

Trafficking



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Part 5, NABA 2022 – Modern Slavery

- Key provisions:
 - Slavery and trafficking information notices (ss. 58-59)
 - Reduction of the recovery period to one-off 30 days (ss. 61-62)
 - Disqualification from protection (s. 63)
 - Assistance and support for potential victims (s. 64)
 - Leave to remain for recognised victims (s. 65)
 - Disapplication of retained EU law (s. 68)

Purpose of new trafficking provisions

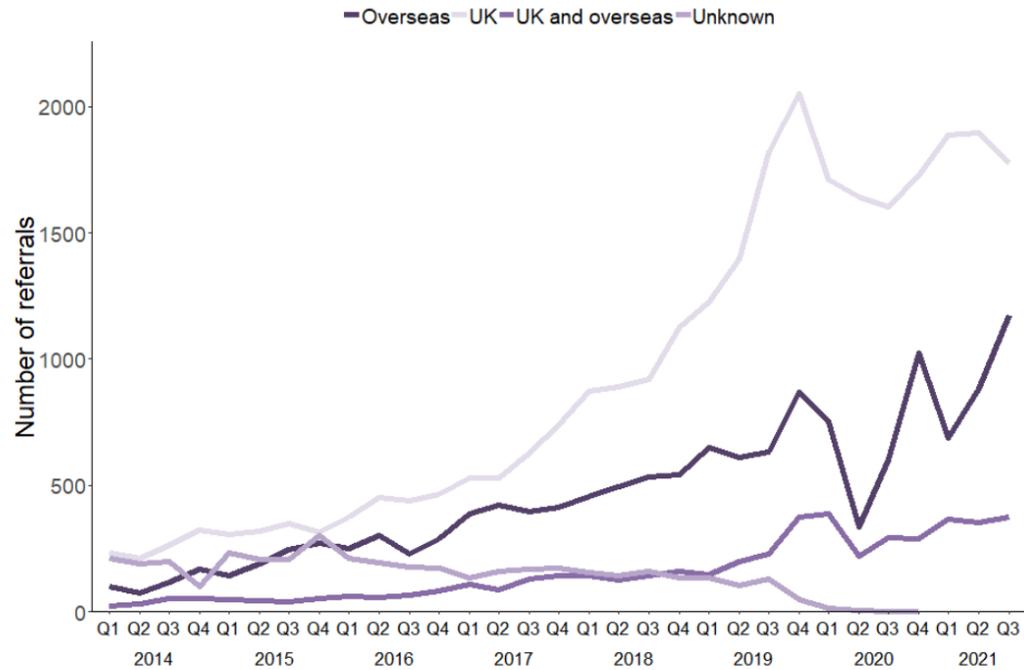
“The UK’s response to the evil of modern slavery is world-leading. The Government remains committed to ... giving victims the support they need to rebuild their lives.

However, over recent years we have seen an alarming increase in the number of illegal migrants, including Foreign National Offenders and those who pose a national security risk to our country, seeking modern slavery referrals – enabling them to avoid immigration detention and frustrate removal from our country.”

‘New Plan for Immigration: Policy Statement’ (March 2022)

Purpose of new trafficking provisions

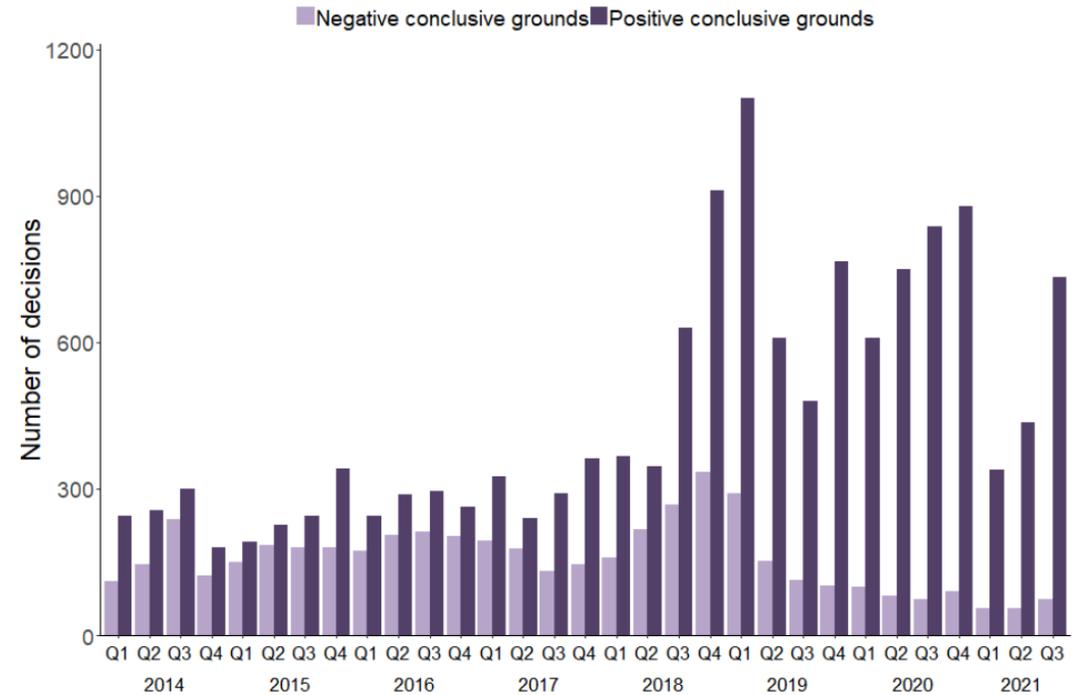
Figure 3: Number of quarterly NRM referrals by location of exploitation



Source: SCA

Notes(s): Excludes data pre-2014 due to data reliability.

Figure 9: Number of NRM positive and negative conclusive grounds decisions



Source: SCA

Notes(s): Based on the quarter in which the SCA issued their decision.

Sections 58-59: information notices

- s.58(1)-(2): SSHD may serve a notice requiring recipient to provide relevant information for making a Reasonable / Conclusive Grounds decision by a specific date.
- S. 59: Where relevant information is provided after the specific date, competent authority **must** take this into account as damaging the person's credibility unless there are good reasons for lateness

Sections 58-59: information notices

Barriers to disclosure

13.18. Victims' disclosures of historic events are often delayed. This may be due to an [unwillingness to self-identify](#), or due to the impact of trauma, particularly post-traumatic stress disorder. A key symptom of post-traumatic stress is avoidance of trauma triggers, or of those things that cause frightening memories, flashbacks or other unpleasant physical and psychological experiences. Because of these symptoms it is likely that a potential victim will not be able to fully explain their experience until they have achieved a minimum level of psychological stability. A delay in disclosing facts should not be viewed as manipulative or taken to mean these facts are untrue. The late disclosure of these facts may be the result of an effective Recovery Period and the establishment of trust with the person to whom they disclose the information. Disclosures often come slowly and in a piecemeal way, sometimes over years.

Sections 61-62

Applicants who receive a first positive Reasonable Grounds ('RG') decision are entitled to a recovery period (if not disqualified under s. 63)

Recovery period will be whichever is later of:

- 30 days from the RG decision, or
- Day on which CG is made.
- Potential victim cannot be removed during this period

Where a further RG decision is made, the competent authority **may** grant a further recovery period.

European Convention on Action Against Trafficking

ARTICLE 13

Recovery and reflection period

1 East Party shall provide in its internal law a recovery and reflection period of **at least 30 days**, when there are reasonable grounds to believe that the person concerned is a victim. Such a period **shall be sufficient for the person concerned to recover and escape the influence of traffickers** and/or to take an **informed decision on cooperating** with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

2 During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.

3 The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victims status is being claimed improperly.

Section 63: disqualification from protection

Competent authority **may** determine post-RG that a person is disqualified from protection and support where:

1. They are a *'threat to public order'*; or
2. They have claimed to be a victim of trafficking *'in bad faith'*.

Threat to public order:

- Most serious offences (terrorism, inc. suspected & attributable to trafficking; Schedule 4 MSA 2015)
- 'Foreign criminal' within the meaning of s. 32(1) UK Borders Act 2007
 - i.e. automatic deportation: e.g. **any** 12+ month sentence
- Deprivation of citizenship where conducive to public good
- Person otherwise poses a risk to UK national security

Section 63: disqualification from protection

If excluded:

- No barrier to removal (under ss. 61-62)
- No leave to remain (under s. 65)

Unresolved questions:

- No Conclusive Grounds decision?
- No statutory defence under s. 45 Modern Slavery Act 2015?

European Convention on Action Against Trafficking

ARTICLE 26

Non-punishment provision

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

Section 63: disqualification from protection

53. Excluding certain victims from protection increases the likelihood that their cases will not be adequately investigated or prosecuted and, therefore, that action will not be taken against organised gangs exploiting these victims of slavery or human trafficking. Such an approach therefore runs counter to the UK's obligations under ECAT and Article 4 ECHR, as well as leaving gaps in enforcing action against traffickers. We are concerned that such an approach will leave a loophole for those responsible for exploiting people in slavery and human trafficking to evade investigation and prosecution, by targeting those with a criminal past.

Joint Committee on Human Rights, HC 964

Section 64: assistance and support

- Duty to provide assistance and support to an identified potential victim where
“necessary for the purpose of assisting the person receiving it in their recovery from any physical, psychological, or social harm arising from the conduct which resulted in the positive reasonable grounds decision in question”
- Reflects ECAT Art. 13.
- Discretionary in case of further RG decisions

Section 65: Leave to remain

- Leave to remain **must** be granted following a positive CG decision where necessary in order to:
 - Assist the person in their recovery from any physical or psychological harm arising from the relevant exploitation;
 - Enable the person to seek compensation; or
 - Enable the person to cooperate with investigation or criminal proceedings into the exploitation

ARTICLE 14

Residence permit

- 1 Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:
 - a the competent authority considers that their stay is necessary owing to their personal situation;
 - b the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

Section 65: Leave to remain

- **However**, s. 65(4)-(5) provide that leave is not '*necessary*' where:
 - A person's needs for assistance can be met:
 - in their country of origin, or
 - any third country where they may be removed under a bilateral agreement
- Victims who are a **threat to public order** or who claimed in **bad faith** are not entitled to leave and any leave they hold may be revoked: s. 65(7)

Section 65: Leave to remain

*“Immediate return of the victims to their countries is unsatisfactory both for the victims and for the law-enforcement authorities endeavouring to combat the traffic. For the victims this means having to start again from scratch – a failure that, in most cases, they will keep quiet about, with the result that nothing will be done to prevent other victims from falling into the same trap... For law-enforcement authorities, if the victims continue to live clandestinely in the country or are removed immediately they cannot give information for effectively combating the traffic. The greater victims’ confidence that their rights and interests are protected, the **better information they will give**. Availability of residence permits is a measure calculated to encourage them to cooperate”*

Explanatory Report to ECAT (CETS 197)

Section 68: Disapplication of EU law

- S. 4 of the European Union (Withdrawal) Act 2018) ceases to apply to the Trafficking Directive (Council Directive 2011/36/EU) insofar as incompatible with the provisions of the NABA 2022
 - No retained protection under EU law for potential and recognised victims adversely affected by these changes

Commencement arrangements

- These provisions are **not yet in force**
 - See e.g. ss. 50-51 MSA 2015
- Can be brought into force **at any time** specified by SSHD

Thank you for listening

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