

# Restoring protections for modern slavery victims

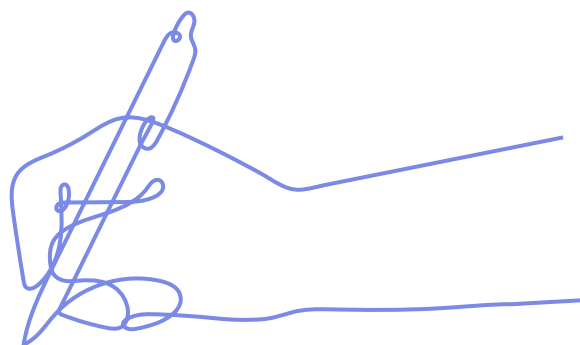
## How to make the modern slavery measures in UK immigration law compatible with human rights

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This is a summary of recommendations from the Modern Slavery and Human Rights Policy and Evidence Centre's Policy Brief aiming to inform the Government's review of immigration law and policy by identifying specific changes which need to be made to the modern slavery measures in recent UK immigration law and related statutory guidance to make the legal and policy framework compatible with the requirements of human rights law. The full Policy Brief can be found on the Centre's website at [modernslaverypec.org](https://modernslaverypec.org).

Noting the Government's unequivocal commitment to ensuring that all legislation is compatible with international law and the overarching duty on ministers in the Ministerial Code to comply with the law, including international law, the Brief identifies the most relevant human rights obligations for the UK and explains in detail what those human rights laws require.

It then considers the compatibility of the modern slavery provisions in recent UK immigration legislation and Modern Slavery Statutory Guidance in the light of those requirements and identifies specific incompatibilities which need to be addressed. It goes on to make detailed recommendations about how to make the changes required by repealing or amending specific statutory provisions and amending the Guidance. Suggested textual amendments to give effect to the recommendations are included in an Annex.



<sup>1</sup> With thanks to Dr. Catherine Briddick and Prof Cathryn Costello, as well as colleagues from the Modern Slavery and Human Rights PEC, for reviewing this brief and providing invaluable feedback.

## Summary of Recommendations

**Recommendation 1: The Safety of Rwanda (Asylum and Immigration) Act 2024 should be repealed** in line with the Government's decision to terminate the migration and economic development partnership with Rwanda and its commitment to acting compatibly with international law.

**Recommendation 2: Sections 22 – 29 of the IMA should be repealed** to bring the UK's legal framework back in line with Article 4 ECHR and Articles 10 (2), 12 (1) and (2), 13, 14, 15 and 16 ECAT.

**Recommendation 3: Section 63 of the NABA should be amended** to bring the law and policy on public order disqualification in line with Article 4 ECHR and Articles 10 (2), 12 (1) and (2), 13, 14, 15 and 16 ECAT. See Annex for a recommendation of the changes in the wording of Section 63.

Overall, these amendments must reflect the position that disqualification on public order grounds is a narrow exception to the rule contained in international law binding on the UK that all victims or suspected victims of modern slavery must be identified and protected and that the burden is on the public authorities to establish that a suspected or identified victim is a threat to public order or has illegitimately claimed victim status in every individual case.

To achieve that, the following should be implemented:

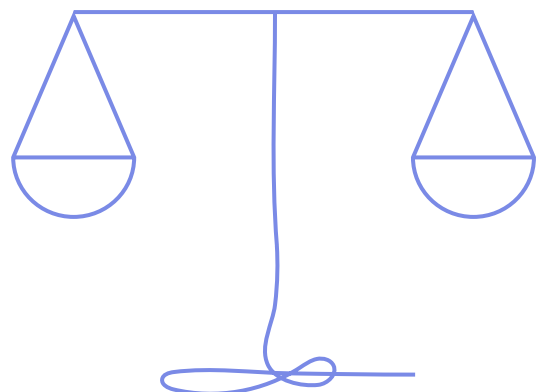
- Remove the *presumption* that public order disqualification applies when a person belongs to a category listed in Section 63 (3) of the NABA – the burden of proof should be on public authorities to *demonstrate* the need for disqualification in each individual case.
- A final decision on victim status should be made before public order disqualification could be applied, unless a decision-maker has *established* that a person has claimed victim status illegitimately.
- The relevant decision-maker should note whether the application of the non-punishment provision/modern slavery statutory defence has been considered before making a public order disqualification decision.

**Recommendation 4: Sections 58 and 59 of NABA should be repealed.** If brought into force, Section 59 should be amended to change “must” to “may”, converting a duty on the competent authority into a power to ‘take account, as damaging the person’s credibility, of the late provision of the relevant status information, unless there are good reasons why the information was provided late.’ See Annex for a recommendation of the changes in the wording of this provision.

**Recommendation 5: The Modern Slavery Statutory Guidance should be amended to give effect to the UK's obligations under the ECAT, ECHR, and other binding rules of international law.** In particular, the Guidance should be amended in the following way:

- **Remove paragraph 14.242** of the Guidance which precludes an individual who is deemed to be a threat to public order from being conclusively identified as a victim of modern slavery.
- **In the section on 'Evidence gathering and decision-making process', after paragraph 14.253, add a new paragraph** to instruct a decision-maker to note whether the application of the non-punishment provision/modern slavery statutory defence has been considered when making a public order disqualification decision.
- **Amend paragraphs 14.266 and 14. 267** to remove a presumption in favour of disqualification of those who meet the criteria from Section 62 (3) (b) and (f) of the NABA and require instead that a decision-maker justifies the decision to apply public order disqualification in each individual case.
- **Remove paragraph 14.245** that regulates public order disqualification of British nationals.
- **Amend paragraph 14.276** to require decision-makers to conduct the risk of re-trafficking assessment before applying public order disqualification regardless of whether such risk arises in the UK or the country where they may be removed/returned to.

**Recommendation 6: The Home Office should collect and publish data on the risk of re-trafficking assessments undertaken as part of making a decision on public order disqualification (including the number of assessments undertaken, disaggregated by age, gender, nationality, type of exploitation) as well as the outcome of those assessments.**



## Proposed Amendments to the Legal and Policy Framework to make them human rights compatible

This Annex translates the recommendations made in the body of the Policy Brief into proposed amendments to the relevant provisions in statute and statutory guidance, shown by track changes to the relevant text.

### Section 63 of the NABA

#### 63 Identified potential victims etc: disqualification from protection

1. A competent authority may determine that subsection (2) is to apply to a person in relation to whom a positive reasonable grounds decision has been made if the authority ~~is satisfied~~ establishes that the person—
  - a. is a threat to public order, or
  - b. has claimed to be a victim of slavery or human trafficking in bad faith.
2. Where this subsection applies to a person the following cease to apply—
  - a. any prohibition on removing the person from, or requiring them to leave, the United Kingdom arising under section 61 or 62, and
  - b. any requirement under section 65 to grant the person limited leave to remain in the United Kingdom.
3. For the purposes of this section, the circumstances in which a person ~~is may be~~ a threat to public order include, in particular, where—
  - a. the person has been convicted of a terrorist offence;
  - b. the person has been convicted of any other offence listed in Schedule 4 to the Modern Slavery Act 2015 anywhere in the United Kingdom, or of a corresponding offence;
  - c. the person is subject to a TPIM notice (within the meaning given by section 2 of the Terrorism Prevention and Investigation Measures Act 2011);
  - d. ~~there are reasonable grounds to suspect that~~ the person is or has been involved in terrorism-related activity within the meaning given by section 4 of that Act (whether or not the terrorism-related activity is attributable to the person being, or having been, a victim of slavery or human trafficking);  
[F1(da) the person is subject to a notice under Part 2 of the National Security Act 2023;

- (db) ~~there are reasonable grounds to suspect that~~ the person is or has been involved in foreign power threat activity within the meaning given by section 33 of that Act (whether or not the foreign power threat activity is attributable to the person being, or having been, a victim of slavery or human trafficking);]
- e. the person is subject to a temporary exclusion order imposed under section 2 of the Counter-Terrorism and Security Act 2015;
  - f. the person is a foreign criminal within the meaning given by section 32(1) of the UK Borders Act 2007 (automatic deportation for foreign criminals);
  - g. the Secretary of State has made an order in relation to the person under section 40(2) of the British Nationality Act 1981 (order depriving person of citizenship status where to do so is conducive to the public good);
  - h. the Refugee Convention does not apply to the person by virtue of Article 1(F) of that Convention (serious criminals etc);the person otherwise poses a risk to the national security of the United Kingdom.

## Section 59 of NABA (not yet commenced)

### 59 Late compliance with slavery or trafficking information notice: damage to credibility

1. This section applies where—
  - a. a person aged 18 or over has been served with a slavery or trafficking information notice under section 58,
  - b. the person provided relevant status information late, and
  - c. a competent authority is making a reasonable grounds decision or a conclusive grounds decision in relation to the person.
2. In determining whether to believe a statement made by or on behalf of the person, the competent authority ~~must~~ ~~may~~ take account, as damaging the person's credibility, of the late provision of the relevant status information, unless there are good reasons why the information was provided late.
3. For the purposes of this section, relevant status information is provided "late" by the person if it is provided on or after the date specified in the slavery or trafficking information notice.
4. In this section, "relevant status information" has the same meaning as in section 58 (see subsection (3) of that section).

## Modern Slavery: Statutory Guidance for England and Wales (under section 49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland (version 3.120, 316 January May 20245)

### Paragraph 14.242

14.242 Where the Public Order Disqualification applies, the following cease to apply:

- any prohibition on modern slavery grounds on removing the person from the UK or requiring them to leave; and
- any requirement on modern slavery grounds to consider the person for Temporary Permission to Stay as a Victim of Human Trafficking or Slavery (VTS) in the United Kingdom; and
- access to a recovery period or modern slavery specific assistance and support; and

~~Where a Conclusive Grounds decision has not yet been made, any obligation to make a Conclusive Grounds decision.~~

### Paragraph 14.245

~~14.245 Disqualification requests can be raised by Competent Authorities where:~~

- ~~a British citizen is in detention or on licence and has been referred into the NRM; or~~
- ~~a British citizen has presented with challenging behaviours in modern slavery support, and it has been identified by the competent authority that the individual meets the public order definition under S63(3)(b).~~

### Paragraph 14.253A

In the section on 'Evidence gathering and decision-making process', after paragraph 14.253, add a new paragraph 14.253A:

A decision-maker should note whether the application of the non-punishment provision (modern slavery statutory defence) has been considered when making a public order disqualification decision.

### Paragraph 14.266

14.266. The decisions must be timely. It is important that decisions on public order are made promptly for protection of the public, clarity for the individual, and those providing support. This means that decisions must be made on the information available in the decision-making window, as set out in the section 'Public Order Decision Making Framework' only. While t~~There is no expectation for decision makers to undertake extensive investigation, they must to support their decision provide reasons for their decision that a person meets the conditions for disqualification from protection on public order grounds.~~

### Paragraph 14.267

~~14.267. The starting point for the Public Order Disqualification decision, using the framework is that an individual who meets the public order definition is a threat to public order. When making the Public Order Disqualification decision, the decision maker must establish on the balance of probabilities whether an individual who meets the public order definition represents a threat to public order. then consider, on the evidence available, whether the individual's need for modern slavery specific protections outweighs the threat to public order posed by the individual. There is a high bar for the need for modern slavery protections or support to outweigh the threat to public order, with more weight given to the public interest in disqualification.~~

### Paragraph 14.276

**14.276. If decision makers decide that the Public Order Disqualification should be applied to an individual, then Competent Authorities must consider the following, using the information available at the time the disqualification is being applied. This information shall include any information already used by decision makers in making the decision to apply the Public Order Disqualification in accordance with the framework.**

- **Is there a credible suspicion of a real and immediate risk that the individual will be re-trafficked ~~in or from the UK?~~**
  - When considering this element of the assessment, decision makers should make a determination about how real and immediate a credible risk is for the case in question. The expectation is that an immediate risk would be one present at the time the assessment is being made by the Competent Authorities and could reasonably be expected to be continuing. A real risk would be one that is more than remote or fanciful.
  - Factors to consider when determining whether a real and immediate risk would be present could include the recentness of the exploitation, with more recent exploitation indicating a more real and immediate risk. Other factors could include where the individual is known to still be in contact with those said to be responsible for exploiting them, or when the known address of the potential victim is the same as that from which they were said to be exploited. Conversely, if an individual's circumstances have not changed since a historic incident of trafficking and no further exploitation has taken place, this could be considered as evidence that there is not a real and immediate risk.

- In line with other decisions made in accordance with this guidance, decision makers are entitled to consider the credibility of an account before them. As such, decision makers should cross reference 'Assessing Credibility and other evidence' when deciding the Public Order Disqualification. Decision makers will consider all information that is available to them in its entirety when making a decision as to whether a real and immediate risk of trafficking or re-trafficking exists.
- **Can the decision to disqualify be issued without putting that individual at a real and immediate risk of re-trafficking in or from the UK?**
  - ~~Decision makers are not expected to make an assessment of re-trafficking risk outside of the UK.~~ When making the assessment of re trafficking risk, decision makers should take into account:
    - The immediate circumstances the individual would find themselves in upon disqualification, evident in the information provided and available to decision makers. This would include, for example, whether the disqualification would result in a change of accommodation;
    - Whether the individual is known to still be in contact with their exploiters;
    - Whether the circumstances in which they were exploited no longer apply;
    - Whether, at the point of the disqualification, that person would be held in secure accommodation, for example prison or immigration detention (note ~~if the individual is held in secure accommodation, it will normally be assumed there are no immediate re-trafficking risks present and no further mitigation necessary.~~ However, where release from secure accommodation is imminent, this should also be taken into account);
    - Whether their exploiters are outside of the UK or otherwise known to be geographically distant from the individual in question;
    - Whether the exploitation was historic or recent.



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The Modern Slavery and Human Rights Policy and Evidence Centre (Modern Slavery and Human Rights PEC) works to enhance understanding of modern slavery and transform the effectiveness of law and policies designed to address it. The Centre funds and co-creates high-quality research with a focus on policy impact, and brings together academics, policymakers, businesses, civil society, survivors and the public on a scale not seen before in the UK to collaborate on solving this global challenge.

The Centre is hosted by the Humanities Division at the University of Oxford. The Centre is a consortium of three universities consisting of the Wilberforce Institute at the University of Hull, the University of Liverpool, and the Bonavero Institute of Human Rights at the University of Oxford.



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