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Illegal Migration Act 2023

A new law called *The Illegal Migration Act 2023* has recently come into force. The Act has brought about significant changes to the UK asylum and immigration system for people who arrive in the UK on or after 20 July 2023. We are in the process of updating the Toolkit to reflect these developments. For now, please be aware that some of the information in the Toolkit may be out-of-date for people who arrived in the UK after that date. To stay up to date with any changes to the Toolkit, please sign up to our newsletter.

Modern Slavery and Human Trafficking

There is a distinct route to getting immigration status in the UK if you have experienced modern slavery or human trafficking. This route is separate to the asylum process, and happens through the National Referral Mechanism (NRM) process.

Many people who have experienced modern slavery or human trafficking might have a NRM application and an asylum claim happening at the same time – but they are not the same thing.

Going through the NRM is a very complex and slow experience, with many delays. There are specialist organisations that provide support to people who are in the system – you can read more about them on this page.

Read this page to understand what modern slavery and human trafficking are, what the process is for survivors in the UK, common issues faced in the process, and key tips and organisations to help you navigate the process.

This is a general introduction to the topic, and not specialist advice.

At Right to Remain, we believe that anyone who has experienced trafficking or modern slavery is a survivor – however, please note that the legal term used by the Home Office is ‘victim’.

On this page, you will find the following information:

What is modern slavery and human trafficking?

Key definitions, including:

Exploitation

Modern slavery

Trafficking

Smuggling

What is the process for survivors of modern slavery in the UK?

The National Referral Mechanism (NRM)

First responders

Reasonable grounds decision

Conclusive grounds decision

Temporary Permission to Stay (and Discretionary Leave)

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The difference between the asylum process and the NRM
Common issues faced in the NRM process, including:
Delays
Pressures on the system
Getting Temporary Protection Status
Key organisations

What is modern slavery and human trafficking?

Trafficking, modern slavery, and smuggling and other terms are all words that are often grouped together to describe experiences that people have had. However, in terms of legal definitions, they do not all mean the same thing.

Key Definitions

Exploitation

Exploitation is a form of abuse where someone is forced or coerced into doing things for the benefit of others. It is defined in section 3 of the Modern Slavery Act 2015, and includes

Slavery, servitude, or forced/compulsory labour. You can read more about this in our Work Exploitation and Migrant Workers' Rights page of the Toolkit.

Sexual exploitation

Bodily exploitation

Being subjected to force, threats, or deception to provide services or benefits to another person such as:

Debt bondage

Drug trafficking

Financial exploitation

Modern slavery

There are different types of modern slavery, many of which overlap with elements of exploitation above. In the UK, modern slavery includes: human trafficking, slavery, servitude and forced or compulsory labour.

A person does not have to be moved to a different location in order to be considered a survivor of modern slavery – this is unlike trafficking, where movement is a key factor.

Trafficking

Trafficking is one element (this means one part) that falls under the broader definition of modern slavery. It is defined in Article 4(a) of the Convention on Action against Trafficking in Human Beings.

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Trafficking is the movement of somebody (through “recruitment, transportation, transfer, harbouring or receipt”) who is being controlled by another person, or by more than one other person.

That control can take the form of “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”.

To fit the definition of “trafficking”, the movement and control must be for the purpose of exploitation.

Smuggling

Smuggling is not the same as trafficking. Smuggling is the secret – usually illegal – moving of someone across a border.

Trafficking must involve threat, force, abduction, fraud or deception but smuggling does not.

While smuggling can involve many types of harm, the smuggler is providing a service for the person being smuggled (and the relationship usually comes to an end on arrival at the point of destination), rather than trafficking which requires moving for the purposes of exploitation.

What is the process for survivors of modern slavery in the UK?

In order for people to be recognised as survivors of modern slavery and to receive protection in the UK, they must be recognised by the National Referral Mechanism (NRM). The NRM is part of the UK Home Office: the government department for things like immigration, policy and crime.

The NRM itself is made up of two bodies called the ‘competent authorities’: The Single Competent Authority (often referred to as the ‘SCA’) and The Immigration Enforcement Competent Authority (IECA).

These competent authorities directly handle the referrals that are put into the NRM. So, the NRM is the name of the system, and the competent authorities are the organisations (and people) who make the decisions in the system.

The main difference between the two competent authorities is that IECA is newer, and focuses on people who do not have immigration status in the UK (for example, because they were trafficked or smuggled into the UK). You can learn more about the role of the IECA here. The SCA, by contrast, works with people who have immigrated to the UK as well as UK nationals who have been exploited.

Referral into the NRM by a first responder

Survivors cannot claim protection through the NRM directly. Instead, the process is as follows:

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The survivor must be referred into the system by a member of staff at a 'first responder organisation'. A first responder organisation is an authority that is authorised to refer a potential 'victim' of modern slavery into the NRM. There are different lists of first responders in England & Wales, Scotland, and Northern Ireland – you can read more about this below.

The survivor must give informed consent (this means giving permission, and knowing what exactly you are giving permission for) to the first responder organisation to refer them into the NRM.

The member of staff at the first responder organisation can then fill out an online form to begin the referral process.

There is a limited list of first responders in England and Wales:

- police forces
- certain parts of the Home Office:
 - UK Visas and Immigration
 - Border Force
 - Immigration Enforcement
 - National Crime Agency
- local authorities
- Gangmasters and Labour Abuse Authority (GLAA)
- Salvation Army
- Migrant Help
- Medaille Trust
- Kalayaan
- Barnardo's
- Unseen
- NSPCC (CTAC)
- BAWSO
- New Pathways
- Refugee Council

Your lawyer or legal representative is not a first responder. You can always check the Home Office website to ensure that the person referring you into the NRM works at an authorised first responder organisation.

There are different first responder organisations in Scotland and Northern Ireland. You can read about them on the online version of this page.

After the first responder organisation has filled out the form, a reference number will be provided, and the NRM will try to make a reasonable grounds decision within 5 working days (however, there are currently severe delays and most people wait longer than this). You can read about reasonable grounds decisions below.

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A conclusive grounds decision should be provided 45 days after a positive reasonable grounds decision, but this is not likely to be the case, as people have been waiting up to 6 months due to delays from the NRM. Read more about conclusive grounds decisions below.

Reasonable grounds decision

A reasonable grounds decision is the first of two stages of decisions provided by a competent authority in the NRM process. You are meant to receive a reasonable grounds decision within 5 working days of being referred into the NRM, but due to severe delays, this is now rarely the case.

If the competent authority finds that there are reasonable grounds to believe that a person has experienced modern slavery or trafficking – this is called a positive reasonable grounds decision, often called a 'positive RG'.

This is not a very high threshold (level) to prove, and as the result of a positive reasonable grounds decision, a survivor is entitled to certain types of support which includes access to:

- Accommodation
- Psychological assistance
- Financial support (in the form of an allowance)
- Access to emergency medical treatment
- Translation and interpretation services
- Counselling
- Assistance in criminal proceedings
- Access to work (and training or education if necessary)

This support is available for a minimum of 45 days following a positive reasonable grounds decision – or until a conclusive grounds decision is received. Due to the delays to the NRM process, survivors often receive this support for months until they receive a conclusive grounds decision.

If the competent authority does not find that there are reasonable grounds to believe that a person referred into the system has experienced modern slavery or trafficking, they will issue a negative reasonable grounds decision (often called a 'negative RG').

What to do if you receive a negative reasonable grounds decision

If you receive a negative reasonable grounds decision, you can try one of the following options:

Try to be referred into the NRM again, but with new information about your situation or experience. We know that this can be difficult – it is already hard to 'prove' that you have experienced trafficking or slavery. You can think about evidence from the police of any crimes you have been subjected to, or getting a medical report that explains or confirms that you have sustained mental or physical injuries as a result of your experiences.

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Pursue a judicial review of the decision. This is a legal challenge as to how a legal decision has been made. You can read more about the process for judicial review in our Toolkit page on the topic. However, we would caution that it is important to try to seek legal advice before going down this route.

Conclusive grounds decision

A conclusive grounds decision is the final decision issued by a competent authority in the NRM process. Between a positive reasonable grounds decision and a conclusive grounds decision, the competent authority may ask for more information or evidence about your experience of trafficking or modern slavery.

Sometimes – but not often – the competent authority may request to interview the person before making a conclusive grounds decision. This interview is similar in format to (but is not the same as) an asylum interview. You can read more about asylum interviews in our Toolkit page to learn about your rights during an interview, and the type of questions you may be asked.

If you receive a positive conclusive grounds decision, this means that the competent authority recognises and accepts that you have experienced trafficking or modern slavery.

The threshold for a positive conclusive grounds decision is 'on the balance of probabilities'. This is higher than that for a positive reasonable grounds decision, so it is harder to receive a positive conclusive grounds decision. On the balance of probabilities means that it has to be more likely than not that the person experienced trafficking or modern slavery.

After receiving a positive conclusive grounds decision, a survivor can continue to receive support via the NRM, however their needs will be assessed and support will be provided as a result. So, after a positive conclusive grounds decision, a person will only receive support for parts of their life where they have needs as a result of the modern slavery or trafficking they have experienced. This is difficult because for many people, every element of their life has been affected by their experience. It is also a difficult adjustment to have fewer avenues of support available after receiving a positive conclusive grounds decision.

If the Home Office finds that a person's 'trafficking needs' no longer fit this criteria, the person will be exited (this means removed) from the NRM. For further support, please see the list of organisations below.

After receiving a positive conclusive grounds decision, a survivor who is not a UK citizen may make an immigration application to stay in the UK. You can read more about this in the Discretionary Leave and Temporary Permission to Stay section below.

If the competent authority does not think that it is more likely than not that you have experienced trafficking or modern slavery, they will issue a negative conclusive grounds decision. If you receive a negative conclusive grounds decision, you will continue to receive support as a result of your positive reasonable grounds decision for another 14 days.

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What to do if you get a negative conclusive grounds decision

You will then have two potential options for challenging the negative decision:

Reconsideration: This is not a formal appeal, but if a support worker or first responder is able to submit further evidence or information (called 'grounds') in support of a positive conclusive grounds decision then the competent authority will need to take a look at it. This is an informal arrangement and only a support worker or first responder can help you to submit a reconsideration. A lawyer/legal representative or charity that is not a first responder cannot help you do this.

You can learn more about the process of reconsideration from page 91 onwards of the Home Office guidance for competent authorities here. You can also learn more by reading ATLEU's resources.

Judicial review: This is a legal challenge as to how a legal decision has been made. You can read more about the process in our Judicial Review page. However, we would caution that it is important to try to seek legal advice before going down this route.

It is not a guarantee that either of these routes will be successful, or even that they will be suitable for each person's situation.

Temporary Permission to Stay and Discretionary Leave

Temporary Permission to Stay (often called 'VTS') is a type of temporary residence permit that survivors of trafficking or modern slavery – and any dependent children they have – may be considered for if they have a positive conclusive grounds decision. It is unfortunately not a route to settlement in the UK.

It is intended to replace Discretionary Leave (for people who received conclusive grounds decisions after 2023), and anyone who was previously granted Discretionary Leave and wants to apply to extend their stay may apply to extend under the Temporary Permission to Stay provisions. However, reconsiderations of decisions made under the previous policy of Discretionary Leave for Victims of Modern Slavery will still be reconsidered under that policy, which you can access here.

Temporary Permission to Stay was introduced by section 65 of the Nationality and Borders Act 2022. You can read the Home Office guidance on Temporary Permission to Stay which is linked on the online version of this page.

Unfortunately, page 11 of the guidance states that receiving a positive conclusive grounds decision is not enough to be granted temporary permission to stay, and says that you must meet the 'eligibility and suitability requirements' that are outlined in the Appendix: Temporary Permission to Stay for Victims of Human Trafficking or Slavery (VTS). Also, you will not be eligible for VTS if you already have another type of permission to stay in the UK.

The eligibility and suitability requirements for VTS are:

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A need for assistance to recover from any physical or psychological harm as the result of trafficking or modern slavery

Cooperating with a public authority (like a police investigation into their traffickers or exploiters) and a need to be physically present in the UK to cooperate with the investigation or prosecution

Seeking compensation (from their traffickers or exploiters) through the UK court system, if it would be unreasonable for them to do so from outside of the UK

You can read more about these requirements on page 17 of the Home Office guidance.

You must fulfil these requirements to the balance of probabilities – which means that it is more likely than not that they are true (this is the same higher threshold that is required for a positive conclusive grounds decision).

The length of stay granted under Temporary Protection Status will depend on the facts of each case, but the Home Office guidance (at page 21) says that decision-makers should not normally grant permission to stay for:

More than 30 months at a time for assisting with psychological / physical recovery needs and / or assisting public authorities.

More than 12 months at a time for the purposes of pursuing a compensation claim.

Under the old policy for Discretionary Leave, it was quite simple for someone to apply for and get temporary permission to stay. It is unfortunately much more difficult to get Temporary Protection Status.

The difference between the asylum process and the NRM

Seeking protection through the National Referral Mechanism (NRM) process is a separate route to getting immigration status in the UK by claiming asylum.

Many people who have experienced modern slavery or human trafficking might have a NRM application and an asylum claim happening at the same time – but they are not the same thing.

The key differences between the asylum process and the NRM process are as follows:

Different requirements

To claim asylum, a person cannot be a citizen of the country they claim asylum in. They must have fled their nation of origin and have a well-founded fear of persecution (this means danger targeted at them specifically) on the basis of who they are (race, nationality, religious belief, political opinion, or belonging to a particular social group). You can learn more about asylum [here](#).

To receive protection through the NRM, it does not matter if a person is a UK citizen or if they do not have immigration status. They must be able to show the competent authority that there are 'conclusive grounds' (this

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means it is more likely than not) to believe that they have experienced trafficking or modern slavery.

Different processes

A person must claim asylum themselves directly from the Home Office, usually in person at the port of entry (like an airport, or train station), or at an Asylum Screening Unit. You can learn more about claiming asylum in the UK in our Toolkit page.

A person must be referred into the NRM process by a first responder – they cannot seek protection from the NRM directly.

Different outcomes

When a person claims asylum and their claim is successful, they will be granted Refugee Status by the Home Office. This is a form of immigration status which lasts for 5 years. After those 5 years, the person can apply for residence (sometimes called 'Indefinite Leave to Remain') in the UK. After one year of residence, they can apply for British citizenship (a passport).

You can learn more about what happens after a Home Office decision in our Legal Update blog on 'What happens after you get refugee status?'

If a person's asylum claim is refused (unsuccessful), they can usually appeal this decision.

When a person is referred into the NRM and receives a positive reasonable grounds decision, they are entitled to support (as outlined above). If they then receive a positive conclusive grounds decision, it will be accepted that they have experienced modern slavery or trafficking, and they will receive limited support to meet their needs related to their experience. They will also have the option to be considered for a temporary residence permit in the UK (either Discretionary Leave, or Temporary Permission to Stay). These are not routes to settlement in the UK.

Common issues faced in the NRM process

Failed new test

In January 2023, the Home Office published a new test under section 49 of the Statutory Guidance on Modern Slavery, which expected survivors of modern slavery to produce objective (this means factual) evidence of their trafficking in order to receive a reasonable grounds decision. A survivor's own account (testimony) was not to be accepted as objective evidence. This made it very difficult for survivors of modern slavery to get the protection they needed from the Home Office, especially so early in the process.

The negative impacts of this new test were clear. In 2022, 88% of NRM cases received reasonable grounds decisions. In the first quarter of 2023 this figure had dropped to 58%.

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A judicial review challenge was brought by two survivors who received negative reasonable grounds decisions, even though the Home Office had said that their own accounts of their experiences were believable.

Before the case reached the hearing stage, the Home Office agreed with the legal challenge and published new guidance in July which removed this requirement for objective evidence.

Though the number of positive reasonable grounds decisions is slowly increasing, it is still not at the level it was at before the new test was published (and then removed!).

It has also caused massive delays in receiving a reasonable grounds decision. Where people used to wait around 5 working days, it is now not unusual to wait many months for an initial decision.

You can read more about delays in the NRM decision-making process by reading Kalayaan's statement on the topic linked on the online version of this page.

Pressures on the system

In February 2023, Kalayaan published a report called *The National Referral Mechanism: Near Breaking Point* which outlines all of the pressures on the NRM system which are preventing it from operating well, to the detriment of survivors.

The report outlines how the UK government has, in recent years, made a significant effort to raise awareness for how to spot signs of trafficking or modern slavery – for example, through campaigns targeted at different parts of society. This has resulted in an increase in the number of people referred into the NRM process.

However, no extra support or resources have been provided to first responders who are dealing with the increased referrals, though this issue has been raised with the Home Office many times. This means that first responders are struggling to meet the demand, and this negatively impacts survivors as a result.

The report states that:

In Kalayaan's experience, the issue is exacerbated [made worse] by some front line staff in statutory services either being unaware of their legal responsibilities to identify and safeguard survivors, or being overstretched and underfunded for them to be able to respond sufficiently. This cannot continue.

The result is that survivors, if and when they are identified, cannot access the one system used in the UK – the NRM – to be identified, safeguarded and offered support. This situation has been deteriorating for a number of years but it now reaches breaking point.

So, the key pressures are that there is only one mechanism for providing protection to survivors in the UK (the NRM), and the first responders who are responsible for referrals are not receiving the support they need in order to then adequately support survivors. The whole system is under strain.

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Page 8 of the report outlines other initiatives or government policies that add to this issue, and goes on to make recommendations for how this can be resolved.

Getting Temporary Protection Status

Under the old policy for Discretionary Leave, it was quite simple for someone to apply for and get temporary permission to stay. It is unfortunately much more difficult to get Temporary Protection Status (also known as 'VTS') because the threshold is so high and the requirements are so limited. You can read more about the requirements above.

We will update this section when we know more about success rates for grants of VTS status.

Key organisations

Though first responders and organisations that support survivors of trafficking and modern slavery are under strain, they do exist.

This is a non-exhaustive list of key organisations across the UK who can provide different types of support or guidance to survivors:

Unseen – Unseen is a non-statutory first responder. It is a UK charity with its head office in Bristol. They provide safehouses and support in the community for survivors of trafficking and modern slavery. They also run the UK Modern Slavery & Exploitation Helpline.

Anti-Trafficking and Labour Exploitation Unit (ATLEU) – ATLEU a charity that provides legal advice and support to survivors of trafficking and slavery. They also have an excellent trafficking information resource hub called the 'ATHUB'.

Kalayaan – Kalayaan is a small London based charity which works to provide practical advice and support to, as well as campaign with and for, the rights of migrant domestic workers in the UK. They have excellent resources for migrant workers, and a general resource hub about migrant workers' rights and the NRM.

Ella's – Ella's is a London-based organisation working with women who have survived trafficking and sexual exploitation. They have two support houses and provide regular support to their members.

The Snowdrop Project – Snowdrop is a Sheffield-based charity that supports and empowers survivors of modern slavery and exploitation in South Yorkshire through initiatives like casework, counselling, and community activities.

Links to all of these organisations are available on the online version of this page.

If you work with or know of more organisations who provide support to survivors of trafficking, modern slavery, and exploitation – please let us know so we can feature you on this list!