

Written Evidence by the Modern Slavery and Human Rights Policy and Evidence Centre (ASU0072)

Introduction to the Modern Slavery Policy and Evidence Centre

The Modern Slavery and Human Rights Policy and Evidence Centre (Modern Slavery PEC) was created by the investment of public funding to enhance understanding of modern slavery and transform the effectiveness of law and policies designed to address it.¹

The Modern Slavery PEC funds research to provide independent, innovative and authoritative insight and analysis on modern slavery. The Modern Slavery PEC is an impartial organisation and our focus is on ensuring the best available evidence and analysis is available for policymakers and law-makers. We are led by evidence and our belief that policies are more effective when they are firmly underpinned by evidence grounded in robust research and data. Our approach is rooted in human rights.

The Modern Slavery PEC's approach to this submission

This submission addresses Questions 8 and 9 in the JCHR's call for evidence, which focus on modern slavery. Whilst recognising the focus of this inquiry is the *'human rights of asylum seekers'*, our response is not confined to this as not all people affected by modern slavery without regularised immigration status claim asylum.

Our approach draws on evidence from existing research and data, and legal analysis undertaken by Dr Marija Jovanovic. We consider the UK's legal framework for addressing modern slavery against relevant human rights standards, in particular the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT)² and the European Convention on Human Rights (ECHR).³

Summary

- **The UK's Modern Slavery Act has identified, protected and supported thousands of victims of modern slavery since its inception. However, evidence shows that its operation in practice could be made more effective.** Issues identified by research funded by the Modern Slavery PEC include: lack of clarity among survivors and service providers about victims' entitlements; barriers to accessing those entitlements; procedural delays in the National Referral Mechanism (NRM) and asylum decision-making systems; and a need to better link specialist modern slavery support services with wider systems such as housing and health. Meaningful survivor inclusion has also been found to increase the effectiveness of modern slavery laws and policies (paragraphs 5-6).
- **In terms of compatibility of the UK's legal framework for modern slavery victim identification and support with ECAT and ECHR:**

¹ The Centre is a consortium of six research organisations led by the Bingham Centre for the Rule of Law and is funded by the Arts and Humanities Research Council on behalf of UK Research and Innovation (UKRI). This response has been prepared by the Modern Slavery PEC's core team and does not necessarily represent the views of all partners making up the Modern Slavery PEC consortium.

² Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005 [The Convention entered into force in respect of the United Kingdom on 1 April 2009]

³ European Convention on Human Rights, as amended by Protocols Nos. 11, 14 and 15 supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16

- We have not undertaken a full analysis of the compatibility of the Modern Slavery Act 2015 with human rights obligations. The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) is responsible for monitoring States' implementation of ECAT. Its most recent evaluation of the UK (July 2021) did not identify major concerns around the compatibility of the UK's then legal framework as a whole with ECAT, apart from concerns that section 45 of the Modern Slavery Act is too narrow an interpretation of the non-punishment principle in Article 26 of ECAT. The UK is currently under supervision by the Committee of Ministers of the Council of Europe for one adverse ECtHR judgment related to modern slavery (paragraph 7).
- The majority of modern slavery provisions in the Nationality and Borders Act 2022 have not yet been commenced. There appears to be a risk of incompatibility of section 63 of the Act with the positive duty to investigate whether a person is a victim of trafficking under both Article 4 ECHR and Articles 10 and 13 ECAT. Further detail is needed in Statutory Guidance about how the modern slavery provisions will operate in practice, including whether and how these relate to children, to ensure they do not give rise to risk of breaches of ECAT and ECHR in individual cases (paragraphs 8-9).
- In December 2022, the Prime Minister announced plans to amend the modern slavery legislative framework, alongside other announcements about the asylum system. At the time of writing, there is limited detail on these plans, but three announcements appear likely to breach the UK's obligations under ECAT and ECHR, namely the plans to raise NRM decision-making thresholds; plans to return victims to Albania potentially prior to the UK undertaking a full investigation into their victim status; and the proposal that any person entering the UK illegally will be detained and returned to their home country or a safe third country (paragraphs 12-13).
- **The UK Government has not published sufficient evidence to demonstrate either the *nature* of the abuse of the Modern Slavery Act 2015 that is alleged to be taking place, nor the *scale* of any such abuse** (paragraphs 15-18).

Summary of recommendations

- The effectiveness of the legal framework for tackling modern slavery and human trafficking is likely to be improved if evaluations of the current framework, by both Government and Parliament, meaningfully engage survivors of modern slavery and take account of the issues raised by research. Proactive steps should be taken to ensure such meaningful engagement and take account of evidence.
- If the purpose of the proposed Modern Slavery Bill is to strengthen protection and support for victims of modern slavery in UK law, it will require careful scrutiny to ensure that the opportunity is taken to provide a more secure legal basis to entitlements the UK is required by its international obligations to guarantee and make effective in practice.
- The UK Government should ensure that proposed amendments to the Modern Slavery Act 2015 do not risk diminishing protections for victims of modern slavery and address the issues identified by research around how the effectiveness of the Act can be improved. The amendments require careful scrutiny given concerns around compatibility with human rights obligations.

- The JCHR should encourage the UK Government to define the precise nature of abuse of the Modern Slavery Act about which it is concerned and publish more data to enable assessment of the nature and scale of particular abuses.

Q8: Is the UK’s legal framework for tackling modern slavery and human trafficking effective and is it compatible with our human rights obligations? Are there changes that should be made?

1. **This submission considers the legal framework for modern slavery victim identification and support in Part 5 of the Modern Slavery Act 2015 and Part 5 of the Nationality and Borders Act 2022,**⁴ as we judge these parts of the legal framework most relevant to this inquiry.⁵ We have interpreted ‘effectiveness’ to mean the extent to which the legal framework meets the stated objectives of the Modern Slavery Act 2015 to identify, support and protect victims.^{6,7}
2. **Many people referred to the National Referral Mechanism (NRM) are also claiming asylum in the UK, though data on this is not routinely published.**^{8,9} Decisions made through the NRM about victim status are generally separate from decisions made about asylum and are made by distinct departments within the Home Office. Being a victim of modern slavery may or may not form part of an applicant’s claim for asylum or protection under human rights grounds.

Effectiveness

3. **The UK has identified, supported and protected thousands of victims of modern slavery since the NRM was set up in 2009, following the UK voluntarily signing up to ECAT in 2008.** The obligations for identifying and supporting victims of modern slavery are set out in detail in Statutory Guidance.¹⁰ Entitlements and responsibilities for delivering services differ for adults and children and vary between UK jurisdictions. The Home Office provides specialised support for victims in England and Wales through the Modern Slavery Victim Care Contract for adults, Independent Child Trafficking Guardians, alongside Local Authority support, asylum support and a range of voluntary services.

⁴The terms ‘survivor of modern slavery’ and ‘people with lived experience of modern slavery’ are preferable. This submission uses the terms ‘potential victim’ and ‘victim’ in places, given they are used in the Modern Slavery Act 2015, ECAT and many other official documents.

⁵ See the [Modern Slavery PEC website](#) for research we have funded on the effectiveness of the wider modern slavery legal framework, such as transparency in supply chains

⁶There is a much wider debate about whether the Modern Slavery Act’s focus primarily on the criminal law to tackle modern slavery is effective in reducing or preventing severe labour exploitation, compared to an approach targeting structural causes of vulnerability to such exploitation (see e.g. V. Mantouvalou, *The UK Modern Slavery Act 2015 Three Years On*), which we assume to be beyond the scope of this inquiry.

⁷ Para 3 and 234, [Explanatory Notes for Modern Slavery Act 2015](#)

⁸ The UK’s system for identifying and supporting modern slavery victims

⁹ The latest data we identified was released following a [Freedom of Information request](#), and relates to individuals referred to the NRM who received an asylum decision between Jan 2016 and December 2018. 982 individuals with a positive conclusive grounds decision were granted asylum. However, this does not include the number of individuals for whom asylum decisions were outstanding at time of publication. Subsequent Freedom of Information releases relate to asylum outcomes for specific nationalities or specific groups, for example FOI6100 and FOI48751.

¹⁰ [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](#)

4. **The UK Government has announced measures to improve the *identification of victims of modern slavery as quickly as possible*.**¹¹ The Government intends to provide increased support to First Responder Organisations and is piloting a local, multi-agency approach to identifying child victims.^{12,13,14} The Modern Slavery PEC is currently funding research to inform recommendations for how First Responders can effectively identify adult survivors.¹⁵

5. **Modern Slavery PEC-funded research recommends that there is scope to make the operation of the *protection and support system more effective in practice*.** Research funded to date primarily focuses on adults in England and Wales and has identified a number of common issues, including:¹⁶
 - a. **Uncertainty around survivors' entitlements.** Survivors and service providers have reported a lack of clarity on legal advice entitlements and psychological assistance provided through the NRM together with a lack of clarity over what survivors' options are if such assistance does not meet their needs.^{17,18} Research on British national survivors identified confusion among professionals about how the NRM relates to entitlements under other legislative and policy frameworks, such as housing or social care.¹⁹
 - b. **Barriers to accessing entitlements.** The Covid-19 pandemic and related lockdowns exacerbated difficulties for survivors accessing services such as counselling and legal advice.²⁰ Survivors and service providers described psychological support provided through the NRM as being often resource-led as opposed to needs-led and survivors reported that long waiting lists and restrictive eligibility criteria prevented timely access, along with language and geographical barriers.²¹ Challenges in accessing legal advice have been identified with respect to (i) availability and capacity of legal service providers (ii) awareness of rights on behalf of both potential clients and referring organisations; and (iii) support needed to facilitate access to legal advice in practice.²²

¹¹Para 523 and 581 [Explanatory Notes for Nationality and Borders Bill and 2021 UK Annual Report on Modern Slavery, 25 November 2021](#)

¹² [A First Responder Organisation](#), in England and Wales, is an authority authorised to refer potential victims of modern slavery into the NRM.

¹³ [New Plan for Immigration - Policy Statement p.32 and Explanatory Notes for Nationality and Borders Bill para 64](#)

¹⁴ [Devolving child decision-making pilot programme: general guidance](#)

¹⁵ [Modern Slavery PEC | Identification of adults with lived experiences of modern slavery in the UK. Findings expected in Spring 2023.](#)

¹⁶ In 2023 we will fund research to expand the evidence base on the effectiveness of support to children.

¹⁷ Dr Jean-Pierre Gauci (BIICL), Dr Noemi Magugliani (BIICL), John Trajer (BIICL), [Assessing the Impacts of a Lack of Legal Advice on Adults with Lived Experience of Modern Slavery](#) (Forthcoming)

¹⁸ Findings based on academic study led by Siân Thomas, Dr. Minh Dang, Jarrai Barrow, Kristen Johannes, Nancy Esiovwa & Professor Caroline Bradbury-Jones, Dr. Juliana Semione and Dr. Nicola Wright, Policy brief led by Vicky Brotherton, [Placing Survivor Wellbeing on the Policy and Evidence Map](#), (Forthcoming)

¹⁹ Dr Carole Murphy, Dr Alicia Heys, Dr Craig Barlow, Louise Gleich, Sophie Wilkinson [Identifying Pathways to Support British Victims of Modern Slavery towards Safety and Recovery: A Scoping Study](#), October 2022

²⁰ Modern Slavery PEC, Policy Brief [Impact of the Covid-19 pandemic on modern slavery](#), November 2021

²¹ Findings based on academic study led by Siân Thomas, Dr. Minh Dang, Jarrai Barrow, Kristen Johannes, Nancy Esiovwa & Professor Caroline Bradbury-Jones, Dr. Juliana Semione and Dr. Nicola Wright, Policy brief led by Vicky Brotherton, [Placing Survivor Wellbeing on the Policy and Evidence Map](#), (Forthcoming)

²² Dr Jean-Pierre Gauci (BIICL), Dr Noemi Magugliani (BIICL), John Trajer (BIICL), [Assessing the Impacts of a Lack of Legal Advice on Adults with Lived Experience of Modern Slavery](#) (Forthcoming)

- c. **Procedural delays in NRM and asylum decisions, and criminal prosecutions, exacerbated by the pandemic, negatively impact on survivors’ well-being and contribute to the feeling of limbo** underlining the need to reduce such delays.^{23,24}

The latest published data shows that at the end of 2021, there were 24,388 cases awaiting NRM conclusive grounds decisions.²⁵ Although the Home Office intended to recruit 350 additional staff to the NRM caseworking unit by March 2021,²⁶ their impact on the backlog is not yet visible given the continued growth in referrals. The average (median) time from NRM referral to conclusive grounds decision was 531 days (as of Q3 2022).²⁷

- d. **A need to improve linkages between specialised modern slavery services and wider systems affecting survivors’ lives such as housing, mental health services, the immigration and asylum system, informed by survivors.**

Research has indicated that psychological assistance cannot have a meaningful impact on survivors’ well-being without access to other entitlements including safe and secure accommodation, material assistance, legal advice and access to interpreters.²⁸ Adopting a holistic approach has been identified as a key factor affecting the quality of legal advice, highlighting the need for greater collaboration and partnerships between statutory service providers and legal advice providers.²⁹ Through participatory research, young people identified structural, systemic and discriminatory barriers to achieving positive outcomes, emphasising the negative impact of immigration procedures.³⁰ Consensus-driven participatory research with adults identified a core set of seven outcomes that should, as a minimum standard, be used holistically and promote inter-agency collaboration and integration to deliver interventions for adult survivor recovery and reintegration, as well as provide a framework for policy and service design and evaluation.³¹

6. **Modern Slavery PEC research has found that meaningful survivor inclusion can improve effectiveness of policies and programmes to address modern slavery.** The

²³ Findings based on academic study led by Siân Thomas, Dr. Minh Dang, Jarrai Barrow, Kristen Johannes, Nancy Esiovwa & Professor Caroline Bradbury-Jones, Dr. Juliana Semione and Dr. Nicola Wright, Policy brief led by Vicky Brotherton, Placing Survivor Wellbeing on the Policy and Evidence Map, (Forthcoming)

²⁴ Modern Slavery PEC, Policy Brief Impact of the Covid-19 pandemic on modern slavery, November 2021

²⁵ Sum of Positive RG decisions 2009-2021, Table 18, Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2021

²⁶ Written question, Dec 2020, Human Trafficking: Children

²⁷ National Referral Mechanism and Duty to Notify statistics UK, July to September 2022

²⁸ Findings based on academic study led by Siân Thomas, Dr. Minh Dang, Jarrai Barrow, Kristen Johannes, Nancy Esiovwa & Professor Caroline Bradbury-Jones, Dr. Juliana Semione and Dr. Nicola Wright, Policy brief led by Vicky Brotherton, Placing Survivor Wellbeing on the Policy and Evidence Map, (Forthcoming)

²⁸ Findings based on academic study led by Siân Thomas, Dr. Minh Dang, Jarrai Barrow, Kristen Johannes, Nancy Esiovwa & Professor Caroline Bradbury-Jones, Dr. Juliana Semione and Dr. Nicola Wright, Policy brief led by Vicky Brotherton, Placing Survivor Wellbeing on the Policy and Evidence Map, (Forthcoming)

²⁹ Dr Jean-Pierre Gauci (BIICL), Dr Noemi Magugliani (BIICL), John Trajer (BIICL), Assessing the Impacts of a Lack of Legal Advice on Adults with Lived Experience of Modern Slavery (Forthcoming)

³⁰ Patricia Hynes, Helen Connolly and Laura Durán with Patricia Durr, Elias Matar and Pandora Haydon, Creating stable futures: human trafficking, participation and outcomes for children, October 2022

³¹ Sharli Paphitis, Sohail Jannesari, Rachel Witkin, Bee Damara, Jeanet Joseph, Olivia Triantafillou, Minh Dang, Emma Howarth, Cornelius Katona, Nicola Wright, Queenie Sit, Sian Oram, The Modern Slavery Core Outcome Set, (forthcoming)

UK Government has taken initial steps to include survivors in its policymaking, for example the FCDO funded Modern Slavery PEC research to examine engagement of survivors of modern slavery in international policy and programming, and the Home Office appointed a contractor to gather views of survivors to inform its review of the Modern Slavery Strategy.³² However, there needs to be a more strategic approach, that draws on emerging best practice and sets short-, medium- and long-term objectives for survivor inclusion in policymaking. This should take account of emerging best practice – being non-tokenistic, trauma-informed and preventing harm – recognising that the Government might not be best placed to engage with survivors directly and should explore using intermediaries with the requisite skills and experience.

Recommendation: the effectiveness of the legal framework for tackling modern slavery and human trafficking is likely to be improved if evaluations of the current framework, by both Government and Parliament, meaningfully engage survivors of modern slavery and take account of the issues raised by research. Proactive steps should be taken to ensure such meaningful engagement and take account of evidence.

Compatibility with human rights obligations

- 7. The Modern Slavery PEC has not undertaken a full analysis of the compatibility of the currently enacted legal framework with human rights obligations.** However, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) is responsible for monitoring ECAT Member States' implementation of ECAT. It has published three evaluations of the UK's implementation of ECAT, the last of which considered the situation up to 8 July 2021.³³ In these reports, GRETA did not identify major concerns around the compatibility of the UK's then legal framework as a whole with ECAT, apart from concerns that section 45 of the Modern Slavery Act 2015 (the statutory defence for people compelled to commit criminal offences as part of their modern slavery exploitation) is too narrow an interpretation of the non-punishment principle in Article 26 of ECAT.³⁴ In July 2021, the European Court of Human Rights (EctHR) ruled the UK had breached its obligations under Articles 4 and 6 of the ECHR (*VCL and AN (77587/12 and 74603/12)*) and the judgment remains under the supervision of the Committee of Ministers.³⁵

³² Modern Slavery PEC (2022), [Engagement of lived experience in international policy and programming](#), Gov.uk Contracts Finder (2022) [Survivor Engagement in the Modern Slavery strategy](#)

³³ [Council of Europe Action against Trafficking in Human Beings Evaluation Rounds](#)

³⁴ Schedule 4 of the Modern Slavery Act 2015 lists offences where the statutory defence cannot be used. GRETA has urged the UK to ensure the non-punishment provision is capable of being applied to all offences that victims of trafficking were compelled to commit. In response, the UK Government has pointed to *R v A [2020] EWCA Crim 1408* and stated 'The Court found there was no conflict between the Schedule 4 exclusions and the UK's international obligations under...ECAT or the EU Directive 2011/36/EU. Neither is directly applicable in domestic law and it was for Parliament to decide how to give effect to those international obligations. In any event, neither article 26 of ECAT nor article 8 of the Directive require member states to provide blanket immunity from prosecution for victims of trafficking who commit criminal offences and neither require that a statutory defence be available in all cases.' See paras 159-177 of [GRETA's 3rd Evaluation Report for the UK](#).

³⁵ Ministry of Justice, [Responding to human rights judgements - Report to the Joint Committee on Human Rights on the Government's response to human rights judgments 2021–2022](#)

8. **The Nationality and Borders Act 2022 included provisions on modern slavery, but at the time of writing (December 2022), the vast majority of these had not been commenced.**³⁶ The Modern Slavery PEC has previously highlighted the need for further detail in Statutory Guidance about how these provisions will operate in practice, including whether and how these relate to children, to ensure they do not give rise to risk of breaches of ECAT and ECHR in individual cases. We have also recommended collecting data to monitor how the provisions are operating in practice.³⁷
9. **There appears to be a risk of incompatibility of section 63 of the Act with the positive duty to investigate whether a person is a victim of trafficking under both Article 4 ECHR and Articles 10 and 13 ECAT.** The positive obligation to investigate is triggered as soon as *‘the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings’* and obliges states to provide for a recovery and reflection period of at least 30 days’ during which *‘it shall not be possible to enforce any expulsion order.’*³⁸ Sections 63 (1) and (2) provide that a person with a reasonable grounds decision (potential victim) may be disqualified from a recovery period and support measures guaranteed throughout this period if the Competent Authority is satisfied that the person is a *‘threat to public order’* or has claimed victim status in *‘bad faith’*. Statutory Guidance indicates that a Recovery Period will not be observed where grounds of public order prevent it, however the Act and guidance are silent on whether a conclusive grounds decision will be made. The ECAT Explanatory Report states *‘The Convention does not require absolute certainty – by definition impossible before the identification process has been completed – for not removing the person concerned from the Party’s territory’*. Under ECAT, if there are ‘reasonable’ grounds for believing someone to be a victim, then that is sufficient reason not to remove them until completion of the identification process establishes conclusively whether or not they are victims of trafficking.³⁹ According to Article 13 (3) ECAT, states *‘are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.’* However, the exceptions in Article 13 ECAT do not extinguish States’ obligation to complete the identification process and conduct investigations into the crime of human trafficking, enshrined in Articles 4 ECHR, Articles 10 and 27 ECAT. Accordingly, whether an individual is disqualified from protection is to be decided after the identification process is concluded and conclusive grounds decision made.⁴⁰
10. **In the Queen’s Speech 2022,⁴¹ the UK Government signalled its intention to bring forward a new Modern Slavery Bill** in the current Parliamentary session to enshrine *‘in domestic law the Government’s international obligations to victims of modern slavery, especially regarding their rights to assistance and support, providing greater legal certainty for victims.’* One of the purposes of the proposed Bill was *‘to strengthen the*

³⁶ [Nationality and Borders Act 2022](#)

³⁷ [Modern Slavery PEC, Submission on the Nationality and Borders Bill](#)

³⁸ [Article 13 ECAT; ECAT Explanatory Report](#) at para 131.

³⁹ [ECAT Explanatory Report](#) at para 132.

⁴⁰ [Modern Slavery PEC, Submission on the Nationality and Borders Bill](#)

⁴¹ [Queen's Speech 2022: background briefing notes](#)

protection and support for victims of human trafficking and modern slavery'. The UK Government has not yet set out the detail of these measures.

Recommendation: If the purpose of the proposed Modern Slavery Bill is to strengthen protection and support for victims of modern slavery in UK law, it will require careful scrutiny to ensure that the opportunity is taken to provide a more secure legal basis to entitlements the UK is required by its international obligations to guarantee and make effective in practice.

11. **The UK Government has also stated it is reviewing whether further changes are needed to the modern slavery legislative framework to ‘ensure that it is not exploited’.**⁴² It is not yet clear whether any changes would be made through the new Modern Slavery Bill, or another legislative vehicle. Information reported in the media suggests the UK Government has been considering several amendments to the legislative framework.⁴³ The Modern Slavery PEC commissioned Dr Marija Jovanovic of the University of Essex to undertake rapid expert legal analysis of the proposals reported in the media, which found that a number of the proposed amendments would be likely to breach the UK’s human rights obligations under the ECHR and ECAT. We will make this legal analysis available to assist Parliament with its scrutiny of the amendments to the MSA when they are introduced, and it is summarised below.

12. **The Prime Minister announced three planned changes to the modern slavery legislative and policy frameworks, alongside wider announcements on the asylum system.** There is limited detail on how these will operate, but initial analysis suggests two of the following three amendments may breach the UK’s obligations under ECAT and ECHR:

- a. **Reducing the reflection and recovery period from 45 to 30 days (for people with positive reasonable grounds NRM decisions).** A minimum period of 30 days (or until the conclusive grounds decision is made, whichever is later) was provided for by section 61(3)(b) of the Nationality and Borders Act 2022 and is in line with the minimum reflection and recovery period set out in ECAT.⁴⁴
- b. **Significantly raising the threshold ‘to be considered a modern slave’** and requiring caseworkers to have ‘*objective evidence*’ of modern slavery rather than just a suspicion. Immigration Minister Jenrick referred to a forthcoming update to Statutory Guidance in January 2023 which will set out that reasonable ground decisions will ‘*mean decision makers now base their assessments on objective factors*’.⁴⁵ The UK’s current reasonable grounds decision threshold is in line with ECAT and any raising of the threshold would likely put the UK in breach of its obligations under ECAT.

⁴² Asylum Seekers Accommodation and Safeguarding, Volume 722, Nov 2022

⁴³ PM statement on illegal migration: 13 December 2022

⁴⁴ This was included in Statutory Guidance issued on 13 December 2022: 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 8.20

⁴⁵ Robert Jenrick, Update to the Modern Slavery Statutory Guidance, 13 December 2022

- c. **A new agreement between Albania and the UK to return Albanians.** A UK-Albania Joint Communiqué was published on 13th December 2022, stating that the States will increase returns of adults to Albania who *'have been identified by UK competent authorities as victims of modern slavery (as defined in the UK legislation) and as victims of human trafficking (as defined in Albanian legislation)'*.⁴⁶ Returning victims of modern slavery to their country of origin or lawful residence is permissible under international law, but is subject to important limitations. Under Article 16 ECAT, such return could only be executed after an individual has been identified as a victim (i.e. has a positive conclusive grounds NRM decision) and it is not clear whether the Communiqué covers adults with a positive reasonable grounds decision, or those with a positive conclusive grounds decision. The former would not be compatible with ECAT. Article 16 of ECAT also states that the state must consider the impact of return on *'the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim'* – language which is used in the Communiqué. GRETA has urged the UK to review its victim return and repatriation policies in order to ensure compliance in law and practice with Article 16 of ECAT, citing concerns around lack of data and information about how victims of trafficking are supported after their return.⁴⁷ The Prime Minister stated that the UK had received formal assurances from the Albanian Government that their protection of victims would allow the UK to detain and return people to Albania *'with confidence and in line with ECAT'*. The detention of potential victims of human trafficking violates Article 26 ECAT *'according to which victims of human trafficking must not be subjected to penalties for their involvement in unlawful activities that they have been compelled to commit.'*⁴⁸ Detention contravenes the State's obligation *'to provide services and assistance to them and discourages them from coming forward and co-operating with the investigation into those responsible for their trafficking.'*⁴⁹

13. **The Prime Minister announced plans to introduce new legislation in 2023** to make it clear that people who enter the UK illegally will be detained and returned to their home country or a safe country where any claim for asylum will be considered. If this were to apply to people who enter the UK illegally but are then identified as potential victims of modern slavery (for example because they were trafficked to the UK or exploited after arrival in the UK), it would inevitably lead to breaches of the UK's obligations under both the ECHR and ECAT. Article 4 ECHR places a positive obligation on States to identify and support any potential victim in their territory, even if the exploitation occurred outside of their territory and Article 13 ECAT provides that during the recovery period States shall not remove victims unless public order grounds prevent it, or it is found that victim status is being claimed improperly. As discussed in paragraph 12c, Article 16 ECAT sets out limitations on the return of confirmed victims.

⁴⁶ UK-Albania Joint Communiqué: Enhancing bilateral Cooperation in areas of common interest, 13 December 2022

⁴⁷ GRETA's 3rd Evaluation Report for the UK, October 2021. Para 315-323.

⁴⁸ GRETA's 3rd Evaluation Report for the UK, October 2021. Para 53

⁴⁹ ECAT Explanatory Report at para 174.

14. **Information reported to the media suggests several other amendments to the Modern Slavery Act 2015 are being considered.**⁵⁰ We recognise these are taken from media reporting and are not official Government policy, however, legal analysis suggests several of these would likely breach ECAT and ECHR obligations, namely:
- a. **If the NRM were to only look at cases with a direct link to the UK i.e. those who are from the UK or who have been exploited in the UK.** Limiting the eligibility for victim status to only those individuals with a ‘direct link’ to the UK amounts to a restriction of the definition of practices that fall under the umbrella of modern slavery, which has no basis in international law. It would breach Article 4 ECHR which places a positive obligation on States to identify and support any potential victim in their territory, even if the exploitation occurred outside of their territory.⁵¹
 - b. **If the number of times an individual can claim the protection of the Modern Slavery Act was limited to once.** This is contrary to the obligations to identify and protect victims of modern slavery under Article 4 ECHR and subsequent ECtHR case law and Article 10 ECAT.⁵² If an individual does raise a claim of being a victim of modern slavery, the ECtHR requires that any such claims be taken seriously.⁵³
 - c. **If Albanians were disapplied from eligibility to claim to be victims of modern slavery.** Denying access to the NRM on the basis of nationality alone would amount to direct discrimination in the enjoyment of the right in Article 4 ECHR not to be held in slavery or servitude or required to perform forced or compulsory labour. Such discrimination in the enjoyment of Convention rights on grounds of national origin is in breach of both domestic and international law unless justified by ‘weighty reasons’, which is unlikely to be the case when significant numbers of Albanians have been recognised as victims of modern slavery through the NRM.⁵⁴

Recommendation: The UK Government should ensure that proposed amendments to the Modern Slavery Act 2015 do not risk diminishing protections for victims of modern slavery and address the issues identified by research around how the effectiveness of the Act can be improved. The amendments require careful scrutiny given concerns around compatibility with human rights obligations.

Q9: Is there any evidence that modern slavery laws are being abused by people ‘gaming’ the system?

15. **The UK Government has not published sufficient evidence to demonstrate either the nature of the abuse of the Modern Slavery Act 2015 that is alleged to be taking place, nor the scale of any such abuse, nor whether the people believed to be abusing the**

⁵⁰ Charles Hymas, ‘Priti Patel to tighten modern slavery laws to prevent last-minute claims’ (The Daily Telegraph, 4 September 2022); Charles Hymas, ‘Albanians claiming to be victims of modern slavery allowed to stay in UK in 90pc of cases’ (The Daily Telegraph, 3 November 2022); Charles Hymas, ‘Ten-point migration plan to end ‘Hotel Britain’ (The Daily Telegraph, 12 November 2022);

⁵¹ *J and Others v Austria*.

⁵² *Chowdury and Others v Greece* [110]; *J and Others v Austria* [109]; *VCL and AN v United Kingdom* [160].

⁵³ *J and Others v Austria* (n 18) [110] – [111].

⁵⁴ Article 14 ECHR, which is given domestic effect by the Human Rights Act 1988, prohibits discrimination on the basis of national origin.

system are adults and/or children. On 8th December 2022, the Office for Statistics Regulation wrote to the Home Office raising concerns that *'policy officials in the department could not point to any specific evidence for [greater gaming of the system] when we enquired. What is more, the proportion of referrals deemed by the Home Office to be genuine cases of modern slavery in its 'conclusive grounds decisions' has risen year by year from 58 per cent in 2016 to 91 per cent in 2021, which does not suggest in itself that gaming is a growing problem'*.⁵⁵ This lack of published evidence on abuse of modern slavery laws has previously been raised by multiple groups including in the Modern Slavery PEC's September 2021 submission to the Joint Committee on Human Rights' (JCHR) call for evidence on the Nationality and Borders Bill.⁵⁶

- 16. The UK Government has not explained exactly what it means by 'abuse' of the Modern Slavery Act 2015, nor has it been consistent about what the nature of the 'abuse' is.** Based on analysis of official statements,⁵⁷ we infer that the UK Government understands abuse as making false claims to be a victim of modern slavery in order to improperly gain access to the protections provided by the NRM. In other words, the protections the law confers are being invoked by people who Parliament did not intend to protect.
- 17. Ministers have used the term 'abuse' to describe a number of situations,** including where late claims of modern slavery are made in order to frustrate immigration removal, including by *'illegal migrants including foreign national offenders and those who pose a national security risk'*,⁵⁸ adult male Albanians arriving on small boats making *'false claims'* of modern slavery;⁵⁹ and Albanians engaging in criminal activity apprehended by law enforcement being coached to claim modern slavery to avoid deportation.⁶⁰
- 18. The UK Government asserts that a very large number of migrants are abusing the Modern Slavery Act 2015 and that abuse is increasing in scale,⁶¹ however it has not published sufficient evidence to qualify these assertions.** Ministers have described individual case studies to illustrate abuse of the NRM.⁶² The National Crime Agency (NCA) has described intelligence about Albanian nationals being coached by criminals to make false claims to be victims of modern slavery.⁶³ However, it is not clear how

⁵⁵ OSR, December 2022, [Ed Humpherson to Jennifer Rubin: use of National Referral Mechanism statistics](#)

⁵⁶ [Modern Slavery PEC, Submission on the Nationality and Borders Bill](#)

⁵⁷ See for example references to *'vexatious accounts of modern slavery'*, *'unsubstantiated' claims*, *'vexatious accounts of modern slavery'*, *'unsubstantiated' claims*, *'unmeritorious'* and *'illegitimate claimants'*.

⁵⁸ Home Office, March 2021, [New Plan for Immigration: policy statement](#), [Written question, May 2021](#), [Slavery: Victims](#), [Written question, Oct 2022](#), [Slavery](#)

⁵⁹ [Western Jet Foil and Manston Asylum Processing Centres, Volume 721, Oct 2022](#) columns 638 and 645; and [Asylum Seekers Accommodation and Safeguarding, Volume 722, Nov 2022](#) column 45

⁶⁰ See [The Telegraph, Nov 2022, Albanian migrant criminals 'coached to claim they are modern slavery victims if caught'](#) and [The Times, Nov 2022, Albanian gangsters exploit slavery laws to pose as victims](#) and [Migration, Volume 722, Nov 2022](#), column 674

⁶¹ [Asylum Seekers Accommodation and Safeguarding, volume 722, Nov 2022](#), column 34

⁶² See [New Plan for Immigration: policy statement](#), [a 2017 letter from Home Office Minister to the Work and Pensions Select Committee](#) and the Home Secretary's [speech](#) to the Conservative Party Conference 2022. Home Secretary Q470, [Home Affairs Committee Oral Evidence: The work of the Home Secretary](#), HC 201, 23 November 2022

⁶³ See [The Telegraph, Nov 2022, Albanian migrant criminals 'coached to claim they are modern slavery victims if caught'](#) and [The Times, Nov 2022, Albanian gangsters exploit slavery laws to pose as victims](#)

representative such cases are of the wider cohort of individuals in the NRM. The NCA also indicated that some Albanians who have arrived in the UK from small boat Channel crossings were ‘debt bonded’ whilst working in cannabis groves, a situation that the Home Office recognises in official policy as a potentially exploitative situation.⁶⁴ The Home Secretary stated that the high numbers of people arriving on small boats ‘*is largely criminal gangs exploiting vulnerable people and selling a lie that they are going to get a better life in the UK*’ which potentially indicates deception, a recognised means of coercion for the crime of human trafficking.^{65,66}

19. Official UK Government and Ministerial statements about abuse often refer to data on the increasing number of referrals into the NRM.⁶⁷ The number of NRM referrals has increased year-on-year since 2009 (bar 2020, likely due to Covid-19 lockdowns),⁶⁸ and the number of referrals received in Q3 2022 is the highest quarterly figure since the NRM began in 2009.⁶⁹ However, an increase in NRM referrals is not inherently indicative of abuse of the system and could be related to a range of factors, for example increased awareness of modern slavery and improved training for First Responders, or a higher incidence rate of modern slavery, as explained by the ONS in 2020.⁷⁰ The NRM is a complex system, which involves a referral process by trained professionals in First Responder Organisations, followed by a two-stage decision-making process, run by the Home Office, to determine whether someone is a victim of modern slavery. Individuals cannot refer themselves to the NRM. The proportion of positive conclusive grounds decisions has risen from 58% in 2016, remaining similar since 2020, with around nine out of every ten referrals receiving a positive conclusive grounds decision.⁷¹ For decisions issued in Q3 2022, the proportion of positive conclusive grounds decisions was 89% for adult and 94% for child victims.⁷²

20. The UK Government has also pointed to data on increased NRM referrals for Foreign National Offenders (FNOs) and people in immigration detention – however

⁶⁴ 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 2.59

⁶⁵ Home Secretary Q507, Home Affairs Committee Oral Evidence: The work of the Home Secretary, HC 201, 23 November 2022

⁶⁶ 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 2.3 and 2.10

⁶⁷ See March 2021 Home Office press release asserting there had been an ‘alarming rise in people abusing our modern slavery system’ noted that ‘*National Referral Mechanism referrals...more than doubled between 2017 and 2020 from 5,141 to 10,613.*’ The Home Secretary, Suella Braverman MP’s speech to the Conservative Party conference in 2022 noted that ‘*We’ve seen a 450% increase in modern slavery claims since 2014.*’

⁶⁸ ‘*The plateau in referral numbers is primarily thought to result from the COVID-19 pandemic and associated restrictions.*’ Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2020

⁶⁹ National Referral Mechanism and Duty to Notify statistics UK, July to September 2022

⁷⁰ Office for National Statistics March 2020 bulletin on modern slavery in the UK stated that ‘*greater awareness, increases in reporting and improvements in police recording are likely to have contributed to the increases seen in potential victim numbers since the introduction of the modern slavery Acts across the UK in 2015.*’ *This was year-on-year increased referrals to NRM between 2009 and 2019.*’

⁷¹ See Table 15, Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 3 2022 – July to September

⁷² Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 3 2022 – July to September

previous analysis by the Modern Slavery PEC has shown that these increases could be due to a range of factors such as better identification of vulnerable people.⁷³

21. **Further data needs to be collected, analysed and published to enable an assessment of the assertions around abuse of the Modern Slavery Act**, underpinned by a clear definition of abuse. **Recommendation: the JCHR should encourage the UK Government to define the precise nature of abuse of the Modern Slavery Act about which it is concerned, and publish more data to enable assessment of the nature and scale of these particular abuses.** This will enable an assessment of the proportionality, impact and unintended consequences of any legislative and policy measures in place which aim to prevent and reduce abuse. This should include:
- The number and characteristics (e.g. nationality, gender, age) of NRM referrals and NRM decision outcomes for people who arrive in the UK on small boats – including reasons for negative NRM decisions
 - The number and characteristics of people with positive conclusive grounds NRM decisions who receive a grant of Discretionary Leave (and other forms of leave) to remain in the UK, and how they arrived to the UK
 - The number and characteristics of people referred to the NRM who claim asylum, and their asylum outcomes, combined with their NRM referrals and outcomes – including reasons for negative NRM decisions
 - The number and characteristics of people in immigration detention and FNOs referred to the NRM and their NRM decision outcomes – including reasons for negative NRM decisions.

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⁷³ Para 4 of Modern Slavery PEC, Submission on the Nationality and Borders Bill