



UNITED KINGDOM

Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Common Law Statutory Law	Written	Yes ¹	Unitary state, with devolved governance to constituent parts	Parliamentary Democracy under a Constitutional Monarchy

1. INTRODUCTION

1.1. United Kingdom and Modern Slavery (Human Trafficking)

The Modern Slavery Act (**MSA**) came into force in England and Wales in 2015. Scotland and Northern Ireland (the other constituent parts of the United Kingdom) enacted similar legislation that same year.² The Scottish and Northern Irish legislation generally tracks the MSA, with adjustments to reflect their different court systems.

The MSA implements four components of the UK's strategy to tackle modern slavery and human trafficking. The MSA (i) defines criminal offences punishing modern slavery and human trafficking in broad terms; (ii) gives authority for the creation of government systems to identify, report, and assist victims of modern slavery and human trafficking; (iii) requires businesses of a financial size that derive revenue from the sale of goods and services in the UK to publish a transparency statement regarding their supply chains; and (iv) establishes the office of the Independent Anti-Slavery Commissioner with a mandate to initiate and advise on measures to combat modern slavery and human trafficking.³

The Home Office is the prime central government department for matters concerning modern slavery and human trafficking. The Home Office is assisted on the detection of criminality by the National Crime Agency (**NCA**) and local police forces. The Home Office is also responsible for enforcing immigration rules in the UK.

The Home Office has established a National Referral Mechanism (**NRM**) for reporting cases of modern slavery and human trafficking and assisting victims. Public authorities and certain first responders are required to channel all suspected cases of modern slavery and human trafficking through the NRM.⁴ The NRM system recorded 10,613 instances of modern slavery/human trafficking incidents for the year ended December 2020.⁵ Most trafficking reports concern individuals trafficked from within the UK. In this period, the primary countries of origin for victims trafficked from outside the UK into the UK were Albania, Vietnam, Sudan, Romania, Eritrea, Iran, China, Iraq, and Nigeria. Victims are trafficked into forced labor in the sex,

¹ Bill of Rights 1689 for England and Wales; Claim of Right Act 1689 for Scotland. These are fundamental parts of the unwritten constitutional framework of the United Kingdom.

² The legislation in Scotland is the Human Trafficking and Exploitation (Scotland) Act 2015, which received royal assent on 4 November 2015, and the legislation in Northern Ireland is the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, which received royal assent on 13 January 2015.

³ See in particular, MSA Sections 1, 2, 4, 40, 49, 50, and 54.

⁴ Home Office, Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015), Non-Statutory Guidance for Scotland and Northern Ireland Version 2.4, March 2020.

⁵ Home Office, Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary, 2020. See also Office of National Statistics. Modern Slavery in the UK: March 2020.

horticulture/agriculture, construction, car-wash, beauty treatment, hospitality, and domestic work sectors.⁶

The Independent Anti-Slavery Commissioner has stated that official statistics are likely to under-report the extent of modern slavery and trafficking because (i) detection is challenging; (ii) victims may not be aware that they are being trafficked or exploited, or they may feel they have consented to it and therefore have no protection; (iii) victims fear retaliation from their employers/traffickers; and (iv) victims fear being reported to immigration enforcement authorities.⁷

1.2. United Kingdom’s Policy and Legal Position

The United Kingdom’s policy and legislative response to modern slavery and human trafficking has a multidisciplinary approach, reflected both in the duties of the Independent Anti-Slavery Commissioner and in the design of the NRM system. The Home Office commissions victim support services from non-governmental organisations (NGOs). NGOs play a prominent, independent role in formulating and commenting on policies and in providing financial, physical, and emotional support to victims.

2. OVERVIEW OF UNITED KINGDOM’S LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

2.1. United Kingdom’s Regional and International Law Obligations

2.1.1. *Fundamental human rights*

The UK was one of the 48 countries that voted in favor of the Universal Declaration of Human Rights in 1948. The UK has ratified a number of other human rights treaties, including the International Covenant on Civil and Political Rights (accession date 1966), the Convention on the Elimination of All Forms of Discrimination against Women (accession date 1986), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (accession date 1988), the Convention on the Rights of the Child (accession date 1991), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (ratified 2006). The United Kingdom also has signed European human rights treaties, including the European Convention on Human Rights (accession date 1966) (ECHR) and the Council of Europe Convention on Action against Trafficking in Human Beings (accession date 2007) (ECAT). Of these treaties, the ECAT has the greatest impact on determining the rights and remedies available to victims of modern slavery and human trafficking in the UK.

2.1.2. *Slavery and trafficking*

Slavery and trafficking are defined under the Modern Slavery Act 2015 as two separate offences. In short, the modern slavery offence is committed when a person (the offender) holds another person (the victim) in slavery or servitude and the circumstances are such that the offender knows or ought to know that the victim is held in slavery or servitude, or the offender requires the victim to perform forced or compulsory labor and the circumstances are such that the offender knows or ought to know that the victim is being required to perform forced or compulsory labor. Forced or compulsory labor for this purpose has the meaning given to it in the ECHR.

⁶ Independent Anti-Slavery Commissioner, Annual Report 2020–2021.

⁷ *Id.*

The trafficking offence is committed if the person (the offender) arranges or facilitates the travel of another person (the victim) with a view to the victim being exploited.

2.1.3. *Effect under United Kingdom’s law*

Under English law, treaties do not create individual legal rights because treaties are not directly incorporated into UK domestic law. Only in exceptional cases may individuals enforce treaty rights, such as when a Government action or policy expressly implements an obligation, so that the action or policy must be consistent with the treaty obligation. In several cases individuals have successfully argued that English law has incorporated ECAT rights. Consequently, ECAT has become the most important UK treaty to protect against modern slavery and human trafficking.⁸

2.2. Human Rights Protections Under United Kingdom’s Law

The primary protection for human rights in the UK is the Human Rights Act 1998 (**HRA**), which incorporates the ECHR into domestic law. While the primary framework for the protection of rights of victims of modern slavery and human trafficking is through the MSA, the HRA is an important reference point in victim compensation cases before courts and tribunals.⁹

2.3. Criminalization of Modern Slavery

The MSA sets out in broad terms offences for modern slavery and human trafficking. Refer to Section 3.

2.4. Supply Chain Reporting

The MSA imposes a supply chain reporting requirement on businesses that provide goods and services in the UK market and that have a global turnover exceeding GBP 36 million.¹⁰

2.5. Investigation, Prosecution, and Enforcement

2.5.1. *Investigation and prosecution of criminal offenses*

The Home Office investigates the MSA criminal offences, and in England and Wales the Crown Prosecution Service (**CPS**) prosecutes offenders. The Home Office manages cases through the NRM and by working with the NCA and local police forces. The Gangmasters and Labour Abuse Authority, which is a non-departmental public body, also investigates reports of worker exploitation and illegal activity, including modern slavery and human trafficking. The authority uses a licensing regime to regulate businesses that provide workers to the fresh produce supply chain and the horticulture industry.

The Home Office uses NRM reports to trigger an investigation and formally to determine whether a person has been a victim of modern slavery or human trafficking. Certain significant government support to the

⁸ *JH Rayner (Mincing Lane) Limited v. Department for Trade and Industry* [1990] AC 418. *But see R (Atamewan) v. Secretary of State for the Home Department* [2014] 1 WLR 1959, *R (PK (Ghana)) v. Secretary of State for the Home Department* [2018] EWCA Civ 98, and most recently *R (on the application of KTT) v. the Secretary of State for the Home Department* [2021] EWHC 2022 regarding incorporation of ECAT rights through the issuance of a policy document to give individual rights. Under the latter ruling, the court concluded that trafficking victims should be given leave to remain in the UK if they are pursuing a claim for asylum based on the fear of being re-trafficked. This decision is expected to have implications for thousands of victims. *See The Guardian*, 12 October 2021. The Home Office has appealed the decision; the appeal is expected to be heard in 2022.

⁹ *See OOO v. Commissioner of Police for the Metropolis* [2011] EWHC 1246.

¹⁰ Section 54(3) of the MSA gives the Home Secretary the right to adjust this financial threshold.

victim is contingent on this decision. The Single Competent Authority (SCA), which is part of the Home Office, does the investigation and decision-making.¹¹

2.5.2. *Mutual assistance/international cooperation*

Public authorities and designated first responder NGOs do the initial NRM reporting.

An adult victim must consent to be reported into the NRM. Victims must be informed clearly that the SCA may share the submitted information with other public authorities, including the police. If an adult does not consent to enter the NRM, public authorities must, and first responders should (subject to any confidentiality obligations they have), submit a Duty to Report (DTR) referral using the same online process. The SCA has no duty of confidentiality to the victim.

In connection with the first report, reporters are to check that victims have suitable emergency accommodation. If necessary, this can be arranged through a Modern Slavery Victim Care Contract. The Home Office has engaged the Salvation Army to provide this accommodation.

On receipt of the referral, the SCA will contact the police. Victims must supply details of any open immigration cases affecting them, and the SCA must then provide details of the referral to the Home Office immigration authorities.

2.5.3. *SCA decision-making/access to support*

The SCA determines whether an individual will be recognized as a potential victim of modern slavery or human trafficking. The decision-making has two stages: First, the SCA will make a “reasonable grounds” decision to determine whether it suspects, but cannot prove, that an individual is a potential victim of modern slavery or human trafficking. It should make this decision within five working days of entry into the NRM, where possible. A negative decision means that the victim may lose support. Second, the SCA proceeds with its investigation to make a “conclusive grounds” decision. This process takes at least 45 calendar days from the reasonable grounds decision, and its purpose is to determine whether, on the balance of probabilities (the civil standard for liability in the UK), there are sufficient grounds to decide that the individual is a victim of modern slavery or human trafficking. Following a positive “conclusive grounds” decision, victims will be removed from support only when appropriate, with a minimum of 45 calendar days of support. This support is intended to implement the UK’s obligations under Articles 12 through 14 of ECAT covering assistance, recovery, and reflection and residence permits. Following a negative “conclusive grounds” decision, an individual will receive nine working days of move-on support. The individual may request an extension of time when needed to become self-supporting or to transition into mainstream support.

Multi-Agency Assurance Panels (MAAPs) review all SCA refusals. MAAPs are comprised of members drawn from a selection of professions, including from police/law enforcement, local authorities, and NGOs. Following its review, the MAAP may ask, but cannot require, the SCA to reconsider its decision. An individual can only challenge a negative SCA decision by way of a judicial review proceeding.

Many victims of modern slavery or human trafficking are not UK nationals and, therefore, do not have a right to remain in the UK. The Home Office position, which has been the subject of recent litigation, is that

¹¹ There are pilot programmes to adjust the SCA arrangements supporting children. These pilot programmes may lead to changes to the adult system. The pilots establish local SCAs and include non-governmental representatives on them. Home Office. Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015), Non-Statutory Guidance for Scotland and Northern Ireland Version 2.4, March 2020.

a favorable “conclusive grounds” decision does not give the victim an automatic right to remain in the UK.¹² The SCA can issue discretionary leave to remain in the United Kingdom for confirmed victims. Discretionary leave also gives victims the right to open a bank account, to enter into a lease with a landlord, and to receive health support through the National Health Service without payment of a surcharge.

2.5.4. *SCA/immigration*

When an NRM report refers an immigration case, the SCA must notify the appropriate Home Office immigration casework teams. The SCA is not responsible for considering any steps in live immigration cases. Immigration casework teams will consider immigration-related steps, including immigration detention, bail, and any applications for asylum. For this reason, victims who are non-UK nationals may be reluctant to consent to an NRM referral.

2.5.5. *Special provisions for children*

Separate procedures protect child victims of modern slavery and human trafficking.¹³ Local authorities provide support for child victims regardless of their nationality or immigration. Under the Children and Social Work Act 2017, local authorities, chief officers of police, and clinical commissioning groups must work together with relevant agencies (as they consider appropriate) to safeguard and protect the welfare of children in their area, including the victims of modern slavery and trafficking. In England and Wales, trafficked children may have an Independent Child Trafficking Guardian (**ICTG**) appointed to advise them and to speak on their behalf. From May 2021, ICTGs are available in two-thirds of local authorities in England and Wales. Where the ICTG service is available, first responders who consider children to be potential victims of modern slavery should refer them to the ICTG service by completing the online referral form in English or in Welsh. This referral is in addition to following usual safeguarding routes and NRM referrals.¹⁴

2.5.6. *Victim criminal cases*

Police investigations into crimes often discover victims of modern slavery or human trafficking who may have been involved in the crimes. In these cases, the police make an NRM referral, but they also will continue to investigate and work with the CPS on prosecution of the crimes. Neither the NRM referral nor the SCA’s “conclusive grounds” conclusion removes the victims from criminal investigation or prosecution. However, Section 45 of the MSA may give victims a defense to any charge.

¹² The decision in *R (on the Application of KTT) v. the Secretary of State for the Home Department* may significantly extend the rights of victims to remain. See footnote 8.

¹³ HM Government, Working Together to Safeguard Children, July 2018.

¹⁴ Detailed guidance is in Home Office, 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.

3. UNITED KINGDOM’S FEDERAL CRIMINAL OFFENSES RELATING TO SLAVERY, SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

3.1. Overview of Criminal Offenses

The MSA consolidates a number of historic offences into two broad offences of modern slavery (Section 1 of the MSA) and human trafficking (Section 2 of the MSA).¹⁵

3.1.1. General

Under Section 1 of the MSA, the modern slavery offence covers slavery, servitude, and forced or compulsory labor.

Section 1 states:

- (1) *A person commits an offence if—*
- (a) *the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or*
 - (b) *the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.*
- (2) *In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.*

Section 2 of the MSA sets out the human trafficking offence.

- (1) *A person commits an offence if the person arranges or facilitates the travel of another person (“V”) with a view to V being exploited.*
- (2) *It is irrelevant whether V consents to the travel (whether V is an adult or a child).*
- (3) *A person may in particular arrange or facilitate V’s travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.*
- (4) *A person arranges or facilitates V’s travel with a view to V being exploited only if—*
- (a) *the person intends to exploit V (in any part of the world) during or after the travel, or*
 - (b) *the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.*

¹⁵ The central government deals with offences relating to slavery, sexual servitude, and online child exploitation at a policy level. Investigation can occur nationally and through local police forces. Prosecution of offences is through the Crown Prosecution Service in England and Wales, the Crown Office and Procurator Fiscal Service in Scotland, and the Public Prosecution Service in Northern Ireland.

- (5) “Travel” means—
- (a) arriving in, or entering, any country,
 - (b) departing from any country,
 - (c) travelling within any country.
- (6) A person who is a UK national commits an offence under this section regardless of—
- (a) where the arranging or facilitating takes place, or
 - (b) where the travel takes place.
- (7) A person who is not a UK national commits an offence under this section if—
- (a) any part of the arranging or facilitating takes place in the United Kingdom, or
 - (b) the travel consists of arrival in or entry into, departure from, or travel within, the United Kingdom.

Note that the definition of travel for human trafficking purposes does not require the crossing of an international border. In the UK, most trafficking offences involve traffickers moving victims within the UK.

Section 4 of the MSA sets out a separate offence in support of Section 2 by stating that a person commits an offence if the person commits any offence with the intention of committing an offence under Section 2 (including an offence committed by aiding, abetting, counselling, or procuring an offence under Section 2).

3.1.2. Penalties

For convictions under Section 1 or 2 of the MSA, individuals face a maximum statutory sentence of life imprisonment. This penalty increases the previous statutory maximum of 14 years in prison.¹⁶ The Magistrates’ Courts (lower criminal courts) can summarily try offences, but the maximum sentence of imprisonment is limited to 12 months, a fine (no financial limit), or both. The Crown Court tries more serious offences on indictment, in which case offenders face the maximum sentence of life in prison. Section 4 liability is the same; however, the maximum imprisonment sentence is lowered to 14 years, unless the offence involves false imprisonment or kidnapping. The first formal sentencing guidelines for MSA offences came into effect on 1 October 2021, and they are set out in Appendix 1.

In addition to criminal liability, individual officers and directors of a company face personal civil liability if the MSA evidence establishes a breach of their statutory fiduciary duties under the Companies Act 2006.¹⁷

3.2. Slavery Offenses Under the Criminal Code

3.2.1. General

Modern slavery can include a broad range of actions by which victims performed services against their will. In most cases, these actions fall within the definition of modern slavery in Section 1 of the MSA.¹⁸

¹⁶ Previous offences were set out in Section 71(3) of the Coroners and Justice Act 2009 and Sections 59A(6)(b) and 62(4)(b) of the Sexual Offences Act 2003.

¹⁷ *Nerijus Antuzis & ors v. DJ Houghton Catching Services Ltd & ors* [2019] EWHC 843 (QB).

¹⁸ The word “Code” is not used in the UK.

3.2.2. Extraterritorial application

By their terms, Sections 2(6) and (7) of the MSA give the trafficking offence extraterritorial application. UK nationals commit the offence if they take actions abroad, and perpetrators outside the UK commit an MSA trafficking offence if they have a connection with the UK.

The UK is a party to numerous extradition treaties allowing the detention of people who are outside of the UK but suspected of UK criminal offences pending their extradition to the UK.

3.3. Slavery-Like Offenses in United Kingdom’s Legal Order

3.3.1. Servitude

The MSA Section 1 offence includes servitude.

3.3.2. Forced labor

The MSA Section 1 offence also includes forced labour.

3.3.3. Deceptive recruiting for labor or services

Deceptive recruiting may fall within the MSA offences depending upon the fact scenario. In addition, an advertisement of this kind may fall within other offences, such as a conspiracy to traffic, participating in the criminal activities of an organized crime group, or fraud by abuse of position. The fraud by abuse of position offence was used to prosecute defendants who were accused of defrauding migrants who had travelled to the UK voluntarily under the promise of well-paid work. Defendants gave the migrants work only if they lived in accommodations provided by defendants. The workers paid excessive rent, their earnings were withheld, and financial penalties were imposed. The defendants used fear and debt to exploit the workers. Defendants were indicted for fraud by abuse of position contrary to sections 1 and 4 of the Fraud Act 2006. The CPS’s prosecution code for Human Trafficking, Smuggling and Slavery refers to this case.¹⁹

3.3.4. Early and forced marriage

The Anti-social Behavior, Crime and Policing Act 2014 created the criminal offence of forced marriage. The offence carries a maximum sentence of seven years if tried on indictment. A forced marriage is where one or both people do not or cannot consent to the marriage, and pressure or abuse is used to force them into the marriage. The UK Government has established a Forced Marriage Unit, which is a joint task force between the Foreign Office and the Home Office.

3.3.5. Debt bondage

Debt bondage is covered within the trafficking and the modern slavery offences. Victims of debt bondage may also make a civil claim under employment legislation.

3.3.6. Any other relevant offenses

Other potentially relevant offences include participating in the criminal activities of an organized crime group under Section 45 of the Serious Crime Act 2015, money laundering under the Proceeds of Crime Act 2002, and fraud by abuse of position under Section 4 of the Fraud Act 2006.

¹⁹ CPS Guidelines on Human Trafficking, Smuggling and Slavery, updated 30 April 2020.

3.3.7. Extraterritorial application of the offenses

Refer to Section 3.2.2.

3.4. Human Trafficking/Smuggling-Related Criminal Offenses**3.4.1. International and domestic trafficking/smuggling of people**

Section 2 of the MSA covers this offence.

3.4.2. International and domestic trafficking in children

Section 2 of the MSA covers this offence.

3.4.3. Victim harboring

Victim harbouring falls within the MSA Section 1, 2, and 4 offences.

3.4.4. Extraterritorial application of human trafficking and smuggling offenses

Refer to Section 3.2.2.

3.4.5. International and domestic organ trafficking

In addition to the MSA offences, section 32 or 33 of the Human Tissue Act 2004 likely prohibits the removal of an organ for purposes of trafficking.

3.5. Online Exploitation of Children Offenses

Under UK law, there are numerous offences relating to the unlawful sexual exploitation of children. The main offences are set out in the Protection of Children Act 1978 and the Sexual Offences Act 2003. A child is an individual under the age of 18. It is an offence to possess, distribute, make, or take sexual images of children. It is illegal for an adult to intentionally communicate with a child for a sexual purpose (the grooming offence). These offences can be committed offline or online. It is also an offence to use any form of online technology to view and share images of child sexual abuse, to groom children, or to live stream the sexual abuse of children.

The UK Government has proposed an Online Safety Bill which would give Ofcom (the primary UK communications regulator) the power to issue fines of up to GBP 18 million or 10% of annual global turnover against a technology provider if the provider fails, among other things, to protect children from sexual exploitation and abuse.

3.6. Child Sex Tourism Offenses

Under Section 72 of the Criminal Justice and Immigration Act 2008, if a UK national or UK resident commits sexual acts involving children in a foreign country that are lawful in that country but that would be unlawful if committed in England and Wales or Northern Ireland, the UK national or resident is subject to prosecution in England and Wales or Northern Ireland (subject to the applicable prosecutorial jurisdiction between England and Wales, on the one hand, and Northern Ireland, on the other). Similar legislation applies in Scotland through the Sexual Offences (Scotland) Act 2009.

4. UNITED KINGDOM’S SUPPLY CHAIN REPORTING LEGISLATION

4.1. MSA Transparency Statement

Section 54 of the MSA requires certain “commercial organisations” to describe the actions they have taken to ensure that slavery and human trafficking (as defined in Sections 1 and 2 of the MSA) are not taking place in their supply chains or in their own businesses, or to state that the commercial organisation has not taken any such action. For public relations and similar purposes, some commercial organisations that are not yet subject to reporting requirements have voluntarily made MSA statements.

Every commercial organisation remains liable for prosecution under Sections 1, 2, or 4 irrespective of whether they are subject to the Section 54 reporting requirements.

4.2. Doing Business in the UK

Section 54 applies to any “commercial organisation” that carries on a business in any part of the United Kingdom by supplying goods and services in the UK.

Any commercial organisation that is formed under UK law or registered at Companies House will be treated as carrying on business in the UK. Foreign companies that have a registered UK establishment at Companies House are commercial organisations for purposes of the MSA. If a foreign company with no establishment in the UK derives revenue from UK customers, it may be a commercial organisation for purposes of Section 54.

4.2.1. Financial threshold

The Home Secretary may adjust the financial threshold of global turnover of GBP 36 million. It is anticipated that this threshold will decrease over time.²⁰ A commercial organisation with minimal UK income may have this reporting requirement because of its greater global turnover.

4.2.2. Statement content

According to the latest Home Office Guidance, the statement should include information detailing:

- (1) *Organisation structure and supply chains,*
- (2) *Policies in relation to slavery and human trafficking,*
- (3) *Due diligence processes,*
- (4) *Risk assessment and management,*
- (5) *Key performance indicators to measure effectiveness of steps being taken, and*
- (6) *Training on modern slavery and trafficking.*

²⁰ Section 54(3) of the MSA.

4.2.3. *Timing and posting requirements*

The Guidance states that a commercial organisation should publish its statement as soon as reasonably practicable after the end of its financial year, and in any event within six months of the financial year end. The default position is that a commercial organisation must post the statement on its website.²¹

The Government has recently established a portal for commercial organisations to post their statements. Use of the portal is voluntary.²²

4.2.4. *Enforcement*

It is not a criminal offence to fail to meet the Section 54 requirement unless the Home Secretary obtains a court order requiring the commercial organisation to comply with Section 54. Failure to comply with that order can be contempt of court, which is a criminal offence punishable by imprisonment or an unlimited fine.

Most commercial organisations registered at Companies House are required to file annual accounts. The Home Office periodically reviews the turnover line in these accounts to identify commercial organisations that should have made a statement. The Home Office usually requests a commercial organisation to post the statement before it seeks a court order.

4.2.5. *Strengthening statements*

A number of proposals aim to strengthen the MSA's transparency provisions. These proposals include mandating that all public bodies (central and local) publish a statement. The Government has already required central government bodies to do so. Additional proposals include: (i) requiring organisations to submit their statement to the newly established government modern slavery statement registry in addition to website posting; (ii) setting out a single annual reporting deadline of 30 September; (iii) introducing financial penalties for organisations that fail to meet their statutory obligations to produce annual modern slavery statements; (iv) requiring commercial organisations to describe the measures they have taken to verify their statement; (v) making it a criminal offence to supply a false modern slavery and human trafficking statement; and (vi) making it a criminal offence to continue to use supply chains that fail to demonstrate minimum standards of transparency. Legislation adopting some of these proposals is anticipated in 2022.²³

5. FORCED LABOR: OVERVIEW OF UNITED KINGDOM'S APPLICABLE EMPLOYMENT AND MIGRATION LAWS

5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

UK employment laws provide a number of mechanisms through which victims of forced labor and trafficking can seek civil remedies. The employment tribunals have provided a venue for successful victim reparation, provided the employer has not absconded and has the financial means to pay the award.²⁴ While it is a

²¹ Home Office, *Transparency in supply chains: a practical guide*, updated 22 July 2021.

²² <https://modern-slavery-statement-registry.service.gov.uk/search>.

²³ Home Office, *Transparency in supply chains consultation – Government response*, 22 September 2020. On 15 June 2021, the Modern Slavery (Amendment) Bill (**Amendment Bill**) was introduced in the House of Lords (the second chamber of the UK Parliament).

²⁴ Southwell Brewer and Douglas-Jones, *Human Trafficking and Modern Slavery Law and Practice*, Chapter 12.

criminal offence for an employer in the UK to employ anyone who does not have a right to work in the UK, this offence does not bar an employee's claim against the employer. However, a claimant who has an immigration problem may find it difficult to remain in the UK in order for the employment claim to be heard.

The Employment Rights Act 1996 provides a mechanism to recover unpaid salaries, and the Working Time Regulations 1998 provide a basis for claims of excessive working hours and failure to provide protections for night-shift workers, required break times, and minimum paid holiday. The UK implemented a national wage requirement under the National Minimum Wage Act 1998. In addition to giving individual rights, employees are encouraged to report employers who breach the statute to HM Revenue and Customs (the UK taxation authority). In many instances, the Agency Workers Regulations 2010 give agency workers equivalent rights to employers. Victims may also be able to make discrimination claims under the Equality Act 2010.

Employment tribunals hear most employment law claims. Employees often represent themselves before an employment tribunal. Unlike in the formal court system, where the losing party is responsible for the winning party's legal costs, employment tribunals seldom make cost orders, meaning each party has to bear its own costs. Employment tribunals work alongside the Advisory, Conciliation and Arbitration Service (ACAS), and ACAS can provide some assistance to litigants working through an unfamiliar legal process.

5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

Victims of modern slavery and human trafficking may make claims under the employment laws and other legislation protecting workers' rights. Some legislation may not apply in some circumstances. For example, certain provisions of the Working Time Regulations 1998 do not apply to domestic service employment.

5.3. Statutory Rights

5.3.1. *Rights to minimum wages, entitlements, and other applicable minimum standards*

The UK has a national minimum wage. Certain regions have voluntary uplifts to the minimum wage, such as the London living wage. If modern slavery is taking place within a unionized establishment, collective bargaining agreements may apply. The national minimum wage also protects apprenticeship agreements and similar training schemes.

5.3.2. *Claims available in relation to misrepresentations and "sham" arrangements*

UK employment laws do not tackle misrepresentations and "sham" arrangements. However, the victim may make a breach of contract claim in the employment tribunal against the "sham" employer for compensation, provided the claim falls within the monetary limit of the tribunal's breach of contract jurisdiction. This limit is GBP 25,000. The claim cannot be made until the employment is terminated, and it must be made within three months of the termination of employment. Such claims may also be brought in the courts. If the claim is less than GBP 10,000, it can be heard in the small claims court. Amounts above this must be heard in the County court or High court system. Litigants have to think carefully about claims in these courts, as the general rule is that the loser in the litigation will be responsible for the winner's legal costs.

5.3.3. *Claims available in relation to unlawful deductions, loans, and debt bondage*

Under English employment law, the only deductions an employer may make from an employee's wages are those required by law (for example, national insurance and tax) and those the employee has specifically consented to. It is open for an employment tribunal to determine that duress vitiates the employee's consent in debt bondage arrangements.

5.3.4. Remedies

Most litigants will be seeking damages as a remedy. Depending on the circumstances, the amounts recoverable will be subject to financial limits, and some employment claims (although not unlawful discrimination claims) are subject to a continuous employment requirement of two years.

5.4. Rights to a Safe Workplace and Compensation Associated With Injuries or Illness

A number of laws protect workers' health and safety in the workplace. There are general standards for all workplaces and more specific standards for particular sectors. An employee can make a claim for personal injury should an employer breach these laws. Employers are also required to carry minimum liability insurance to meet these claims.

5.5. Access to Justice and Practical Issues Associated With Enforcing Social Legislation

Many litigants face the challenges of navigating the tribunal process. It is not unusual for claimants to act for themselves in employment cases, and employment tribunals are more accessible than many other judicial venues in the UK.

5.6. Interaction Between Employment Law and Migration

5.6.1. Employment rights affected where employment is unlawful under migration law

An employer's breach of immigration laws by hiring persons who do not have the right to work in the UK does not bar those employees from making claims against their employer.

5.6.2. Rights/remedies available under applicable migration law and regulations

The most common remedy in an employment tribunal is compensation.

5.7. Employment Laws and Child Labor

UK law restricts the full-time employment of children to those over 16 years old. Children are allowed to work a very restricted number of hours during prescribed times from the age of 13.

6. GOVERNMENT PROCUREMENT RULES

The tender and award process set out in the Public Contracts Regulations 2015 governs general contracts entered into by UK public authorities with a value over a specified amount (GBP 189,330 for most bodies). Under Regulation 57, a tenderer is subject to mandatory disqualification from participating in a public tender if the tenderer has been convicted under MSA Sections 1, 2, or 4. Public authorities include large parts of the UK economy, such as the defense, transportation, healthcare, utility, and education (including university) sectors.

The first step to participating in a tender process is completion of a pre-qualification questionnaire.²⁵ In England and Wales, the tender documents should include the Standard Selection Questionnaire circulated by the Cabinet Office and the Crown Commercial Service. The questionnaire requires the tenderer to provide information about its compliance with the MSA's supply chain transparency requirements and to confirm that it has not been convicted of any child labor or human trafficking offences in the past five years.

UK central government contracts entered into from 1 January 2021 must be evaluated against certain social values. The equal opportunity criteria include demonstrating action to identify and manage the risks of modern slavery in the delivery of the contract, including in the supply chain.²⁶

7. RESTITUTION AND VICTIM COMPENSATION

7.1. Obligations

The UK has agreed to provide compensation and legal redress to trafficked victims in the UK under Article 15 of ECAT and under Article 17 of the EU Trafficking Directive 2011/36/EC (**Trafficking Directive**). While these remedies are available, litigation is difficult and takes a long time to complete. Consequently, support for most victims is provided through the NRM process or through NGOs and charities established to support victims of modern slavery and human trafficking rather than through victim restitution processes.

7.2. Criminal Proceedings

Courts may order compensation to victims for any offence without any application made by a victim. Subject to the court's obligation to consider the offender's means, in most cases, there is no limit on the amount that a court can award. However, the offender is not required to pay any award until all appeals from the conviction have been exhausted. Only one compensation order, of GBP 13,533,²⁷ was recorded in the April 2019 to March 2020 period.

7.3. MSA Reparation Orders

Courts can make a reparation order under Section 8 of the MSA (an order to compensate the victims), provided a confiscation order (an award for seizure of the proceeds of the defendant's criminal activity) has been made against the offenders. Courts are required to consider making a reparation order even if the prosecution does not ask for one. Under MSA Section 8(7), the court must give reasons if it does not make a reparation order. The reparation order cannot be for an amount greater than the amount set out in the confiscation order. The Government does not track modern slavery reparation orders separately, so it is not known how many, if any, have been made.²⁸

7.4. CICB Orders

The Criminal Injuries Compensation Board (**CICB**) is a government-funded scheme to compensate blameless victims of violent crimes committed in England, Wales, and Scotland. Crimes involving deception are not in

²⁵ Cabinet Office/Crown Commercial Service, Procurement policy note 8/16: Standard Selection Questionnaire (**SQ**), dated 2017.

²⁶ Cabinet Office/Department for Digital, Culture, Media & Sport, Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts, September 2020.

²⁷ HM Government, 2020 UK Annual Report on Modern Slavery.

²⁸ UK Parliament, Slavery and Trafficking Reparation Orders, Question for Home Office, UIN HL1878, tabled on 25 February 2020.

scope because they do not meet the violence criterion. There is a separate scheme for Northern Ireland. The CICB decides whether to grant applications for awards, with a right of appeal to a tribunal. There are a number of eligibility requirements. Victims must apply within two years of the commission of the crime. Conviction of an offender is not necessary for the CICB to make an award, but victims must commit to work with the police to bring the assailant to justice. This requirement can be a significant bar to the victims of modern slavery and human trafficking. In addition, victims of modern slavery or human trafficking must not have a conviction for any offence, and many victims may have offences on their record. The victim's immigration status may also restrict eligibility.

Trafficking applicants appealed against the bar blocking compensation for those with a criminal conviction. They argued that this bar violated the Trafficking Directive, the ECHR, and the ECAT because it disproportionately excluded modern slavery and human trafficking victims. The Supreme Court, however, determined that the bar was lawful.²⁹

7.5. Human Rights Act Claims

Where a police investigation of a modern slavery and trafficking offence does not meet the standard for an effective investigation, the Human Rights Act 1998 gives victims a right of compensation.

8. UNITED KINGDOM'S MULTIDISCIPLINARY/INTERAGENCY COOPERATION APPROACH

MSA Section 40 established the Office of the Independent Anti-Slavery Commissioner. The Commissioner has a wide remit to initiate and participate in policy. For 2020–2021, the Commissioner's strategic priorities were to improve victim care and support, focus on prevention, support law enforcement and prosecutions, and get value from research and innovation.

The formal NRM process is multidisciplinary. The Salvation Army assists victims at the time of referral, certain NGOs have first responder status, and MAAP boards include NGOs and charities.

Numerous NGOs shape government policy on modern slavery and human trafficking. NGOs not only support government programmes and lead policy debates on the best ways to stop modern slavery and human trafficking, but also provide invaluable physical and mental support to victims.

Measures to protect children are also built on a model of multidisciplinary support within communities.

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²⁹ *A and B (Appellants) v. Criminal Injuries Compensation Authority and another* [2021] UKSC 27.

herein are the personal views of the authors and do not necessarily reflect those of Rotary International/Rotary Action Group Against Slavery or of any contributing entity.

APPENDIX 1. Excerpts from Sentencing Guidelines for Slavery, Servitude and Forced or Compulsory Labour/Human Trafficking

Applicable Statute: Modern Slavery Act, Sections 1 and 2. Triable either way (summary or under indictment)

Maximum: Life imprisonment

Offence range: High level community order—18 years' custody

Step 1 – Determining the offence category

Culpability

In assessing culpability, the court should weigh up all the factors of the case, including the offender's role, to determine the appropriate level. Where there are characteristics present which fall under different categories, or where the level of the offender's role is affected by the very small scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A – High Culpability

- Leading role in the offending
- Expectation of substantial financial or other material advantage
- High degree of planning/premeditation
- Use or threat of a substantial degree of physical violence towards victim(s) or their families
- Use or threat of a substantial degree of sexual violence or abuse towards victim(s) or their families

B – Medium Culpability

- Significant role in the offending
- Involves others in the offending whether by coercion, intimidation, exploitation or reward
- Expectation of significant financial or other material advantage
- Some planning/premeditation
- Use or threat of some physical violence towards victim(s) or their families
- Use or threat of some sexual violence or abuse towards victim(s) or their families
- Other threats towards victim(s) or their families
- Other cases falling between A and C because:
 - Factors in both high and lower categories are present which balance each other out, and/or
 - The offender's culpability falls between the factors as described in A and C

C – Lower culpability

- Engaged by pressure, coercion or intimidation, or has been a victim of slavery or trafficking related to this offence
- Performs limited function under direction

- Limited understanding/knowledge of the offending
- Expectation of limited or no financial or other material advantage
- Little or no planning/premeditation

Harm

Use the factors given in the table below to identify the Harm category. If the offence involved multiple victims or took place over a significant period of time, sentencers may consider moving up a harm category or moving up substantially within a category range.

The assessment of harm may be assisted by available expert evidence, but may be made on the basis of factual evidence from the victim, including evidence contained in a Victim Personal Statement (**VPS**). Whether a VPS provides evidence which is sufficient for a finding of serious harm depends on the circumstances of the particular case and the contents of the VPS. However, the absence of a VPS (or other impact statement) should not be taken to indicate the absence of harm.

Loss of personal autonomy is an inherent feature of this offending and is reflected in sentencing levels. The nature of the relationship between offender and victim in modern slavery cases may mean that the victim does not recognise themselves as such, may minimise the seriousness of their treatment, may see the perpetrator as a friend or supporter, or may choose not to give evidence through shame, regret or fear. A victim's apparent consent to their treatment should be treated with caution.

Sentencers should therefore be careful not to assume that absence of evidence of harm from those trafficked or kept in slavery, servitude or in forced or compulsory labour indicates a lack of harm or seriousness. A close examination of all the particular circumstances will be necessary.

Category 1

- Exposure of victim(s) to high risk of death

A category 2 offence may also be elevated to category 1 by –

- The extreme nature of one or more factors
- The extreme impact caused by a combination of factors

Category 2

- Serious physical harm which has a substantial and/or long-term effect
- Serious psychological harm which has a substantial and/or long-term effect
- Substantial and long-term adverse impact on the victim's daily life after the offending has ceased
- Victim(s) deceived or coerced into sexual activity

Category 3

- Some physical harm
- Some psychological harm
- Significant financial loss/disadvantage to the victim(s)
- Exposure of victim(s) to additional risk of serious physical or psychological harm
- Other cases falling between categories 2 and 4 because:
 - Factors in both categories 2 and 4 are present which balance each other out, and/or

- The level of harm falls between the factors as described in categories 2 and 4

Category 4

- Limited physical harm
- Limited psychological harm
- Limited financial loss/disadvantage to the victim(s)

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting point 14 years’ custody	Starting point 12 years’ custody	Starting point 8 years’ custody
	Category range 10–18 years’ custody	Category range 9–14 years’ custody	Category range 6–10 years’ custody
Category 2	Starting point 10 years’ custody	Starting point 8 years’ custody	Starting point 4 years’ custody
	Category range 8–12 years’ custody	Category range 6–10 years’ custody	Category range 3–7 years’ custody
Category 3	Starting point 8 years’ custody	Starting point 6 years’ custody	Starting point 2 years’ custody
	Category range 6–10 years’ custody	Category range 5–8 years’ custody	Category range 1–4 years’ custody
Category 4	Starting point 5 years’ custody	Starting point 3 years’ custody	Starting point 26 weeks’ custody
	Category range 4–7 years’ custody	Category range 1–5 years’ custody	Category range High level community order 18 months’ custody

FACTORS INCREASING SERIOUSNESS

Statutory aggravating factors:

- Previous convictions
- having regard to (a) the nature of the offence to which the conviction relates and its relevance to the current offence; and (b) the time that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on, any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.

Other aggravating factors:

- Offending took place over a long period of time (in the context of these offences, this is likely to mean months or years) where not taken into account at step 1
- Steps taken to prevent the victim reporting the offence or obtaining assistance
- Deliberate targeting of victim who is particularly vulnerable (due to age or other reason)
- Victim’s passport or identity documents removed
- Gratuitous degradation of victim
- Large-scale, sophisticated and/or commercial operation (where not taken into account at step 1)
- Abuse of trust/responsibility
- Substantial measures taken to restrain the victim
- Victim forced to commit criminal offences (whether or not he/she would be able to raise a defence if charged with those offences), where not taken into account at step 1.

FACTORS REDUCING SERIOUSNESS OR REFLECTING PERSONAL MITIGATION

- No recent or relevant convictions
- Offender has been a victim of slavery/trafficking in circumstances unrelated to this offence
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability
- Physical disability or serious medical condition requiring urgent, intensive, or long-term treatment
- Offender cooperated with investigation, made early admissions, and/or voluntarily reported offending

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