022) [‘The use of Napier Barracks to house asylum seekers: regret motion’](#)

¹¹⁷ BBC (2023) [‘Staff and asylum seekers attacked at Knowsley hotel, police say’](#) 16 March 2023.

¹¹⁸ The Guardian (2023) [‘Revealed: scores of child asylum seekers kidnapped from Home Office hotel’](#) 21 January 2023.

forthcoming Statutory Guidance. How this will operate in practice remains unclear until the Statutory Guidance is published that sets out how the Government commitment will be operationalised, how it interacts with Section 22 of the Act, and further defines what constitutes an ‘incident’ of exploitation.

32. **How people assessed by the Home Office to be a potential victim of modern slavery, disqualified on public order grounds and returned to their home country or a ‘safe’ third country will have their modern slavery experience further investigated and be able to access support.** According to the government’s Human Rights Memorandum, the Home Office will ensure that “receiving countries are able to investigate trafficking claims and, if made out, provide support to victims”.¹¹⁹ It is unclear how this capability will be assessed in practice for example, whether it requires that the receiving country will have a properly functioning and an ECAT-compliant system of formal identification and support and whether it will be an individualised assessment. It is also unclear whether the UK will commit to formal cooperation in criminal proceedings and/or extradition in cases where traffickers are in the UK.
33. **What counts as compelling evidence of re-trafficking such that removal to the safe country in question would give rise to a real, imminent, and foreseeable risk of serious and irreversible harm for suspensive claims.** For those who are issued with removal notices to a ‘safe’ third country, Section 42 enables the person to make a suspensive claim if they can provide compelling evidence that removal to the country in question would give rise to a real risk of serious and irreversible harm such as persecution, torture or death, which may include fear of re-trafficking. The Act defines this as a “real, imminent and foreseeable” risk of serious and irreversible harm.¹²⁰ However, it is not clear what would constitute “compelling evidence” (as described in Section 42) of re-trafficking. Indeed, people in scope of this provision with a positive reasonable grounds decision would have been disqualified from protection on public order grounds so would not have had a conclusive grounds decision, i.e., an incomplete investigation. Further, while the Act ensures that individuals served with a removal notice have access to legal advice,¹²¹ a serious harm suspensive claim must be made within 8 days of receiving the removal notice.¹²² The Act states that removal cannot be effected unless the claim period has expired, or the individual has informed the Secretary of State (orally or in writing) that they do not wish to make a claim.¹²³ There are reports of concerns around a shortfall of accessible, high-quality legal advice in and outside of immigration detention¹²⁴ which may come under further strain when seeking to ensure that people served with removal notices have the means and resources necessary to make an informed, in-time decision about whether to submit a claim.
34. **How the exception based on ‘compelling circumstances’ in Section 29(3) will operate, and what will constitute such circumstances.** As outlined in paragraph 22, Section 29(3) amends Section 63(2) NABA to state that “a competent authority may not determine that subsection (2) [removing the prohibition against removal and the requirement to grant limited leave to remain] is to apply to a person if the

¹¹⁹ HM Government (2023) [‘Illegal Migration Act: European Convention on Human Rights Memorandum’](#)

¹²⁰ Section 39 of the [Illegal Migration Act 2023, c. 37](#)

¹²¹ Section 56 of the [Illegal Migration Act 2023, c. 37](#)

¹²² Section 42 of the [Illegal Migration Act 2023, c. 37](#)

¹²³ Section 8 of the [Illegal Migration Act 2023, c. 37](#)

¹²⁴ See, e.g., Bail for Immigration Detainees (2022) [‘Autumn Legal Advice Survey’](#)

competent authority considers that there are compelling circumstances [...]” It is unclear how this will operate in practice and what circumstances may be in scope of this exception.

35. **The Home Office’s Impact Assessment (IA) has not attempted to calculate the total monetised costs of implementing the Act, nor any set-up costs.**¹²⁵ The IA estimates the additional unit cost for relocating an individual who has arrived in the UK irregularly to a safe third country is £169,000, while the “monetised benefit” from reduced asylum support in the UK for those relocated to a safe third country is estimated at £106,000 per individual. The IA does not monetise the implications of the Act’s modern slavery provisions, such as how the cost of the Modern Slavery Victim Care Contract (MSVCC) would change given some people would be disqualified from accessing the support provided through this Contract. The IA notes that there are risks to delivery of the Act’s measures, including from legal challenges, and that the deterrence impact of the Act relies on “sufficient capacity to detain and remove an appreciable proportion of individuals in scope to a safe third country”.
36. **Whether and how the public order disqualification would be applied to people who have been exploited and committed immigration offences such as overstaying their visas.** During the House of Lords Committee Stage debate on the Bill, Lord Murray of Blidworth stated that people who overstay visas “will not be caught by the public order disqualification.”¹²⁶ This statement is potentially incongruent with the Act’s provisions, which apply the public order disqualification to non-British nationals who have been convicted of an offence, sentenced to a period of imprisonment for the offence, and those who are liable to deportation. While committing an immigration offence normally leads to the individual in question being served with a removal notice, rather than a deportation notice, offences such as overstaying a visa or breaching one’s visa conditions can be punishable by imprisonment if the Crown Prosecution Service decides to charge the offender.¹²⁷ This lack of clarity risks contributing to a general culture of fear (or the ‘chilling effect’ described in paragraph 28) among non-British nationals, potentially dissuading people affected by modern slavery from engaging with authorities.
37. **When each Section will come into force.** When the Act received Royal Assent on 20 July 2023, Sections 30-37 (on entry, settlement, and citizenship), Section 52 (on judges of First-tier Tribunal and Upper Tribunal), and Sections 63-69 (general provisions e.g., consequential, extent, etc) came into force. Other Sections came into force solely for the purposes of making regulations – and are, as such, not yet implemented. It is unclear when such regulations needed for implementation will be finalised, and the remainder of the Act’s provisions will be commenced.¹²⁸

Appendix: The existing modern slavery support system

¹²⁵ UK Home Office (2023) [‘Impact Assessment, The Home Office: Illegal Migration Bill’](#)

¹²⁶ Lord Murray of Blidworth (2023) [‘Illegal Migration Bill’](#) HL Deb. Vol.830 col.1703.

¹²⁷ Section 24 of the [Immigration Act 1971, c.77.](#)

¹²⁸ Resources likely to be updated as Sections of the Act are implemented include [FreeMovement.org.uk.](#)

1. **Under ECAT¹²⁹ and ECHR Article 4¹³⁰ the UK has obligations to identify, protect and support victims of slavery and human trafficking and investigate, prosecute and punish the perpetrators.** The National Referral Mechanism (NRM) is the system the UK uses to fulfil these obligations.¹³¹ 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 think that they are a victim of modern slavery. People cannot refer themselves into the NRM, and adults cannot be referred without their consent.
2. **When someone is referred into the NRM, Home Office caseworkers begin a two-stage decision-making process to determine whether they will be recognised as a victim of modern slavery (victim status).** The first decision is whether there are ‘reasonable grounds’ to believe that the referred individual is a victim of modern slavery, which should be made within five days of referral. A positive reasonable grounds decision triggers specific entitlements: a ‘reflection and recovery period’ of at least 30 days which includes protection against removal from the UK. Individuals have the right to receive specialist support services (such as accommodation to safeguard against destitution, or legal advice). This period is also intended to enable potential victims to decide whether they want to cooperate with law enforcement in the investigation of their case. During this period, the Home Office gathers further information about their case, to make a final ‘conclusive grounds’ decision as to whether, on the balance of probabilities,¹³² the individual should be recognised as a confirmed victim of modern slavery. On average, it took 543 days to reach a conclusive grounds decision in 2022,¹³³ although for some groups this is longer: for example it took on average (median) 1,113 days for women to receive a conclusive grounds decision in Q2, 2022.¹³⁴ The average (median) time taken from referral to conclusive grounds decisions made in January to March 2023 across the competent authorities was 566 days.¹³⁵
3. **Some people who are referred into the NRM are disqualified from the above entitlements on public order grounds. This is called the public order disqualification.** This disqualification is applied on a case-by-case basis for people who have been referred into the NRM and are awaiting a conclusive grounds decision (they may have already received a positive reasonable grounds decision). Circumstances which are indicative of a ‘threat to public order’ are broadly defined in Section 63 of the Nationality and Borders Act¹³⁶ and include, for instance, where the person referred has been sentenced to at least

¹²⁹ ECAT (2005) [Council of Europe Convention on Action against Trafficking in Human Beings. Warsaw](#), 16 May 2005. Cm 7465 (entered into force in respect of the United Kingdom 1 April 2009)

¹³⁰ ECHR (1950) [European Convention on Human Rights](#)

¹³¹ UK Home Office (2022) [‘National referral mechanism guidance: adult \(England and Wales\)’](#)

¹³² The ‘balance of probabilities’ threshold was confirmed in primary legislation in Section 60 of the Nationality and Borders Act 2022: [The Nationality and Borders Act 2022, c. 36.](#)

¹³³ UK Home Office (2023) [‘Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022’](#) section 3.2

¹³⁴ International Organization for Migration (2022) [‘UK National Referral Mechanism Data Analysis Briefing #4’](#)

¹³⁵ UK Home Office (2023) [‘Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2023 – January to March](#)

¹³⁶ [The Nationality and Borders Act 2022, c. 36.](#)

twelve months' imprisonment, or where they pose a risk to national security.¹³⁷

The public order disqualification revokes:

- a. potential victims' right not to be removed during the recovery and reflection period,
- b. their right to specialist support services,
- c. the Secretary of State's duty to grant them temporary permission to stay in particular circumstances, in all UK nations and,
- d. a conclusive grounds decision (the final decision confirming whether or not they will be recognised as a victim) will not be made.¹³⁸

The public order disqualification was introduced into legislation by the Nationality and Borders Act in 2022, but was implemented on 30 January 2023. There is no ability to appeal a public order disqualification decision.¹³⁹ As yet, there is no data or evidence indicating how this change is working in practice.

4. **People who are not British citizens who receive a positive conclusive grounds decision (and therefore a confirmed victim of modern slavery) do not automatically have the right to remain in the UK**, according to both domestic immigration law and the UK's international obligations. However, they may be eligible to receive temporary permission to stay (a visa) to (1) assist in their recovery if they cannot do this in the country of which they are a citizen, (2) seek compensation for their exploitation if they cannot do this outside of the UK, or (3) cooperate with the authorities investigating or prosecuting their case.¹⁴⁰ Only 447 confirmed victims of modern slavery were granted leave to remain, out of the 6,066 people who applied for it between April 2016 and June 2021 (7%).¹⁴¹

¹³⁷ Traffickers often target people with criminal convictions, and it has been noted that there is a danger that the public order disqualification may lead to an increase in exploitation of those with criminal convictions if awareness is raised that they may not be offered state protections, see, e.g., Garbers, K. (2022) '[Confirmations, Commitments & Concerns: How will Part 5 of the Nationality and Borders Act on Modern Slavery be enacted?](#)'

¹³⁸ 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](#)', pg.168

¹³⁹ Ibid., pg. 179

¹⁴⁰ UK Home Office (2023) '[Immigration Rules Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery](#)'

¹⁴¹ The Guardian (2022) '[Revealed: just 7% of trafficking victims given leave to remain in UK](#)'

If you have any questions or feedback about this Explainer please email:
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The Modern Slavery and Human Rights Policy and Evidence Centre was created by the investment of public funding to enhance understanding of modern slavery and transform the effectiveness of law and policies designed to overcome it. The Centre is a consortium of six academic organisations led by the Bingham Centre for the Rule of Law.



The Modern Slavery and Human Rights Policy and Evidence Centre is funded and actively supported by the Arts and Humanities Research Council (AHRC), part of UK Research and Innovation (UKRI), from the Strategic Priorities Fund.

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