

Written Submission to the House of Lords Select Committee on the Modern Slavery Act 2015 Call for Evidence

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Introduction

The International Organization for Migration, Country Office for the United Kingdom of Great Britain and Northern Ireland (IOM UK), is pleased to submit a written response to the House of Lords Select Committee inquiry into the impact of the Modern Slavery Act 2015.

Established in 1951, IOM is the leading inter-governmental organisation in the field of migration and works closely with governmental, intergovernmental and non-governmental partners. IOM is committed to the principle that humane and orderly migration benefits migrants and society. The Organization works with its partners in the international community to assist in meeting the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration and to uphold the well-being and human rights of all migrants.

According to Article 1 (c) of the IOM Constitution, one of the purposes and functions of the Organization is “to provide [...] advisory services on migration questions and other assistance as is in accord with the aims of the Organization”. IOM seeks to assist States in the development and delivery of programmes, studies and technical expertise on combating migrant smuggling and trafficking in persons, in particular women and children, in a manner consistent with international law.

Since the mid-1990s, IOM and its partners have provided protection and assistance to more than 100,000 men, women and children, who were trafficked for sexual and labour exploitation, slavery or practices similar to slavery, servitude, or organ removal.

Evidence submission:

IOM’s submission responds to two of the topics as described in the call for evidence. Firstly, “the extent to which the Modern Slavery Act 2015 has been impacted by recent legislation” and secondly, “the efficacy of the other key provisions of the Act, including definitions, sanctions, reporting, enforcement, and the statutory defence for victims.”

In addressing the first topic, this submission concentrates on the impacts of the Nationality and Borders Act 2022 (NABA) in changing how Reasonable Grounds (RG) decisions are made and the impacts of Section 63 “identified potential victims etc: disqualification from protection” (specifically 63.1 (a) that the person is a threat to public order) of NABA ¹ and Section 29 of the Illegal Migration Act 2023 (IMA).² IOM’s response to the second topic specifically focuses on the ongoing challenges with the operationalisation of the statutory defence enshrined in Section 45 of the Modern Slavery Act 2015 (MSA).

¹ <https://www.legislation.gov.uk/ukpga/2022/36/section/63/enacted>

² <https://www.legislation.gov.uk/ukpga/2023/37/section/29/enacted>

This submission is based on IOM’s ongoing research, and analysis of raw data from the UK Data Service (UKDS) on referrals to the UK’s National Referral Mechanism (NRM) between 2014-2023.^{3 4}

1. The extent to which the Modern Slavery Act 2015 has been impacted by recent legislation

Changes to reasonable grounds decision making:

- 1.1 Section 49 of the Modern Slavery Act (MSA) requires the Secretary of State to issue guidance on the identification and response to victims of modern slavery or human trafficking. Section 49.1(c) specifically requires that this includes the “arrangements for determining whether there are reasonable grounds to believe that a person may be a victim of slavery or human trafficking.”
- 1.2 Section 60.3 (C) of NABA amended Section 49 of the MSA by adding a 49.1 (d) “arrangements for determining whether a person is a victim of slavery or human trafficking.” This amendment commenced on the 30 January 2023 and introduced a significant change to the policy on how Reasonable Grounds (RG) decisions are made in the MSA statutory guidance. The guidance explained, “A decision maker must base their decision on objective factors to have real suspicion and therefore meet the RG threshold. An “objective” factor is a piece of information or evidence that is based in fact. Ordinarily, a victim’s own account, by itself, would not be sufficient absent objective factors to have real suspicion.”⁵ A judicial review led to the Home Office withdrawing the requirement for objective evidence on 27 June 2023.⁶ The Home Office updated the guidance at the start of July with new wording for RG decisions which remains in place today. The decision is based on “whether the decision maker agrees there are reasonable grounds to believe, based on all available general and specific evidence but falling short of conclusive proof, that a person is a victim of modern slavery.”⁷
- 1.3 The Home Office’s analysis of the 2023 NRM statistics acknowledges that the amendment to Section 49 and the changes to the MSA statutory guidance led to a fall in the percentage of positive RG decisions. The Home Office explains, “The proportion of positive decisions had remained relatively stable in recent years, with around 9 out of every 10 referrals receiving a positive decision. However, from 30 January 2023, the threshold for a positive reasonable grounds decision

³ Home Office, Modern Slavery Research & Analysis. (2024). *National Referral Mechanism and Duty to Notify Statistics, 2014-2023*. [data collection]. 11th Edition. UK Data Service. SN: 8910, DOI: <http://doi.org/10.5255/UKDA-SN-8910-11>

⁴ IOM’s ongoing analysis of NRM data is available here <https://unitedkingdom.iom.int/national-referral-mechanism-analysis-briefs>

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<https://webarchive.nationalarchives.gov.uk/ukgwa/20230130154837/https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims>

⁶ <https://www.matrixlaw.co.uk/news/sshd-withdraws-new-evidential-test-for-reasonable-grounds-decisions-in-modern-slavery-statutory-guidance/>

⁷ <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northe>

was updated, which led to a reduction in the proportion of positive decisions issued.”⁸ **However, IOM’s analysis of the NRM data available from the UK Data Services finds a much greater fall in the number of positive decisions for foreign nationals compared to those whose nationality is ‘UK’.** Figure 1 shows the percentage of UK cases which received a positive RG decision was 85%, almost exactly double the 43% of RG decisions which were positive for foreign nationals.

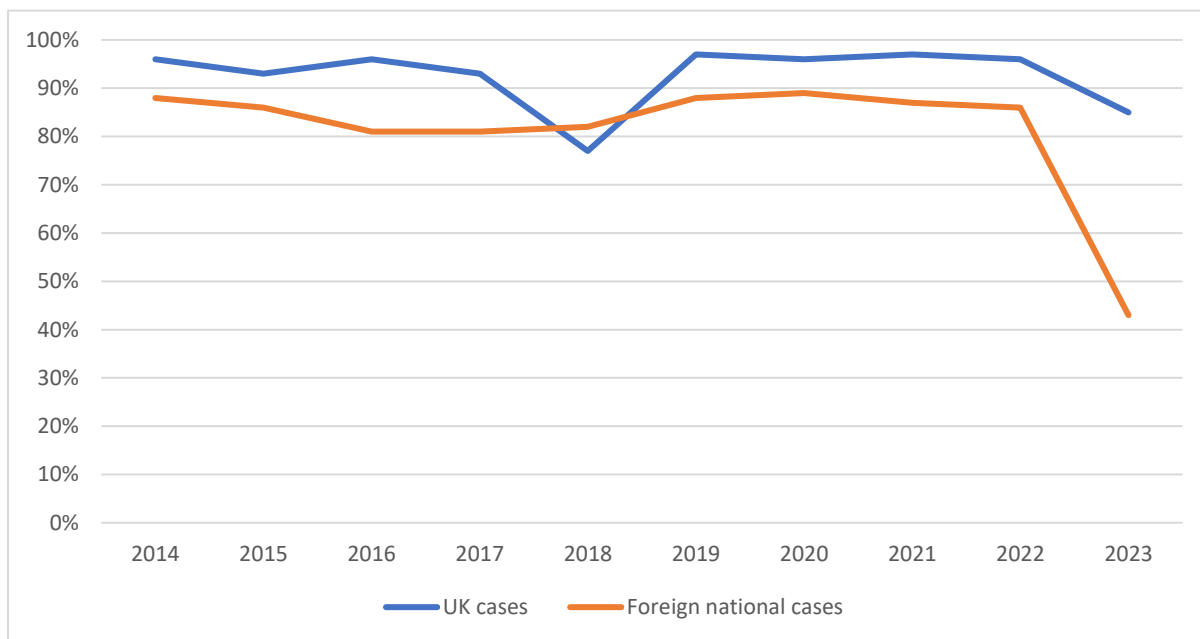


Figure 1: Percentage of positive Reasonable Grounds decisions for UK nationals and foreign nationals 2014-2023⁹

1.4 Nearly half of all child cases referred to the NRM in 2023 had their nationality recorded as ‘UK’. There was an equally significant disparity in the numbers of positive decisions for UK and foreign national child cases. Figure 2 shows that 93% of UK child cases received a positive decision compared to only 54% of foreign national child cases.

⁸ <https://www.gov.uk/government/statistics/modern-slavery-nrm-and-dtn-statistics-end-of-year-summary-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2023>

⁹ Home Office, Modern Slavery Research & Analysis. (2024). *National Referral Mechanism and Duty to Notify Statistics, 2014-2023*. [data collection]. 11th Edition. UK Data Service. SN: 8910, DOI: <http://doi.org/10.5255/UKDA-SN-8910-11>

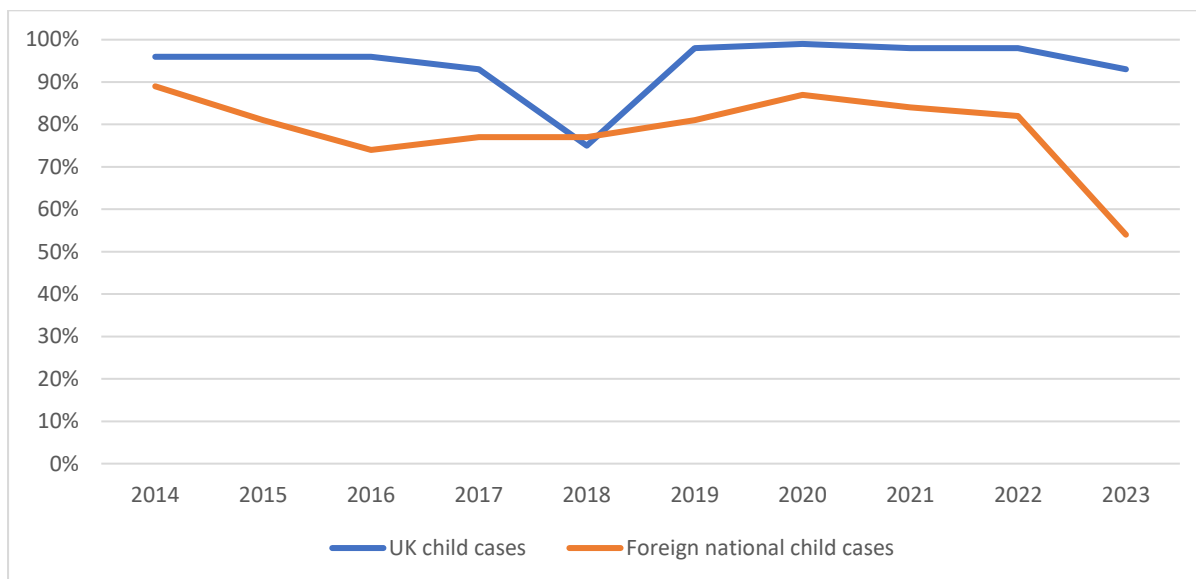


Figure 2: Percentage of positive Reasonable Grounds for UK child cases and foreign national child cases 2014-2023 ¹⁰

Disqualification from Protection:

1.5 The MSA did not enshrine a right to assistance and support for potential victims of modern slavery or human trafficking. Section 50(1) of the MSA instead states “the Secretary of State may make regulations providing for assistance and support to be provided to persons— (a)who there are reasonable grounds to believe may be victims of slavery or human trafficking.” However, Section 63 of NABA enables the UK government to disqualify persons with Reasonable Grounds decisions from the support and assistance included in such regulations. Section 63 permits the Competent Authority to disqualify a person with a positive RG decision if they consider that the person is either a “threat to public order” or has been referred in “bad faith”.

Threat to public order.

1.5.1 The type of circumstances in which a person is considered a threat to public order under Section 63 includes foreign nationals who have received a custodial sentence of at least twelve months. The MSA Statutory Guidance includes a list of indicators with a rating of ‘High’ and ‘Low’ threat to public order. One of the ‘low’ indicators is “Where it is accepted that the offence was committed as part of the individual’s exploitation as outlined in Section 45 of the Modern Slavery Act 2015.” However, it is highlighted, “that this indicator alone is not sufficient to categorise as low.” ¹¹ **It is therefore possible that people referred to the NRM because they were a potential victim of criminal exploitation may be disqualified from the support and assistance which is available upon receiving a positive RG decision because of the crimes they were coerced into committing.** Section 29 of the IMA amends Section 63 of the NABA to disqualify people from protection if they had received a custodial sentence of any length of time.

¹⁰ Ibid.

¹¹ <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northe>

- 1.5.2 IOM’s analysis of the UKDS NRM data finds that of the 330 cases¹² which received a positive RG decision and were subsequently disqualified from protection on the grounds of being a threat to public order, 71% were recorded as a potential victim of criminal exploitation. **Such persons could therefore have been disqualified from support and assistance due to the nature of their exploitation.**

Bad faith.

- 1.5.3 The MSA statutory guidance explains that “an individual may be considered to have claimed to be a victim of modern slavery in bad faith where they, or someone acting on their behalf, have knowingly made a dishonest statement in relation to being a victim of modern slavery.” To-date it appears that this legislation has had no practical impact on the MSA. By the end of 2023, nobody has been disqualified from protection on the grounds of ‘bad faith.’ Furthermore, there had not been any applications for anyone to be disqualified on this basis.¹³

2 The efficacy of the other key provisions of the Act, including definitions, sanctions, reporting, enforcement, and the statutory defence for victims

Statutory defence:

- 2.1 Presently there is an absence of data on the use of Section 45 of the MSA. IOM recommends that data is recorded on cases where a Section 45 Statutory Defence has been raised and whether the use of the defence was successful or unsuccessful.
- 2.2 Despite an absence of quantitative data on the use of Section 45, IOM is concerned that victims of human trafficking and modern slavery in England and Wales appear to continue to be punished for offences they committed as a direct consequence of being a victim of modern slavery. These concerns are based on IOM’s analysis of nearly 300 media reports identified between 2015 and 2024 from regional online news websites about foreign nationals who received custodial sentences after being found guilty of the production of cannabis where the media report describes strong indicators that those who were convicted were a potential victim of human trafficking or modern slavery. In most of the reports there is no reference to the defendants being recognised as potential victims of human trafficking or modern slavery. However, IOM has identified multiple cases in which defendants were explicitly described as a victim of human trafficking and modern slavery during their criminal trial. This submission includes a small snapshot of such cases reported in the past 12 months.

¹² Data extracted from a live database on 3 January 2024. Home Office, Modern Slavery Research & Analysis. (2024). National Referral Mechanism and Duty to Notify Statistics, 2014-2023. [data collection]. 11th Edition. UK Data Service. SN: 8910, DOI: <http://doi.org/10.5255/UKDA-SN-8910-11>

¹³ <https://www.gov.uk/government/statistics/modern-slavery-nrm-and-dtn-statistics-end-of-year-summary-2023#documents>

- 2.3 IOM recognises the limitations of analysing these news reports as they do not provide all the pertinent details of the cases. However, we feel they give insights into concerning trends that justify further investigation into the operationalisation of the non-punishment provision in the form of Section 45. The cases suggest more training on human trafficking and modern slavery and Section 45 of the MSA is needed for all stakeholders throughout the criminal justice system. All these individuals could be disqualified under the amendments to the public order disqualification in the IMA.

Cases where there is formal or informal recognition that the defendant is a victim of modern slavery.

- 2.3.1 In March 2024, Warwickshire police published a press release about a forty-seven-year-old Vietnamese man who was given a ten-month custodial sentence at Warwick Crown Court for the production of cannabis. The police's press release mentions both the act and means of trafficking based on the man's interview "he had been forced into a vehicle and brought to the grow in Nuneaton three months prior to his arrest. He said that he had been forced to water and feed the plants under threats of violence from the owners of the grow." The investigating officer (a Police Constable) is quoted in the press release explicitly describing the man as a victim of modern slavery, "Nguyen has committed a crime and has been prosecuted according to the law, but along with many other grow operators he is also a victim of modern slavery."¹⁴
- 2.3.2 In August 2023, a Vietnamese man was given a seventeen-month custodial sentence at Carlisle Crown Court for the production of cannabis. The Recorder who issued the sentence described the man as a victim of human trafficking but also explained that he was not entitled to use the Section 45 defence. The media report quotes the Recorder as telling the man, "You moved to the UK in 2021, being a victim of human trafficking and therefore had to discharge a debt of many thousands of pounds . . . Even though the threshold of a defence of modern slavery was not reached, it is clear that the last few years of your life have been lived in circumstances akin to human trafficking . . . You could not use the defence of 'modern slavery', but you were in circumstances approaching it."¹⁵
- 2.3.3 In August 2023, a twenty-one-year-old Albanian man was given an eight-month custodial sentence at Oxford Crown Court for the production of cannabis. The man was due to be sentenced in July 2023, but the sentencing was delayed due to there not being an interpreter available. The media report from July explains that "Recorder Joseph Hart, expressed some surprise that Lika had not been referred to the Home Office as a potential victim of modern-day slavery, given his account of being made to tend to the plants."¹⁶
- 2.3.4 In March 2023, a nineteen-year-old Albanian man was given a fifteen-month custodial sentence at Maidstone Crown Court for the production of cannabis. The media report

¹⁴ <https://www.warwickshire.police.uk/news/warwickshire/news/2024/march/ty-nguyen-sentenced-to-10-months-for-cannabis-production/>

¹⁵ <https://www.newsandstar.co.uk/news/23713744.carlisle-cannabis-farmer-250k-crop-trafficked-uk/>

¹⁶ <https://www.oxfordmail.co.uk/news/23666823.delay-sentencing-cannabis-farmer-came-oxford-illegally/>

describes how the individual was transported from a Home Office run hotel to a cannabis factory in a disused building in the countryside. His solicitor described him as a “young, naive and a victim of modern-day slavery.” The Judge’s description of the cannabis factory suggests an inability for the individual to leave the cannabis factory, “I accept that this establishment was pretty much sealed for you to remain there.”¹⁷

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¹⁷ [Besmir Sula, 19, who paid £4,000 to gangsters to be smuggled to the UK, locked up for 15 months | Daily Mail Online](#) The article also mentions that an unnamed sixteen-year-old also found in the cannabis factory had pled not guilty and would face trial at a youth court in June 2023.