

## Written Evidence by CARE (IMB0022)

### Introduction to CARE

1. CARE (Christian Action Research and Education) is a well-established mainstream Christian charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives. CARE has worked with MPs, Peers, MSPs and MLAs on human trafficking and modern slavery during the passage of several Acts.<sup>1</sup>

### Summary

2. CARE has answered Q12-13 on modern slavery. The rights of potential victims of modern slavery who arrive by irregular routes are being removed based on a novel and new reading of the ECAT public order disqualification. Unless the person is co-operating with the police, the Illegal Migration Bill (IMB) would prevent them from remaining in the UK so they can receive support while there is a determination made as to whether they are a victim. We agree with the ECAT monitoring group, GRETA, that the Bill “*a significant step backwards in the fight against human trafficking and modern slavery in the United Kingdom, and risk[s] undoing many of the country’s significant achievements in this area, by making it harder to identify victims, prosecute traffickers and combat human trafficking.*”<sup>2</sup>

### **Q12. The Bill disapplies various modern slavery provisions to those who enter or arrive in the UK irregularly in accordance with the four conditions set out in Clause 2:**

#### **a. Would the removal of potential victims of trafficking from the UK be compatible with the UK’s obligations under Article 4 ECHR and the Council of Europe Convention Against Trafficking (ECAT)?**

3. No. Removal under the conditions of the IMB would mean a potential victim did not get a recovery period to receive support and remain in the UK for a minimum of 30 days.
4. We would argue that a lack of recovery period is contrary to Article 4 of the ECHR because **the European Court has said Article 4 obligations include “a legislative and administrative framework to prevent and punish trafficking and to protect victims.”**<sup>3</sup> The IMB would remove protection for victims.
  - 4.1. Article 4 requires that no-one should be held in slavery or servitude; and that no-one should be required to perform forced labour.<sup>4</sup> There is no derogation from this requirement in a time of emergency (Article 15).
  - 4.2. While these provisions do not refer to ‘trafficking’ the ECHR guide on Article 4 notes, “*there can be no doubt that trafficking threatens the human dignity and fundamental*

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<sup>1</sup> Most recently these have included the Nationalities and Borders Act 2022 and the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022

<sup>2</sup> “UK’s Illegal Migration Bill should be reviewed to ensure it complies with the anti-trafficking convention”, says Council of Europe Expert Group on Trafficking, [GRETA Press Release](#), 29 March 2023

<sup>3</sup> [V.C.L. and A.N. v The United Kingdom](#), February 2021, para 151. See also European Court of Human Rights, Guide on Article 4 of the European Convention on Human Rights, para 56, page 16

<sup>4</sup> [Article 4 ECHR](#)

*freedoms of its victims and cannot be considered compatible with a democratic society and the values of the convention.*"<sup>5</sup>

5. Similarly, we believe that removal of victims from entitlement to a recovery period **under ECAT is unjustified and not in line with the spirit of that Convention.**
6. The Convention is clear that entering illegally is not a reason to exclude a person from protection. The Explanatory Report says, "...in the case of transnational trafficking, the Convention **applies both to victims** who legally entered or are legally present...**and those who entered or are present illegally.**"<sup>6</sup> The Modern Slavery Guidance states that under ECAT "*Even if the UK authorities intervene and prevent exploitation taking place in the UK, victims may have experienced serious trauma in their home country or on the way to the UK and may still be in need of support.*"<sup>7</sup>
7. Under Article 10, the Government is obliged to identify victims however they arrive.<sup>8</sup> Since clause 21 of the IMB refers to victims who have entered the National Referral Mechanism (NRM) and received a positive reasonable grounds decision, the Government would still meet their Article 10 obligation. The purpose of identification under Article 10 is for the victim to benefit from the Convention entitlements.<sup>9</sup> Under Article 13 they should receive a recovery and reflection period of at least 30 days to receive support and consider their cooperation in prosecutions,<sup>10</sup> and while doing so not be removed from the UK.<sup>11</sup>
8. **Parties can exclude victims from the recovery period in just two circumstances:** if they find the victim status is being claimed improperly or on grounds of public order (Article 13(3)). The Explanatory Report says, "*This provision aims to guarantee that victims' status will not be illegitimately used.*"<sup>12</sup> However, the IMB will ensure that anyone deemed to have arrived illegally will not get a recovery period under the public order exemption in Article 13(3), *unless* co-operating with the police. As discussed below in response to Q13, **CARE believes that the extension of the public order disqualification is new and novel and is not in the spirit of Article 13(3).**
9. Victims will be held in detention prior to removal which will not be beneficial for their recovery. We bring to the Committee's attention the recommendation from the Office of the UN High Commissioner for Human Rights that "*Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination*".<sup>13</sup> GRETA has also said, under Article 10(2) "*Trafficked persons should have access to specialised shelters and accommodation should be separate from the immigration system.*"<sup>14</sup>

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<sup>5</sup> [Guide on Article 4 - Prohibition of slavery and forced labour \(coe.int\)](#) pages 6-7

<sup>6</sup> [ECAT Explanatory Report](#), 2005, para 62

<sup>7</sup> [Modern Slavery: Statutory Guidance, Version 3.1](#), 3 March 2023, para 2.23-2.24, pages 23-24

<sup>8</sup> [ECAT Explanatory Report](#), 2005, para 62

<sup>9</sup> [ECAT Explanatory Report](#), 2005, para 127

<sup>10</sup> [ECAT Explanatory Report](#), 2005, para 174

<sup>11</sup> [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](#), version 3.1, para 8.20, page 69

<sup>12</sup> [ECAT Explanatory Report](#), 2005, para 173

<sup>13</sup> UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, Office of The High Commissioner for Human Rights, 2002, [E/2002/68/Add](#), English version, para 7, page 3; see also Guideline 2.6, page 7 and 6.1, page 10

<sup>14</sup> Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection, GRETA, [\(2020\)062](#), para 43, page 13

**b. Is the removal of support provisions for potential victims of slavery or trafficking currently available under the Modern Slavery Act 2015 and equivalent provisions in Scotland and Northern Ireland compatible with the UK’s obligations under Article 4 ECHR and ECAT?**

10. No. Our concerns about the removal of support mirror the concerns expressed above about removal from the UK. In addition, **by making a recovery period conditional on supporting prosecutions, the Government is breaching Article 12(6) of ECAT.** Victims will have to decide to co-operate with police without the reflection period the Convention requires for such consideration.

11. Modern slavery is a devolved matter with different legislation across the UK.<sup>15</sup> The Modern Slavery Act 2015 (section 50A) removes any obligation to provide support if a victim in England and Wales has a public order disqualification from protection under section 63 of the Nationality and Borders Act 2022 (NBA). Such a provision does not currently apply in Scotland nor Northern Ireland but would as a result of the IMB.

12. We also raise with the Committee the potential that victims in Northern Ireland have retained rights to **support under Article 11 of the EU Directive 2011/36/EU ‘Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’** which would be removed by clause 24. The Northern Ireland Human Rights Commission argues that the Directive still **applies to Northern Ireland under Article 2 of the Northern Ireland Protocol, saying** *“Because the Trafficking Directive protects a subset of ‘victims’ in Northern Ireland, the Trafficking Directive should also fall within the scope of Protocol Article 2.”*<sup>16 17</sup>

**c. Is the removal of the duty to grant limited leave to victims of slavery or trafficking who have received a positive conclusive grounds decision compatible with the UK’s obligations under Article 4 ECHR and ECAT?**

13. The Government has this power to remove limited leave already granted based on the public order disqualification under sections 65(2) and (6) of the NBA. As we believe the extension of the public order disqualification is of concern, so is this additional application of the power.

14. ECAT Article 14 requires that victims should be given a “renewable residence permit” if needed *“owing to their personal situation”* or because they are co-operating in criminal proceedings.<sup>18</sup> The October 2021 GRETA Report urged the Government to *“ensure that all victims of human trafficking who have received a positive Conclusive Grounds decision and whose immigration*

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<sup>15</sup> [Human Trafficking and Exploitation \(Scotland\) Act 2015](#) & [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015](#)

<sup>16</sup> [Joint NIHRC / ECNI Briefing Paper](#) on the Modern Slavery and Human Trafficking and Electronic Travel Authorisation provisions in the Nationality and Borders Bill, January 2022, para 3.2, page 6

<sup>17</sup> See also Annual Report of the NIHRC and the ECNI on the implementation of Protocol Article 2 2021 – 2022, [July 2022](#), para 4.184, pages 60-61 and para 4.131, page 50. Similar text appears in [Working Paper: The Scope of Article 2\(1\) of the Ireland/Northern Ireland Protocol](#). NIHRC/ECNI, December 2022, page 33; [Working Paper: The Scope of Article 2\(1\) of the Ireland/Northern Ireland Protocol](#). NIHRC/ECNI, December 2022, para 3.10, page 15; [Table of EU Directives which underpin the Rights, Safeguards and Equality of Opportunity Provisions included in the Chapter of the Belfast \(‘Good Friday’\) Agreement of the same name and Implementing Domestic Legislation](#), NIHRC, November 2022, page 29

<sup>18</sup> [Council of Europe Convention on Action against Trafficking in Human Beings CM 7465](#) ([publishing.service.gov.uk](http://publishing.service.gov.uk))

*status requires it, are issued a renewable residence permit when their personal situation warrants it or when they are co-operating with the authorities in criminal investigations or proceedings and their presence in the UK is required for this purpose, in accordance with Article 14(1) of the Convention.*<sup>19</sup>

15. We are disappointed that in the Government's new guidance on temporary leave for victims published in February 2023,<sup>20</sup> the Secretary of State has determined that she is no longer required under ECAT to grant leave owing to personal circumstances.<sup>21</sup> We **recommend the Committee** urge the Government to revert to the previous position on Article 14, as set out in the NBA ECHR Memorandum,<sup>22</sup> which reflects GRETA's understanding.<sup>23</sup>

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<sup>19</sup> Council of Europe GRETA Evaluation Report United Kingdom, 20 October 2021, paragraph 314, page 78

<sup>20</sup> Temporary Permission to Stay Considerations for Victims of Human Trafficking or Slavery, Version 2.0, February 2023

<sup>21</sup> *Ibid*, pages 6-8

<sup>22</sup> Nationality and Borders Bill, ECHR Memorandum, paras 77 and 78

<sup>23</sup> Council of Europe GRETA 2021 Evaluation Report, Op Cit, para 314

**Q13. The Government justifies the disapplication of various modern slavery provisions on the basis that persons who meet the four conditions in clause 2 are a “threat to public order” and therefore the obligations arising under Article 13 of the Council of Europe Convention Against Trafficking (ECAT) do not apply. To what extent is this extension of the public order disqualification compatible with Article 4 and ECAT?**

16. The Government enacted section 63 of the NBA<sup>24</sup> to prevent **specific individuals being allowed a recovery period on public order grounds** arguing that this was needed to prevent foreign national offenders, including terrorists, from “abusing the system” ie ensuring that “*victims’ status will not be illegitimately used.*”<sup>25</sup> Being “a threat to public order” is defined in section 63 as covering terrorist offences, threats to national security, serious offences or being a foreign criminal. The Modern Slavery Guidance contains a “*public order decision making framework*” to be “*satisfied that the individual is a threat to public order*”, which includes assessment of the need for modern slavery specific protections.<sup>26</sup>
17. The Bill’s Explanatory Notes say the IMB “*extends the operation of the public order disqualification such that the consequences listed in section 63(2) of the 2022 Act also apply to persons within the scheme provided for in this Bill*” and that there will be a **new interpretation of the public order disqualification.**<sup>27</sup>
18. The Government argues that the “*new and ambitious*”<sup>28</sup> **change from excluding specific individuals to a whole group of people is justifiable** because it “*considers that it is appropriate to apply the public order disqualification to illegal entrants...on the basis that it is in the interests of the protection of public order in the UK including to prevent persons from evading immigration controls in this country, to reduce or remove incentives for unsafe practices or irregular entry...*”<sup>29</sup> In the Human Rights Memorandum, the Government says that they consider a person who falls within the duty to remove “*is a threat to public order, arising from the exceptional circumstances relating to illegal entry into the UK, including the pressure placed on public services by the large number of illegal entrants and the loss of life caused by illegal and dangerous journeys.*”<sup>30</sup>
19. As we raised earlier, we are **concerned** about the significant reinterpretation of the public order grounds under ECAT Article 13(3) which means victims who fall within a class of individuals (apart from those supporting criminal investigations) are considered as a whole to be enough of a risk to general public order will have their rights removed. We agree with the Commissioner of the Council of Europe who said, “*Such a justification appears to me to be so broad and general that it increases the likelihood of an arbitrary application of the modern slavery protections.*”<sup>31</sup>
20. Under ECHR Article 4, the obligations to victims **do not cease** in times of “public emergency” (that is exceptional circumstances) which suggests the rationale for the amended public order

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<sup>24</sup> [Section 63, Nationality and Borders Act 2022](#)

<sup>25</sup> [ECAT Explanatory Report, 2005, para 173](#)

<sup>26</sup> Modern Slavery: Statutory Guidance, [Version 3.1](#), 3 March 2023, page 17 and para 14.268, pages 172-174 Note that the framework for decisions based on national security is not in the public domain. See para 14.232, page 166

<sup>27</sup> Explanatory Notes: [Illegal Migration \(parliament.uk\)](#), para 119, page 23

<sup>28</sup> [ECHR Memo Illegal Migration Bill-07323 \(parliament.uk\)](#) para 47, page 10

<sup>29</sup> Explanatory Notes: [Illegal Migration \(parliament.uk\)](#), para 135, page 26

<sup>30</sup> [ECHR Memo Illegal Migration Bill-07323 \(parliament.uk\)](#) para 45, page 9. See also [Delegated Powers Memorandum, Illegal Immigration - 070323 \(parliament.uk\)](#), para 43, page 12

<sup>31</sup> [Letter](#) from the Commissioner to the Council of Europe, CommHR/DM/sf 007-2023, 24 March 2023

disqualification is contrary to Article 4 and that the safeguards set out in para 46 of the ECHR memorandum are insufficient. **We raise with the Committee that the Home Secretary has not been able to confirm this part of the IMB is compatible with Convention Rights.**<sup>32</sup>

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<sup>32</sup> [ECHR\\_Memo\\_Illegal\\_Migration\\_Bill-07323 \(parliament.uk\)](#) paras 46 and 47, page 10