



Home Office

Discretionary leave considerations for victims of modern slavery

Version 2.0

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About this guidance

This guidance explains the circumstances in which it may be appropriate to grant discretionary leave to remain (DL) to individuals confirmed as victims of modern slavery by the National Referral Mechanism (NRM), and the considerations that must be made before such a decision is made. It also deals with extending DL or curtailing leave as necessary. The term “modern slavery” includes human trafficking, slavery, servitude and forced or compulsory labour).

Contacts

If you have any questions about the instruction and your line manager or senior caseworker cannot help you or you think that the instruction has factual errors then contact the Asylum Policy inbox.

If you notice any formatting errors in this instruction (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the instruction then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the instruction was published:

- version **2.0**
- published for Home Office staff on **10 September 2018**

Changes from last version of this guidance

Clarification that section 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 replicates section 1 of the Modern Slavery Act 2015 (England and Wales) and section 1 of the Northern Ireland legislation.

Related content

Victims of modern slavery – Competent Authority guidance.

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Related external links

[PK\(Ghana\) v SSHD](#)

[Council of Europe Convention on action against trafficking in human beings.](#)

Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to section 55. The Home Office instruction [Every Child Matters: Change for Children](#) sets out the important principles to take into account in all relevant activities.

Our statutory duty to children includes the need to demonstrate:

- fair treatment which meets the same standard a British child would receive
- the child's interests being made a primary, although not the only consideration
- no discrimination of any kind
- asylum applications are dealt with in a timely fashion
- identification of those that might be at risk from harm

Related content

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Background to discretionary leave for potential victims of modern slavery

Decisions about who is recognised as a victim of modern slavery are made by trained specialists in designated Competent Authorities. Modern slavery may be raised as part of an asylum claim, or during another immigration process

Competent Authorities

The designated Competent Authorities are:

- [the Modern Slavery Human Trafficking Unit \(MSHTU\)](#)
- [the Home Office](#)

The Modern Slavery Human Trafficking Unit (MSHTU)

All referrals to the National Referral Mechanism (NRM) from first responders must be sent to MSHTU initially. MSHTU currently makes reasonable and conclusive grounds decisions on all cases involving:

- a British Citizen
- a European Economic Area (EEA) national (except where there is a live immigration issue)

The MSHTU will refer all other cases to the Home Office Competent Authority, who will make the reasonable and conclusive grounds decisions.

The Home Office

The Home Office also performs functions which are separate to its role as a Competent Authority but which relate to that role. For example:

- processing asylum claims from a person who has had their final decision from the NRM
- supporting voluntary returns where a person also claims to be a victim of human trafficking or modern slavery
- making decisions on whether to grant discretionary leave, or not

When to consider a grant of discretionary leave

A person will not qualify for discretionary leave (DL) solely because they have been identified as a victim of modern slavery – there must be reasons based on their individual circumstances to justify a grant of DL where they do not qualify for other leave such as asylum or humanitarian protection.

Where the case involves a child the best interest of the child should always be factored into the consideration. The Secretary of State has the power to grant leave on a discretionary basis outside the rules from residual discretion under the Immigration Act 1971. Discretionary leave is a form of leave to remain that is granted outside the Immigration Rules in accordance with this policy. Applications for DL cannot be made from outside the UK. Part 9 of the Immigration Rules covers the general grounds for refusal and must be consulted and applied before DL is granted.

Discretionary leave may be considered where a Competent Authority has made a positive conclusive grounds decision that an individual is a victim of modern slavery they are not eligible for any other form of leave (such as asylum or humanitarian protection) and either:

- [leave is necessary owing to personal circumstances](#)
- [leave is necessary to pursue compensation](#)
- [victims who are helping police with their enquiries](#)

Leave is necessary owing to personal circumstances

When deciding whether a grant of leave is necessary under this criterion an individualised human rights and children safeguarding legislation - based approach should be adopted. The aim should be to protect and assist the victim and to safeguard their human rights. In seeking to do so decision makers should primarily:

- assess whether a grant of leave to a recognised victim is **necessary** for the UK to meet its objective under the Trafficking Convention - to provide protection and assistance to that victim, owing to their personal situation

It is not possible to cover all the circumstances in which DL may be appropriate because this depends on the totality of evidence available in individual cases. However, considerations when deciding if DL is appropriate might include (the list is not intended to be exhaustive):

- whether the person may be eligible for a more advantageous form of leave, for instance, asylum or humanitarian protection
- whether leave is necessary because there is a significant and real risk in light of objective evidence that the person may be re-trafficked or become a victim of modern slavery again - in such cases consideration should also be given as to whether the risk is greater in the UK or in the person's home country
- whether, if returned home, the person would face harm or ill-treatment from those who first brought them to the UK, or exploited them in their home country
- whether on the objective information and evidence in a particular case the receiving state have the willingness and ability to provide through its legal system a reasonable level of protection to the person, if returned to their care (it

would be rare for an individual to be able to rely on there being an absence of sufficient protection for victims of modern slavery in an EU member state)

- whether DL is necessary for the person [to seek compensation](#) through the Courts or is assisting the police with a [criminal investigation or prosecution](#)

Additionally, a person may provide evidence from a healthcare professional that they need medical treatment. In these cases, consider whether it is necessary for the treatment to be provided in the UK. In terms of needing to stay in the UK to have such treatment you may wish to consider that the UK's international obligations do not extend to a requirement that treatment must be provided by specialists in trafficking, or that it be targeted towards one aspect of an individual's needs (the consequences of trafficking) as opposed to his or her overall psychological needs as set out in the case of [EM v SSHD](#). In brief, the support duty calls for the provision of support, not that the person is supported until they achieve full physical, psychological or social recovery. Leave granted to allow for medical treatment should normally be granted for the duration of the course of treatment or up to 30 months, whichever is shorter.

Leave is necessary to pursue compensation

A grant of leave to pursue compensation from their perpetrator(s) is normally only necessary where it would be unreasonable for the victim to pursue that claim from outside the UK. However, cases should be decided on their individual merits.

A victim of modern slavery who has not been trafficked but is a victim of slavery, servitude and forced or compulsory labour may be considered for discretionary leave whilst seeking compensation through the Courts. The consideration must include:

- the type of compensation being sought
- the grounds of the claim
- the likelihood of the claim succeeding - in reference to the claims accepted or rejected by the Competent Authority
- the likely length of the claim
- whether it is necessary for the person to be physically in the UK for the duration of their claim or can be returned for the hearing

A confirmed victim who is a deported foreign criminal must not be facilitated to attend a civil hearing about compensation in person. In such cases attendance by virtual means will be more appropriate.

Victims who are helping police with their enquiries

Where a person is conclusively found to be a victim of modern slavery (including trafficking) and has agreed to assist with police enquiries in the UK, the victim, or the police, may apply for leave to be granted, or extended, on this basis. Initial

considerations of discretionary leave for non-European Economic Area (EEA) national victims will take place automatically.

If the police make a request or the victim makes an application before a conclusive grounds decision is taken, they should be notified that no decision on whether to grant discretionary leave will be taken before a conclusive grounds decision is made.

If the victim is applying for discretionary leave on this basis they must fully co-operate with the Home Office by providing all relevant information known to them to help with establishing which police officers are involved in the relevant investigation. This is so even where the Home Office is the Competent Authority and a discretionary leave consideration is happening automatically.

A non- exhaustive list of information that a victim might include with an application to help the Home Office contact the relevant police officers includes the following:

- the name of the investigating police force
- the name of any police station they have visited to assist with police enquiries
- the name and contact details of the investigating officers or victim support officers such as their email address or telephone number
- any other information that may be relevant in helping the Home Office identify who the investigating officers might be

The Home Office Competent Authority will take reasonable steps to verify the information provided as necessary. Reasonable steps include contacting an anti-trafficking or anti - slavery unit or contact with the relevant police force or another officer or unit in that police force to seek their assistance in establishing who the investigating officers are.

If the Home Office Competent Authority (despite having taken reasonable steps) is unable to establish that the victim is helping the police with enquiries and the individual does not provide further information on request, the application may be refused unless the person can demonstrate they fall under other DL criteria set out in this guidance.

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Application process and fees

There is no fee for an initial consideration of discretionary leave where a victim of modern slavery has a positive conclusive grounds decision from the NRM.

A person with a positive conclusive grounds decision who has claimed asylum. will also receive an automatic consideration for discretionary leave on the basis of modern slavery, if they are not granted asylum or humanitarian protection or leave on the basis of their family or private life. No application form is needed.

A person will need to fill in an application form for consideration of discretionary leave on the basis of modern slavery where another Competent Authority such as MSHTU (not the Home Office) took the positive conclusive grounds decision in their case and they are relying on criteria relating to personal circumstances, or pursuing compensation. Generally the form they should complete is the [form FLR\(HRO\)](#) for non-asylum cases or the [FLR\(DL\)](#) for failed asylum claimants.

Where a person has agreed to assist with police enquiries, either the victim may apply, or the police may make a request for them, to be granted leave on this basis. For victims applying on this basis the form they should complete is the [form FLR\(HRO\)](#) for non-asylum cases or the [form FLR\(DL\)](#) for failed asylum seekers.

Victims of modern slavery who enter the NRM in Scotland

A victim of human trafficking or of slavery, servitude or forced or compulsory labour in Scotland with a positive conclusive grounds decision will fall to be considered under this discretionary leave policy.

Section 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 is the equivalent of section 1 of the Modern Slavery Act 2015 (England and Wales) and section 1 of the Northern Ireland legislation. All modern slavery cases (trafficking, slavery, servitude and forced or compulsory labour), are therefore entitled to receive positive reasonable grounds and conclusive grounds decisions in Scotland.

A person in Scotland who has not been referred to the NRM but considers themselves to be a victim of modern slavery may wish to contact frontline staff to seek a referral to the NRM.

Where the Home Office is the Competent Authority they will additionally consider the case under the discretionary leave policy.

Where MSHTU is the Competent Authority the onus will be on the individual (or the police in helping police with enquiries cases) to seek discretionary leave from the Home Office using the processes outlined elsewhere in this guidance.

If discretionary leave is granted on this basis, the process for [extending discretionary leave](#) must be followed if such a request is made. The same approach to [fees and fee waivers](#) set out in this guidance should apply.

Recourse to public funds, work or study

Those granted DL have recourse to public funds with no prohibition on work, and they are also able to enter higher education. However, those on limited leave are not eligible for higher education student finance under existing Department for Education regulations. In addition, a study condition applies to all adult temporary migrants granted DL which prohibits studies in particular subjects without first obtaining an Academic Technology Approval Scheme (ATAS) clearance certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office (FCO). Those granted DL who are aged 18 or will turn 18 before their limited leave expires will, in addition to any other conditions which may apply, be granted leave subject to the requirements set out [part 15 in the Immigration Rules](#).

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Actions to take following a positive conclusive grounds decision

Immigration cases

Victims of modern slavery also make asylum claims. Where they do it is for the Home Office to make decisions on the asylum claim once a conclusive grounds decision has been taken.

A positive conclusive grounds decision does not result in an automatic grant of immigration leave.

However, if the Home Office is the Competent Authority it will automatically consider whether a grant of discretionary leave (DL) is appropriate under the following criteria:

- those relating to personal circumstances
- assisting police with enquires
- pursuing compensation once a positive conclusive grounds decision is issued

All outstanding asylum decisions should be taken before any consideration is given to whether the victim is eligible for discretionary leave. If it is decided that a grant of leave is appropriate and the length of that leave is more generous than any discretionary leave grant, that leave should be granted. This may be the case where the person qualifies for a grant of asylum or humanitarian protection or for leave to remain on the basis of family or private life.

Home Office not the competent authority

The Modern Slavery Human Trafficking Unit (MSHTU) cannot determine eligibility for or issue discretionary leave.

If the Home Office is not the Competent Authority an individual would need to apply for discretionary leave under the modern slavery policy following a positive conclusive grounds decision. The police may also make a formal request to the Home Office on behalf of a person assisting them with enquiries.

European Economic Area (EEA) nationals: identified as victims of modern slavery

EEA nationals, who are identified as victims of modern slavery (human trafficking or slavery, servitude and forced or compulsory labour) generally retain the ability to exercise free movement rights in accordance with [The Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 Regulations).

However, where an EEA national receives a positive conclusive grounds decision from another competent authority for example MSHTU they may apply to the Home Office if they are seeking discretionary leave under this policy and relying on the criteria in this guidance. They should use [form FLR\(HRO\)](#) to do so. The same approach to fees and fee waivers in relation to other victims who seek discretionary leave will also apply to EEA nationals. No assessment as to whether the EEA national is exercising treaty rights is needed.

Foreign national offender cases

Criminals or extremists should not normally benefit from leave on a discretionary basis because it is a Home Office priority to remove them from the UK. Where the Competent Authority decision maker is Criminal Casework, DL can only be granted with the authority of the grade 5 who must give authority for deportation not to be pursued. It may be justifiable to grant DL for 6 months initially to enable regular reviews.

Where DL is granted for 6 months or less, if the individual travels outside the UK their limited leave will lapse, and they cannot return unless they make a successful application for leave under the Immigration Rules.

Further grants of discretionary leave

If a person has been granted discretionary leave under this policy and wishes to extend it, or the police wishes it to be extended, for a further period they must make an application to the Home Office ([form FLR\(DL\)](#) or [form FLR\(HRO\)](#)). Further periods of discretionary leave may be granted where the individual continues to meet the eligibility criteria set out in this policy.

A person granted discretionary leave on the basis of modern slavery who wants to apply for leave to remain on any other basis, for example family life, must apply on the relevant form. See [GOV.UK](#), for current forms and any fees that may apply.

Requests for any further discretionary leave for victims with a positive conclusive grounds decision from the National Referral Mechanism (NRM) are not exempt and therefore will be subject to a fee (the general leave to remain fee) unless, on application, the persons European Convention on Human Rights (ECHR) rights would be breached by a refusal to grant a fee waiver.

An individual should apply for further DL on the appropriate application form no more than 28 days before their existing leave expires if they wish to remain in the UK. The application must also be accompanied by the correct fee in line with the requirements of the Immigration and Nationality Fees Regulations.

Out of time applications (those submitted after the extant period of DL has expired) must still be considered. The fact that the application was late should not be a reason to refuse further leave where the individual otherwise qualifies under the policy.

Qualifying for a fee waiver in further discretionary leave cases

A victim of modern slavery who is seeking further discretionary leave where they have already accrued 30 months discretionary leave since leaving the NRM must meet the same fee waiver criteria as applies to those making claims under Article 8 of the European Convention on Human Rights. These criteria provide that applicants will qualify for a fee waiver only where they can demonstrate based on the evidence provided that:

- they are destitute
- they would be rendered destitute by payment of the fee
- there are exceptional circumstances relating to their financial circumstances and ability to pay the fee such that the fee should be waived in their case (even where the evidence does not demonstrate that they are destitute or would be rendered destitute by payment of the fee)

[Form Appendix 1 FLR\(FP\) FLR\(HRO\)](#) must be completed to request a fee waiver if a victim has already accrued discretionary leave beyond 30 months. Or, if successful, the request for further leave will exceed 30 months in total since leaving the NRM.

Requests for indefinite leave to remain

There is no requirement to issue indefinite leave to remain (ILR) to confirmed victims of modern slavery, and the threshold for a grant of ILR outside the Immigration Rules is a high one. Victims of modern slavery granted discretionary leave to remain in the UK are not considered to be on a route to indefinite leave to remain in the UK.

Requests for a grant of ILR following a period of discretionary leave from a person who has had a conclusive grounds decision from the NRM should be considered in line with the guidance set out in the asylum discretionary leave instruction.

Travel documents

A person granted DL will normally be expected to keep their own national passport valid or obtain a passport from their country of origin. Alternatively, a person who has DL following an unsuccessful asylum claim may instead apply for a Home Office Certificate of Travel (COT) on the appropriate application form and payment of the correct fee. Applicants should normally provide evidence to show that they have been formally refused a national passport or evidence to demonstrate they have made efforts to obtain a passport which have proved unsuccessful in the absence of a formal refusal from the relevant Embassy. Where the applicant has ILR, the COT will usually be valid for 5 years. Otherwise it will usually expire when the holder's current leave to enter or remain expires.

Even where all the criteria are met, an application for a COT can be refused, for example, for reasons of national security and public order. Further information about applying for travel documents is available on [GOV.UK](#).

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Period of discretionary leave grants and access to public funds, work and study

Standard grant of leave periods

Leave should normally be for no more than 30 months, though shorter or longer periods may be granted if the facts of the case justify it. Reasons for granting a period of less than 30 months, or less than the time requested by the person, must be included in the decision letter to the individual. When the initial leave expires, a further period of leave may be granted on application.

For a longer term to be appropriate there must be sufficient evidence to demonstrate that the individual circumstances of the case can be distinguished to a high degree from other cases to the extent that it is necessary to deviate from a standard grant of discretionary leave (DL) under this policy.

If it is considered that there are good reasons to depart from the policy of granting 30 months' DL, a senior caseworkers' permission must be obtained for the non-standard grant of leave.

Normally 30 months' DL is the appropriate maximum period of initial leave to grant.

Cases involving children

In cases involving children, the best interests of the child is regarded as a primary consideration (although not necessarily the only consideration) and one that can affect the duration of leave granted. See [section 55 of the Borders, Citizenship and Immigration Act 2009](#) for further guidance, and article 14(2) of the [Council of Europe Convention on Action against Trafficking in Human Beings](#).

Where the child or their parent meets the criteria for a grant of DL based on modern slavery, consideration should be given to factors such as the length of residence in the UK, where the child was born, and the strength of the evidence to suggest that the child's life would be adversely affected by a grant of limited leave rather than indefinite leave to remain (ILR). This does not alter the expectation that in most cases a standard period of up to 30 months DL will be appropriate.

Parents of children granted extended leave must separately demonstrate that there are compassionate factors, in their own right, to warrant departure from the standard grant of DL under this policy. The onus is on the applicant to provide the evidence to support their case.

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Ending or curtailing discretionary leave

Consideration must always be given to ending or curtailing discretionary leave (DL):

- [when the basis for the grant of leave has ceased](#)
- [on grounds of character, conduct or fraud](#)

The basis for the grant of leave has ceased

For example, a child granted leave under the DL policy and who is still a child is subsequently contacted by an adult family member who wishes to care for them in their own country.

Whilst it is normally considered to be in the best interests of a child to be reunited with family members in their country of origin such cases should be assessed carefully to ensure that the decision does not give rise to protection issues. The views of children's services and or those currently caring for the child should be sought so that these can inform consideration of the child's best interests.

A senior caseworker must always be consulted before any action is taken to consider curtailment of leave under this category.

Curtailment on grounds of character, conduct, or fraud

DL should normally be curtailed if a person becomes subject to any of the grounds for exclusion in the 'Exclusion under Article 1F of the Refugee Convention', where there is criminality or where the individual is a danger to national security. In such circumstances, it will also be appropriate to consider whether a grant of leave under the restricted leave policy, or removal action, is appropriate.

Action to curtail or vary DL will only be necessary in deportation cases where a person is liable to deportation but it is not possible to make a deportation order. A deportation order automatically invalidates any extant leave.

Where a person has obtained DL by deception under this policy, that person should have their leave curtailed following which they would be liable to removal under section 10 of the Immigration and Asylum Act 1999 as amended.

See also: [When to consider a grant of discretionary leave](#).

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