



**Hostility for Survivors,
Impunity for Traffickers:
How the Hostile
Environment
enables Modern
Slavery**

Hope for Justice Briefing Paper
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Drawing from Hope for Justice’s frontline experience, this paper will explore the impact of recent legislative and policy changes on survivors of modern slavery pursuant to the UK Government’s policy of creating a hostile environment for migrants. It will equip parliamentarians and policy-makers with insights as to the impact of hostile legislation and policies upon survivors of modern slavery, and offer an alternative approach which will better protect survivors and prevent further exploitation.

‘we are seen as immigrants first, a problematic immigrant and then a human last’¹

Introduction

Progress is rarely linear, particularly when addressing an issue as complex as modern slavery. Nevertheless, it is striking that lessons from 2013 remain pertinent over a decade later:

‘Of fundamental importance is the understanding that modern slavery is not primarily an issue of immigration’²

As the department responsible for developing and implementing the Government’s modern slavery strategy, the Home Office must strike a balance between efforts to tackle exploitation and support survivors, and often competing objectives of immigration deterrence, control and enforcement. Whilst significant effort was made to draw a distinction between modern slavery and immigration control following the passage of the Modern Slavery Act 2015, in recent years the response to slavery has not so much been conflated with immigration, it has become consumed by it.

‘We are deeply concerned that the Government is prioritising irregular migration issues at the expense of tackling human trafficking. The Government’s deprioritisation of human trafficking is not reflective of the scale of the threat it poses or the gravity of the crimes involved’³

Treating modern slavery as an issue of immigration control and enforcement is problematic. Neither domestic nor international law requires an individual to have crossed a border to be recognised as a victim of human trafficking or modern slavery. Indeed, British nationals represent one of the largest cohorts of survivors identified in the UK. An immigration enforcement mindset also hinders the effectiveness of the response to slavery: it fails to recognise the factors which drive vulnerability to exploitation or the needs of survivors. This is further exacerbated by the hostile environment policy, more recently known as the Compliant Environment Policy.

Recommendations

Hope for Justice recommend the following steps be taken to mitigate the risk of further harm and reduce vulnerability to modern slavery:

- **Deconflate modern slavery and immigration policies:**
 - Remove modern slavery from the portfolio of the Minister for Illegal Migration
 - Develop a multi-departmental response to tackling modern slavery; ensuring that responsibility for survivor support sits within an appropriate governance structure focused on safeguarding and care
 - Create a comprehensive, evidence-based and overarching strategy on immigration which is aligned with efforts to tackle modern slavery
- **Directly incorporate the European Convention on Action against Trafficking (ECAT) into domestic law**
- **Strengthen the rights of those vulnerable to exploitation, including asylum seekers and migrant workers**
- **Enable secure reporting:** survivors must feel safe to report exploitation and abuse, regardless of their immigration status
- **Provide the right to work:** allowing those seeking refuge in the UK and survivors of modern slavery to access legitimate employment would significantly reduce vulnerability
- **Create safe and legal routes for those seeking refuge in the UK and safer routes for economic migrants**
- **Pilot a Trafficking Visa:** provide survivors with regularised status and a pathway to permanent residence in the UK based on their holistic individual circumstances and best interests
- **End the hostile environment:** reaffirm the UK’s commitment to adhering to its obligations under international law to safeguard the rights of vulnerable individuals and communities

How the hostile environment policy has impacted modern slavery

The policy of creating a hostile environment for immigrants has a long history and has impacted the response to modern slavery for many years. This paper will focus on how recent legislative and policy changes have impacted survivors of modern slavery in the UK. However, it is important to note that the escalation in hostility to migrants since the 2021 New Plan for Immigration builds upon well-established foundations.

‘We are seen as a burden on society if we are not originally British, so then it is important for us to work to be independent but it currently traps survivors in the system’⁵

In 2013, a van drove round London carrying the message: *In the UK illegally? Go home or face arrest.* The Immigration Acts of 2014 and 2016 created new offences of illegal working and renting; requiring a wide range of stakeholders to conduct immigration checks and share data with the Home Office, including employers, bank employees, marriage registrars, the DVLA and landlords. In addition, the Government introduced a number of measures, such as restricting

1 Survivor of modern slavery
2 [CSJ_Slavery_Full_Report_WEB5.pdf \(centreforsocialjustice.org.uk\)](#)
3 [Human trafficking \(parliament.uk\)](#)

4 [National Referral Mechanism statistics – GOV.UK \(www.gov.uk\)](#)
5 Survivor of modern slavery

access to public funds, Legal Aid, and imposing an NHS surcharge.⁷ Such policies not only created an environment in which survivors of modern slavery would be more fearful of trusting state authorities and disclosing their exploitation; these policies heightened vulnerability to modern slavery, by limiting legitimate opportunities, and increasing the risk of destitution and homelessness.

*'The fear that is installed by traffickers can take years to undo, it's like unlearning everything you learned, so the fear of reporting it to someone who doesn't want you here in the first place is just as worse, it's like everywhere you go for help there will be barriers and feels like the system is designed for you to not share without any repercussions - so again you're silenced and dismissed.'*⁸

The Government introduced various changes to the immigration rules following the UK's exit from the EU. Again, these changes have sought to limit rights and opportunities for those seeking to come to the UK. The UK supported a Universal Periodic Review recommendation made by the US to 'Take steps to ensure migrant workers are not left vulnerable to abuse and exploitation from employers and the UK visa system'.⁹ NGOs have warned about the implications of the new Seasonal Worker visa: 'The restrictive nature of the visa, with no recourse to public funds, means it is unclear what, if any, options are open in practice to workers if they are exploited'.¹⁰

Civil society organisations have consistently recommended that confirmed survivors of modern slavery be granted leave to remain in the UK to assist their recovery: secure immigration status can provide much-needed stability to address trauma and access appropriate services as well as enabling them to make choices such as whether to support a police investigation. A cost-benefit analysis demonstrated that allowing survivors to continue to access support for 12 months, with temporary leave to remain, would be a net benefit of up to £25m to the public purse.¹¹ However, the Home Office has resisted an automatic provision of leave to remain of a minimum of 12 months to survivors arguing that doing so would create a pull factor and false claims of exploitation. A 2017 report by the Work and Pensions Committee found that this claim by the Home Office 'makes little sense and is unsubstantiated by evidence'.¹²

The publication of the New Plan for Immigration in 2021 was a critical development in the re-conflation of modern slavery and immigration policy: it spoke of the 'rising abuse' of the National Referral Mechanism by 'illegal migrants, including Foreign National Offenders'.¹³ Since then the UK Government has taken a series of regressive steps in its response to modern slavery, most notably through the Nationality and Borders Act 2022, the Illegal Migration Act 2023 and amendments to statutory guidance relating to the identification and support of survivors.

The Government's legislative agenda is premised upon abuse of the system of support for victims of modern slavery.¹⁴ In 2022, the Prime Minister pledged to 'remove the gold plating in our modern slavery system', raising the threshold for an individual to be identified and reducing the support available to survivors: 'one of the reasons we struggle to remove people is because they unfairly exploit our modern slavery system'.¹⁵

Migrants arriving in the UK are often spoken of in derogatory or even threatening language: a 'hurricane' of migrants threatening to 'overwhelm' the UK.¹⁶ Political leaders have also established a narrative of criminal gangs gaming the system of support for survivors of modern slavery.¹⁷

*'to truly understand what it feels to be overwhelmed is having your rights stripped away by traffickers and then not being given them again when you fight for your freedom.'*¹⁸

The United Nations and experts at international and domestic level have criticised the Government for the lack of evidence for these claims and for the hostile language adopted.

'We are alarmed by the rise in unsubstantiated claims by public officials and Government departments regarding persons seeking protection under the Modern Slavery Act and the National Referral Mechanism...

*'This has a chilling effect on those willing to come forward as victims and those willing to provide legal representation to victims, impeding efforts to identify and protect victims and persons at risk of trafficking and hold perpetrators accountable'*¹⁹

The Office for Statistics Regulation stated:

*'We consider that the NRM statistics do not support the claims that people are "gaming" the modern slavery system, and the source of the claim is unclear to us. We have asked the Home Office to ensure that claims in public statements are clear on whether they are sourced from published statistics or from other reliable evidence, to avoid the risk of misleading people.'*²⁰

The then Independent Anti-Slavery Commissioner stated:

*'I do not think the evidence, as I understand it, supports the rhetoric, and the concern is that the rhetoric is severely undermining the Modern Slavery Act protections.'*²¹

A survivor of modern slavery cannot access support by simply submitting a claim that they have suffered exploitation. In order to receive assistance and protection, a government-appointed First Responder must suspect that the individual has been exploited and refer their case to the Home Office's Competent Authority for a two-stage decision making process, known as the National Referral Mechanism (NRM). If the Competent Authority believes there are 'reasonable grounds' to believe that the individual has been exploited, they are able to access government-funded assistance whilst a 'conclusive grounds' decision is made. If the individual is positively identified as a victim at this stage, a Recovery Needs Assessment is carried out to ascertain what assistance the individual requires moving forward.²²

⁶ [Immigration Act 2016 \(legislation.gov.uk\)](#), for example see sections 35 and 39

⁷ For more context on the hostile environment: [The UK's hostile environment: Deputising immigration control \(sagepub.com\)](#)

⁸ Survivor of modern slavery

⁹ [Universal Periodic Review - United Kingdom of Great Britain and Northern Ireland | OHCHR](#)

¹⁰ [Government must act to prevent exploitation on the UK's Seasonal Workers' Scheme - FLEX \(labourexploitation.org\)](#)

¹¹ [News - The benefits of longer-term support for survivors of modern slavery outweigh the initial costs, finds a new report - University of Nottingham](#)

¹² [Victims of modern slavery \(parliament.uk\)](#)

¹³ [New Plan for Immigration: policy statement \(accessible\) - GOV.UK \(www.gov.uk\)](#)

¹⁴ [Alarming rise of abuse within modern slavery system - GOV.UK \(www.gov.uk\)](#); [Illegal Migration Bill: overarching factsheet - GOV.UK \(www.gov.uk\)](#)

¹⁵ [PM statement on illegal migration: 13 December 2022 - GOV.UK \(www.gov.uk\)](#)

¹⁶ [Suella Braverman says 'hurricane' of migrants coming to the UK \(ft.com\); Rishi Sunak says migrants threaten to 'overwhelm' UK | The Independent](#)

¹⁶ [Suella Braverman says 'hurricane' of migrants coming to the UK \(ft.com\); Rishi Sunak says migrants threaten to 'overwhelm' UK | The Independent](#)

¹⁷ [Braverman's claims slavery victims are 'gaming' system questioned by stats | The Independent](#)

¹⁸ [Braverman's claims slavery victims are 'gaming' system questioned by stats | The Independent](#)

¹⁹ [Survivor of modern slavery](#)

²⁰ [UK: UN experts condemn attacks on credibility of slavery and trafficking victims | OHCHR](#)

²¹ [Ed Humpherson to Maya Esslemont and Anna Powell-Smith: Modern slavery data - Office for Statistics Regulation \(statisticsauthority.gov.uk\)](#)

²² ['No evidence' of Suella Braverman's claims migrants are 'gaming' slavery laws, watchdog says | The Independent](#)

²² [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 \(accessible version\) - GOV.UK \(www.gov.uk\)](#)

There is, therefore, a system in place to ensure that those who make false claims of exploitation cannot access support, and that assistance is provided to those who most need it. It is already within the Home Office's gift to issue negative decisions and thereby deny access to support where they conclude that the individual has not been exploited. Despite claims of widespread abuse of the system, in 2022 the Home Office issued positive conclusive grounds decisions (that on the balance of probabilities a person is a victim) in 89% of cases.²³

*'The pressure can be removed of the government if it worked on decreasing the times for these decisions to be made - survivors are waiting years for this - so why not invest in this area?'*²⁴

How the hostile environment is impacting survivors: Insights from Hope for Justice's teams

Not only have legislative and policy developments restricted survivors' rights and made it harder for individuals to access crucial services, there has also been a shift in attitudes and a growing culture of disbelief. The hostile and often dehumanising narrative regarding those seeking refuge in the UK has had a trickle-down effect: attitudes have hardened and suspicion grown making it harder for survivors to realise even these more limited rights.

Hope for Justice's teams have reported that survivors are increasingly reluctant to disclose exploitation or trust state authorities for fear of deportation. The attitude of hostility to foreign national survivors is evident in the current discourse and attitudes towards survivors, and there is a growing tendency to disregard survivors' experiences and a presumption of disbelief.

*'When I try and make friends, when I tell them I'm Albanian they ask me if I sell drugs. Why does no one like me in this country?'*²⁵

Increasingly there is a presumption that foreign national survivors do not have recourse to public funds or the right to access housing. Survivors are met with hostility: *'why doesn't he just go back to Poland?'*²⁶ Survivors may even be offered repatriation without consideration of the risks or alternative options which might be in their best interests.

*'As a survivor I grew up with racism and I dread saying where I come from or what ethnicity my traffickers are because of these assumptions, I am denied my truth because of these ideas fuelled by the media everyday. If I was a British survivor and looked British - I wonder if the government still wanted me to go somewhere else?'*²⁷

Without support from an independent advocate, survivors risk being turned away from services to which they are entitled. Frequently Hope for Justice's teams see individuals turned away from support providers, only to then be granted assistance when they are accompanied by an independent advocate.

Even where there is a desire to ensure that survivors receive assistance, such as safe accommodation, service providers are often reluctant to do so as they are anxious about the repercussions. First Responders are increasingly hesitant to work with survivors, making it harder to complete and submit an NRM form.

*'The changes create an environment of disbelief of victims' narratives. It discourages them from even coming forward...The expectations and additional responsibilities put on victims and those supporting survivors are unjust. Do victims of other serious crimes have to prove that they have been a victim at the time they report the crime before they can be safeguarded and supported?'*²⁸

Section 45 of the Modern Slavery Act 2015 provides a defence from prosecution on the basis that the offence committed was part of the exploitation. A narrative has been established nationally that this defence is being abused by criminals to avoid prosecution and this is trickling down to law enforcement bodies, further entrenching a culture of disbelief. Presumptions are reportedly made about survivors of particular nationalities: that all Albanians are criminals, or all Vietnamese willingly took part in cannabis cultivation.

In one recent case of an Albanian male facing prosecution for cannabis cultivation, Hope for Justice's IMSA reported concerns that the majority of the prosecution's language in the courtroom focused on his nationality and illegal migration. Rather than considering his exploitation, and in the absence of evidence, the prosecution emphasised that he was an 'economic migrant' and was subsequently convicted.²⁹ At sentencing, in recognition of the fact that his case was one of modern slavery, the judge veered from guidelines (a minimum custodial sentence) and issued a community order.

Case study: Lena

Lena^{*} was just 16 when she was trafficked from the Czech Republic to London and forced into prostitution. She was groomed to become part of the sex industry. Her traffickers forced her to commit a number of crimes, including managing a brothel.

Prior to her sentencing, Lena was appointed a duty criminal advisor who told her she was not a victim of modern slavery and incorrectly advised her to plead guilty. She received a two-year prison sentence in 2017. On leaving prison, the Home Office issued her with a deportation order in relation to her convictions and she was moved to a detention centre where she was unlawfully held for three months.

While in prison, Lena had disclosed her exploitation, resulting in her referral into the NRM. Despite receiving positive reasonable and conclusive grounds decisions, and despite official guidance stating that potential victims should not usually be imprisoned, the department maintained her detention.

In December 2022, Lena's deportation order was quashed by the Upper Tribunal and awarded compensation for being illegally held in a detention centre.

The Independent Modern Slavery Advocate supporting Lena said:

*"Sadly, because of the uncertainty around her immigration status and the anxiety this has caused her, Lena has been unable to receive counselling. Her therapist acknowledged that the ongoing distress she was facing meant they could not even begin to process the trauma from her trafficking. The Home Office's unjust treatment of this survivor, resulting in her being without stability, as well as the mental and emotional turmoil it has created, has significantly delayed Lena's ability to recover. Despite everything she has been through, Lena remains hopeful."*³⁰

*Name changed to protect identity

²³ [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022 - GOV.UK \(www.gov.uk\)](#)

²⁴ Survivor of modern slavery

²⁵ Hope for Justice IMSA's account of client's experience

²⁶ Hope for Justice IMSA's account of client's experience

²⁷ Survivor of modern slavery

²⁸ The environment of disbelief - the impact of the Nationality and Borders Act 2022 (hopeforjustice.org)

²⁹ For more information on Albanian survivors of modern slavery see [New Underground: Lives report published on Albanian survivors of modern slavery | Hestia](#)

³⁰ [Survivor wins four-year legal battle against Home Office \(hopeforjustice.org\)](#)

Survivors face greater challenges in accessing NRM support thanks to the barriers created by recent legislation. Even in cases where the definition of trafficking has been met, individuals have received a negative decision due to the lack of objective evidence. Decision-making has been delayed apparently due to changes to the guidance issued to the Competent Authority. Our teams have been involved in cases in which reasonable grounds decisions have taken months.

The legislative and policy changes which have raised the threshold for identification and created time limits on disclosure create a pressure for those working with potential victims of modern slavery. There is a tension between working with a survivor in a trauma-informed manner and what is required by the system: there is now greater urgency to disclose details of exploitation and therefore pressure on both the survivor and support worker.

*'Since those Acts came into force, we are seeing more negative conclusive grounds decisions. I'm working with young people who have had negative CGs and negative asylum decisions, even with quite a lot of evidence, which is quite worrying because when they're young they are more at risk...we try to uplift the survivor as much as possible and keep that positivity. Because a young person sometimes tries to rationalise that decision and unfortunately their thought process can be very much like 'this country hates me, what have I done wrong?' It's really hard to have those conversations with 18 year olds about why people are looking at them differently or why they feel that the government doesn't want to help them.'*³¹

Summary of recent legislative and policy changes

Despite the Home Office commencing a review of its Modern Slavery Strategy in 2021 it is yet to publish a revised strategy from its 2014 publication. Home Office officials have confirmed that a revised strategy is not a priority for the Minister. Nevertheless, the Government has made significant changes to the system of identification and support for survivors of modern slavery since 2021: the rights available to survivors of modern slavery have been undermined as part of a broader policy of hostility and deterrence towards foreign nationals arriving in the UK.

Legislative and policy changes have:

1. Created barriers to identification,
2. Limited access to support services, and
3. Created a hostile environment which risks exacerbating vulnerability

Nationality and Borders Act 2022

Part 5 of the Act makes a number of critical changes to the identification of, and support afforded to, survivors of modern slavery. Crucially, the Act doesn't offer any distinction for children and particular concerns have been raised about how these changes will impact them.

1. Time Limit on Disclosure

If an individual makes a protection of human rights claim, the Home Office will issue a 'Slavery or trafficking information notice' requiring them to provide information about their exploitation within a specified time period. Late compliance with such a notice will damage the individual's credibility.

Imposing such a time limit on disclosure of exploitation demonstrates a profound misunderstanding of trauma and its impact on an individual's ability or willingness to disclose what has happened to them. Crucially, this provision does not apply to all victims: UK nationals, for example, would not have to comply with such a time limit. Therefore, not only is this provision not trauma informed, it is also discriminatory.

2. Change in Reasonable Grounds Threshold

It is no longer sufficient that there are reasonable grounds to suspect that a person may be a victim of modern slavery for them to access to support. The threshold has been raised so that there must now be reasonable grounds that the person *is* a victim.

In January 2023, the Home Office published statutory guidance which further increased the threshold for reasonable grounds decisions; requiring objective evidence from the survivor of their exploitation. This places survivors of modern slavery in a uniquely challenging position of having to prove that they have been subjected to a crime before being safeguarded.

*'If there was focus on the substantiated claims and more support given to identify and tackle true survivors and create a pathway then this could be better this creates a fear that survivors will not be believed and is not a trauma informed approach. When you are being trafficked, you don't know it sometimes, your main focus is survival not collecting evidence.'*³²

Impact of the Reasonable Grounds Threshold

There has been a significant drop in the number of reasonable grounds decisions: from 1st January – 31st March 2023 the number of positive decisions fell to 58%, compared with 85% in the previous quarter. The Human Trafficking Foundation report that the increase in negative decisions was largely due to a 'lack of objective factors'.³³

The International Organization for Migration (IOM) have also highlighted the stark difference in decision-making following the introduction of the Nationality and Borders Act 2022 and updated guidance:³⁴

- Potential victims of modern slavery wait ten times longer than the five-day target to receive an initial decision
- In 2023, only four out of 10 foreign nationals received a positive reasonable grounds decision, compared to eight out of 10 UK nationals
- 70% of people who were disqualified had received a positive reasonable grounds decision as a potential victim of criminal exploitation, meaning that they were potentially forced to commit the crimes as part of their exploitation

Operation Challenger, a Greater Manchester Police initiative, reported a marked decrease in positive reasonable grounds: from approximately 95% to 18% between February 20th and 31st March 2023, noting in the area that four out of five potential victims could not get into the NRM system.³⁵

It is hardly surprising that many of those who leave situations of exploitation are unable to produce evidence or documentation to corroborate their narrative: this is often a moment of crisis and intense vulnerability, the reality of which the new legislation fails to reflect.

³² Survivor of modern slavery

³³ [Reports – Human Trafficking Foundation](#)

³⁴ [Updated analysis of the National Referral Mechanism data | IOM United Kingdom](#)

³⁵ [4 in 5 modern slavery victims denied justice as new law 'gives traffickers impunity' - Mirror Online](#)

³¹ [Supporting child trafficking survivors as they become adults | Hope for Justice](#)

*'Does a domestic abuse survivor have to prove they have been hurt before seeking alternative accommodation? Or someone who has been hurt by a weapon have to identify the weapon first? This shows the lack of understanding of trauma, the tactics of the traffickers and puts the onus back on the survivor to feel responsible for what happened to them. I can hardly speak about my experiences, think of them and do everything to block it out so to be asked to 'prove' them is impossible.'*³⁶

Following a judicial review based on Article 4 ECHR, this guidance has been revised so that the decision maker now has to consider whether 'in all the circumstances, it is reasonable to expect supporting evidence or corroborating information'.³⁷

3. Shortened Recovery and Reflection Period with more limited support

Survivors who receive a positive reasonable grounds decision will now be guaranteed 30 days of support, reduced from 45 days.³⁸ Whilst this remains in keeping with the minimum requirements of the European Convention on Action against Trafficking (ECAT), it is indicative of the regressive approach and reduction of survivors' rights.

Section 64 requires the Secretary of State to provide survivors with assistance and support which is 'necessary' to help the person recover from the physical, psychological or social harm resulting from their exploitation. Crucially, this may fail to take account of the individual's specific vulnerabilities which initially led to their exploitation. Helping survivors address these underlying issues is critical to reducing the risk of re-trafficking.

4. Public Order Disqualification

Section 63 of the Nationality and Borders Act 2023 casts a wide net in terms of those who can potentially be disqualified from identification and protection on the grounds of 'public order' or 'bad faith'. The Act defines situations where an individual can be excluded, for example where they have committed a criminal offence and been sentenced to 12 months' imprisonment. The Act's Explanatory Notes argue that this disqualification is provided for within the ECAT, specifically Article 13(3).³⁹

Incorrect application of ECAT's public order provision

Parties are not bound to observe the recovery and reflection period if grounds of public order prevent it. Through the Nationality and Borders Act, and then the Illegal Migration Act 2023, the UK Government has sought to apply this principle as part of its efforts to address immigration via irregular routes. However, this is an incorrect interpretation and application of Article 13(3), which is intended to apply in circumstances where the State cannot provide a recovery and reflection period to a survivor due to a particular public order situation, for example the commencement of a war.

The Vienna Convention on the Law of Treaties 1969 requires that treaties be 'interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.⁴⁰ The purpose of ECAT is detailed in Article 1: to prevent and combat human trafficking; to protect the human rights of victims including a comprehensive framework for the protection and assistance of victims and witnesses; ensure effective investigation, prosecution and cooperation.⁴¹

The application of the public order provision, by both the 2022 and 2023 legislation, is extensive. It effectively punishes survivors for entering the country through irregular routes, disregarding the deception and coercion at the very core of exploitation.

*'the heart of trafficking is founded upon deception'*⁴²

Disqualification on the grounds of public order, therefore represents a breach of various ECAT articles, including but not limited to: prohibition on removal (Articles 13 and 10); duty to identify (Articles 13(1), 4, 10 and 18); duty to protect and support including non-refoulement (Articles 13(1)(2) and 12, 14, 16); non-penalisation (Article 26); non-discrimination (Article 3); access to compensation and redress (Article 15); Protection of witnesses (including victims) from intimidation and retaliation before and after criminal proceedings (Article 28).

In July 2023 the High Court gave permission for judicial review and granted an interim order that the Secretary of State cannot disqualify anyone from receiving protection support pending trial unless an initial risk assessment and been conducted and factored into the disqualification decision.⁴³

Following this legal challenge, in January 2024, the Home Office published updated guidance to include a risk of re-trafficking assessment as part of the process for issuing a public order disqualification: is there a 'credible suspicion of a real and immediate risk that the individual will be re-trafficked in or from the UK'.⁴⁴ The new assessment follows on from the process for making a decision under the Public Order Decision Making Framework, so that when it is determined a Public Order Disqualification can apply to an individual, the Competent Authorities must consider whether the issuing of that decision creates a real and immediate re-trafficking risk.⁴⁵

Impact of the Public Order Provision

During the passage of the Nationality and Borders Act, Hope for Justice estimated that at least 45% of our clients would be impacted by this disqualification, even though many of them were not primarily survivors of criminal exploitation.

IOM's analysis of the first six months of 2023 notes that 71% of people disqualified from protection under the National Referral Mechanism because they were a 'threat to public order' were referred into the NRM as a potential victim of criminal exploitation.⁴⁶

³⁶ Survivor of modern slavery

³⁷ [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 \(accessible version\) - GOV.UK \(www.gov.uk\)](#)

³⁸ [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 \(accessible version\) - GOV.UK \(www.gov.uk\)](#)

³⁹ [72637 Chapter 36 EN 2022 Cover.indd \(legislation.gov.uk\)](#), para 622

⁴⁰ [Vienna Convention on the Law of Treaties \(1969\) \(un.org\)](#)

⁴¹ See Article 1 of ECAT; Article 2 of the Palermo Protocol

⁴² Survivor of modern slavery

⁴³ [High Court orders no public order disqualifications of slavery victims may take place without a risk assessment pending trial - Matrix Chambers \(matrixlaw.co.uk\)](#)

⁴⁴ [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 \(accessible version\) - GOV.UK \(www.gov.uk\)](#)

⁴⁵ The factors to be taken into account when making a decision on re-trafficking risk are set out at 14.268 of the updated Guidance

⁴⁶ [PowerPoint-præsentation \(iom.int\)](#)

The Illegal Migration Act now casts the net even wider in respect of the public order disqualification: it is no longer to be a discretionary measure, but a mandatory exclusion. Section 29 significantly widens the scope of the exclusion. Not only is anyone who has previously been sentenced to imprisonment to be excluded, it extends to an individual who has been detained in an institution other than a prison which could include immigration detention, detention in a healthcare facility.

5. Leave to Remain

Ensuring that foreign national survivors have secure immigration status provides a critical foundation for their recovery. Uncertainty or even fear as to whether they may be removed from the UK can significantly hinder their ability to address the trauma of their exploitation. Rather than granting confirmed survivors with leave to remain automatically, the Home Office has preferred to do so on a case-by-case basis. The result is that survivors of modern slavery rarely receive leave to remain, or temporary permission to stay. From 2020 to 2022:

- 5,578 adults were confirmed as victims of trafficking. However, only 364 adults subject to immigration control were granted discretionary leave as a result.
- Despite 5,266 children being recognised as victims of trafficking, fewer than 21 were granted discretionary leave in the same period.⁴⁷

The Nationality and Borders Act and Illegal Migration Act (discussed below) limit the conditions upon which leave to remain can be granted, such as cooperating with an investigation or criminal proceedings and it is necessary for them to remain in the UK to provide that cooperation.⁴⁸ This places significant pressure on the individual to cooperate with police, again demonstrating that this approach is not trauma informed. Data is not published as to the number of applications for this form of leave to remain and anecdotally frontline organisations report high levels of refusal with inadequate reasoning.

*'In order for survivors to report their exploitation and abuse we must feel safe in the system, the fear of deportation can be just as equal to fear of being under traffickers - we need time, reassurance to build that trust and time to breathe again.'*⁴⁹

Slavery and Human Trafficking (Definition of Victim) Regulations 2022

Without consultation with subject matter experts, the Home Office redefined what it means to be a victim of trafficking or slavery.⁵⁰ Whilst it is beyond the scope of this paper to detail the ways in which this redefinition is problematic, it is important to note that the Regulations depart from the well-established definitions contained in the Palermo Protocol⁵¹ and ECAT.⁵² In addition to raising the threshold for who should be considered a victim, the new definition places a significant emphasis on 'arranging or facilitating travel', in keeping with the Home Office's conflation of modern slavery with immigration.⁵³

Illegal Migration Act 2023

Whilst the implications of the Nationality and Borders Act were still to be fully realised, Parliament passed the Illegal Migration Act 2023. This new legislation intensified the hostile environment still further and, if implemented, will have significant implications for those seeking refuge and survivors of modern slavery in the UK. The government's justification is to 'deter illegal entry into the UK' and to 'break the business model of the people smugglers and save lives'.⁵⁴ Many subject-matter experts have warned that this legislation will be extremely damaging:

*'Thousands of potential victims of modern slavery will be denied protections by the modern slavery provisions in the Act, when commenced. This includes people for whom their entry to the UK is an integral element of the criminal offence of trafficking committed against them'*⁵⁵

The legislation has been criticised by GRETA, the Group of Experts tasked with monitoring the implementation of ECAT, who stated that the legislation

*'would run contrary to the United Kingdom's obligations under the Anti-trafficking Convention, to prevent human trafficking, and to identify and protect victims of trafficking, without discrimination.'*⁵⁶

Prior to the Bill's passage, the Joint Committee on Human Rights warned:

*'By treating victims of modern slavery as 'illegal migrants' subject to detention and removal, this Bill would breach our legal obligations to such victims and would risk increasing trafficking of vulnerable people.'*⁵⁷

Section 2 of the Act imposes the mandatory removal of those who have entered the UK by irregular routes when meeting certain criteria. The Act requires the removal of those did not come directly to the UK from a country in which their life and liberty was threatened. If a person passed through or stopped in another country where their life and liberty was not threatened, they will not be considered to have come directly to the UK.

For survivors of modern slavery, the Act removes the protection of the recovery and reflection period, leave to remain and asylum system for those who enter the country irregularly.

Once again, the legislation fails to reflect the realities of modern slavery. The use of irregular routes and deception are the modus operandi of human traffickers, yet it is their victims who are penalised.

Given the lack of safe and legal routes for those seeking refuge, the majority of those seeking refuge have no option but to arrive in the UK by irregular means via people smugglers and thus meeting the conditions in section 2. This cohort are effectively left in limbo. Even those who were not initially trafficked to the UK risked being exploited without access to the asylum system.

47 [Leave in limbo_Final_Aug23.pdf \(helenbamber.org\)](#)

48 Section 22 IMA [Illegal Migration Act 2023 \(legislation.gov.uk\)](#)

49 Survivor of modern slavery

50 [The Slavery and Human Trafficking \(Definition of Victim\) Regulations 2022 \(legislation.gov.uk\)](#)

51 [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime | OHCHR](#)

52 [CETS 197 - Council of Europe Convention on Action against Trafficking in Human Beings \(coe.int\)](#)

53 [Joint briefing to the SDLC - Draft Slavery and Trafficking Definition of Victims Regulations - debate 29 June 22 FINAL.pdf - Google Drive](#)

54 [Illegal Migration Act 2023 \(legislation.gov.uk\)](#)

55 [Modern-Slavery-PEC-Explainer-Illegal-Migration-Act-v.2.pdf \(modernslaverypec.org\)](#)

56 [www.coe.int/en/web/portal/-/uk-s-illegal-migration-bill-should-be-reviewed-to-ensure-it-complies-with-the-anti-trafficking-convention-says-greta](#); See further criticism from UNHCR, CoE Commission on Human Rights and JCHR

57 [Widespread human rights failings must be addressed in Illegal Migration Bill, Human Rights Committee finds - Committees - UK Parliament](#)

It is estimated that thousands of survivors of modern slavery will fall within the scope of the Illegal Migration Act, either due to the Section 2 definition or the Section 29 public order disqualification. On the basis of information available, it is estimated that at least half of victims and survivors who accessed identification, support and protection under the NRM between January and March 2023, would be excluded if the Illegal Migration Act were in force at that time. It is for this reason that the anti-trafficking sector briefing declared the then-Bill 'a charter for exploitation, trafficking and modern slavery'.⁵⁸

Traffickers are known to use fear of detention and deportation as a means of controlling their victims; this legislation makes such threats a reality. Foreign national survivors of modern slavery are therefore disincentivised from disclosing exploitation or cooperating with state authorities. This impedes identification and the ability of survivors to engage with law enforcement agencies which is essential to achieve successful investigations and prosecutions.

*'This means it's so easy for survivors to go back to trafficking. To escape or speak out takes courage, but when there is no hope in the system - you can sometimes ask yourself what is the point?'*⁵⁹

This legislation represents a breach of the UK's international legal obligations. The UK is required by Article 26 ECAT to not impose penalties 'on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so'.

Article 3 ECAT also imposes a duty of non-discrimination: 'the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground'. The distinction drawn between survivors based upon how they entered the UK, regardless of whether they did so under coercion or deception, clearly violates these provisions. The mandatory nature of the detention and removal of those who enter the UK irregularly also denies this cohort their right to a fair trial pursuant to Article 6 of the European Convention on Human Rights (ECHR) as well as the absolute obligations on the state to ensure that people are not subject under section 3 to torture or inhumane or degrading treatment and section 4 to all forms of slavery and forced labour (which includes human trafficking).

Lack of Evidence for the Legislation Even on the Government's Own Research

As with the broader policy of creating a hostile environment, the legislation seeks to create a deterrent effect by denying access to safeguarding, support or the asylum system. However there is no evidence to indicate that this approach will provide an effective deterrent.

Research by the Home Office Analysis and Insight team into why individuals seek asylum in the UK found:

- The role of welfare policies, economic factors, and labour market access as potential drivers of migration to the UK is limited as many asylum seekers have little to no understanding of current asylum policies and the economic conditions of a destination country. Many asylum seekers have no experience of a welfare state, and they expect to be able to work to support themselves.
- Restrictive migration policies may increase the number of applicants that fall into irregularity, displacing them into more dangerous and exploitative routes (such as trafficking).⁶⁰

Hostile migration policies will not deter people from taking dangerous journeys, merely the opposite: they create a fertile ground for people smugglers and traffickers. The policy and legislation fail to consider and understand the modus operandi of both people smugglers and human traffickers in targeting those who are extremely vulnerable, deceiving them about entry and often controlling where they are sent to or the limited knowledge that victims of modern slavery and those seeking refuge have in respect of the UK systems.

Safety of Rwanda (Asylum and Immigration) Bill

A cornerstone of the hostile environment policy is the removal of those who enter the UK by irregular routes to Rwanda. The Bill was introduced to prevent further legal challenge to removals on human rights grounds following the Supreme Court's ruling that it would not be safe to remove asylum seekers and survivors of trafficking to Rwanda.

The premise of the Bill is contrary to the UK's obligation in ECAT to prevent trafficking through safe migration policies. The policy which this legislation seeks to realise will only serve to heighten vulnerability to exploitation. Rather than offering protection to vulnerable people, the government risks penalising survivors for the actions of those who exploit them. Deporting the prosecution witnesses also undermines the prospect of prosecuting criminal gangs.

*'Trafficking involves moving, this is another move and to me echoes the actions of traffickers - to be moved somewhere new, somewhere uncertain and miles away - the fear of something happening there and it's like there is nothing human - dehumanising and being exported like goods. If only, this much effort was to disrupt traffickers.'*⁶¹

Article 4 ECHR and ECAT impose positive obligations on the UK to protect survivors of modern slavery and trafficking and prevent exploitation. An individual's right to be free from slavery is not a right from which the UK is able to derogate in times of emergency.⁶² The UK is obliged to establish a 'spectrum of safeguards [which] must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking'.⁶³

In attempting to remove individuals to Rwanda, the UK is in effect seeking to delegate its legal obligations, as contained in the Refugee Convention, ECHR and ECAT. It hopes to pass responsibility to a country which is not signatory to the ECHR and ECAT and where there is therefore no accountability structure to monitor and enforce fundamental human rights. Rwanda has been categorised by the US State Department as a 'tier two' country which does not meet the minimum standards for the elimination of trafficking in several key areas.⁶⁴

This policy is not only legally problematic, it will also be ineffective in achieving a deterrent effect. In 2022, the Permanent Secretary at the Home Office warned the Home Secretary:

*'I do not believe sufficient evidence can be obtained to demonstrate that the policy will have a deterrent effect significant enough to make the policy value for money.'*⁶⁵

⁵⁸ [072023 Anti-trafficking sector IMB briefing - international compliance amendment.pdf - Google Drive](#)

⁵⁹ Survivor of modern slavery

⁶⁰ [Microsoft PowerPoint - Annex A - Sovereign Borders International Asylum Comparisons Report - Section 1 Drivers and impact on asylum migration journeys with references \(freemovement.org.uk\)](#)

⁶¹ Survivor of modern slavery

⁶² Article 15(2) ECHR.

⁶³ *Rantsev v Cyprus and Russia* (2010) 51 EHRR 1 [284].

⁶⁴ [Rwanda - United States Department of State](#)

⁶⁵ [Letter from Matthew Rycroft to Rt Hon Priti Patel \(accessible\) - GOV.UK \(www.gov.uk\)](#)

Indeed, this policy of hostility has proven ineffective in deterring people from coming to the UK. In the year ending 2022, net migration reached a record high of 745,000.⁶⁶ According to the Office for National Statistics, net migration for the year end to June 2023 was 672,000, up from 607,000 for the year ending June 2022.⁶⁷ It is also expensive: from the cost of housing asylum seekers in hotels or the Bibby Stockholm barge, holding people in immigration detention, or the plan to remove people to Rwanda.⁶⁸ Creating a deterrent through hostility does not appear to offer a positive return on investment.

Protecting the rights and wellbeing of those seeking refuge and survivors of modern slavery is vital to ensuring an effective strategy to prevent modern slavery. It is also essential to successfully disrupting trafficking networks: by supporting survivors to access trauma-informed support, safe accommodation, legal advice and other services, they will be better placed to assist investigations and prosecutions of their traffickers.

Not only does this Bill fail to comply with the international legal framework to which the UK is a signatory, it is morally wrong and counterproductive to the objectives of preventing exploitation, identifying and protecting victims and ensuring that serious organised criminals are held to account.

Safe and Legal Routes: Ukraine

Conflict is commonly understood to increase vulnerability to exploitation. As people are displaced and seeking refuge, often with few resources or safeguards, traffickers see an opportunity.

*'Each year, thousands of people living in and fleeing warzones are subjected to horrific violence and abuse. Forced recruitment and use by armed groups, abductions and kidnapping for ransom, forced marriage, and forced labour are among the daily risks faced.'*⁶⁹

In the wake of Russia's invasion of Ukraine in February 2022, there were concerns that those fleeing the conflict would be exploited. Shortly after the conflict began, the UK Government introduced two visa schemes to enable people impacted by the war to come to the UK: the Ukraine Family Scheme and the Ukraine Sponsorship Scheme. Ukrainians in the UK could also apply for permission to remain in the UK. As of March 2023, 169,300 people have arrived in the UK under these schemes.⁷⁰

Contrary to the expectation that Ukrainian refugees would be exploited, there have been relatively few instances of Ukrainians being identified as survivors of modern slavery in the UK.⁷¹ In part this can be attributed to the significant effort made by civil society organisations to raise awareness of the risks of exploitation and provide appropriate resources. However, it could also be explained by the existence of visas which enabled Ukrainians to travel safely to the UK, find safe accommodation and have the right to work. There was no need to rely on smugglers to help them across borders, or to accept exploitative offers of 'assistance'. Rather than treating Ukrainian refugees with hostility or seeking to deter their arrival, they were safeguarded.

*'Why is this route not for everyone fleeing war?'*⁷²

Civil society organisations have often called for the creation of safe and legal routes for those seeking refuge in the UK. The experience of providing such routes for Ukrainians appears to demonstrate that this may minimise the risk of exploitation and the need to take dangerous journeys, such as crossing the Channel in small boats. This is shown by the fact that there is no data showing Ukrainians crossing small boats to get to the UK.

Recommendations

The hostile environment has failed survivors of modern slavery and will continue to do so. The erosion of rights for those seeking refuge in the UK has heightened vulnerability to exploitation and hindered the ability of law enforcement to disrupt trafficking networks and prosecute those responsible. Hope for Justice therefore recommends that the UK Government urgently take the following measures in order to enhance protection from exploitation and mitigate further harm.

- **Deconflate modern slavery and immigration policies:** these issues need to be separated, with survivor support coming under appropriate ministerial governance focused on safeguarding and care rather than law and immigration enforcement. This will require:
 - Removing modern slavery from the portfolio of the Minister for Illegal Migration, and placing it within the remit of the Minister for Safeguarding
 - Developing a multi-departmental response to tackling modern slavery, ensuring that the Home Office cannot dominate the strategy, and other departments with relevant existing responsibilities and expertise assist in preventing exploitation and supporting survivors
 - Creating a comprehensive, evidence-based and overarching strategy on immigration which is aligned with efforts to tackle modern slavery
- **Directly incorporate the European Convention on Action against Trafficking (ECAT) into domestic law:** for survivors' rights to be effective, and for state responsibilities to be binding, ECAT must be directly incorporated into domestic legislation. Such a move would also signal the UK's commitment to adhering to the highest standards in international law.
- **Strengthen the rights of those vulnerable to exploitation, including asylum seekers:** when an individual's rights and options are limited they become increasingly susceptible to taking desperate or risky measures, accepting exploitative offers of travel or work. However, when they have rights which can be enforced, their opportunities and resilience to exploitation improve.
- **Enable secure reporting:** survivors must feel safe to report exploitation and abuse, regardless of their immigration status. This requires a mechanism for secure reporting, provided for by legislation, through which safeguarding is prioritised over immigration enforcement.
- **Create safe and legal routes:** enabling Ukrainian refugees to safely travel to the UK significantly reduced their risk of exploitation and harm. As other groups are forcibly displaced by war or climate change, the availability of safe and legal routes will be essential to ensure they too are protected.

⁶⁶ [UK net migration hit new record high in 2022 in latest blow for Sunak | Reuters](#)

⁶⁷ [Long-term international migration, provisional - Office for National Statistics \(ons.gov.uk\)](#)

⁶⁸ [The UK aid budget and support for refugees in the UK in 2022/23 - House of Commons Library \(parliament.uk\)](#)

⁶⁹ [Global Slavery Index | Walk Free](#)

⁷⁰ [Statistics on Ukrainians in the UK - GOV.UK \(www.gov.uk\)](#)

⁷¹ [National Referral Mechanism statistics - GOV.UK \(www.gov.uk\)](#)

⁷² Survivor of modern slavery

- **Provide the right to work:** survivors do not have permission to work whilst they are in the NRM and receive only limited financial support. Allowing those seeking refuge in the UK and survivors of modern slavery to access legitimate employment would significantly reduce vulnerability.

- **Pilot a Trafficking Visa:** survivors require secure immigration status to provide the stability necessary to recover and reduce the risk of re-exploitation. A Trafficking Visa for those trafficked to the UK would provide survivors with regularised status and a pathway to permanent residence in the UK based on their holistic individual circumstances and best interests, including but not limited to cooperation with investigation or prosecution and/or pursuing a compensation claim.

Discretionary leave to remain linked to supporting an investigation or prosecution can result in leave being withdrawn following the criminal case and survivors at risk of destitution, homelessness and ultimately re-trafficking. This is at a point when they can be extremely vulnerable including the risk of reprisals from wider elements of an organised crime group who may not have been prosecuted.

A Trafficking Visa would also reduce the costs of the NRM system by giving people recourse to public funds early on thus spreading the costs between different government departments with little budgetary impact, allowing people to work which also improves recovery and investment back into the UK. In addition, this enables survivors to engage with criminal justice responses at a point they are ready to in their own personal journey of recovery thus actively improving engagement.

- **End the hostile environment:** the vilification of migrants and the undermining of the rights and protections of those seeking refuge in the UK only fosters greater vulnerability and harm. The UK Government must reverse its policy of creating a hostile environment and reaffirm its commitment to adhering to its obligations under international law to safeguard the rights of vulnerable communities. The language used in relation to those seeking refuge in the UK also needs to change: ending the negative discourse about asylum seekers and survivors of modern slavery, instead using language which respects their dignity and humanity.

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Hostility for Survivors, Impunity for Traffickers: How the Hostile Environment enables Modern Slavery

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