



Home Office

Discretionary leave considerations for victims of modern slavery

Version 4.0

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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 **4.0**
- published for Home Office staff on **08 December 2020**

Changes from last version of this guidance

Clarification that from 1 January 2021, EEA nationals who receive a positive conclusive grounds decision that they are a victim of modern slavery will automatically be considered for a grant of DL under this policy in the same way as non-EEA nationals.

Related content

Victims of modern slavery – Competent Authority guidance.

[Contents](#)

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

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Background to discretionary leave for potential victims of modern slavery

Modern slavery is a serious crime encompassing slavery, servitude, forced and compulsory labour and human trafficking. The government is committed to ending modern slavery and towards supporting victims of modern slavery.

As part of this strategy there are occasions when it may be appropriate to grant discretionary leave to remain (DL) to individuals from abroad who have been confirmed as victims of modern slavery.

The National Referral Mechanism (NRM) is the framework for identifying and referring potential victims of modern slavery and ensuring they receive the appropriate support. A First Responder Organisation is in England and Wales an authority that is authorised to refer a potential victim of modern slavery into the NRM. These organisations include (but are not limited to) police forces, the National Crime Agency, local authorities, health and social care trusts. In addition, specific public authorities have a duty pursuant to section 52 of the Modern Slavery Act 2015 to notify the Secretary of State of any person that has been identified in England and Wales as a suspected victim of slavery or human trafficking.

Referrals are made to the Single Competent Authority. **The Single Competent Authority ('SCA')** refers to the United Kingdom's decision-making body, made up of trained specialists, that is responsible for determining whether a potential victim of modern slavery is a confirmed victim of modern slavery. To establish whether a person is a victim of any form of modern slavery (including human trafficking, and slavery, servitude, and forced or compulsory labour) the SCA will consider firstly whether there are reasonable grounds to establish that someone is a potential victim of modern slavery. Only if the SCA determines that there are reasonable grounds that someone is a potential victim of modern slavery it will go on to determine whether there are conclusive grounds to determine whether the victim is in fact a victim of modern slavery.

When to consider a grant of discretionary leave

A person will not qualify for discretionary leave (DL) solely because the SCA has confirmed that they are a victim of modern slavery. There must be reasons based on their individual circumstances to justify a grant of DL.

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 under this specific policy where the SCA has made a positive conclusive grounds decision that an individual is a victim of modern slavery **and** they satisfy one of the following criteria:

- [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 following non- exhaustive list:

- 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, consideration should be given to 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, caseworkers should note 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 UK's international obligations call for the provision of support, not that the person is supported until they achieve full physical, psychological or social recovery.

Leave is necessary to pursue compensation

A grant of leave to pursue compensation from the perpetrator(s) of their exploitation 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 DL 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 Single 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 (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 DL 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 DL under this policy will be taken before a conclusive grounds decision is made.

If the victim is applying for DL 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.

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 will take reasonable steps to verify the information provided as necessary. Reasonable steps include contacting the relevant police force to seek their assistance in establishing who the investigating officers are.

If the SCA (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.

Official – sensitive: start of section

The information in this section has been removed as it is restricted for internal Home Office use.

The information in this section has been removed as it is restricted for internal Home Office use.

Official – sensitive: end of section

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 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 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 for DL under this 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.

The Single Competent Authority will additionally consider the case under the discretionary leave policy.

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.

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Actions to take following a positive conclusive grounds decision

Immigration considerations

A positive conclusive grounds decision does not result in an automatic grant of immigration leave. However, unless the confirmed victim has an outstanding asylum claim at the time the positive conclusive grounds decision is made, automatic consideration (for non-EEA victims) should normally be given at the same time, or as soon as possible afterwards, to whether a grant of discretionary leave is appropriate under this policy.

If the confirmed victim has an outstanding asylum claim and the deferral of a decision on whether to grant discretionary leave would not itself result in the withdrawal of any NRM support which the victim receives and still needs, then the asylum claim should normally be decided before any consideration is given to whether the victim is eligible for DL under this policy.

However, in some cases it may nonetheless be appropriate to consider a grant of DL under this policy in advance of consideration of the asylum claim. Each case should be considered carefully on its own facts, but examples of where this would be appropriate include:

- It is clear that the victim is assisting the police with enquiries and is therefore likely to qualify for discretionary leave to remain under this policy.
- It is clear that the victim is pursuing a claim for compensation and is therefore likely to qualify for discretionary leave to remain under this policy.
- It is clear that due to personal circumstances the victim is likely to qualify for discretionary leave to remain under this policy, regardless of the outcome of the asylum or humanitarian protection claim. For example, there is strong evidence that the victim has a medical need to help them recover from their experience of being a victim of modern slavery and it is also clear that the assistance they require is unlikely to be available outside the UK (regardless of any issue about whether they would be safe in that country, which would fall to be considered as part of their protection claim).

Where a decision has previously been made to defer consideration of discretionary leave to remain, pending the outcome of the victim's asylum claim, but there has been a material change in circumstances such that it would now be appropriate to consider a grant of discretionary leave to remain in advance of consideration of the asylum claim, this should be considered.

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

Where an EEA national receives a positive conclusive grounds decision they do not currently receive automatic consideration of a grant of DL under this policy. However, they may apply to the Home Office for a grant of DL 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.

However, from 1 January 2021, EEA nationals who receive a positive conclusive grounds decision will automatically be considered for a grant of DL under this policy in the same way as non-EEA nationals currently do.

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. 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 DL 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 DL may be granted where the individual continues to meet the eligibility criteria set out in this policy.

A person granted DL 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.

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 applications for further discretionary leave cases

A victim of modern slavery who is seeking further DL under this policy is exempt from paying an application fee if they have not accrued more than 30 months DL under this policy.

Applicants are able to apply for a fee waiver for applications for further DL, but must meet the same fee waiver criteria as applies to those making claims under Article 8 of the European Convention on Human Rights. The criteria is 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 DL under this policy are not considered to be on a route to indefinite leave to remain in the UK.

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

Where DL under this policy is granted for medical treatment it should normally be for up to 30 months. When the initial leave expires, a further period of leave may be granted on application.

A grant of DL to assist in police enquiries or for the purposes of pursuing a compensation claim should be for the time considered necessary depending on the circumstances, up to a maximum of 12 months in the first instance.

For a longer periods of DL to be granted there must be sufficient evidence to demonstrate that the individual circumstances of the case can be distinguished to a high degree from other cases.

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 of the Immigration Rules](#).

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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