

MODERN SLAVERY (VICTIM SUPPORT) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Modern Slavery (Victim Support) Bill [HL] as introduced in the House of Lords on 26 June 2017 (HL Bill 4).

- These Explanatory Notes have been prepared by Lord McColl of Dulwich CBE, the Peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Overview of the Bill

- 1 The Bill amends the Modern Slavery Act 2015 to establish a statutory basis for support and assistance to be provided to victims of modern slavery. The Bill creates a statutory duty to provide support and assistance to potential victims during a reflection and recovery period of 45 days, and for confirmed victims for a further period of 12 months following confirmation of their status as a victim of modern slavery.

Policy and legal background

- 2 Article 12 of the Council of Europe Convention on Action Against Trafficking in Human Beings¹, and Article 11 of the European Union Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims² give rise to obligations on the UK to provide support for victims of human trafficking.
- 3 Since 2009, the Government has been providing support and assistance for potential victims of human trafficking in pursuance of its obligations under the Council of Europe Convention. However, this support and assistance is provided without a statutory underpinning. In July 2015, the provision of support was extended to potential victims of slavery, servitude or forced or compulsory labour.
- 4 Guidance about identifying and supporting victims of modern slavery, required under section 49 of the Modern Slavery Act 2015 (guidance about identifying and supporting victims), is yet to be produced.³
- 5 Section 50 of the Modern Slavery Act 2015 (regulations about identifying and supporting victims) contains a power for the Secretary of State to make regulations for providing assistance and support for victims. No regulations under this section have been made.
- 6 The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015⁴ and the Human Trafficking and Exploitation (Scotland) Act 2015⁵ both contain statutory duties to provide support to victims of human trafficking.
- 7 In its report on Victims of Modern Slavery published on 30 April 2017, the House of Commons Work and Pensions Committee recommended that confirmed victims of modern slavery should be provided with leave to remain and access to support, including a personal plan which details their road to recovery and acts as a passport for support for a period of 12 months following a decision confirming their status as a victim.⁶

Territorial extent

- 8 This Bill and the new clauses inserted into the Modern Slavery Act 2015 will apply only to England and Wales.

¹ [Council of Europe Convention on Action Against Trafficking in Human Beings](#)

² Directive 2011/36/EU [of the European Parliament and of the Council of 5th April 2011 on preventing and combatting trafficking in human beings and protecting its victims](#)

³ The answer to parliamentary question HL4645 given on 24 January 2017 states: “The National Referral Mechanism pilot is due to conclude March 2017 after which the full evaluation will be completed to help inform any potential reforms. The statutory guidance cannot be finalised until this process is complete and is being developed in consultation with NGOs and frontline agencies.”

⁴ [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015](#)

⁵ [Human Trafficking and Exploitation \(Scotland\) Act 2015](#)

⁶ House of Commons, Work and Pensions Committee, [Victims of Modern Slavery](#) (12th Report of Session 2016-17) (26 April 2017)

- 9 This reflects the fact that Northern Ireland and Scotland already have legislation guaranteeing victims' support during the initial period whilst the potential victim's case is being determined by the National Referral Mechanism (NRM) process.

Commentary on provisions of the Bill

Clause 1: Supporting victims of modern slavery

- 10 Clause 1 inserts four new sections into the Modern Slavery Act 2015 after section 48 (independent child trafficking advocates). The new clauses create a statutory duty to provide support to victims of modern slavery both pending a determination that they should be regarded as a victim and for a period of 12 months following a positive conclusive determination.

Clause 48A: Provision of assistance and support during reflection and recovery period

- 11 Clause 48A creates a duty on the Secretary of State to ensure an adult is provided with support during a reflection and recovery period.
- 12 Subsection (2)(a) specifies that the duty applies in relation to individuals who are aged over 18, or who are not being treated in accordance with a presumption that they are aged under 18 according to section 51 of the Modern Slavery Act (presumption of age).
- 13 Subsection (2)(b) specifies that the duty applies from the time a referral is made or is about to be made to a competent authority for a determination about whether the person is to be treated as a victim of modern slavery (for example, from referral into the National Referral Mechanism (NRM)).
- 14 Subsection (3) requires support to be provided until there is a determination that there are not reasonable grounds for considering a person is a victim of modern slavery, or until there is a conclusive decision that a person is or is not a victim. Under the current NRM process, this is determined by the reasonable grounds decision made by a competent authority. "Conclusive determination" is intended to refer to a final decision in the NRM determination process called the "conclusive grounds" decision. Paragraph (c) stipulates that the support shall only end where all processes for reconsideration of the determination (whether reasonable grounds or conclusive determination) have been completed. The reference to "reasonable grounds" reflects the obligations in the EU Directive and Council of Europe Convention that support is only required to be provided where there are reasons to believe a person is a victim, so if it determined that that is not the case then the duty to support no longer applies.
- 15 Subsection (4) ensures that if a conclusive determination is made that the person is a victim of modern slavery before the end of the reflection and recovery period the support will continue to be provided for the whole of that period (45 days).
- 16 Subsection (5) sets out that the reflection and recovery period is to be 45 days ensuring that this will be the minimum length of time for which support will be provided. This reflects current Home Office policy (as set out in Guidance for Competent Authorities⁷). 45 days is equivalent to the statutory minimum provision in the Northern Ireland Act. The Council of Europe Convention states that 30 days is the minimum length of time for which support should be provided.

⁷ [Home Office, Victims of modern slavery – Competent Authority guidance Version 3.0, 21 March 2016](#)

- 17 Subsection (6) gives the Secretary of State power to allow continued provision of support on a discretionary basis.
- 18 Subsection (7) requires provision of temporary admission to the UK for those referred to the NRM during the period in which they are receiving support under this section. This reflects current Home Office practice.
- 19 The practical implication of new clause 48A is that support would be available as follows:

Circumstance	Length of Support
Referral made	Support available immediately for up to 45 days or longer until conclusive determination made.
Person determined not to be a victim of modern slavery	Stops at the time the determination is made or following completion of reconsideration/appeal/judicial review of the decision if such processes are entered into.
Person determined to be a victim of modern slavery	Support provided for 45 days or until conclusive determination made whichever comes later. The victim is then entitled to at least 12 months support under clause 48B.

Clause 48B: Provision of assistance and support to victims of modern slavery following conclusive determination by a competent authority

- 20 Clause 48B creates a duty on the Secretary of State to ensure a person who is conclusively determined to be a victim of modern slavery is provided with support following the reflection and recovery period.
- 21 Subsection (2)(a) limits the duty to those over 18 in the same manner and for the same reasons as clause 48A.
- 22 Subsection (2)(b) applies the duty to provide support to all persons conclusively determined to be victims of modern slavery under the NRM. Although not all victims may want to receive support (or may not need leave to remain) the support will be available to all who consent (see clause 48C(2)(b)).
- 23 Subsection (3) requires support to be provided for a period of 12 months following the end of support provided under new clause 48A (i.e. the end of the reflection and recovery period or the conclusive grounds decision – whichever is latest).
- 24 Subsection (4) requires the Secretary of State to ensure that the necessary leave to remain is granted to victims to enable them to receive support for the 12 month period to which they are entitled. Since the requirement to grant leave to remain is for the purpose of receiving support under this clause (and as defined in clause 48C), it is implied that the granting of leave to remain should be made with recourse to public funds where necessary in order for the victim to receive the support provided under this clause.

- 25 Subsections (5) and (6) allow for discretionary extension of the support and granting of leave to remain under this clause. This reflects current Home Office guidance which recommends that leave to remain is granted for a minimum of 12 months and not more than 30 months.⁸
- 26 Subsection (8) sets out matters to which the Secretary of State must have regard in considering an extension under subsections (5) and (6). These include the current criteria for a victim of modern slavery to be granted discretionary leave to remain under the Home Office's guidance for competent authorities within the NRM.⁹
- 27 Subsection (9) enables the Secretary of State not to grant leave to remain to a victim who is a sexual or violent offender and poses a genuine, present and serious risk to members of the public. This provision attempts to balance the need for public protection with recognition that many victims are made vulnerable to exploitation by virtue of having a criminal conviction but may not pose a present risk to the public.
- 28 Subsection (10) requires the Secretary of State to give the victim reasons for any refusal to grant leave to remain under this section in writing.

Clause 48C: Meaning of assistance and support

- 29 Clause 48C sets out the type of assistance and support that is to be provided to victims, and key aspects of the manner in which that assistance and support is to be provided.
- 30 The provisions of clause 48C apply to the support provided both during the reflection and recovery period under new clause 48A and in the 12 months following conclusive determination that the person is a victim under new clause 48B.
- 31 Subsection (1) sets out a non-exhaustive list of the services and material assistance that should be provided. The list echoes the types of support required by the Council of Europe Convention and the EU Directive.
- 32 Subsection (2) establishes key factors regarding the manner in which support is to be provided to victims. Specifically, support
- should be provided irrespective of whether a victim cooperates with the police (paragraph (a));
 - should be provided only with the victim's consent (paragraph (b));
 - should be provided in a way which takes account of risks of further harm that victims may face (paragraph (c)); and
 - is based on the assessed individual needs of each person, with regard to any special needs that they may have (paragraph (d)).

These factors meet the obligations of the Council of Europe Convention and the EU Directive.

- 33 Subsection (2)(e) requires that the support should be provided in accordance with a personal assistance and support plan detailing the specific needs of the person and how these will be met during the period of support.

⁸ [Home Office Asylum Policy Instruction Discretionary Leave Version 7.0 18 August 2015, at paragraph 5.4](#)

⁹ [Home Office, Victims of modern slavery – Competent Authority guidance Version 3.0, 21 March 2016](#)

- 34 Subsection (3) requires the Secretary of State to publish in regulations the minimum standards for assistance and support provided under this Bill, standards which subsection (5) states must be the subject of a public consultation. Subsection (4) stipulates that the regulations are to be passed by an affirmative resolution of both Houses of Parliament.

Clause 48D: Sections 48A and Section 48B: interpretation

- 35 New clause 48D provides the key definitions for interpreting who is to be treated as a victim of modern slavery and therefore within the scope of the Bill. The definitions are derived from definitions used in the Modern Slavery Act 2015 for a victim of slavery and a victim of human trafficking.

Clause 2

- 36 Clause 2 repeals section 50(1) of the Modern Slavery Act 2015 which enables the Secretary of State to make regulations about providing assistance and support to victims. This Bill replaces the need for such regulations.

Commencement

- 37 Clause 3(2) states that the Bill will come into force 12 months following Royal Assent.

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