



Confirmations, Commitments & Concerns - How will Part 5 of the Nationality and Borders Act on Modern Slavery be enacted?

Policy Paper

Purpose and Context

On 28th April 2022, the [Nationality and Borders Act](#) (the 'Act') passed into law. During the Bill's passage through Parliament, numerous concerns were raised by parliamentarians and the antislavery sector, including by the Rights Lab in its [Consideration Paper](#) published in October 2021.¹ Focused on Part 5 (on 'modern slavery') of the Act, the Consideration Paper examined the impact the legislative provisions would have on the effective identification, support, and protection of victims of modern slavery and trafficking.

Despite the concerns raised throughout the parliamentary process, the government maintained that the Act would enhance early identification of victims, enable 'genuine' victims to access support, and prevent misuse of the National Referral Mechanism (NRM).

The purpose of this paper is to:

- Provide an overview of the contents of each of the enacted sections of Part 5 (on 'modern slavery') of the Nationality and Borders Act 2022.
- Summarise the government's stated intentions in relation to the content and purpose of each section.
- Provide a summary of the ongoing concerns related to each of the sections, as shared by organisations and experts within the anti-slavery sector.

It is intended that this paper will provide further detail to assist parliamentarians and the anti-slavery sector in holding the government to account on its commitments, and in monitoring and scrutinising the implementation and impact of Part 5 of the Act.

This briefing has been drafted ahead of all associated secondary legislation being published, including relevant updates to existing Statutory Guidance.² Further briefings will be published once this secondary legislation/guidance is made available, to outline the framework in which the Act, and the commitments made by the government, are to be implemented.



It should be noted that, as with the [Consideration Paper](#), this policy paper predominantly concerns adults. The Nationality and Borders Act generally does not distinguish between adult and child victims. However, enhanced protection should be provided to children and any decision regarding their protection should be in accordance with their best interests, consistent with obligations outlined in the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), the European Convention on Human Rights (ECHR), the UN Convention on the Rights of the Child (UNCRC) and Optional Protocols, and relevant domestic law.³

While preferred terminology when referring to those who have experienced slavery or trafficking would be ‘survivor’, this paper uses the term ‘victim’ as per the Act and Explanatory Notes.⁴ It should also be noted that the Modern Slavery Statutory Guidance referred to throughout is statutory under Section 49 Modern Slavery Act in England and Wales and non-statutory in Scotland and Northern Ireland.

This paper does not respond to the Act in its entirety. It should be noted that other sections of the Act outside Part 5—including provisions concerning nationality, asylum, and immigration—also raise issues for victims of modern slavery and trafficking. The exclusion of consideration of these provisions does not indicate any position on their content or implications for victims.

In relation to the territorial extent and application of Part 5 of the Act, the following sections extend only to England and Wales:

- Section 60: Identification of potential victims of slavery or human trafficking
- Section 64: Identified potential victims etc in England and Wales: assistance and support
- Sections 66 and 67: Civil legal aid under Section 9 of LASPO: add-on services in relation to the National Referral Mechanism and Civil legal services under Section 10 of LASPO: add-on services in relation to National Referral Mechanism apply to England and Wales only.

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About the Rights Lab

The Rights Lab delivers research to help end modern slavery. We are the world’s largest group of modern slavery researchers, and home to many leading modern slavery experts. Through our five research programmes, we deliver new and cutting-edge research that provides rigorous data, evidence and discoveries for the global anti-slavery effort. More information about the Rights Lab is available at www.nottingham.ac.uk/rights-lab.



Contents

Purpose and Context	1
Overview.....	4
The Modern Slavery provisions in Part 5 of the Act	6
Sections 58 and 59	6
Section 60.....	8
Section 61.....	11
Section 62.....	12
Section 63.....	14
Section 64.....	17
Section 65.....	20
Sections 66 and 67	23
Section 68.....	24
Section 69.....	25
Appendices/Further Information.....	26
An overview of the National Referral Mechanism	26
References.....	27



Overview

The New Plan for Immigration Policy Statement, launched in 2021, clearly identified the intention of government to link the issues of immigration and modern slavery.⁵ The government justified this connection claiming that support systems in place for survivors of slavery were being misused by dangerous criminals wishing to frustrate their removal from the UK.⁶ The plan outlined five areas of reform intended to prevent abuse of the system from occurring and to ensure 'genuine' victims continued to be identified and protected.⁷

In response to the New Plan for Immigration (hereafter known as the 'Plan'), and to deliver the legislative and policy changes outlined in the Plan, the Nationality and Borders Bill was introduced to Parliament on the 6th July 2021. The Nationality and Borders Act reached Royal Assent on the 28th April 2022.

The Nationality and Borders Act (2022) solidifies the government's direction of travel in relation to modern slavery – clearly viewing this as an immigration issue.

The Act requires new regulations to be put into place and requires changes and additions to the Modern Slavery: Statutory Guidance for England and Wales (under Section 49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland. This has led to new regulations and amended guidance being produced.

At the time of publication, Part 5 of the Nationality and Borders Act has not yet entered into force in its entirety.⁸ Section 69, concerning the interpretation and definitions of specific terminology found in Part 5 (terminology such as 'conclusive grounds decision' and 'competent authority'), came into effect on 28th April 2022, the day the Act became law, enabling government to consult on the definitions and terminology.

Draft Slavery and Human Trafficking (Definition of Victim) Regulations 2022 were laid before Parliament on the 23rd May, approved and subsequently came into force on the 28th July 2022.⁹ The House of Lords tabled a motion of regret on the 20th July in relation to these regulations based on a lack of consultation with the sector and the lack of reference to ECAT within the definitions.¹⁰

Government have also confirmed, in relation to Section 65 of the Act, the introduction of 'Temporary Permission to Stay' within the immigration rules for those identified as victims of modern slavery. These permissions will commence on the 30th January 2023.¹¹

There have been no dates provided for when the rest of Part 5 of the Act is expected to come into force.

Amendments to the Modern Slavery: Statutory Guidance for England and Wales (under Section 49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland in June 2022 have reflected some of the changes made in Part 5 of the Act, such as the non-observance of the recovery period on grounds of improper claims and public order.¹²

There are concerns that the regulations and amended guidance stemming from Part 5 of the Act may:

- Further destabilise and damage the NRM system of identification and protection.



- Reduce the support and protections available and accessible to all survivors.
- Not meet the UK's international obligations under the Europe Convention on Action against Trafficking in Human Beings (ECAT)¹³ and European Convention on Human Rights (ECHR)¹⁴ in relation to survivor support and protections.
- Be implemented without proper and formal consultation processes with parliamentarians, the antislavery sector, and those with lived experience.
- Undermine prevention, policing, and prosecution efforts.

It should also be noted that other Parts of the Act that may be relevant and pertinent to potential victims of modern slavery and trafficking have already entered force. For example, many sections in Part 2 (on 'Asylum') entered into force on the date the Act was passed (as per Section 87 of the Act). These concern asylum and removal, including accelerated detained appeals, and age assessments. In addition, the Government proceeded with its Rwanda policy, involving an accelerated inadmissibility procedure with no rights of appeal followed by forcible removal to Rwanda.¹⁵ Several potential victims of trafficking have been made subject to that process and legal challenges are ongoing.¹⁶

The government maintained throughout the parliamentary process that the Act will enhance early identification of victims, enable 'genuine' victims to access support and prevent misuse of the National Referral Mechanism (NRM).^a The government states that the legislative changes presented in the Act are necessary to tackle modern slavery and human trafficking and that the Act assists them to meet their obligations under the Council of Europe's Convention against Trafficking in Human Beings (ECAT).¹⁷

Since the Act received Royal Assent, several implementation workshops have been held between civil servants and select partners within the anti-slavery sector looking at different parts of Part 5 of the Act and how they will be practically implemented. Updates to the Modern Slavery Act Statutory guidance will be implemented as a result of the Act and are expected imminently.

^a See p.18 for further information on the National Referral Mechanism or follow this link: <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>



The Modern Slavery provisions in Part 5 of the Act

Sections 58 and 59

Provision of information related to being a victim of slavery or human trafficking

Late compliance with slavery or trafficking information notice: damage to credibility

Section 58 allows for the serving of a 'slavery or trafficking information notice' (STIN) to individuals who have made a protection or a human rights claim. The notice requires them to provide any relevant information relating to their status as a victim of slavery or trafficking within a specified period. Information provided in the notices may be used to make decisions at both reasonable grounds (RG) and conclusive grounds (CG) stages within the NRM. If information is provided late (on or after the specified date), the recipient must also provide a statement setting out the reasons for not providing the status information 'before' the specified date. If deemed to be late without 'good reasons', Section 59 considers this to damage an individual's credibility.

Government commitments

The explanatory notes to Sections 58 and 59 state that they are intended to:

- Identify individuals subject to immigration control who may be potential victims of trafficking and modern slavery.
- Speed up the processes involved in decision making (protection claims and the NRM) as all information and grounds for claims will be considered collectively.
- Reduce costs by considering protection or human rights claims and referrals in the NRM concurrently rather than sequentially.¹⁸

The government has confirmed:

- 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.¹⁹
- Information will be provided about available protections and the state's obligations when STINs are issued and this is intended to help victims better understand the NRM and support available.²⁰
- Children (those under the age of 18) are exempt from credibility considerations.²¹
- They will outline what 'good reasons' for late disclosure are within Statutory Guidance²² and will work with stakeholders to operationalise the guidance.²³
- They will ensure the effects of trauma will be considered in decision making and that tools will be provided for decision makers in guidance.²⁴

Concerns

- [The process conflates immigration and modern slavery decision-making](#)



The STIN conflates immigration and modern slavery decision-making, penalising people if they do not (or are unable to) comply and submit information ahead of an imposed deadline. Practically, information must be provided to the Competent Authority before the stated deadline in the STIN. Any information received on the deadline day or after will be considered as late.²⁵ The introduction of the STIN places greater emphasis on the immigration status of a potentially trafficked person, rather than focussing on the crime(s) committed against them and the impact of this on their ability to make disclosures.

- [The provisions apply only to those who have made a protection claim or human rights claim and are therefore discriminatory](#)

Sections 58 and 59 do not apply to all victims. They are relevant only to those who (a) have made a protection or human rights claim and (b) have raised a trafficking claim pending a RG or CG decision. UK nationals or other potential victims of trafficking who do not have a protection or human rights claim (and/or have no need for a claim) would not be served with a STIN, so would not be legally obliged to comply. The statutory requirement that credibility will be damaged therefore only applies to victims with a protection or human rights claim.

Requiring 'early' or 'extra information' from some victims is discriminatory and directly contravenes the prohibition of discrimination in Article 14 of the ECHR and Article 3 ECAT.²⁶

- [Sections 58 and 59 punish delayed disclosure](#)

Sections 58 and 59 do not take into account the impacts of trauma on victims' ability or willingness to self-identify or make disclosures within set and imposed timeframes. Nor do they account for other reasons for delayed disclosure, such as manipulation or fear of reprisals from traffickers. Many of these reasons are outlined in the Modern Slavery Act Statutory Guidance.²⁷

Failure to meet the specified deadline or provide good reasons why the deadline has not been met will damage credibility of the information supplied.²⁸ This is contrary to the government's acceptance to date that victims may be unable to provide disclosure of their experiences of trafficking and/or may not recognise themselves as victims.²⁹

Victims are commonly unable to provide an 'evidencable factual account' of what has happened to them, as they are often not made aware of where they are, who is transporting them, or the details of what is going to happen. Victim accounts are not always able to be corroborated. Existing research establishes that as a result of traumatic experiences, memories and recall may be affected and victims' narratives are likely to be delayed, emerge in a piecemeal fashion, and become more coherent as trust and relationships are established.³⁰ It has also been observed that during the reflection and recovery period, many victims initially recall their experiences with contradictions or inconsistencies.³¹ Legal cases have also affirmed that it can take victims a long time to come forward after their trafficking experience.³² Penalising victims for late, lacking, incomplete, or inaccurate disclosures is out of line with evidence on victim behaviours and experiences. This shows that information related to status as a victim is a process with takes an unspecified time, even with trust and support, and is a multi-factorial and complex process.



- **Practical Concerns**

Additional practical concerns include how the need for a STIN will be communicated with victims, how it will work in practice, how it will intersect with the NRM, how good reasons will be evidenced and who will be responsible for submitting the information required. These aspects of the process have yet to be clearly laid out.

Section 60

Identification of potential victims of slavery or human trafficking

One of the reforms in the New Plan for Immigration related to the strengthening of the reasonable grounds decision making processes, claimed to be a preventative measure for the NRM system being misused.³³ Ministers confirmed that a review of the reasonable grounds test, and the corresponding guidance for decision makers, will occur to ensure decision makers are best able to identify 'genuine' victims and reduce the potential for non-genuine victims to misuse the system.³⁴

Section 60 in the Act changes the threshold for reasonable grounds decision-making within the NRM from reasonable grounds to believe a person 'may be a victim' to 'is a victim'.

The provision also enshrines the standard of proof for conclusive grounds decisions (as to whether someone is a victim of modern slavery) to be on the 'balance of probabilities' and shifts regulatory power to define 'victim of slavery' and 'victim of human trafficking' from the Modern Slavery Act (2015) to the Nationality and Borders Act.

As referenced in the overview (p. 2), Section 69 of the Act came into force on the 28th July 2022 and establishes regulations that define both 'victim of modern slavery' and 'victim of human trafficking'. The regulations in Section 69 relate to Section 60, as the reasonable grounds threshold and the decision-making process is underpinned by the definition of a victim found in Section 60.

Government commitments

The explanatory notes state that Section 60 is intended to:

- Clarify the threshold that determines whether an individual is a potential victim and as a result bring the Modern Slavery Act (2015) and guidance in line with the language of ECAT.
- Enable compliance and alignment of domestic legislation with international obligations (Articles 10 & 13 of ECAT) and the devolved administrations.
- Offer a definition of 'victim' that provides legislative clarity in a manner that is compatible with the definitions of Article 4 of ECAT and Article 4 of the European Convention on Human Rights (ECHR).^{35 & 36}

The government has confirmed:

- That amending the language of the threshold for reasonable grounds decisions assists with alignment and mirroring of international obligations and that this change will not narrow the scope of identifying victims and will focus on all victims (those trafficked into as well as within the UK).³⁷



- The definition of victim held in the Modern Slavery Act (2015) and subsequent guidance are for the purpose of recognising an individual as a victim of a criminal offence and not the identification process.³⁸
- That definitions set out in regulations are compliant with international obligations and existing operational practices, including ECAT, and that Section 60 will ensure that victims and those involved in identifying victims have clear parameters and terms to rely on.³⁹
- They commit to reviewing terms of the ‘victim definition’ as outlined in regulation.⁴⁰
- That clarifying the reasonable grounds threshold will enable first responders to identify victims quickly and enable access to support.⁴¹
- They will review the reasonable grounds test and associated guidance⁴² as well as the lessons learned from multi-agency NRM decision panels.⁴³

Concerns

The government accepted and used the original reasonable grounds threshold (*‘may’* be a victim) for well over a decade, after signing ECAT (23rd March 2007), ratifying it (17th December 2008), and its entry into force in the UK (1st April 2009), in the development of the NRM and the enactment of the Modern Slavery Act (2015). It is therefore unclear why the government deemed it necessary to ‘clarify’ the threshold within the Act.

We are now in a situation whereby there is one set of definitions (of a victim) for the NRM, within the Nationality and Borders Act (2022), and one set for criminal matters, within the Modern Slavery Act (2015). Neither incorporate the trafficking definition as found in the Palermo Protocol^b, ECAT, or the EU Trafficking Directive.⁴⁴ All these instruments make it clear that the types of exploitative purpose listed are non-exhaustive so that as new forms of abuse and exploitation emerge states can adjust and evolve to make sure victims are protected. The Nationality and Borders Act, the Modern Slavery Act, and the associated guidance and regulations do not reflect fully the UK’s international obligations.

- **No evidence has been provided that the NRM is being abused**

When asked to evidence the claim that the NRM is being misused by serious criminals, the government referred to the fact that from 2017 to 2019 the number of individuals in immigration detention referred to the NRM increased from 3% (501) to 16% (1,767). This does not support the government’s claim because there is no evidence that all immigration detainees have committed an offence, let alone serious crimes. To the contrary, many victims of trafficking in immigration detention have committed no offence at all, or have offences related to their own trafficking experience, such as being a victim of criminal exploitation. This in no way shows a misuse of the NRM.⁴⁵

Of all referrals relating to adults in 2019 (5,866), 30% were identified in immigration detention settings. The government offers no comment to the argument that some victims have been

^b Full title of the OHCHR Protocol: Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime



wrongly treated as perpetrators of crime, rather than as potential victims, and have only had indicators of victimhood identified once in detention.

The government also offers no comment on the fact that of the 1,767 potential victims referred to the NRM in 2019 from detention, 90% received a positive reasonable grounds decision.^c Further, no connection is made between the criminal activity for which they were arrested potentially being linked to their exploitation.⁴⁶

This unfounded assertion about links between immigration detention and misuse of the NRM is particularly worrying given the creation of the Immigration Enforcement Competent Authority (IECA), which makes all detained NRM decisions. The IECA was introduced in amendments to statutory guidance in November 2021.⁴⁷

In addition, NRM statistics show that of the 12,665 reasonable grounds decisions made for victims in 2021, 90% were positive.⁴⁸ These statistics indicate that the system is not in fact being abused; rather it indicates a failure of the state to identify victims when initially encountered.

- [Narrowing of the definition of 'victim'](#)

The major concerns here are that the new powers in Section 60 have narrowed the definition of 'victim', that the definitions depart from those contained in international law, that it provides insufficient distinction between adult and child victims and may lead to victims being unable to access protection, support, and assistance. These concerns were raised in both the House of Commons and the House of Lords during the debates on the Act, as well as by anti-slavery organisations and experts.⁴⁹

- [Section 60 may exacerbate the problem of low NRM referrals compared to the estimated prevalence of modern slavery in the UK](#)

Increasing the threshold for an initial NRM decision means victims may not be able to access support – not on the basis that they were not trafficked, but on the basis they are unable to provide enough evidence to reach the threshold the reasonable ground decision requires.⁵⁰

Changing the reasonable grounds threshold is likely to result in a reduction in victims entering the NRM and getting the support they need and are entitled to. This would subsequently impact and undermine policing and prosecutions as victims' testimonies are often vital in modern slavery convictions.

The government reported in 2021 that 3,190 individuals did not consent to enter the NRM, even though they were encountered by professionals who considered there to be indicators of slavery and trafficking in their cases. While these individuals may enter the NRM at a later date, this equates to a 47% increase in duty to notify referrals between 2020 and 2021, indicating that victims are increasingly choosing not to enter the NRM, suggesting it is not fit for purpose.⁵¹

^c Breakdown of 1,767 referrals in 2019 - 1,599 positive RG decisions made, 34 positive CG decisions, 18 negative CG decisions and 1,517 awaiting a CG decision.



- Lack of consultation

Despite the existence of established stakeholder groups, there was no formal consultation in relation to the drafting of the Slavery and Human Trafficking (Definition of Victim) Regulations. The Parliamentary Under-Secretary of State for the Home Department at the time committed to provide a full list of individuals/organisations the government consulted with in relation to the regulations, as the government are of the opinion that they have consulted.⁵² It is not known if this list has yet been provided to the Ministers who requested it.

Section 61

Identified potential victims of slavery or human trafficking: recovery period

Section 61 provides for a recovery period of at least 30 days for potential victims between the reasonable and conclusive grounds decisions involved in the NRM.

Section 61 cuts the recovery and reflection period from 45 days minimum in guidance to 30 days and makes this reduced period statutory. However, Sections 61, 62, and 64 should be read together because they all concern the withdrawal of support and protection following a reasonable grounds decision. These provisions should also be read subject to the disapplication of Section 63 ('Identified potential victims etc: disqualification from protection').

Article 13 of ECAT states that a 'reflection and recovery' period should be offered to potential victims in the period between the reasonable and conclusive grounds decisions being made and should last at least 30 days.⁵³

Currently identified victims are entitled to support for 45-days or until a conclusive grounds decision is received. Following receipt of a positive conclusive grounds decision, they are also entitled to a further 45-days with the possibility of follow-on support if required.⁵⁴

It has been determined in the UK Courts that ending support after 45 days following a conclusive grounds decision was unlawful, failed to assess needs, and was incompatible with ECAT.⁵⁵ At the time of the ruling, the government recognised that recovery was different for every individual and could not be achieved within a set timeframe, agreeing to provide support in line with their needs and not stopping this after a specified period.⁵⁶

Government commitments

The explanatory notes state that Section 61 is intended to:

- Implement the UK's ECAT obligations (under Article 13) to provide a recovery period to potential victims of modern slavery for at least 30-days, during which the victim must not be removed from the UK.
- Determine when a 'reflection and recovery' period will not be given to potential victims who are deemed to be disqualified from protection.⁵⁷

The government has confirmed:

- That they 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 Slavery Statutory Guidance.^{58 & 59}

Concerns

- [Legislation not matching guidance](#)

The recovery period outlined in Section 61 of the Act is not in line with the Modern Slavery Act Section 49 Statutory Guidance. Government have confirmed they do not intend to reduce the recovery period from 45 to 30 days. However, the Act now states in Section 61(3)(b) that the recovery period ends after 30 days, or when the conclusive grounds decision is made, whichever is later.⁶⁰

If the government does not intend to reduce the recovery period to 30 days, it is unclear why it is necessary to enshrine this specific time limit from ECAT Article 13 into domestic legislation when domestic guidance already provides for a longer period. Including mention of this 30-day period in law increases the likelihood that government will introduce this time limit in guidance with the view of harmonising UK legislation and policy.

Guidance can be changed with limited scrutiny, and this means government could, in the future, reduce the recovery period and remain in compliance with ECAT without consultation. This would afford victims of modern slavery and human trafficking less time for reflection and recovery.

- [Future legislation: Modern Slavery Bill](#)

Further legislation, in the form of a 'Modern Slavery Bill' was announced in the Queen's Speech 2022, to '*strengthen the protection and support for victims of human trafficking and modern slavery. It will further enshrine into domestic law the government's international obligations to victims of modern slavery, especially regarding their rights to assistance and support, providing greater legal certainty for victims*'.⁶¹

While this appears to be a positive move, it is unclear which international obligations relating to assistance and support will be included in the forthcoming Modern Slavery Bill, and how this legislation will work alongside the Modern Slavery Act (2015) and the Nationality and Borders Act in a way that will create greater legal certainty for victims. The government has consistently stated its compliance with its international obligations, so it is unclear why further legislation is required.

Section 62

No entitlement to additional recovery period etc

Section 62 is linked to Section 61 and specifies that victims may receive only one recovery period unless the Secretary of State considers it appropriate in the particular circumstances of a case to provide a further period. Decisions on additional periods will be dependent on the specific case.

Section 62 applies where the competent authority has made a previous positive reasonable grounds decision, and a further reasonable grounds decision is made in relation to trafficking that happened before the first decision. If a recovery period is granted, removal is prohibited



in that period. If no recovery period is granted, the victim is not only denied support but is also liable for removal from the UK.

The government states that this provision is intended to prevent misuse of the NRM and reduce barriers to removal where support and protections are not considered necessary.

Government commitments

The explanatory notes state that Section 62 is intended to:

- Set out the exemptions to the reflection and recovery period and outline where additional recovery periods are not needed.
- Allow the government to withhold the reflection and recovery period as outlined in Section 61.
- Remove any protection against removal should an individual have their reflection and recovery period withheld.⁶²

The government has confirmed:

- That blanket disqualification of additional, multiple recovery periods will not apply but that they intend to utilise Section 62 to remove the automatic presumption of multiple recovery periods where the period of exploitation has occurred before the original recovery period was provided.⁶³
- They will consider the need for additional recovery periods on a case-by-case basis and applying discretion.⁶⁴
- They will consider specific needs, vulnerabilities, safeguarding and age before withholding any recovery period.⁶⁵
- How decisions makers are expected to apply discretion will be outlined in guidance.⁶⁶

Concerns

- [No evidence of misuse of the NRM](#)

As outlined in Section 60, the misuse of the NRM has not been clearly evidenced by the government.

- [Victims not getting the support they are entitled to](#)

Section 62 lifting the recovery period, and associated support and the prohibition of removal, applies in cases where there is a previous reasonable grounds decision, and the Competent Authority is making a further decision where trafficking arose before the first reasonable grounds decision was made. Quite apart from this being administratively unclear and unworkable, it fails to reflect the realities of trafficking. The crime of trafficking may run in complex and continuous chains or cycles and in multiple forms. Victims may not reveal significant facts and experiences in the initial stages of engagement with officials. Important aspects of a victims' experiences—including distinct experiences and evidence of slavery and trafficking—may therefore not be identified in an initial reasonable grounds decision or in the related conclusive grounds decision. These may have significant implications for victims' support and protection needs, and for subsequent decision-making in their cases and access



to additional periods of recovery. Rather than preventing misuse of the NRM, it might penalise the most vulnerable who are caught in a cycle of exploitation.

- [Compliance of Section 62 with ECAT](#)

The protections and support following receipt of a reasonable grounds decision under ECAT are automatic entitlements.

ECAT makes no reference to the concept of additional recovery periods, and it is not specified how many times this process can occur.

Section 62 makes the application of additional recovery periods discretionary.

The provision of a recovery period and support is a minimum requirement under ECAT; there is no caveat based on whether the reasonable grounds decision is a first or second decision, this is an entirely domestic invention.

- [How additional recovery periods will be determined or denied](#)

Practically, it is not yet clear how the process for assessing additional recovery periods will operate. Government have said that decisions are to be made on a case-by-case basis and underpinned by guidance.⁶⁷

Currently the Recovery Needs Assessment (RNA) process is how the government assesses a victim's on-going support needs post the receipt of a conclusive grounds decision.⁶⁸ An independent review of the RNA process identified that the RNA process is complex, inefficient, unclear, and not trauma-informed.⁶⁹

It is unclear how Section 62 fits with the needs-based approach the government states it wishes to take in relation to victim support, especially if the current RNA process is not working.

It should also be noted that currently in the UK, there is no specialised returns programme in place for conclusively identified victims in accordance with Article 16 ECAT.⁷⁰ If additional periods of recovery are to be declined, ensuring safe returns will be imperative to meet the UK's international obligations.⁷¹

Section 63

Identified potential victims etc: disqualification from protection

Section 63 provides that a victim with a reasonable grounds decision may be disqualified from protection if the Competent Authority is satisfied that the person is a 'threat to public order' or has claimed victim status in 'bad faith'.

The definition of circumstances in which a person is deemed a threat to public order is non-exhaustive. However, nine examples of 'circumstances in which a person is a threat to public order' are listed in Section 63(3)(a)-(i).⁷² There is no definition of bad faith included in the Act.

Disqualification from protection means that the mandatory requirements to provide protection and support under the reflection and recovery period (offered via the NRM and the Modern Slavery Victim Care Contract (MSVCC)), the prohibition on removal, and any requirement to



grant limited leave to remain, will cease to apply (Sections 63(2), 64, and 65). Protection or leave may also be revoked.

Government commitments

The explanatory notes state that Section 63 is intended to:

- Establish the exemptions to providing victims with protection and support.
- Allow government to withdraw and remove protections should disqualification criteria apply.
- Implement UK obligations under ECAT Article 13.⁷³

The government has confirmed:

- That by providing a definition of ‘public order’, Section 63 supports the implementation of ECAT and that without this in place they are unable to disqualify dangerous individuals from recovery periods or from removal from the UK.⁷⁴
- They will ensure due account is taken of the circumstances of each individual case, so that any permitted actions, including prosecutions, are proportionate and in the public interest.⁷⁵
- Disqualification will be established on a case-by-case basis.⁷⁶
- A mechanism will be established to identify cases of public order concern at the point of referral to the NRM.⁷⁷
- Provision of support in line with international obligations for those in public order process will continue until a determination is made.⁷⁸

Concerns

- **Inconsistency with ECAT**

The government considers that Section 63 supports the implementation of ECAT. However, the provision does not align with the obligations established under ECAT.

Section 63 is contrary to ECAT because it 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 13 provides for a minimum recovery and reflection period which ‘*shall be sufficient*’ for the person to recover, escape the influence of the traffickers, and/or take an informed decision on cooperating with the competent authorities. During this period no removal or expulsion can be enforced against the victim, and their stay must be authorised.⁷⁹ Further, potential victims ‘*shall be entitled*’ to the Article 12 measures of assistance and support during the recovery and reflection period (refer to Section 64).

To prevent misuse of support systems Article 13 enables States to not observe a recovery period should victims have claimed improperly or if there are concerns under public order grounds. However, Article 10 of ECAT obliges states to identify all victims promptly and correctly and requires that persons ‘*shall not be removed from [the] territory until the identification process of an offence ...has been completed*’ under Article 18.⁸⁰



Practically potential victims should receive support and protection whilst the State carries out any activities to determine if an improper claim has been made or if an individual poses a threat (Article 13(1)). If a victim were found to have claimed victim status improperly, this would result in a negative identification decision as per standard NRM processes for any potential victim who is subsequently considered to not meet the thresholds for trafficking and modern slavery.

Section 63, along with other Part 5 provisions, inappropriately conflates immigration and protection processes, prioritising immigration measures that render separate victim protection measures ineffective.

- **Scope of public order offence**

Offences that disqualify people from protection are listed, and the public order grounds are wide, which means a lot of people risk disqualification. The lack of any definition of what will constitute disqualification on '*bad faith*' grounds creates a risk that victims will be unfairly denied access to protection.

The statutory definition of 'public order' is inexhaustive. It states that for the purpose of disqualification '*the circumstances in which a person is a threat to public order include, in particular*', and then nine circumstances are defined. These circumstances are very wide, culminating in a catch all provision where '*the person otherwise poses a risk to the national security of the United Kingdom*'.⁸¹

Section 63 will disqualify any foreign national who has been sentenced to 12 months' imprisonment or more, at anytime, anywhere in the world, from accessing support through the NRM. It also allows the disqualification victims from protection where they have not necessarily been convicted of any offence at all.

- **Penalises and punishes victims**

The government has stated that it wishes to prevent protection systems being illegitimately used. Yet, to date, has been unable to provide any evidence of this occurring.

Traffickers commonly target and exploit those with criminal convictions.⁸² There is a danger that exploitation of those with criminal convictions could increase, as traffickers may know that if their victim has been in prison for 12 months or more, they may not be afforded protection from the state.

This is also true with regards to crimes a victim has been forced to commit during their exploitation and therefore arguably should not have been prosecuted at all. It is evidenced that large numbers of children and vulnerable adults are being trafficked for the purpose of criminal exploitation.⁸³ The significant increase in understanding and numbers of victims related to this typology of trafficking has been acknowledged by government, who now recognise criminal exploitation as a specific exploitation typology and provide statistics in relation to this via NRM quarterly reporting.⁸⁴ However, those involved in criminality as part of their exploitation are not always identified as victims in their first interaction with authorities and the application of Section 63 risks a) the withdrawal of support and b) removal from the UK for victims who have experienced criminal exploitation (if this is not recognised by first responders).⁸⁵



While Section 63 does not expressly deal with the mandatory requirement to complete victim identification at the conclusive grounds stage, it remains to be seen how disqualification will operate in practice. If a victim identified on reasonable grounds is removed from the territory during the reflection and recovery period on '*public order/bad faith*' grounds, without a conclusive grounds decision or in any circumstances where prompt and correct victim identification has not been completed, this will clearly breach Article 10 ECAT and the ECHR, in addition to the breaches outlined above.

It should also be noted that the application of Section 63 raises particular concerns in relation to those identified who are children and would not meet the UK's obligation under the Convention on the Rights of the Child to respect and ensure the rights set forth in the Convention are applied to each child within their jurisdiction without discrimination of any kind.⁸⁶

- [Plays into the hands of those exploiting](#)

Concerns have been voiced that the cessation of protection and prohibition on removals risks damaging policing and prosecution efforts, reduces self-reporting, and penalises victims.

Victims may be reluctant to offer information about experiences and perpetrators for fear of being implicated and having protections ceased.

Section 63 has the potential to have a knock-on effect to reducing the number of investigations and criminal proceedings against traffickers by removing victims of crime and witnesses and discouraging victims from coming forward and reporting crime in the first place.

- [Definition of '*bad faith*'](#)

There is no definition of '*bad faith*' in the Act itself. No explanation has been given of the types of cases intended to come within the scope of these provisions and how this will be applied to individual cases is unclear.

ECAT Article 13 does not refer to claims made in bad faith but rather non-observance of the recovery and reflection period if grounds of public order prevent it, or victim status is being claimed improperly.

Language used in the Act is subjective. '*Bad faith*' focuses on the individual having done something wrong, whereas '*victim status being claimed improperly*' may relate to the actions of a third party.

Section 64

Identified potential victims etc in England and Wales: assistance and support

Section 64 amends the Modern Slavery Act, inserting a new section (50A) outlining the necessary assistance and support to be secured for potential victims during the recovery and reflection period. Section 63 and 64 should be read together as they impact each other.

Under Section 64 (or Section 50A(2) of the Modern Slavery Act), support for potential victims must be deemed '*necessary for the purpose of assisting the person receiving it in their*



recovery from physical, psychological, or social harm arising from the conduct which resulted in the positive reasonable grounds decision.⁸⁷

Assistance and support will only be applicable to those with a positive reasonable grounds decision (as is currently the case), and only if ‘*appropriate*’ in a further reasonable grounds decision (Section 50A(4)). The support duty ‘*ceases to apply*’ to those disqualified under Section 63. These qualifications and disqualifications are not found in ECAT.

Neither the Modern Slavery Act (2015) nor the Nationality and Borders Act (2022) include provisions implementing Article 12 of ECAT in its entirety. Following a reasonable grounds decision, a person shall not be removed until completion of the identification process provided for in Article 18 and the authorities ‘*shall ensure*’ that person receives the assistance provided for in Article 12(1) and (2), and Article 10(2) of ECAT. Article 12 lists the minimum measures that should be adopted to assist victims.

By not transposing all elements of victim protection found in international legislation, gaps have been left in domestic law in relation to victim protection, support, and assistance.

Government commitments

The explanatory notes state that Section 64 is intended to:

- Provide victims with certainty about the circumstances in which support is provided through the NRM.
- Implement the UK’s obligations of protection, support, and assistance as outlined in ECAT.
- Include an entitlement to support in legislation.
- Outline the provision of a recovery period, during which victims must be provided with assistance and support to aid their recovery.⁸⁸

The government has confirmed:

- Section 64 places the right to support within primary legislation.⁸⁹
- Support is a ‘fundamental pillar’ in their approach to assisting victims and reducing the risk of re-trafficking.⁹⁰
- That they do not intend to include in primary legislation the support victims will be entitled to and will outline this within guidance. Support being outlined in guidance has been positioned as necessary to provide the flexibility to tailor support to victims, ensuring timely amendments to support as victims needs change.⁹¹
- That they intend to offer on-going support to victims with a positive conclusive grounds decision, via the recovery needs assessment process and that this support will have no time-limit and enable the delivery of appropriate and effective needs-based support. Support plans can be put in place for up to six months at a time, with no overall limit.⁹²
- Details of the support that victims will be eligible for will be outlined in guidance.⁹³
- That they will ensure support is targeted, personalised, and based on victim needs.⁹⁴
- There will be the provision of ongoing, appropriate, and tailored support for a minimum of 12 months post a positive conclusive grounds decision.⁹⁵



Concerns

Section 64 (as read with Section 50A of the Modern Slavery Act) decreases the support previously available to victims as outlined in guidance.⁹⁶ Potential victims of trafficking are entitled to support as of right following a positive reasonable grounds decision. Section 64 places support on a discretionary basis, makes the provision of support subject to several qualifications or exemptions, and allows for the cessation of support completely. The support offered, in its current format, does not provide even the minimum set of protections and assistance required by ECAT. Calls for the standardisation of care, longer term support, access to the labour market, leave to remain, and legislation to enshrine victims' rights have all been tabled.⁹⁷

- **ECAT is not being fully implemented**

The government state that Section 64 is designed to be in line with ECAT. That is not the case because whilst ECAT requires assistance and support to be provided, it does not contain any provision excluding a '*further reasonable grounds decision*' contained in Section 64. Nor does it give the competent authorities a discretion as to what support is deemed 'necessary' (as in Article 64(2)). There is simply a free-standing duty to provide assistance and support in Article 12 ECAT.⁹⁸

- **UK government can change the support offered to victims as and when they like**

The government have not always effectively consulted with the anti-slavery sector. While Ministers have clearly voiced their intentions to work with the sector to update the guidance to enable implementation of the Act, how this will be undertaken in practice is yet to be seen. Government says that positioning support standards in guidance allows for flexibility and responsiveness to the changing nature of trafficking.⁹⁹ While this is accurate and in different circumstances may be welcomed, it is at this juncture concerning because it means that government will be able to further alter, and potentially decrease, the protection, support, and assistance offered to victims without any parliamentary scrutiny or approval.

- **Evidence of needing support**

Section 64 (as read with Section 50A of the Modern Slavery Act) does not provide support to potential victims automatically, to assist with their recovery, as required by ECAT. Instead, it introduces several conditions, including that support only be provided to victims if it is deemed '*necessary...for the purpose of assisting the person receiving it in their recovery*'.¹⁰⁰

Recovery needs must also be from '*any physical, psychological or social harm arising from the conduct which resulted in the positive reasonable grounds decision in question*'.¹⁰¹ This is problematic as practically defining, determining, and measuring the harms that have arisen solely as result of a trafficking experience is not practically achievable or realistic. Some existing vulnerabilities are likely to be the precursor to being 'selected' by traffickers, and those vulnerabilities are then exacerbated by exploitation, and may, if not addressed, lead to re-trafficking. A 2021 report by the Rights Lab highlights traffickers targeting vulnerabilities based on environmental, social, community, family, and personal factors.¹⁰²

If the harm is not judged to have arisen from the '*reasonable grounds decision in question*', support will not be deemed necessary. This is contrary to ECAT, as discussed in Section 62



(p. 11-13), as protections and support following receipt of a reasonable grounds decision under ECAT are automatic entitlements of receiving a positive reasonable grounds decision.

Under Section 64, victims with a positive reasonable grounds decision are protected from removal for the duration of the recovery period, as long as no disqualifications, as outlined in Section 62, are present. However, under this section, victims will only be able to access support if assessed as needing it, and if their needs are related only to their experiences of exploitation as outlined in their NRM application that resulted in the positive reasonable grounds decision.

This broad and unclear provision gives wide and seemingly unbridled discretion to refuse support to those identified as potential victims and in receipt of a positive reasonable grounds decision.

Limited information is currently available about how needs will be assessed. In addition, the question of 'harm' and what this term covers or how it will be measured is unknown. This is a concern for both support during the reflection and recovery period and for on-going support needs post a positive conclusive grounds decision. Issues with the recovery needs assessment process have already been documented.¹⁰³

- [A lack of protection and support pre-reasonable grounds decisions](#)

For the reasons given above, a concern is that victims with a reasonable grounds decision will not be provided with support as required by ECAT. It is unclear if the current approach, outlined in the Modern Slavery Guidance of offering '*emergency accommodation*' under the MSVCC to those who are destitute, between being referred to the NRM and receiving a reasonable grounds decision, will continue.¹⁰⁴ Section 64 does not offer comment on the legislative approach, nor has government offered comment on any changes to guidance in this regard.

Section 65

Leave to remain for victims of slavery or human trafficking

Section 65 outlines the circumstances in which leave will be granted to conclusively identified victims. Section 65 will apply to those victims who are not British and/or do not have the right to remain in the UK if the Secretary of State '*considers it necessary*' for one of three purposes, defined as follows:

- a) assisting the person in their recovery from any physical or psychological harm arising from the relevant exploitation
- b) enabling the person to seek compensation in respect of the relevant exploitation,
- c) enabling the person to co-operate with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation.¹⁰⁵

Government commitments

The explanatory notes stated that Section 65 is intended to:



- Clarify in primary legislation international obligations and the policy of discretionary leave currently set out in guidance.
- Provide a specific grant of temporary leave to remain for confirmed victims of modern slavery in primary legislation.
- Reflect the government's commitment to supporting victims (of all ages) who do not have immigration status and automatically considering them for a grant of temporary leave.¹⁰⁶

The government has confirmed:

- A new form of 'Temporary Permission to Stay' within the immigration rules for those identified as victims of modern slavery. These permissions will commence on the 30th January 2023.¹⁰⁷
- Section 65 is seen as a crucial provision that enhances the rights of the victims and will give victims and decision makers clarity as to entitlements, in line with international obligations.¹⁰⁸
- 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.¹⁰⁹
- Section 65 will meet ECAT obligations under Article 14 and all victims (adults and children) will automatically be considered for leave.¹¹⁰
- Temporary permission to stay as a victim may be granted for a period not exceeding 30 months for each grant.¹¹¹

Concerns

The current Discretionary Leave to Remain (DLR) policy and process for victims is outlined in guidance and allows for every conclusively identified victim to be considered for temporary leave should they have no right to remain within the UK and require this. This guidance is said to meet the UK's obligations under ECAT Articles 14 and 10(1). The provision of discretionary leave, as set out in Section 65, is therefore not as new a concept as the government suggests.¹¹²

- **Limiting of reasons to grant leave**

All the reasons that the Secretary of State would grant leave or consider it necessary are outlined in Section 65(2).¹¹³

Section 65 misinterprets the obligations outlined in ECAT as it:

- a) Narrows the scope of the personal circumstances in which a victim would be entitled to a period of discretionary leave.
- b) Limits the compensation/cooperation with the police grounds if the victim can seek compensation from outside the UK (so a victim can be returned home whilst these processes are on-going).
- c) Overlooks the connection between secure status, recovery, and cooperation with law enforcement.
- d) Is silent on non-exhaustive factors such as the risk of reprisals or re-trafficking upon return.¹¹⁴



All three purposes for the provision of a grant of leave are to be linked and limited to ‘*the relevant exploitation*’, defined as the conduct resulting in the positive conclusive grounds decision (Section 64(10)).¹¹⁵ There is no concept of relevant exploitation in ECAT, and no qualifications on the purposes under which leave is deemed necessary in Article 14.

It should also be noted that leave is deemed ‘*not necessary*’ if assistance needs can be met from a victim’s home or a third country, should they be removed from the UK.¹¹⁶ This means that the UK is in effect out-sourcing support for victims to other states, which is not in line with ECAT obligations.

Limiting the reasons to grant leave is concerning and presents a risk to victims’ right to remedy and redress. It will also hamper efforts to tackle the perpetrators of this crime. If victims do not feel supported, are returned home and not provided leave, their engagement in criminal justice processes against their traffickers will reduce and prosecutions are likely to fail.

Section 65 also provides for an open-ended discretion to the state as to whether to grant leave or refuse it. This is contrary to very clear Court of Appeal guidance that confirmed Article 14 of ECAT does not permit an open-ended discretion in relation to the granting of leave.¹¹⁷

It should also be noted that no grant of temporary leave is required if a victim is disqualified from protection under Section 63(2), Section 65(6) and (7).¹¹⁸ These sections also mean leave can be revoked as well.

- [Recording and reporting on leave granted](#)

It is not yet clear how data will be collected in relation to leave that victims are granted or if this will be reported on as part of the NRM quarterly and annual statistics. With the current DLR policy and process, official data is not routinely collated or published on the number of grants of leave given.

To analyse if the leave offered via Section 65 fulfils its protective aims under ECAT, the government will need to release how many grants of leave are issued in relation to each of the three purposes - (a) (b) and (c). It must disaggregate this data. This can then be analysed alongside the number of conclusive grounds decisions and the number of prosecutions against traffickers to assess the efficacy of the policy.

- [Information that is considered](#)

When considering whether a grant of leave should be provided, the government will only consider the ‘*relevant exploitation*’ as disclosed via the NRM process. This is unduly narrow and carries a risk that relevant factors will be ignored or overlooked.

Further, the UK is also under a duty and obligation to ensure the safe returns of victims where temporary leave is not granted, as per Article 16 of ECAT.¹¹⁹ Any reference to this obligation is absent from the Act.



Sections 66 and 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

Sections 66 and 67 amend the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) to provide a legal aid 'add-on' in relation to a referral to the NRM when a victim is already in receipt of legal aid.

This means an individual must already have a legal aid lawyer representing them in relation to a matter that has been determined as being in scope of legal aid (under section 9 and Para 1 Schedule 1 LASPO). If work is out of scope, but a person has a human rights claim, an application may be made for Exceptional Case Funding (ECF) under section 10 LASPO.

Add-on services are for advice on the NRM and other legal services in connection with accessing the NRM. Specified exclusions mean that advocacy, and attendance at interview with the Competent Authority are not covered by add-on NRM services.¹²⁰

The explanatory notes state Sections 66 and 67 are intended to:

- Enable advice to be given at point of referral into the NRM, where an individual is already in receipt of legal aid advice for specific immigration and asylum matters.

The government has confirmed:

- Section 66 and 67 will identify and support individuals who may be potential victims of modern slavery or human trafficking by ensuring they receive advice on referral into the NRM to understand what it does and how it could help them.¹²¹
- Individuals will be provided with advice on the NRM at the same time as they are receiving advice on an asylum and immigration matter.¹²²

Concerns

- Advice pre-NRM will not be available to all victims

It is positive that legal aid for pre-NRM advice will now be available to some victims as a result of Sections 66 and 67. Early legal advice can be pivotal in ensuring victims achieve positive outcomes and access justice.¹²³ However, this funded pre-NRM advice will only be available to some victims, namely, those who are in receipt of legal aid via the scope of another matter, which leaves an unfair disparity in support provision. This is a highly complex area, leaving many victims without legal aid funding in a risky situation, particularly those who have recently fled exploitation and are unable to articulate their own claims. There are already a significant number of barriers for victims to access to legal aid justice, and significant gaps in provision still exist.¹²⁴

- Legal Aid Drought



There are significant issues in current legal aid provision in the UK.¹²⁵ It is not clear if extra funding and support will be given to support the implementation of Sections 66 and 67 or if legal aid practitioners will be expected to work within the current frameworks.

Section 68

Disapplication of retained EU law deriving from Trafficking Directive

Section 68 disapplies the EU Trafficking Directive.

The explanatory notes state that Section 68 intends to:

- Disapply the Trafficking Directive where it is incompatible with provisions in the Act.
- Bring legislative clarity to the modern slavery clauses in the Act and avoid any duplication of rights as well as providing clarity to victims on their rights and entitlements.¹²⁶

The government has confirmed:

- The UK is no longer bound by EU law.¹²⁷
- Their commitment to implement ECAT and that the obligations it imposes remain unaffected.¹²⁸
- Article 4 of ECHR will remain unaffected.¹²⁹
- They intend to disapply the Trafficking Directive insofar as it is incompatible with any provisions in the Act.¹³⁰
- Their position is that, in effect, the Trafficking Directive has already been disapplied post the conclusion of the transition period in January 2021.¹³¹

Concerns

The Directive was adopted by the UK on 5th April 2011.¹³² It was intended to build on ECAT. Like ECAT, the Directive aims to prevent and combat trafficking by imposing obligations on member states to investigate and prosecute trafficking as a serious organised crime and a gross violation of fundamental rights.

While the UK is no longer a Member State of the EU, the government publicly remains committed to combatting trafficking.¹³³ Ceasing the application of rights in the Trafficking Directive insofar as they would otherwise be incompatible with any provision of Nationality and Borders Act (2022) is therefore contrary to the stated commitment to combat trafficking.

- **The Trafficking Directive is not disapplied and remains in force**

The Trafficking Directive was retained in UK law after Brexit by section 4 European Union (Withdrawal Act) 2018, and therefore it continues to apply. So does the case law in relation to the Directive.

It is therefore surprising that the Government consider that the Directive is already disapplied.¹³⁴ No explanation has been offered by government for this view and it is not legally correct.



- Lack of clarity as to what provisions derived from the Directive are considered incompatible with Nationality and Borders Act (2022)

The government has not specified which elements (which include rights, powers, liabilities, obligations, restrictions, remedies, and procedures) of the Trafficking Directive it considers incompatible with the Act, nor have they offered clarity as to which sections of the Trafficking Directive would cease to apply under Section 68.

- Risks undermining criminal justice efforts traffickers

Government states that increasing prosecutions is one of the aims of this Act, yet the disapplication of the Directive threatens the ability to do this. An overarching purpose of the Directive is to ensure the success of investigations and prosecutions of human trafficking offences. The definition of the offence of trafficking under the Directive (Article 2), the non-prosecution or non-application of penalties (Article 8), investigations (Article 9), the assistance and support duties (Articles 11 and 12), and further measures including for child victims (Articles 13-14, 16) are calibrated towards combatting trafficking, identifying and support victims including through the criminal justice process, and prosecuting traffickers.

- Risk of watering down of support and protection, including for children

The Directive has been found to have direct effect in UK law, providing victims with enforceable rights and remedies in UK courts. Existing UK legislation does not enshrine specific assistance and support measures included in the Directive.

There are particular concerns about the watering down of the specific protections afforded to children (especially when viewed with other parts of the Act including section 52 on age assessments). The combined reduction of child-specific protection, and the reduction of support is particularly problematic because child victims tend to be provided with support under the Children Act 1989, rather than specialist NRM support.

Section 69

Part 5: interpretation

Section 69 of the Act concerning the interpretation of Part 5, which entered into force on 28 April 2022. This has led to new regulations and amended guidance.

Section 69 provides the definitions of terms used in Part 5 of the Act and confers power to the Secretary of State to set the meaning of 'victim of slavery' and 'victim of trafficking' in regulations. As outlined in the overview and referenced in Section 60, the Slavery and Human Trafficking (Definition of Victims) Regulations 2022 have been laid before Parliament, affirmed and are now in force.



Appendices/Further Information

An overview of the National Referral Mechanism

The National Referral Mechanism (NRM) is the UK government's system for determining whether they believe a person is a victim of trafficking.¹³⁵ The NRM was first implemented on 1 April 2009 and was designed to fulfil the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), ratified by the UK in 2009.¹³⁶ The NRM has historically operated not under statute, but mainly through statutory and non-statutory guidance, including the Modern Slavery: Statutory Guidance for England and Wales (under Section 49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland.¹³⁷

In briefest summary, the NRM follows a three-stage process. Designated First Responder organisations who encounter cases with indicators of modern slavery or trafficking make a referral to the Competent Authorities that are part of the Home Office. The Competent Authorities include the Single Competent Authority (SCA) and the Immigration Enforcement Competent Authority (IECA) responsible for making decisions on different cohorts of cases. The IECA was created in November 2021 and is responsible broadly for all adult cases in detention, and all third country unit/inadmissible or deportation cases (whether detained or not).¹³⁸ The SCA is responsible for all other cases referred to the NRM including child cases. Adults must give informed consent to an NRM referral. In the absence of informed consent, specified public authorities in England and Wales have a Duty to Notify (DtN) the Secretary of State when encountering a potential victim of trafficking (under section 52 Modern Slavery Act 2015).¹³⁹

The Competent Authorities then embark on a two-stage decision-making process as follows:

Reasonable Grounds (RG) decision: applies the threshold of 'I suspect but cannot prove' that the individual is a potential victim of modern slavery.

Conclusive Grounds (CG) decision: the test at this stage is 'whether, on the balance of probabilities, there is sufficient information to conclude the individual is, more likely than not, a victim of trafficking'.

The timeframes currently outlined in guidance indicate the RG decision should be made within five days and CG decision within 45 days. Where the SCA considers that there are reasonable grounds to believe that someone may be a victim of modern slavery (positive RG decision), the person will be granted a 30-day (minimum) reflection and recovery period, per the obligations outlined in ECAT Article 13.¹⁴⁰ **To note:** 45-days is currently applied in England and Wales and Northern Ireland, and 90 days in Scotland.

A positive CG decision does not result in an automatic grant of immigration leave. However, under Section 65 of the Act every confirmed victim without permission to stay in the UK will be considered for a form of temporary leave.¹⁴¹



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