

Explainer: The Illegal Migration Bill modern slavery provisions

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Context

On 7 March 2023, the UK Government introduced the Illegal Migration Bill with the stated purpose to “prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes.” The Bill introduces provisions that would amend immigration, asylum, and modern slavery legislation.

This Explainer aims to answer common questions about the modern slavery provisions in the Bill. 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 Bill’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.

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This Explainer will be updated as the Bill progresses through Parliament and new evidence becomes available. The Clauses referenced in this version are numbered in accordance with the House of Lords Bill 133 version of the Illegal Migration Bill, as brought from the Commons on 27 April 2023.¹

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.

¹ HM Government (2023) [‘Illegal Migration Bill’](#)

Summary

- The Illegal Migration Bill, if enacted, would have 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 of people who are recognised to be potential victims of modern slavery.
- Thousands of potential victims of modern slavery may be denied protections by the modern slavery provisions in the Bill. This will include people for whom their entry to the UK is an integral element of the criminal offence of trafficking committed against them (see paragraphs 5-6).
- 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 3-4; 7-15).
- The modern slavery measures in the Bill 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 16-20).
- Under the modern slavery provisions, potential victims may be denied protection and support and removed from the UK before the victim identification process has been completed, impacting on their safety from traffickers and their recovery from exploitation. While there are exceptions for those supporting investigations and prosecutions, a Government amendment to the Bill (made in April 2023) 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 paragraphs 21-23).
- 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 paragraphs 24-25).

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The Modern Slavery Clauses

What are the modern slavery provisions in the new Bill?

1. **The modern slavery provisions at Clauses 21-28 automatically disapply legislative protections for potential victims of modern slavery who the Government deems as having arrived in the UK irregularly.**² If enacted, the provisions would apply to people for whom the Home Office has determined that there are reasonable grounds to believe they are a victim of modern slavery,³ who arrived in the UK without valid authorisation (such as a visa) after 7 March 2023, 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. Clause 28 also disapplies these protections for any potential victim of modern slavery who entered the UK as an 'excluded person',⁴ 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. A Government amendment (115) to this Clause, incorporated into the House of Lords Bill, further disapplies these protections 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. The provisions of the Illegal Migration Bill do this by extending the already-existing public order disqualification from the Nationality and Borders Act to people who meet these criteria, 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.⁵
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,
 - d. a conclusive grounds decision (the final decision confirming whether or not they will be recognised as a victim) will not be made.⁶

² Other clauses, if the Bill is enacted, 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 Bill, below.

³ 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.

⁴ An 'excluded person' refers to the meaning specified under Section 8B of the Immigration Act 1971.

⁵ Government amendments 95-97 to Clause 21 clarifies 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 (see paragraph 22c for discussion).

⁶ 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.166

For how long will the Bill's modern slavery provisions apply?

3. **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,⁷ 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.”⁸ Without parliamentary or Government intervention, these measures will automatically expire two years after the Bill is enacted, in accordance with Clause 25.⁹
4. **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.**¹⁰ 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 would be affected by the modern slavery provisions in the Bill, if enacted?

5. **The potential victims of modern slavery who would not receive protection under this Bill 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.¹¹ The definition of trafficking makes it clear that such an offence involves a range of actions that might be committed by different

⁷ HM Government (2023) [‘Illegal Migration Bill: European Convention on Human Rights Memorandum’](#)

⁸ HM Government (2023) [‘Illegal Migration Bill Explanatory Notes’](#)

⁹ Clause 25(1) of the Bill.

¹⁰ HM Government (2023) [‘Illegal Migration Bill Explanatory Notes’](#)

¹¹ 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).

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 migration,¹² or human smuggling,¹³ but where an individual is in an exploitative situation such as being forced to work off their debts.¹⁴

6. **Due to limited published data, it is challenging to put a precise figure on how many potential victims of modern slavery would be deprived of protections by these provisions in the Bill, but potentially thousands of people could be affected.** In 2022, 12,350 foreign nationals were referred to the National Referral Mechanism (NRM),¹⁵ (73% of all referrals) of whom 8,016 (65%) were adults.¹⁶ 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.¹⁷ 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).¹⁸ 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.¹⁹ These cases are

¹² **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.

¹³ Human trafficking is distinct from **human smuggling** which occurs when a person seeks help to be moved across a border illegally. Smuggling is a voluntary, transactional arrangement which ends once the person enters the country.

¹⁴ 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

¹⁵ 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.

¹⁶ 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.

¹⁷ 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](#)'

¹⁸ 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).

¹⁹ 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](#)'

recorded by public authorities as Duty to Notify Referrals (DtN),²⁰ and foreign nationals represented 91% of these referrals in 2022 (4,152).²¹ These figures do not include the number of people who are victims of modern slavery but are not formally identified or supported through the NRM.²² The UK Government has not published any assessment of the number of people it expects will be deterred from entering the UK as a result of the Bill, 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?

7. **The UK Government has claimed that people are 'abusing' the modern slavery system to prevent their removal from the UK.**²³ 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" as Albanians are from a "safe European country" and because some people referred into the NRM were referred from detention and slated for removal.²⁴ Material in the Bill's Explanatory Notes, such as references to using the public order disqualification to remove incentives for irregular entry, suggest that the UK Government perceives the UK's modern slavery protections as an incentive to enter the UK unlawfully in relation to either or both the support and protection against removal to which potential victims are entitled.
8. **The UK Government has stated in a 'factsheet' that laws need reforming because "the modern slavery system is not delivering what was intended when the UK introduced its world-leading Modern Slavery Act" and that the system "needs reform to allow the UK to focus its efforts and resources on genuine victims".**²⁵ The 'factsheet' does not specify exactly how the system is not delivering on its original intentions. It states that the original impact assessment for the Modern Slavery Act 2015 anticipated that around 3,500 victims of modern slavery would be referred into the NRM annually, and that the increased number of referrals (625% increase between 2014 and 2022) indicates the system is in need of reform. However, the impact assessment does not appear to estimate how many victims would be referred to the NRM annually.²⁶ It includes various estimates of prevalence of modern slavery in the UK, and 3,500 appears to be the mid-point between estimates quoted. The first year that NRM referrals surpassed 3,500 was 2016 and the average rate of increase of NRM referrals year-on-year has remained

²⁰ 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.

²¹ 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](#)'

²² 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](#)'

²³ 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; UK Home Office (2023) '[Illegal Migration Bill: overarching factsheet](#)' 28 April 2023; and UK Home Office (2023) '[Illegal Migration Bill: Modern slavery factsheet](#)' 28 April 2023

²⁴ Braverman, S. (2023) '[Illegal Migration Bill](#)' HC Deb. Vol.729 col.579.

²⁵ UK Home Office (2023) '[Illegal Migration Bill: Modern slavery factsheet](#)' 28 April 2023

²⁶ UK Home Office (2014) '[Impact Assessment \(IA\): Modern Slavery Bill](#)'

similar since then (39%, except in 2020-21 due to the Covid-19 pandemic).²⁷ Previous UK Government publications state that increasing referral numbers are “likely due to greater awareness of the NRM process, though higher incidence of modern slavery cannot be ruled out”.²⁸ The same section of the ‘factsheet’ also states the increased proportion of NRM referrals made for Albanian nationals (27% of 2022 referrals) and that Albania “is a signatory of the same anti-trafficking treaty as the UK (ECAT)”.²⁹ Under ECAT and ECHR, the state has a positive 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.

9. **The UK Government states that the Bill’s purpose is, in part, to avoid potential future abuse of the modern slavery system as a means to frustrate removal from the UK.**³⁰ However, as is demonstrated in paragraphs 10-15, there is no published evidence that there is widespread abuse of the ‘modern slavery system’, or the mechanism used to identify, protect, and support victims of modern slavery, to frustrate removals from the UK.
10. **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).³¹ 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 2022.³² 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).³³ In the 4th 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”.³⁴
11. **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 Parliamentary debates on the Bill, the Home Secretary and Minister for Immigration

²⁷ 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’](#)

²⁸ See, e.g., HM Government (2020) [‘2020 UK Annual Report on Modern Slavery’](#)

²⁹ UK Home Office (2023) [‘Illegal Migration Bill: Modern slavery factsheet’](#) 28 April 2023

³⁰ Ibid.

³¹ 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’](#)

³² UK Home Office (2023) [‘Irregular migration to the UK, year ending December 2022’](#)

³³ UK Home Office (2023) [‘Annex: analysis of modern slavery NRM referrals from asylum, small boats and detention cohorts’](#)

³⁴ Ibid.

have 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).³⁵ 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 grounds decision.³⁶ 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.”

12. 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.³⁷ 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.³⁸ 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.”³⁹ 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.⁴⁰ It is important to note that people cannot “put forward a modern slavery claim” – they are

³⁵ 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](#)’

³⁶ UK Home Office (2023) ‘[Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022](#)’

³⁷ 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 Bill. See: The Modern Slavery PEC (2021) ‘[Written Evidence from Modern Slavery Policy and Evidence Centre NBB0049](#)’

³⁸ The Independent Chief Inspector of Borders and Immigration (2022) ‘[Third annual inspection of ‘Adults at risk in immigration detention’](#)’

³⁹ Braverman, S. (2023) ‘[Illegal Migration Bill](#)’ HC Deb. Vol.729 col.579.

⁴⁰ UK Home Office (2023) ‘[Modern slavery referrals for people detained for return after arriving in the UK on small boats](#)’

referred by a first responder which, in immigration detention, is usually Home Office Immigration Enforcement.⁴¹

13. **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 countries.⁴² Further research shows that potential victims of modern slavery are often unaware of how the NRM system operates, nor of their entitlements.⁴³ 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.⁴⁴ 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.⁴⁵
14. **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.
15. **Data published on 4th May 2023 indicates that during Q1 2023 (Jan-March) the proportion of positive reasonable grounds decisions for all NRM referrals was 58%; the Modern Slavery PEC will publish a more detailed analysis of this data in due course.** The Home Office states this decision rate is likely to be due to changes to the reasonable grounds threshold introduced in January 2023.⁴⁶ Statutory Guidance issued on 30th January 2023 states that the reasonable grounds test comprises “reasonable grounds to believe, based on objective factors but falling short of conclusive proof, that a person is a victim”.⁴⁷ 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.”⁴⁸ For instance, an individual may

⁴¹ UK Home Office (2023) [‘Modern slavery referrals for people detained for return after arriving in the UK on small boats’](#)

⁴² UK Home Office Analysis and Insight (2020) [‘Sovereign Borders: International Asylum Comparisons Report’](#)

⁴³ See, e.g., Anti Trafficking and Labour Exploitation Unit (ATLEU) (2022) [‘It has destroyed me’: A legal advice system on the brink’](#)

⁴⁴ 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’](#)

⁴⁵ 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’](#)

⁴⁶ UK Home Office (2023) [‘Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2023 – January to March’](#)

⁴⁷ 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’](#)

⁴⁸ Braverman, S. (2023) [‘27 March 2023 Letter to Dame Diana Johnson MP’](#)

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.

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

- 16. Clauses 21-28 of the Bill, in their current form, 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).** Article 4 ECHR obligations draw 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, Clauses 21-28 of the Bill would, if enacted in their current form, contravene both the UK's domestic human rights law and its international obligations under both the ECHR and ECAT.
- 17. 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' (a term used in the Modern Slavery Act 2015 to encompass human trafficking, slavery, servitude and forced labour): 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.
- 18. 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. Article 4 ECHR 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.⁴⁹

19. **Clauses 21-28 of the Bill 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 Clause 21, 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 would violate an express obligation to identify every victim of modern slavery, before their return to the country of origin could be considered. This obligation to identify victims applies regardless of whether they have been convicted of criminal offences. Removal of potential victims would 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 would be difficult to gather relevant evidence to prove the offence of modern slavery.
20. **The Bill 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 would 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.

What are the potential harms of the Bill?

Direct potential harms of modern slavery measures

21. **Under the Modern Slavery provisions in the Bill (Clause 21), potential victims may be removed 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 Bill 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.⁵⁰ 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. Additionally, this would be incompatible with the UK's obligations under both Article 4 ECHR and Article 10 ECAT (see paragraphs 16-20).

⁴⁹ The Modern Slavery PEC (2023) '[Written Evidence by Modern Slavery and Human Rights Policy and Evidence Centre \(IMB0011\)](#)'

⁵⁰ 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 14.236

22. Under the Modern Slavery provisions in the Bill (Clauses 22-24), potential victims may be denied protection and support, 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 such support, the UK will be in breach of its international obligations to protect potential victims and to investigate and prosecute the perpetrators (see paragraphs 16-20). Consensus-driven participatory research with adult survivors of modern slavery identified long-term and consistent support as a key outcome for recovery.⁵¹ Research also indicates a lack of rehabilitation and effective long-term support among the factors that may facilitate re-trafficking.⁵²

- 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 decision as intended by ECAT 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.⁵³ The CPS recognises challenges in supporting victims in modern slavery cases and that 'many victims take significant risks in giving evidence'.⁵⁴ 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.⁵⁵ Furthermore, the police describes modern slavery investigations as 'typically complex',⁵⁶ and it may well be the case that by the time a decision to prosecute is taken, under the proposed measures an individual may have been already disqualified on public order grounds owing to the entry method to the UK and detained potentially and deported, directly impacting on their willingness and ability to cooperate. For

⁵¹ 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'](#)

⁵² The University of Nottingham and the Independent Anti-Slavery Commissioner (2021) ['Re-trafficking: The current state of play'](#)

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

⁵⁴ Crown Prosecution Service (updated 2022) ['Modern Slavery, Human Trafficking and Smuggling Guidance'](#)

⁵⁵ Her Majesty's 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'](#)

⁵⁶ Modern Slavery and Organised Immigration Crime Programme (2022) ['Annual Report 2021-22'](#)

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.⁵⁷ 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.⁵⁸

- c. Government amendments 95-97 to Clause 21 clarify 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. As noted by GRETA, 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”.⁵⁹ 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.⁶⁰ 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.

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

23. 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 are enacted, the announcement of the Bill may impact on how foreign nationals currently in a situation of exploitation and without regular 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,⁶¹ and some behaviours might be difficult for authorities or law-enforcement that are not adequately trained to understand and to correctly identify victims.⁶² 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

⁵⁷ Dr Samantha Currie and Dr Matthew 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

⁵⁸ College of Policing (updated 2022) [‘Modern slavery investigation’](#)

⁵⁹ 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’](#)

⁶⁰ The University of Nottingham and the Independent Anti-Slavery Commissioner (2021) [‘Re-trafficking: The current state of play’](#)

⁶¹ 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.’](#)

⁶² 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’](#)

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.⁶³ 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".⁶⁴ 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'.⁶⁵ 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'.⁶⁶

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

24. **The Modern Slavery PEC has yet to conduct a comprehensive analysis of the measures of the Bill that are not specific to modern slavery (clauses other than 21-28).** We will therefore expand on the following section as appropriate.
25. **The broader measures in the Bill may, if enacted, 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 Bill would have their claims to protection deemed inadmissible under Clause 4**, 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 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,⁶⁷ including by increasing known drivers of exploitation such as homelessness and poverty.
 - b. **The Bill may increase people's susceptibility to exploitation by removing their ability to regularise their status in the UK under Clauses**

⁶³ Pedraza, F. I., and L. Zhu (2015) '[The "Chilling Effect" of America's New Immigration Enforcement Regime](#)'

⁶⁴ UK Home Office (2021) '[Review of data sharing: migrant victims and witnesses of crime](#)'

⁶⁵ UK Home Office (2021) '[New Plan for Immigration: Policy Statement](#)'

⁶⁶ Ibid.

⁶⁷ 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](#)'

29-36, 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 fosters the conditions that enable exploitation and re-trafficking to occur,⁶⁸ in the UK⁶⁹ and in countries with similar policies.⁷⁰ 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.⁷¹ 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.⁷² As such, they are particularly vulnerable to exploitation, including modern slavery.⁷³

- c. **Potential victims fearing re-trafficking in their home country may be removed there (Clauses 2, 4, 5, and 57).** Nationals from countries designated in Clause 57⁷⁴ as 'safe', such as Albania, would have their claim to refugee protection deemed inadmissible, including those with positive reasonable grounds decisions. Clause 4 provides that the Secretary of State would have 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 would be removed, and their challenge against removal would 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 may be returned to their country of origin

⁶⁸ The University of Nottingham and the Independent Anti-Slavery Commissioner (2021) '[Re-trafficking: The current state of play](#)'

⁶⁹ 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](#)'

⁷⁰ 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](#)'

⁷¹ Waite, L. (2017) '[Asylum Seekers and the Labour Market: Spaces of Discomfort and Hostility](#)'

⁷² 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](#)'

⁷³ The Passage (2017) '[Understanding and Responding to Modern Slavery within the Homelessness Sector](#)'

⁷⁴ In the Bill as introduced, this was Clause 50 (Inadmissibility of certain asylum and human rights claims).

where the exploitation occurred, if that country is listed in Clause 57 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.⁷⁵ In line with current legislation,⁷⁶ Clause 5 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 claim⁷⁷ and (2) the Secretary of State considers that there are 'exceptional circumstances' preventing the individual's removal to their home country.

- d. **People may be removed to third countries with which they have no connection (Clauses 2 and 5).** While the ability to remove people to third countries is already part of primary legislation, the Bill 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,⁷⁸ the research available demonstrates that, upon removal, they often experience poverty, homelessness, and isolation due to a lack of social ties or support.⁷⁹ 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.⁸⁰ 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,⁸¹ – factors associated with third country removal. While Clauses 4, 7, and 37-41⁸² in the Bill provides 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 29).
- e. **The Bill, under Clauses 10-12,⁸³ would 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

⁷⁵ [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 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."

⁷⁶ See Section 80A of The Nationality and Borders Act 2022: [The Nationality and Borders Act 2022, c. 36](#).

⁷⁷ 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).

⁷⁸ Turnbull, S. (2017) ['Starting Again: Life After Deportation from the UK'](#)

⁷⁹ Ibid.;

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

⁸⁰ Khosravi, S. (2016) 'Deportation as a Way of Life for Young Afghan Men' In: *Detaining the Immigrant Other*. Oxford University Press.

⁸¹ The University of Nottingham and the Independent Anti-Slavery Commissioner (2021) ['Re-trafficking: The current state of play'](#)

⁸² The House of Lords Bill includes a new Clause 38 related to serious harm suspensive claims. In the Bill as introduced, these were therefore Clauses 37-40.

⁸³ In the Bill as introduced, these were Clauses 11-13.

demonstrates that detention produces extreme uncertainty, trauma, and terror and has long-term psychological repercussions.⁸⁴ 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.⁸⁵ In addition, for people with lived experience of modern slavery the prospect and experience of immigration detention is an expected deterrent to cooperating with the authorities in criminal proceedings against offenders (see paragraph 23 above). While a Home Office 'factsheet' states that the 'Adults at Risk in Immigration Detention' policy will continue to apply,⁸⁶ 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.

- 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.** Clause 8⁸⁷ makes people whose claims are rendered inadmissible by the Bill eligible to receive Section 4 support.⁸⁸ 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 there are reports that the Home Office is seeking to secure cruise liners, ferries, and barges to house asylum seekers.⁸⁹ 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.⁹⁰ Further, hotels housing people

⁸⁴ 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.

⁸⁵ UK Home Office (2023) '[Adults at risk in immigration detention](#)'

⁸⁶ UK Home Office (2023) '[Illegal Migration Bill: detention and bail factsheet](#)' 28 April 2023

⁸⁷ In the Bill as introduced, this was Clause 9.

⁸⁸ 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](#)'.

⁸⁹ The Guardian (2023) '[Home Office to acquire fleet of ships to house asylum seekers](#)' 1 May 2023.

⁹⁰ ICIBI (2021) '[An inspection of contingency asylum accommodation: HMIP report on Penally Camp and Napier Barracks](#)';

seeking asylum have been targeted by far-right extremist groups, leading to violent assaults against those housed,⁹¹ and hotels have been targeted by traffickers targeting vulnerable unaccompanied children.⁹²

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

26. **How the exception for those co-operating with law enforcement investigations will operate in practice.** 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.
27. **How the disapplication of support owing to the public order disqualification will apply to children.** Clause 21 will deny potential victims disqualified on public order grounds a recovery and reflection period, thereby excluding them from support. It is unclear whether such a disqualification will prevent children in England and Wales accessing an Independent Child Trafficking Guardian. Further, there is uncertainty around how the public order disqualification will be applied to unaccompanied children.
28. **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".⁹³ 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.
29. **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 returns notices to a 'safe' third country, Clause 37 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. A Government amendment, now incorporated as Clause 38 into the Bill, further defines this as an "imminent and foreseeable" risk of serious and irreversible harm.

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](#)'

⁹¹ BBC (2023) '[Staff and asylum seekers attacked at Knowsley hotel, police say](#)' 16 March 2023.

⁹² The Guardian (2023) '[Revealed: scores of child asylum seekers kidnapped from Home Office hotel](#)' 21 January 2023.

⁹³ HM Government (2023) '[Illegal Migration Bill: European Convention on Human Rights Memorandum](#)'

However, it is not clear what would constitute “compelling evidence” (as described in Clause 41) 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 Clause 54 ensures that individuals served with a removal notice have access to legal advice, a serious harm suspensive claim must be made within 7 days of receiving the removal notice, according to Clause 41. A Government amendment to Clause 7 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. There are reports of concerns around a shortfall of accessible, high-quality legal advice in and outside of immigration detention⁹⁴ 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.

30. **The government is yet to publish any impact assessment or tax and public expenditure implications.** We will expand on this section in due course. Given the incompatibility of the proposed measures with international law there are likely to be lengthy legal challenges and any impact assessment should consider whether the proposed measures are likely to increase the already considerable pressure on the competent authority casework systems.

⁹⁴ See, e.g., Bail for Immigration Detainees (2022) [‘Autumn Legal Advice Survey’](#)

Appendix: The existing modern slavery support system

- 1. Under ECAT⁹⁵ and ECHR Article 4⁹⁶ 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.⁹⁷ 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,⁹⁸ 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 2022,⁹⁹ 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, 2022.¹⁰⁰ The average (median) time taken from referral to conclusive grounds decisions made in January to March 2023 across the competent authorities was 566 days.¹⁰¹
- 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

⁹⁵ 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)

⁹⁶ ECHR (1950) [European Convention on Human Rights](#)

⁹⁷ UK Home Office (2022) [‘National referral mechanism guidance: adult \(England and Wales\)’](#)

⁹⁸ 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](#).

⁹⁹ UK Home Office (2023) [‘Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022’](#) section 3.2

¹⁰⁰ International Organization for Migration (2022) [‘UK National Referral Mechanism Data Analysis Briefing #4’](#)

¹⁰¹ UK Home Office (2023) [‘Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2023 – January to March’](#)

grounds decision). Circumstances which are indicative of a ‘threat to public order’ are broadly defined in Section 63 of the Nationality and Borders Act¹⁰² and include, for instance, where the person referred has been sentenced to at least twelve months’ imprisonment, or where they pose a risk to national security.¹⁰³

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.¹⁰⁴

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.¹⁰⁵ 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.¹⁰⁶ 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%).¹⁰⁷

¹⁰² [The Nationality and Borders Act 2022, c. 36.](#)

¹⁰³ 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?’](#)

¹⁰⁴ 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.166

¹⁰⁵ *Ibid.*, pg. 176

¹⁰⁶ UK Home Office (2023) [‘Immigration Rules Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery’](#)

¹⁰⁷ 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.



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