

ACCESS TO WORK FOR SURVIVORS OF SLAVERY TO ENABLE INDEPENDENCE AND SUSTAINABLE FREEDOM

MARCH 2021

EMPLOYEES

736



ACKNOWLEDGEMENTS

This briefing has been produced by a coalition of organisations who either provide direct services and advocacy to survivors or work on relevant policy. We share a commitment to ensure that survivors are appropriately supported and empowered to move on from exploitation and rebuild their lives.



"Before I was trafficked in the UK I had 15 years' experience as a healthcare assistant. Working has always given me a sense of purpose and identity. Since entering the NRM and becoming an asylum seeker, I am unable to do what I love doing and I cannot become independent. This is detrimental to my recovery from trauma and feels like another freedom has been removed, reminding me of everything else I have lost. Life feels meaningless and counselling does not replace work. Every day I lose motivation and my skills get rusty – valuable skills that are needed during a pandemic. I could be working in a vaccination centre tomorrow if given the opportunity. Many survivors have skills that would benefit this country but because we have no right to work everyone in society loses out."

– JARRAI

INTRODUCTION

To address slavery, the UK needs to ensure that its systems provide meaningful options which assist survivors in their recovery. This includes providing options to build independence and sustainable freedom through work, as well as through education, counselling and access to legal justice. This is a simple, achievable ask, which would do much to facilitate survivors to move on from exploitation and to rebuild their lives.

In the UK, support for people who have been trafficked or enslaved is currently provided through the National Referral Mechanism (NRM), the UK's system for identifying victims of trafficking and slavery. While support provided through the NRM includes a support worker, material assistance and access to legal entitlements,¹ there is little information available as to what happens to people once they leave this support following formal identification as a victim. There is significant evidence that without a structure which enables independence and sustainable freedom, survivors of slavery go through the NRM yet remain vulnerable to exploitation.²

NRM decision making can be slow. In 2017 the National Audit Office found that the average time taken to make a final Conclusive Grounds decision within the NRM was 132 days.³ A December 2020 High Court judgment states that in 2017 the average number of days to a Conclusive Grounds decision was 356, rising to 462 in 2019 with a backlog of 9,000 peoples' cases.⁴ Providing access to work during this period would help ensure that this time spent in the NRM is one of rebuilding lives and moving on from exploitation, rather than being a period of uncertainty and limbo, without the autonomy and the options so many of us take for granted.

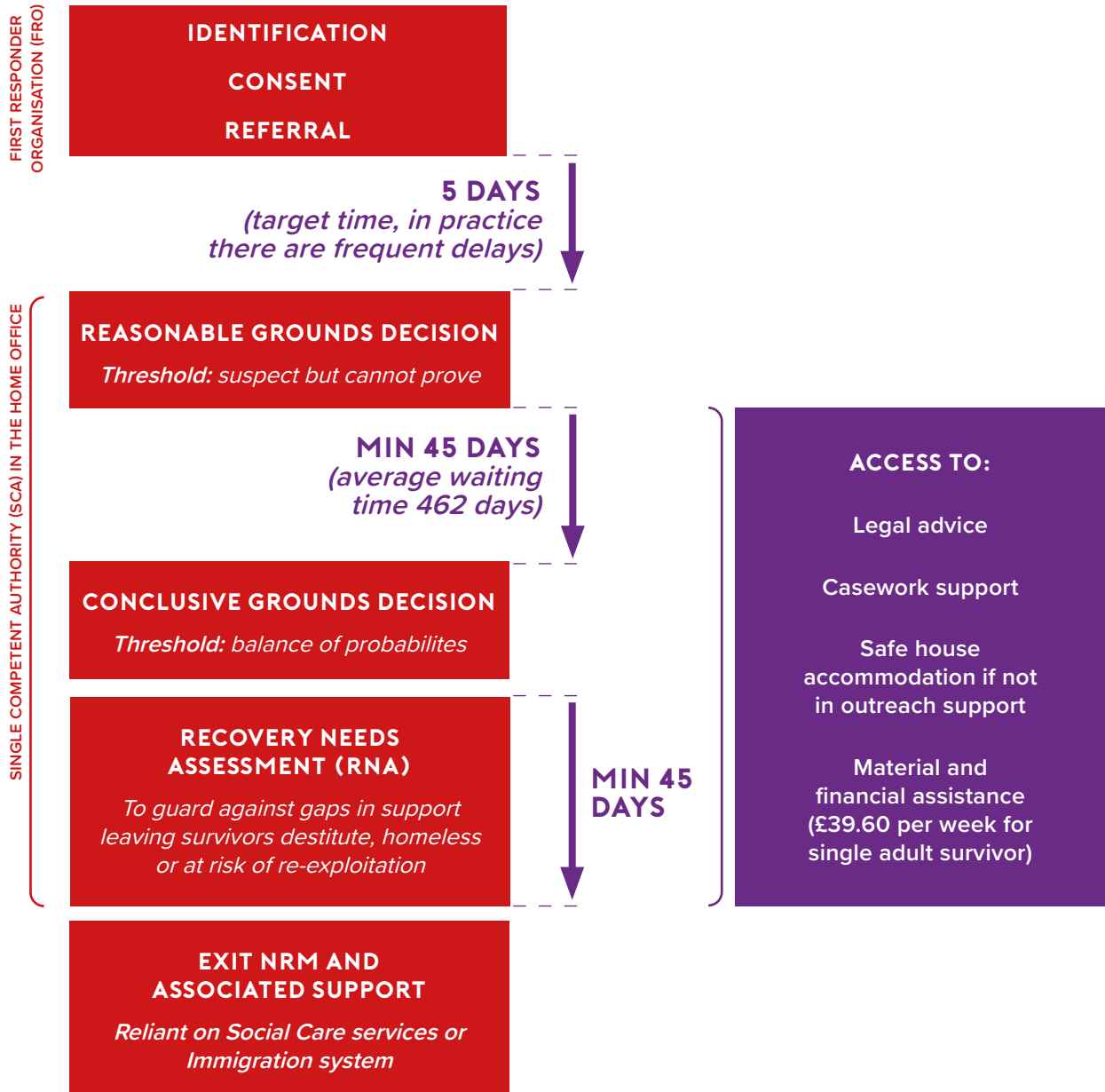
¹ For more information, see 'Slavery and Trafficking Survivor Care Standards (2018) Human Trafficking Foundation (HTF)

² See for example: 'A game of chance? Long term support for survivors of modern slavery' (2018) Dr Carole Murphy; 'Day 46, is there life after the safe house for survivors of modern slavery (2016) HTF; 'Life beyond the Safe House for survivors of modern slavery in London' (2015)

³ 'Reducing Modern Slavery' (2017) National Audit Office, <https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>, page 6

⁴ EOG v Secretary of State for the Home Department [2020] EWHC 3310 (Admin) para 26. <https://www.bailii.org/ew/cases/EWHC/Admin/2020/3310.html>

DIAGRAM 1 – NRM PATHWAY



By the time a positive Reasonable Grounds decision (the first stage NRM decision) is made giving entry to the NRM, each person will have already gone through two stages of scrutiny to determine whether they may be a victim of trafficking: firstly, a government designated First Responder has assessed them as having indicators of trafficking and referred them into the NRM; and secondly, the state has determined there are Reasonable Grounds to suspect they may be a victim.

This system does not currently work in the best interests of survivors. Without access to work, time spent in the NRM can feel like a time of limbo, leading to practical difficulties and a deterioration in the mental health of survivors.⁵ Workers who need to provide for their families do not feel able to consent to a referral into a system which could leave them in limbo for years.⁶

Morally, economically, and practically the UK needs to make sure the NRM works for survivors. Providing access to work and education during this time would transform the NRM, meaning that survivors could use this time, when they are supported by caseworkers, to access decent work and begin to prepare for independence.⁷ Enabling people in the NRM to access work is a simple process which can be achieved by changing the Immigration Rules and without the need to amend primary legislation.

THE HARMS OF DENYING SURVIVORS ACCESS TO WORK

Survivors have described their time spent in the NRM as a time of deep anxiety, uncertainty and limbo, and some report feeling punished by the system designed to protect them.⁸ This is exacerbated by the long delays in decision-making.⁹ It is not uncommon for survivors to spend two years or more waiting for a Conclusive Grounds decision.¹⁰

Without access to work, survivors are unable to move on with their lives. This has a significant impact on their mental wellbeing. Survivors have described spending most of their waking hours with little to do, which has been found to aggravate mental distress and has been linked to feelings of anxiety, sadness, fear and hopelessness.¹¹

Work also shapes people's feeling of social integration and acceptance.¹² Long periods without work and lack of control over their personal finances are seen to lead to a loss of confidence and skills, which together with a lack of employment references (if previous work has been exploitative) affect individuals' ability to find employment.¹³ This is compounded by the long delays in NRM decision-making which has been described by survivors as an extension of their experience of slavery, impacting on their recovery and resilience. One survivor described the years of waiting while unable to work and move on as "emotional torture [...] I nearly went mad".¹⁴

⁵ See 'Dignity, not Destitution, Kalayaan', 2019 http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf

⁶ 'UK officials struggle to persuade suspected modern slaves to accept help' Thomson Reuters Foundation, January 2021 <https://www.reuters.com/article/us-britain-slavery-idUSKBN29Q2RI>

⁷ See, for example, Cockayne J, 2021 OPINION: Agency is key to reducing slavery – and boosting post-COVID growth, Thompson Reuters Foundation news <https://news.trust.org/item/20210201154709-54ea3>

⁸ Ibid, 5.

⁹ Ibid, 5.

¹⁰ Ibid, 5.

¹¹ Fleay, C, Hartley, L. (2015) 'I feel like a beggar': Asylum Seekers Living in the Australian Community Without the Right to Work

¹² Jannesari, S et al 'What effects the mental health of people seeking asylum in the UK? A narrative analysis of migration stories, (2019)

¹³ 'Bright Future' An Independent Review, (2019), University of Liverpool

¹⁴ Lewis et al 'Faith responses to modern slavery, 2020, University of Sheffield, University of Leeds

'It's so long – when at night it's like very long and the day's very long... like you're wake up you sleep you are nothing you know? Like I'm useless person in this world you know? That's what I feel, like I'm nothing in this world, I can't move...One year, almost two years in this August I feel like I'm nothing in this world, your life is useless you know'

– MARIA¹⁵

Beyond this, many survivors face immense pressure to work so they can continue providing for their families or pay off debts. By denying survivors access to work, they become vulnerable to further harm and re-exploitation while still in the NRM.¹⁶

'It is very necessary that I work, because my husband and I owe a lot of money, and they are now exerting pressure on us, specially (sic) now they know I'm abroad... That is the reason why I do not want to go home without money because my life is in danger... Yeah, they forcing me to pay my debt... They believe, they think that because I've been abroad for two years I have money'

– JOANA¹⁷

THE BENEFITS TO GRANTING SURVIVORS ACCESS TO WORK

Independence and sustainable freedom

Work has been shown to provide survivors with structure and opportunities for integration, building community links and networks as well as the important practical option of meeting their own needs and providing for any dependents. Expert evidence has shown that rehabilitation prospects “depend upon victims being or becoming able to build and maintain healing relationships with others”, especially to those who have suffered complex trauma.¹⁸ Another study found that employment helps improve work and language skills, enhancing capacity for economic independence and fostering participation in and contribution to the wider community.¹⁹ Evidence from the Philippines supported these findings. It concluded that safe and supportive workplace environments can contribute to the healthy reintegration of human trafficking survivors.²⁰

Organisations supporting survivors in work have highlighted that access to work helps strengthen a sense of purpose, allowing survivors to maintain and develop skills which provides them with choices and pathways out of exploitation. It also improves mental well-being by empowering them to be forward looking with hope for a different future. Finally, it equips survivors with current and relevant work experience and means they can move on from employment gaps which can be difficult to explain to prospective employers.²¹

¹⁵ Ibid, 5.

¹⁶ Ibid, 5.

¹⁷ Ibid, 5.

¹⁸ 9 OSCE Office of the Special Representative and Co-ordinator for Combatting Trafficking in Human Beings in partnership with the Ludwig Boltzmann Institute of Human Rights and the Helen Bamber Foundation, Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment, Occasional Paper Series no. 5, (2013), <https://www.osce.org/cthb/103085?download=true>

¹⁹ Fleay, C, Hartley, L. (2015) 'I feel like a beggar': Asylum Seekers Living in the Australian Community Without the Right to Work

²⁰ Gill, M and Tsai, L. C (2018) 'Building core skills among adult survivors of human trafficking in a workplace setting in the Philippines'

²¹ Ibid, 13.

For those with permission to work, employment also provides them with a safer and more sustainable exit strategy from the NRM and its associated support, helping the UK achieve its aim to support survivors to recover from exploitation and achieve independence and sustainable freedom.

Creates options to leave exploitation and prevents re-exploitation

Workers who need to send remittances home (for example to pay for school fees or medical care) may have no option but to enter or stay in exploitative work if a referral into the NRM could prevent them from providing for their families, possibly for several years.²²

A recent comparative study undertaken in the UK has shown that survivors with permission to work while in the NRM were financially independent and able to provide for their families, whereas those without permission were drawn into destitution and left vulnerable to further harm and exploitation.²³ Another study supports these findings stating that access to work allows survivors to continue paying off medical bills and other debts and send remittances home to support family members. It also helps reduce the risk of family members being targeted by debt collectors.²⁴

Evidence from Ghana concluded that improving the economic well-being of trafficking survivors is key to reducing re-exploitation and providing them with stability to rebuild their lives.²⁵ Access to work is seen to help prevent re-exploitation by empowering survivors to meet their financial needs, lessening their dependence on government support and helping build resilience from exploitation.

Increases financial independence

In the absence of access to work, survivors are made dependent on the state. Such dependency only increases over time. As shown, access to work empowers survivors to become financially independent. It also generates benefits to the state through tax contributions from their employment and would likely reduce government expenditure on NRM support costs and later interventions to address re-exploitation.²⁶

During the period between the Reasonable Grounds and Conclusive Grounds decision survivors have access to a support worker. To be able to re-enter the workforce while this support worker is available would make use of their time to help manage any issues associated with starting work, following exploitation. This would include support to address any issues which trigger trauma, make sure there is a clear understanding around the conditions of the employment, and address practical issues like securing a National Insurance number, opening a bank account and providing information around work entitlements or negotiating leave to attend court or a doctor's appointment. Ultimately, a support worker is well placed to ensure that starting work goes as smoothly as possible, is a positive part of the recovery process and to make sure that the work is not exploitative and will support the survivor in their life after trafficking.²⁷

²² Ibid, 5.

²³ Ibid, 5.

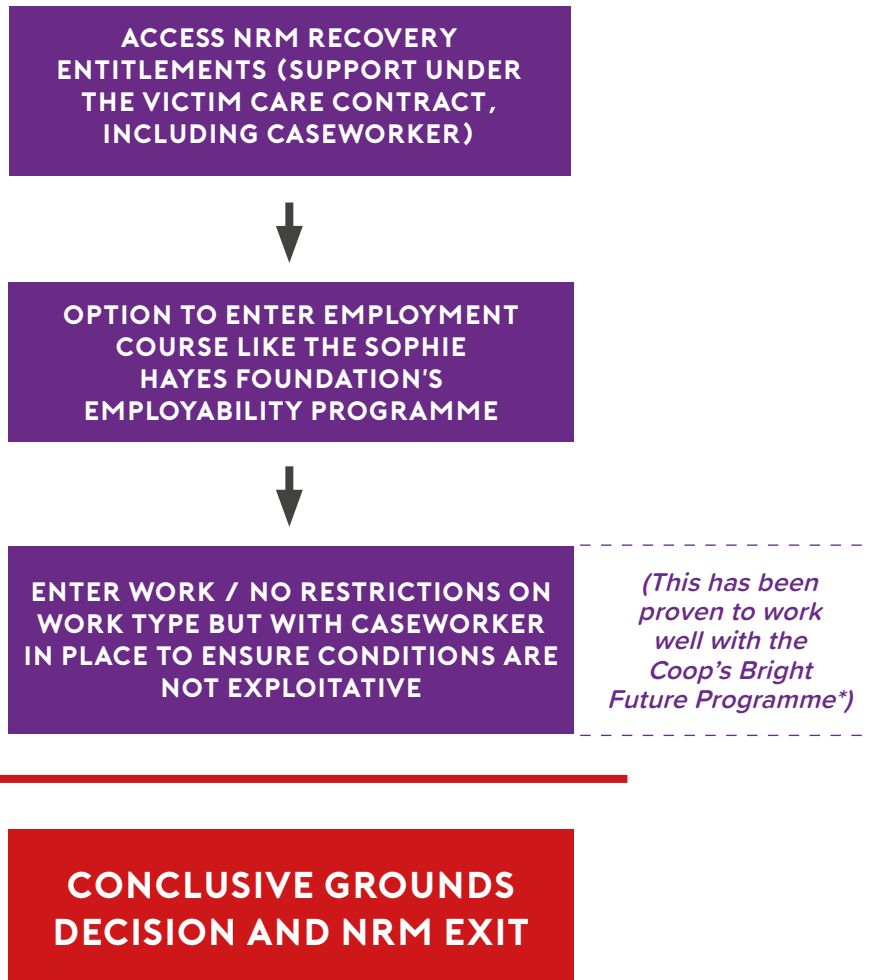
²⁴ See 'Precarious Lives' (2013) Lewis, Dwyer, Hodkinson and Waite

²⁵ David Okech, Stephen Vandiver McGarity, Nathan Hansen, Abigail C Burns & Waylon Howard (2018) Financial Capability and Sociodemographic Factors among Survivors of Human Trafficking, *Journal of Evidence-Informed Social Work*, 15:2, 123-136, DOI: 10.1080/23761407.2017.1419154

²⁶ See University of Nottingham's costs benefit analysis 2019 of the Modern Slavery (Victim Support) Bill

²⁷ The Bright Future Programme has found that support from a charity partner is vital for the success of a placement. https://www.antislaverycommissioner.co.uk/media/1176/the-co-op-s-bright-future-programme_an-independent-interim-review.pdf

DIAGRAM 2 – RECOMMENDED PATHWAY TO INDEPENDENCE AND SUSTAINABLE FREEDOM



*Co-op provides brighter future for UK victims of modern slavery
<https://www.co-operative.coop/media/news-releases/co-op-provides-brighter-future-for-uk-victims-of-modern-slavery>

IMPLEMENTATION OF SURVIVORS' ACCESS TO WORK WHILE IN THE NRM

Options for access to work

Enabling people in the NRM to access work is a simple process which can be achieved by changing the Immigration Rules and without any need to amend primary legislation.

As already noted, by the time a positive first stage (Reasonable Grounds) trafficking decision is made, a survivor has already gone through two stages of identification; first, identification by a government designated First Responder at the referral stage and, second, identification by the Single Competent Authority (part of the Home Office) who issues the first stage decision. Any concerns about access to work acting as a 'pull factor' are therefore unlikely to materialise, since each survivor will already have undergone the government's initial two stage identification system. Providing survivors with access to work will only allow for the UK's trafficking identification and support systems to better respond to their needs.

- 1. The best option to enable access to work would be to grant people in the NRM a residence permit, or discretionary leave to remain, following a positive first stage trafficking decision. This would give people much needed security and certainty while in the NRM to begin to recover and build sustainable freedom and independence.**
- 2. A second option would be to amend the conditions of immigration bail (the status of people in the NRM who do not already have leave to remain in the UK), to grant permission to work. This can be achieved through a change to the Immigration Rules, and to the relevant guidance (ie. Modern Slavery Statutory Guidance, Immigration Bail guidance) and would not require changes to primary legislation.²⁸ A detailed description of how immigration bail can be implemented to provide survivors with access to work is available in the annex.²⁹**

CONCLUSION AND RECOMMENDATIONS

The NRM has been in place almost 15 years, yet little is known about the extent to which it enables sustainable recovery and independence. What is clear is that preventing survivors from working while in the NRM can compound the trauma of trafficking, leaving people vulnerable to re-exploitation and even trap people who depend on these earnings in exploitative work.³⁰ In contrast, providing access to work for people in the NRM is an opportunity to enable sustainable freedom and independence.

All potential victims of modern slavery or trafficking who are in the NRM should have access to work. To be effective, access to work must not be restricted and should be granted automatically at the Reasonable Grounds decision stage so those who are ready can start work.

There should be no restriction upon the type of work people who are in the NRM can undertake. Nor should there be any expectation to work if this is not appropriate for the individual.³¹ Access to work gives survivors in the NRM the option to work if this is right for them.

As the government looks to embark on the NRM Transformation Programme and reflects on how best to support survivors in a way that is 'sustainable and centred on their needs', we trust that allowing access to work during the recovery and reflection period between Reasonable and Conclusive Grounds decision, will be given careful and immediate consideration. Access to work will discourage dependence on the NRM as a temporary support structure and only serve to assist survivors in their recovery and with their journey beyond the NRM.

²⁸ See annex

²⁹ This should also remove restrictions on the right to rent so that people can find accommodation near their work.

³⁰ [https://www.duncanlewis.co.uk/InthePress/Home_Office_unlawfully_failing_to_protect_trafficking_survivors_from_hostile_environment_says_High_Court_\(Multiple_Sources\).pdf](https://www.duncanlewis.co.uk/InthePress/Home_Office_unlawfully_failing_to_protect_trafficking_survivors_from_hostile_environment_says_High_Court_(Multiple_Sources).pdf)

³¹ *Ibid*, 13.

ANNEX

Implementation; Access to work for survivors through immigration bail

Most potential victims of trafficking and modern slavery will be on bail. All statutory provisions relating to bail are now in Schedule 10 to the Immigration Act 2016.³² Paragraph 2 of Part 1 (of Schedule 10) states:

Conditions of immigration bail

2 (1) Subject to sub-paragraph (2), if immigration bail is granted to a person, it must be granted subject to one or more of the following conditions—

(a) a condition requiring the person to appear before the Secretary of State or the First-tier Tribunal at a specified time and place;

(b) a condition restricting the person's work, occupation or studies in the United Kingdom;

(c) a condition about the person's residence;

(d) a condition requiring the person to report to the Secretary of State or such other person as may be specified;

(e) an electronic monitoring condition (see paragraph 4);

(f) such other conditions as the person granting the immigration bail thinks fit.

As long as the grant of bail is subject to at least one of the above conditions, there is no requirement that the Secretary of State prohibits or restricts employment.

The bail guidance³³ makes it clear that a condition to allow work *can be* restricted to work for a specified employer, or to work on the shortage occupation list, but there is nothing stating it must be so restricted. The guidance gives the example of a person who had leave with work permission, whose leave is curtailed, and whose bail should be granted retaining that work permission.

The unrestricted right to work could be stated in the person's bail form - or the employment condition could be omitted altogether to show there is no prohibition or restriction.

Where a potential victim of trafficking or modern slavery has leave subject to a prohibition or restriction on work, that is slightly more complex. As with bail, the Secretary of State has discretion as to the conditions that apply to a grant of leave, provided under s3(1) of the Immigration Act 1971. S3(3) of the Act and paragraph 31 of the Immigration Rules allows her to vary those conditions by amending the relevant document (usually a BRP), but also 'the decision may be made known in writing in some other appropriate way'. However, the conditions that apply to any particular grant of leave (for example, as a student or overseas domestic worker) are in the relevant category of the Immigration Rules and are not subject to discretion. The Secretary of State could though vary the condition 'outside the Rules', for example, with amended Trafficking and Bail Guidance, and/or amend the Immigration Rules to allow for that discretion in the case of potential victims of trafficking and modern slavery.

³² <https://www.legislation.gov.uk/ukpga/2016/19/schedule/10>

³³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952910/immigration-bail-v7.0-gov-uk.pdf

