



# Modern Slavery: Commitments by the UK Government in relation to Part 5 of the Nationality and Borders Act 2022

## Updated Quick Reference Guide - June 2023

The [Nationality and Borders Act 2022](#)<sup>1</sup> (hereafter the ‘Act’) became law on 28 April 2022. Part 5 of the Act (sections 58-69) relates to ‘modern slavery’. During the legislative scrutiny process, the government made numerous commitments, 29 in total, regarding the delivery and application of Part 5 of the Act. In November 2022, the Rights Lab published research to list and reference these commitments.<sup>2</sup> This paper provides an update on the government’s progress with meeting these 29 commitments and considers how these commitments may be impacted by the enactment of the [Illegal Migration Bill](#)<sup>3</sup> currently being scrutinised by Parliament.

### Overview

On the 30 January 2023, sections 60-69 of the Act commenced. Sections 58 and 59 have yet to commence.<sup>4</sup> **To date, five of the 29 commitments made by government in relation to Part 5 of the Act have been met, 15 have been partially met and nine have not been addressed or met.**

Many of the commitments made, as outlined below, are at risk of being further jeopardised and undermined by the introduction of the Illegal Migration Bill (hereafter ‘the Bill’). The Bill proposes further significant changes to the way the UK identifies and protects potential victims of modern slavery. Currently, potential victims referred into the National Referral Mechanism (NRM) have temporary protection over removal and adult victims have access to specialist support whilst a decision is made on their case. Clause 2 of the Bill, if enacted, would remove this protection for victims of modern slavery who have arrived in the UK by irregular means. People deemed to be in this category (including children, who are not exempt), regardless of whether they are a potential victim, would be detained and deported.

Clauses 21-28 of the Bill also directly relate to modern slavery. The Bill disapplies protections that victims are currently able to access; instead viewing anyone arriving irregularly to be a threat to public order, and automatically disqualifying them from existing legal protections. The exception to this is if a victim is cooperating with a criminal investigation linked to their exploitation and they are required to be in the UK to take part in these criminal proceedings. It should be noted, however, that the presumption in the Bill is that it is not necessary for victims to remain in the UK for this purpose. If the Bill progresses all these provisions will be backdated to apply from 7 March 2023.

<sup>1</sup> UK Parliament. [Nationality and Borders Act 2022](#). (Legislation.gov.uk, 2022)

<sup>2</sup> Rights Lab. [Confirmations, Commitments & Concerns - How will Part 5 of the Nationality and Borders Act on Modern Slavery be enacted?](#) (November 2022); Also see Rights Lab. [Quick Reference Guide, Modern Slavery: Commitments by the UK Government](#). (November 2022).

<sup>3</sup> UK Parliament. [Illegal Migration Bill 2023](#). (Legislation.gov.uk, 2023)

<sup>4</sup> UK Parliament. [Section 58 Commencement Information](#) and [Section 59 Commencement Information](#). (Legislation.gov.uk, 2023)

Government commitments	Progress to date	Has the commitment been met?
<p>1. Government will work with stakeholders to operationalise the guidance in relation to Part 5 of the Nationality and Borders Act.<sup>5</sup></p>	<p>Members of the Modern Slavery Strategy Implementation Groups (MSSIG) and Statutory Guidance Reference Group (SGRP), run by the Modern Slavery Unit at the Home Office, were invited to several sessions held between July and December 2022 to discuss how the Nationality and Borders Act 2022 would be interpreted into existing Modern Slavery Statutory Guidance.<sup>6</sup></p> <p>Meetings were held on the following elements of Part 5 of the Act:</p> <ul style="list-style-type: none"> <li>• Slavery and Trafficking Notices (s.58 &amp; s.59)</li> <li>• Reasonable Grounds decision (s.60)</li> <li>• Additional Recovery Periods (s.62)</li> <li>• Public Order Offences (s.63)</li> <li>• Temporary Permission to stay (s.65)</li> </ul> <p>The purpose of the meetings was for the convened groups to provide expert advice and opinion in relation to guidance revisions, and suggestions regarding policy implementation. It should be noted that this engagement occurred after the enactment of the Act and as such meant there was limited capacity to alter what was being proposed.</p>	<p><b>MET</b></p>
<p>2. The effects of trauma will be considered in decision-making and guidance will be provided for decision-makers in relation to this.</p>	<p>The Modern Slavery Statutory Guidance still outlines the impact of trauma upon survivors of modern slavery – this part of the text does not appear to have been amended since the Act entered into force.</p> <p>Section 6 of the Statutory Guidance notes that trauma should be recognised and considered by individuals involved in the identification of victims. Annex D outlines considerations for those involved in identifying, interviewing or supporting victims in their interaction with victims, as well as provides an overview that the impact of trauma can have on disclosure and credibility.<sup>7</sup></p> <p>Changes to the reasonable grounds threshold, under s.60 of the Act (see Commitment no. 11 below), requires objective evidence to be provided by a potential victim in support of their NRM referral. It is not clear how some victims of modern slavery will be practicably able to provide objective evidence</p>	<p><b>PARTIALLY MET</b></p>

<sup>5</sup> References for each of the government commitments listed in this document can be found here: Rights Lab. [Quick Reference Guide, Modern Slavery: Commitments by the UK Government](#). November 2022.

<sup>6</sup> 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 Version 3.2](#). (Gov.uk, 2023)

<sup>7</sup> *Ibid.* Annex D, p.110

	<p>within the timeframes given. The change to the reasonable grounds threshold does not take into consideration the impact of trauma. At this early-stage individuals may not be able to explore, explain or disclose all that has happened to them. They also may not be able to access a First Responder who is in a position to gather all the information required to submit to the relevant Competent Authority.</p> <p>It should be noted, however, that further to a successful judicial review challenge (the outcome of which was published on 28 June 2023) for two claimants of Duncan Lewis Solicitors, the Secretary of State for the Home Department has agreed to withdraw, reconsider and revise parts of the Modern Slavery Statutory Guidance that set out this requirement for objective evidence to be provided in support of an NRM referral. The Secretary of State has stated her intention to devise and publish new Statutory Guidance reflecting these changes by 10 July 2023.</p>	
<p>3. Protection and support needs, additional recovery needs, additional recovery periods, and disqualification will all be applied on a case-by-case basis and with discretion.</p>	<p>The Act reduces access to NRM support and protection from a minimum of 45 days to 30 days. Whilst this is still in line with the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT)<sup>8</sup> obligations, it does renege on previous commitments that the government made to support victims for longer.<sup>9</sup></p> <p>No ongoing or additional recovery periods will be offered if the individual victim is considered a ‘threat to public order’ or has claimed to be a victim in ‘bad faith’. This will be determined on a case-by-case basis by the relevant Competent Authority and those found to be a threat or claiming in bad faith will not be entitled to ongoing support and will not be protected from removal from the UK during the NRM period, nor have access to temporary leave to remain.</p> <p>Raising of the reasonable ground threshold means that if victims are unable to provide objective factors and evidence to support their NRM claim they will not be given access to support and protection. Whilst this should be applied on a case-by-case basis, NRM data is already showing that the rate of negative reasonable ground decisions has increased since the Act entered into force. For instance, between January – March 2023, the rate of negative reasonable grounds decisions rose from 11% to 58% suggesting that victims are unable to provide objective evidence within the Act’s parameters.<sup>10</sup></p> <p>This commitment will not be met should the Illegal Migration Bill be enacted. The Bill will not apply disqualification on a case-by-case basis but instead apply a blanket disqualification to support anyone arriving irregularly as well as widening the public order disqualification.</p>	

<sup>8</sup> Council of Europe. [Council of Europe Convention on Action against Trafficking in Human Beings](#). (2005).

<sup>9</sup> See for instance, [House of Commons. Nationality and Borders Bill Nationality and Borders Bill. Volume 711: Column 267](#). (Hansard.parliament.uk, 22 March 2022); House of Commons. [Nationality and Borders Bill \(Thirteenth sitting\). Column 529](#). (Hansard.parliament.uk, 2 November 2021).

<sup>10</sup> Home Office. [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2023 – January to March](#). (2023)

<p>4. Victim support entitlements will not be outlined in the legislation but will continue to be outlined in guidance.</p>	<p>Since the commencement of the modern slavery clauses within Part 5 of the Act, the Modern Slavery Statutory Guidance has been updated on six occasions.</p> <p>The notable additions and changes to the guidance are as follows:</p> <ul style="list-style-type: none"> <li>• Insertion and updating of the definition of a victim of slavery and human trafficking<sup>11</sup></li> <li>• Change to the reasonable ground threshold (and the requirement for the provision of objective evidence to support NRM referrals).</li> <li>• Insertion of information relating to leave (and removal of previous 'Discretionary Leave' policy)</li> <li>• Insertions of definition of 'bad faith' and public order offences and associated guidance</li> <li>• Changes to financial support rates for those supported in the NRM</li> <li>• Removal of reference to multi-agency decision-making panels</li> <li>• Reduction of the 'Recovery Period' to 30 days.</li> </ul> <p>The Act has reduced the support entitlements that potential victims can access.</p> <p>The Illegal Migration Bill, should it pass in its current format, will directly contradict this commitment and outline in legislation, the exclusion of potential victims from accessing any support or protection if they arrive in the UK irregularly.</p>	<p><b>MET</b></p>
<p>5. Support will be a 'fundamental pillar' in the government's approach to assisting victims and reducing the risk of re-trafficking.</p>	<p>As detailed above, access to support and protection for potential and confirmed victims has reduced because of the enactment of Part 5 of the Act. The Illegal Migration Bill, if passed, will further restrict this access for a significant proportion of potential victims in the UK, arguably making it difficult to agree with the statement that assisting victims is fundamental to the government's approach.</p>	<p><b>NOT MET</b></p>
<p>6. Implementation of ECAT and the obligations it sets out in relation to victims will remain unaffected (<i>Commitment made in relation to Section 68 of the Act - 'Disapplication</i></p>	<p>Under ECAT, the UK government has obligations to identify, support and protect victims. Concerns, as outlined by the Joint Committee on Human Rights in its Legislative Scrutiny report<sup>12</sup> on the Act in 2021, and by the Rights Lab<sup>13</sup>, remain that the Act does not meet certain obligations under ECAT, for example:</p> <ul style="list-style-type: none"> <li>• At s.58 &amp; s.59: requiring extra information from some victims is discriminatory and directly contravenes the prohibition of discrimination (ECAT, Article 3).</li> </ul>	<p><b>NOT MET</b></p>

<sup>11</sup> UK Parliament. [The Slavery and Human Trafficking \(Definition of Victim\) Regulations 2022](#). (Legislation.gov.uk, 2022).

<sup>12</sup> House of Commons. [Joint Committee on Human Rights Legislative Scrutiny: Nationality and Borders Bill \(Part 5\)—Modern slavery](#). Eleventh Report of Session 2021–22. (21 December 2021).

<sup>13</sup> Rights Lab. [Nationality and Borders Bill, Part 5: Modern Slavery](#). (December 2021).

<p><i>of retained EU law deriving from Trafficking Directive’)</i></p>	<ul style="list-style-type: none"> <li>• s.62: ECAT makes no reference to the concept of additional recovery periods, and it is not specified how many times additional period can occur. Section 62 makes the application of additional recovery periods discretionary rather than automatic.</li> <li>• s.63: Allows for removal and cessation of support for victims with a positive reasonable grounds decision, which is found in no part of ECAT. To the contrary, ECAT prohibits removal during the recovery and reflection period without exception (article 10 and 18).</li> <li>• s.64: Outlines where the support duty ceases to apply in relation s.63. The support offered under ECAT (Article 12) does not reference such discretions or exclusions.</li> <li>• s.65: Allows for a form of leave to be granted (required under Article 14) but narrows the scope of how this leave is accessed and granted. No such qualifications for accessing support are found within ECAT.</li> <li>• s.68: The Government has not yet provided details on what elements of 2011 EU Trafficking Directive they consider to be incompatible with the Act.</li> </ul> <p>The blanket application of disqualification to support for any victim arriving irregularly found within the Illegal Migration Bill is not within the spirit of ECAT<sup>14</sup>; however, the Government have said they are not bound to follow the 30-day reflection period if an individual is a threat to public order, which they deem irregular arrivals to be.<sup>15</sup></p>	<p><b>PARTIALLY MET</b></p>
<p><b>Sections 58 &amp; 59 - Provision of information related to being a victim of slavery or human trafficking &amp; late compliance with slavery or trafficking information notice (STINs): damage to credibility</b></p>		
<p>7. Individuals who bring late claims will be treated as if they have submitted on time if there is good reason for their claim being late.</p>	<p>To date it is unclear what progress has been made in relation to slavery and trafficking notices (STIN’s).</p> <p>STIN’s have not been included in the Modern Slavery Statutory Guidance updates, nor do they appear to have commenced with the other sections of Part 5 of the Act (i.e., s.69 which commenced upon royal assent and s.60-68, which commenced on 30 January 2023).</p>	<p><b>NOT MET</b></p>
<p>8. Information will be provided about the state’s obligations in relation to victim protection and support when STINs are issued, and this is</p>	<p>Given this, we have assumed that these commitments in relation to s.58 and s.59 are yet to be met.</p>	

<sup>14</sup> Modern Slavery and Human Rights Policy and Evidence Centre. [Explainer: The Illegal Migration Bill modern slavery provisions](#). (2023, p.5)

<sup>15</sup> House of Lords. [Report stage debate, illegal Migration Bill. Column 1728](#). (Hansard, 12 June 2023).

intended to help victims better understand the NRM and support available.		
9. Children (those under the age of 18) are to be exempt from credibility considerations.		
10. Government will outline what ‘good reasons’ for late disclosure are in statutory guidance.	<p>Modern Slavery Statutory Guidance includes references to ‘barriers to disclosure’ and acknowledges that late and delayed disclosures will occur due to victims’ unwillingness to self-identify or due to the impact of trauma.<sup>16</sup> Annex D also includes further information on working with vulnerable victims, including common barriers to disclosure.<sup>17</sup></p> <p>These references to late disclosure are not in relation to the STIN’s specifically, but as previously noted above, STIN’s do not yet seem to have been commenced.</p> <p>A new NRM form has been introduced and includes the following questions in relation to late disclosure - ‘Is this the first chance they have had to report this?’ and ‘Why are they reporting this now?’. There is, however, no reference or prompts for a First Responder to understand the ‘good reasons’ someone may be disclosing their experiences at this time.</p>	<p><b>PARTIALLY MET</b> – included in Guidance but not in relation to STINs</p>
<p><b>Section 60 - Identification of potential victims of slavery or human trafficking</b></p>		
11. Amending the language of the threshold for reasonable grounds will not narrow the scope of identifying victims and will focus on all victims (those trafficked into as well as within the UK).	<p>Article 60 sets a new, higher threshold that victims must meet to be granted a reasonable grounds decision under the NRM, thereby narrowing the scope of who is able to access support and protection from removal.</p> <p>To be granted a positive reasonable grounds decision a victim (or first responder) is now required to provide objective factors of their exploitation. Modern Slavery Statutory Guidance states that an “objective” factor is a piece of information or evidence that is based in fact, such as medical assessments, expert, or police reports. A victim’s own testimony alone is no longer sufficient evidence for the Single Competent Authority of Immigration Enforcement Competent Authority to issue a positive reasonable ground decision.<sup>18</sup></p>	

<sup>16</sup> 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 Version 3.2](#), para 13.16 & 13.18, p. 115. (2023).

<sup>17</sup> *Ibid*, Annex D. p. 110

<sup>18</sup> *Ibid*, para 14.50-14.81. p. 132-137

	<p>In the first quarter of 2023, 4,746 potential victims of modern slavery were referred to the Home Office; a 26% increase in referrals when compared to the first quarter of 2022. Reasonable grounds determinations were made on 3,528 cases (not all of these decisions will have necessarily been from referrals made during this quarter). Positive decision rates at reasonable grounds stage decreased to 58% compared to 89% in the same quarter of 2022.<sup>19</sup></p> <p>Between January-March 2023, 1,058 adults, referred by a first responder to the NRM, did not meet the threshold for a positive Reasonable Grounds (RG) decision and were therefore not entitled to specialist support, protection from removal or consideration for permission to stay in the UK as a victim of modern slavery.<sup>20</sup></p> <p>As noted above (see Commitment no. 2), Duncan Lewis Solicitors successfully challenged the government on the basis that the new statutory guidance is procedurally unfair and unlawfully means that potential victims can be denied the support and protection they are owed under international human rights law.<sup>21</sup> As a result of this legal challenge, the Secretary of State has committed to review and revise the Statutory Guidance.</p> <p>The Illegal Migration Bill, if enacted, would further narrow the scope of identifying victims and enabling access to support as anyone arriving irregularly or indirectly would be automatically detained and deported and therefore denied their entitlement to protection and support.</p>	<b>NOT MET</b>
<p><b>12.</b> Section 60 will ensure that victims and those involved in identifying victims have clear parameters and terms to rely on.</p>	<p>Modern Slavery Statutory Guidance outlines the evidence required and deemed acceptable for submission at reasonable grounds stage – these include objective factors, specific evidence and general evidence.<sup>22</sup></p> <p>Sections 14.62-14.81 outline how decision-makers should evaluate and weigh the evidence provided.</p> <p>However, it should be noted that the Home Office First Responder training has not been updated to incorporate these changes, nor have First Responders received direct communication about the new</p>	<b>PARTIALLY MET</b>

<sup>19</sup> Human Trafficking Foundation. [Impact of the Nationality and Borders Act: Changes to the Reasonable Grounds Threshold](#). (May 2023)

<sup>20</sup> *Ibid*

<sup>21</sup> Duncan Lewis. [Interim relief granted in Duncan Lewis legal challenge over new statutory guidance on Modern Slavery](#). (17 May 2023)

<sup>22</sup> 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 Version 3.2](#), para 14.49-14.61, p. 131-133. (May 2023).

	expectations placed upon them in relation to the provision of evidence at point of referral of an individual into the NRM.	
13. Government recognises the evolving nature of exploitation and will keep the Victim Definition Regulations (as per Section 69 of the Act ' <i>The Slavery and Human Trafficking (Definition of Victim) Regulations 2022</i> ') under review.	<p>The Slavery and Human Trafficking (Definition of Victim) Regulations were introduced and referenced in the Modern Slavery Statutory Guidance in January 2023.<sup>23</sup></p> <p>Currently, there is no published public schedule for a review or update of these Regulations.</p>	<b>PARTIALLY MET</b>
14. Reviews of the reasonable grounds test and associated guidance will be undertaken and lessons from multi-agency NRM decision panels will be considered within this.	<p>Currently, there is no published public schedule for a review of the reasonable grounds test or associated guidance. However, post the legal challenge by Duncan Lewis Solicitors the Secretary of State has now committed to review and republish guidance by 10 July.<sup>24</sup></p> <p>The multi-agency assurance panels involved in decision-making in the NRM have been discontinued as of December 2022. To date, no evaluation of the effectiveness of these panels has been published.</p>	<b>NOT MET</b>
<b>Section 61 - Identified potential victims of slavery or human trafficking: recovery period</b>		
15. Government do not intend to practically reduce the number of days of support offered to victims and will continue to offer a minimum of 45-day recovery period to potential victims, unless disqualifications apply, as outlined in Modern	The Modern Slavery Statutory Guidance has been updated to reflect the language of the Act and no longer includes a minimum 45-day recovery period. The recovery period has been reduced from 45 to 30 days, and therefore the government has failed to meet the commitment it made.	<b>NOT MET</b>

<sup>23</sup> UK Parliament. [Nationality and Borders Act. Section 69. The Slavery and Human Trafficking \(Definition of Victim\) Regulations 2022.](#) (2023).

<sup>24</sup> Matrix Chambers. [SSHD withdraws new evidential test for 'Reasonable Grounds' decisions in Modern Slavery Statutory Guidance.](#) (2023).



Slavery Statutory Guidance (as per Section 49 of the Modern Slavery Act).		
<b>Section 62 - No entitlement to additional recovery period etc.</b>		
16. Blanket disqualification of additional, multiple recovery periods will not be applied.	The Modern Slavery Statutory Guidance clearly states that discretion must be applied, and that blanket disqualification should not be applied in relation to s.62 and access to additional recovery periods. <sup>25</sup>  The Modern Slavery Statutory Guidance details how the competent authorities will make additional recovery period decisions. <sup>26</sup>	<b>MET</b>
17. Guidance will be written and will set out details on how discretion can be applied to ensure victims of modern slavery who 'genuinely' need multiple periods of protection and support receive it.		
<b>Section 63 - Identified potential victims etc: disqualification from protection</b>		
18. Government will ensure due account is taken of the circumstances of each individual case, and guidance will be written to outline mitigating circumstances that should be considered by decision-makers considering disqualifying someone.	The Public Order disqualification process, evidence gathering and decision-making framework are all outlined in the Modern Slavery Statutory Guidance, as updated in January 2023.  The guidance states that ' <i>Discretion should be exercised when making the decision on a case-by-case basis balancing the threat to public order with the need for modern slavery specific support</i> '. <sup>27</sup>  As referenced in commitment 4, should the Illegal Migration Bill pass in its current format commitment 18 will not be met moving forwards, as decisions will not be on a case-by-case basis but all those arriving irregularly will be excluded from accessing any support or protection.	<b>MET</b>

<sup>25</sup> 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 Version 3.2](#), para 14.95, p. 139. (2023).

<sup>26</sup> Ibid, p. 138

<sup>27</sup> Ibid, para 14.258, p. 172.

<p>19. A mechanism will be established to identify cases of public order concern at the point of referral to the NRM.</p>	<p>From the Modern Slavery Statutory Guidance, it currently appears that the public order disqualification is applied once someone is in the NRM rather than at point of referral.</p> <p>Guidance indicates requests for disqualification can be made post-NRM referral and post a positive RG or CG decision.<sup>28</sup></p> <p>It is expected that the decision on a public order disqualification is made as close as possible to a positive reasonable grounds decision, but no pre-NRM process is referenced nor appears to be in place unless a potential victim is being referred to the NRM from detention.<sup>29</sup></p>	<p><b>PARTIALLY MET</b></p>
<p>20. Potential victims will continue to receive support following a positive reasonable grounds decision while any public order disqualification decision is being considered. For those subject to a public order disqualification, legal aid advice will continue to be available.</p>	<p>The Modern Slavery Statutory Guidance does not explicitly state that support will continue under the NRM whilst a public order disqualification is being decided.</p> <p>The guidance does state what happens if a public order disqualification applies to an individual i.e. that they will no longer be entitled to a recovery period or modern slavery specific assistance and support, prohibition on removal action, nor any consideration of Temporary Permission to stay as a Victim of Human Trafficking or Slavery (VTS) in the United Kingdom.</p> <p>Whilst we are unsighted as to what is happening in practice guidance states that individuals in Modern Slavery Victim Care Contract (MSVCC) accommodation who receive a public order disqualification are provided with 9 working days of move-on support from the date of receipt of the decision, unless the level of public order harm necessitates immediate withdrawal of that support.<sup>30</sup></p> <p>If enacted, the Illegal Migration Bill provisions will mean any potential victim arriving irregularly will be considered a threat to public order and will therefore not be able to get to the point of receiving an RG decision, and as a result will not be eligible to receive legal advice.</p>	<p><b>NOT MET</b></p>
<p><b>Section 64 - Identified potential victims etc in England and Wales: assistance and support</b></p>		
<p>21. Government reaffirmed their commitment to providing 12 months support. They also went further, confirming that on-going, appropriate,</p>	<p>There has been no indication that victims will be supported for up to 12 months within the NRM.</p> <p>The most recent NRM statistics state that the average (median) time taken from referral to conclusive grounds decisions made in quarter one of 2023 was 566 days.<sup>31</sup></p>	<p><b>PARTIALLY MET</b></p>

<sup>28</sup> *Ibid*, p.168.

<sup>29</sup> *Ibid*, para. 14.327, p. 169.

<sup>30</sup> *Ibid*, para. 14.278, p.178.

<sup>31</sup> Home Office. [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022](#). (2023)

<p>and tailored support will be available, with no overall time-limit, for those with a positive conclusive grounds decision, where support needs are identified.</p>	<p>The Modern Slavery Statutory Guidance outlines that a period of move-on support of up to 45 days will follow a positive conclusive grounds decision.<sup>32</sup> Post the 45 days, any further support required will be determined via the Recovery Needs Assessment process.<sup>33</sup> Support workers can make recommendations seeking up to a maximum of six months continued MSVCC support at a time (with the option to reapply if support needs still exist and if the victim's recovery needs arising from their modern slavery experiences cannot be met outside the MSVCC at the end of that six-month period).</p> <p>Reach-in support is also offered as a transitional support to those with a positive conclusive grounds decision who have exited the NRM.<sup>34</sup></p>	<p><b>PARTIALLY MET</b></p>
<p>22. Support will be targeted, personalised, and based on victim needs.</p>	<p>The MSVCC aims to provide support for eligible potential victims and any support offered is risk- and needs-assessed.</p> <p>All support needs must result from an individual's experience of exploitation, which does not take into account pre-existing support needs that made the individual vulnerable to trafficking and exploitation in the first place. The effectiveness of needs assessments and the delivery of support that adequately meets the needs of survivors has been subject to critique from the sector.<sup>35</sup></p> <p>However, both the Nationality and Borders Act and the proposed Illegal Migration Bill will, as outlined in this document, limit the number of potential victims who are/will be eligible to receive support.</p>	
<p><b>Section 65 - Leave to remain for victims of slavery or human trafficking</b></p>		
<p>23. New permissions for temporary leave will start on the 30<sup>th</sup> January 2023.</p>	<p>New permissions were introduced in January 2023 under the Temporary Permission to Stay for Victims of Human Trafficking or Slavery (VTS) policy.<sup>36</sup> The VTS replaced the Discretionary Leave (DL) Policy previously applied to victims. VTS policy differs from the provisions previously offered under the DL Policy, mainly in relation to why a period of leave will be granted.</p>	<p><b>PARTIALLY MET</b></p>
<p>24. Temporary permission to stay in the UK can be granted to confirmed victims for up to 30 months (per grant, with multiple grants being able</p>	<p>s.65 of the Act outlines that permission to stay in the UK may no longer be necessary on the grounds of personal circumstances or to claim compensation, as support to access both may be able to occur from outside of the UK. Leave may be granted to confirmed victims of modern slavery who are cooperating with public authorities in the investigation and/or prosecution of their exploiters. Leave will</p>	

<sup>32</sup> 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 Version 3.2](#), para 8.27, p. 71. (2023)

<sup>33</sup> Home Office. [Recovery Needs Assessment \(RNA\) Version 7.0](#). (2021)

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 Version 3.2](#), para 8.30 p. 73. (2023)

<sup>35</sup> ATMG. [One day at a time](#). Chapter 4, p. 13 – 33 (2022)

<sup>36</sup> Home Office. [Temporary permission to stay for victims of human trafficking and slavery: caseworker guidance](#). (2023).

<p>to be given if deemed necessary).</p>	<p>not be granted to victims who have claimed in bad faith or who are deemed to be a threat to public order (s.63 of the Act).</p>	<p><b>PARTIALLY MET</b></p>
<p>25. A grant of temporary leave to remain for victims will not prohibit them from being granted another, more advantageous, form of leave, should they qualify for it.</p>	<p>Leave is still available to confirmed victims, but the VTS policy represents a shift in government policy intention regarding how the Secretary of State complies with ECAT obligations in relation to the issuing of renewable residence permits. Signatory states to ECAT can elect whether to grant a residence permit in the circumstances described in Article 14(1)(a), on personal circumstances, or 14(1)(b), on assisting law enforcement enquiries, or both. Historically the Secretary of State’s policy intention was to grant leave in both situations (14(1)(a) and 14(1)(b)). However, the Secretary of State has decided to change the policy approach and the VTS only applies to victims who are assisting the police. The scope of the leave policy has therefore reduced under the Act.</p>	
<p>26. ECAT Article 14 ('Residence permit') requirements will be met, and all victims—adults and children—will automatically be considered for leave.</p>	<p>The Illegal Migration Bill originally included a narrowly defined exception to removal should an individual be assisting with police activity, but this was to all intents and purposes was removed by a government amendment that has amended the language in the Bill to presume an individual’s presence in the UK is not required.<sup>37</sup></p>	
<p><b>Sections 66 &amp; 67- Civil legal aid under Section 9 of LASPO: add-on services in relation to the National Referral Mechanism Civil legal services under Section 10 of LASPO: add-on services in relation to National Referral Mechanism</b></p>		
<p>27. That victims will receive advice on referral into the NRM to understand what it does and how it could help them.</p>	<p>Whilst pre-NRM advice is now available to some victims, namely those who are in receipt of legal aid via the scope of another matter, sections 66 &amp; 67 of the Act still mean there an unfair disparity in support provision. If you do not have access to legal aid via another matter, for example immigration advice, you will not be able to access free legal aid upon entry to the NRM.</p>	<p><b>PARTIALLY MET</b></p>
<p>28. Individuals will be provided with advice on the NRM at the same time as they are receiving advice on an asylum and immigration matter.</p>	<p>Pre-NRM advice and access to legal support becomes even more relevant with the increased threshold of the reasonable grounds decision and the need to provide objective evidence at this stage. Whilst, as referenced above, the increase to the threshold is currently on pause whilst the Secretary of State reconsiders the guidance, it should be noted that access to legal aid at this juncture may remain an issue.</p> <p>If enacted the Illegal Migration Bill provisions will mean any potential victim arriving irregularly will be considered a threat to public order and will therefore not be able to get to the point of receiving a reasonable grounds decision in the NRM, and therefore will not be entitled to legal advice.</p>	

<sup>37</sup> UK Parliament. [Illegal Migration Bill 2023](#), at section 12(5). (Legislation.gov.uk, 2023)

## Section 68 - Disapplication of retained EU law deriving from Trafficking Directive<sup>1</sup>

29. Obligations under Article 4 of European Court of Human Rights (ECHR)<sup>38</sup> will remain unaffected.

The government believes that s.68 of the Act does not result in a diminution below the standards laid down in the 2011 EU Trafficking Directive, nor does it remove any entitlements from victims.<sup>39</sup> The Directive has a stronger enforcement mechanism than ECAT and direct effect in UK law, providing an important avenue for justice for victims. Existing UK legislation does not enshrine specific assistance and support measures included in the Directive. The loss of the direct effect of the Directive in UK law limits victims' rights and opportunities for redress within the UK legal system.<sup>40</sup> The disapplication of the Directive may impact the UK's ability to meet the positive obligation that ECHR places upon States to identify and support any potential victim in their territory, irrespective of whether the exploitation occurred outside of their territory.<sup>41</sup>

The modern slavery provisions included in the Illegal Migration Bill are incompatible with Article 4 of the 1950 European Convention of Human Rights (ECHR).<sup>42</sup>

**NOT MET**

---

<sup>38</sup> Official Journal of the European Union. [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#). (2011)

<sup>39</sup> House of Lords. [Written question by Lord Coaker on Human Trafficking: EU Law](#). (6 September 2022)

<sup>40</sup> Rights Lab. [Consideration Paper: Nationality and Borders Bill Part 5 Modern Slavery](#). (2021)

<sup>41</sup> Modern Slavery and Human Rights Policy and Evidence Centre. [Explainer: The Illegal Migration Bill modern slavery provisions](#). (2023, p.5)

<sup>42</sup> Council of Europe. (1950). [European Convention of Human Rights. Article 4](#). p.7 (1950); Modern Slavery and Human Rights Policy and Evidence Centre. [Explainer: The Illegal Migration Bill modern slavery provisions](#). (2023, at p.2 & p.11).