

*Status: This version of this provision is prospective.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Illegal Migration Act 2023. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



# Illegal Migration Act 2023

## 2023 CHAPTER 37

### *Modern slavery*

PROSPECTIVE

#### **22 Provisions relating to removal and leave**

- (1) Subsection (2) (disapplication of modern slavery provisions) applies in relation to a person if—
- the Secretary of State is required by section 2(1) to make arrangements for the removal of the person from the United Kingdom, and
  - a decision has been made by a competent authority that there are reasonable grounds to believe that the person is a victim of slavery or human trafficking (a “positive reasonable grounds decision”).

This is subject to subsections (3) to (7).

- (2) Where this subsection applies in relation to a person—
- any prohibition arising under section 61 or 62 of the Nationality and Borders Act 2022 (recovery period) on removing the person from, or requiring them to leave, the United Kingdom does not apply in relation to the person, and
  - any requirement under section 65 of that Act (leave to remain) to grant the person limited leave to remain in the United Kingdom does not apply in relation to the person.
- (3) Subsection (2) does not apply in relation to a person if—
- the Secretary of State is satisfied that the person is cooperating with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation,
  - the Secretary of State considers that it is necessary for the person to be present in the United Kingdom to provide that cooperation, and

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- (c) the Secretary of State does not consider that the public interest in the person providing that cooperation is outweighed by any significant risk of serious harm to members of the public which is posed by the person.
- (4) In subsection (3)—
  - (a) the reference to a person cooperating with a public authority in connection with an investigation or criminal proceedings is to the person doing so to the extent that is reasonable having regard to the person’s circumstances, and
  - (b) “the relevant exploitation” means—
    - (i) the conduct or alleged conduct resulting in the positive reasonable grounds decision, and
    - (ii) where a positive conclusive grounds decision has also been made in relation to the person, any other conduct resulting in that decision.
- (5) The Secretary of State must assume for the purposes of subsection (3)(b) that it is not necessary for the person to be present in the United Kingdom to provide the cooperation in question unless the Secretary of State considers that there are compelling circumstances which require the person to be present in the United Kingdom for that purpose.
- (6) In determining whether there are compelling circumstances as mentioned in subsection (5), the Secretary of State must have regard to guidance issued by the Secretary of State.
- (7) Subsection (2) does not apply in relation to a person (“A”) if subsection (3) applies in relation to a person (“P”) and—
  - (a) A is P’s child, or a child living in the same household as P in circumstances where P has care of A, or
  - (b) in a case where P is a child—
    - (i) A is P’s parent, or
    - (ii) A lives in the same household as P and has sole responsibility for P.
- (8) Subsection (9) applies to a person if—
  - (a) the Secretary of State is not required by section 2(1) to make arrangements for the removal of the person from the United Kingdom,
  - (b) the only reason why the Secretary of State is not required to do so is that the person has limited leave to remain in the United Kingdom granted under section 65(2) of the Nationality and Borders Act 2022,
  - (c) that leave was granted on or after 7 March 2023, and
  - (d) subsection (3) or (7) does not apply in relation to the person.
- (9) The Secretary of State may revoke the leave granted to the person under section 65(2) of the Nationality and Borders Act 2022.
- (10) Subsection (9) is to be treated for the purposes of section 3 of the Immigration Act 1971 as if it were provision made by that Act.
- (11) In this section—
  - “child” means a person who is under the age of 18;
  - “competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention;
  - “positive conclusive grounds decision” means a decision made by a competent authority that a person is a victim of slavery or human trafficking;

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“public authority” means a public authority within the meaning of section 6 of the Human Rights Act 1998;

“the Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005);

“victim of slavery” and “victim of human trafficking” have the meanings given in regulations made by the Secretary of State under section 69 of the Nationality and Borders Act 2022.

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**Commencement Information**

**II** S. 22 not in force at Royal Assent, see [s. 68\(1\)](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act excluded by [2024 c. 8 s. 2\(5\)\(a\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 39(4A) inserted by [2024 c. 8 s. 7\(2\)](#)