

LEGAL & POLICY BRIEFING

Human Trafficking, Modern Slavery and the National Referral Mechanism in Wales

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Introduction

This briefing provides information on human trafficking and modern slavery to local authorities, statutory and non-statutory agencies. This briefing focuses on the obligations of statutory agencies to identify human trafficking and modern slavery and the process for identification and the provision of support in Wales. The briefing also considers the implications of the Modern Slavery Act to current practice. The law on human trafficking and Modern Slavery is found in the 2015 Modern Slavery Act, and in international and European law. The national referral mechanism for the identification of victims of trafficking is not devolved and responsibility is placed with the UK Human Trafficking Centre based at the National Crime Agency.

Status of this briefing

This briefing does not constitute legal advice, nor is it statutory guidance. Whilst advice on the National Referral Mechanism is not considered immigration legal advice under the Immigration and Asylum Act 1999, human trafficking is frequently related to immigration, and therefore care should be taken when giving advice to individuals. Only those who are regulated solicitors, barristers, legal executives, regulated by the Office of the Immigration Services Commissioner (OISC) or exempt by ministerial order are able to give legal advice on immigration and asylum. You should seek legal advice through your organisation's legal services or an independent legal adviser.

This briefing has been prepared in December 2015 and updated in January 2017 reflects the legal position up to this date. However, there are changes to the National Referral Mechanism (NRM) currently on an extended pilot in England. As a result of this pilot, changes are likely to be made to the NRM in 2017 and this briefing will be updated to reflect changes in policy and practice.

How this briefing is structured

This briefing sets out the law in respect of human trafficking and modern slavery, including the duties on statutory organisations which have been established through statute, guidance and case law. This briefing then considers the practical process of identification and support for a victim of trafficking or modern slavery, and the particular features of the Welsh process. Finally, this briefing looks forward to the proposed changes to the identification process and their possible impact. The aim of this briefing is to provide practical assistance on the law and practice of human trafficking in Wales. Within this briefing, reference is made to human trafficking and modern slavery, as the current legislation includes slavery, servitude and forced labour. In England and Wales, statutory guidance refers to the umbrella term of "modern slavery" however, both in Europe, and in international law, the terms human trafficking and trafficking in human beings are used, and the concept of human trafficking and slavery are legally distinct.

Definition of human trafficking and modern slavery

The international definition of human trafficking is found in Article 3 of the Palermo Protocol to the [UN Convention on Transnational and Organised Crime 2000](#), and was adopted in full by Article 4 of the [European Convention on Action Against Trafficking in Human Beings \(ECAT\)](#), ratified by the UK in 2009. This definition is:

a) "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

b) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;

d) Child shall mean anyone under 18 years of age"

The elements of the definition of human trafficking for adults can be broken down into three constituent parts: *facilitation*, *means* and *purpose*. All three parts must be present for an adult to be recognised as a victim of human trafficking.

Facilitation: includes recruitment, transportation, transfer, harbouring or receipt. There is no requirement that any international borders are crossed.

Means: in order to achieve the facilitation and to vitiate consent, traffickers must use or threaten force, coercion or abduction of victims. This can also be achieved by means of fraud, deception, abuse of power or a position of vulnerability or by giving money or another form of benefit. Trafficked victims for example report being told they will have a stable job, earn high wages or have access to education. Where a victim is a child, the means do not need to be demonstrated.

Purpose: the purpose of the exploitation must be within the definitive list produced in the Palermo Protocol and Convention on Action Against Trafficking in Human Beings set out above. The list refers to forms of exploitation and is limited to: forced labour or services, slavery or practices similar to slavery, servitude, removal of organs, or prostitution and forms of sexual violence. In many instances of trafficking, more than one form of exploitation is reported.

The purpose element of trafficking has been expanded by the [EU Directive 2011/36/EU](#) which makes specific reference to forced begging as a form of forced labour, in line with the [1930 ILO Convention no. 29 concerning Compulsory or Forced Labour](#). Article 2 of the Directive also includes exploitation for criminal activities which are defined as activities including pickpocketing, shoplifting, drug-trafficking, or other illicit activities for financial gain. Other criminal activity identified in the UK has included cannabis cultivation, selling counterfeit goods, and benefit fraud.¹ The Directive also includes forced marriages and illegal adoptions as forms of exploitation.

In cases of child trafficking, the means is not required. A child cannot consent to being trafficked. Therefore, where there has been facilitation for the purpose of exploitation, a child can be considered a victim of human trafficking.

Within England and Wales, legislation under the [Modern Slavery Act 2015](#) creates a criminal offence of modern slavery (section 1) and human trafficking (section 2) and therefore defines the criminal acts of modern slavery and human trafficking. The definition of human trafficking found in section 2 is the same as the Palermo Protocol and ECAT:

(1) A person commits an offence if the person arranges or facilitates the travel of another person ("V") with a view to V being exploited.

(2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).

(3) A person may in particular arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.

1. ATMG 'In the Dock', June 2013, p92.

- (4) A person arranges or facilitates V's travel with a view to V being exploited only if—*
- (a) the person intends to exploit V (in any part of the world) during or after the travel, or*
 - (b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.*

The section also makes clear that the criminal offence has transnational jurisdiction. Therefore, if the perpetrator who commits an offence is a UK national, they can be convicted of a human trafficking offence even if the elements of the offence are committed abroad. Someone who is not a UK national can be convicted of the offence where either the arrangements are made in the UK, or part of the offence takes place in the UK.

Exploitation is defined in section 3. The definition of slavery or forced labour refers to Article 4 of the European Convention on Human Rights, which contains an absolute prohibition on slavery, or servitude save for work undertaken in detention, as part of compulsory military service, or civic duties. Slavery and servitude are differentiated by the degree of control exercised over an individual, which must be total to meet the definition of slavery.

Where the forms of exploitation are already criminal offences in the UK, the Act refers to the existing legislation to define these forms of exploitation. In particular, the definition of sexual exploitation refers to the Protection of Children Act 1978 (indecent photographs of children) and Part 1 of the Sexual Offences Act 2003. Reference is made to the Human Tissue Act 2004 (commercial dealings regarding organs and use of live donors) to define the scope of trafficking for the removal of organs.

The Modern Slavery Act defines other forms of exploitation through slavery (with reference to the criminal offence in s1 of the Act), and forced labour and services. The definition of forced labour or services in s3(5) is intended to include exploitation through forced criminality including begging and theft, where the perpetrator receives a benefit.

- (5) The person is subjected to force, threats or deception designed to induce him or her—*
- (a) to provide services of any kind,*
 - (b) to provide another person with benefits of any kind, or*
 - (c) to enable another person to acquire benefits of any kind.*

While the majority of the Modern Slavery Act is in force, the section 48 requiring the provision of independent child trafficking advocates has not yet been commenced. Following an independently evaluated pilot scheme, changes have been made to how child trafficking advocates will be implemented. From 30 January 2017, there will be three early adopter sites (Wales, Hampshire and the Isle of Wight, and Greater Manchester) for the second stage of the implementation of section 48 and the provision of independent child trafficking advocates (See below for further information). Where the Modern Slavery Act touches on areas of devolved responsibility in relation to social care², the Welsh Assembly has consented to the central government implementation of measures relating to independent child trafficking advocates, guidance about identifying and supporting victims, and the presumption of age.

National Referral Mechanism (NRM)

The [National Referral Mechanism \(NRM\)](#) is the formal UK process for the identification of victims of trafficking, assisting them and protecting their human rights. Entry into the process must be with consent where a victim is an adult. It is necessary to take great care where an adult has disabilities which may make it difficult to establish consent. A child is not required to consent to a referral to the NRM.

2. Memorandum LCM LD9974 to the Modern Slavery Bill agreed 9 December 2014.

The NRM is a framework found in the Organisation for Security and Co-operation in Europe (OSCE) practical handbook *National Referral Mechanisms: Joint Efforts to Protect the Rights of Trafficked Persons 2004*. It is a cooperative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons in strategic partnership with civil society. The OSCE handbook is not binding on states, and international law makes clear that a person is to be recognised as a victim of trafficking whether or not they are identified through a national referral mechanism.

The national referral mechanism creates competent authorities within the UK with the responsibility of making decisions as to whether someone is a victim of human trafficking or modern slavery. Referrals to competent authorities are made by first responders. The operation of the NRM is not an area of devolved law and policy, and funding for the provision of care during the recovery and reflection period³ is from the Ministry of Justice. However, additional care needs of trafficking victims outside the recovery and reflection period and ongoing care, are areas of devolved law and policy. Access to social care in Wales is governed by the Social Services and Well-Being (Wales) Act 2014.

First Responders

Currently, in most areas in the UK, only designated first responders may make a referral for a potential victim of trafficking into the NRM. First responder status is split between statutory bodies and civil society (NGOs). In Wales, the statutory first responders are local authorities, the police force, UK Visas and Immigration and Border Force and the Gangmasters' Licensing Authority. In addition to these, NGO first responders that are Wales specific are BAWSO and New Pathways. Other first responders operate across the UK and can make referrals including the Salvation Army, the NSPCC, and Barnado's. Where a first responder is also a Salvation Army sub-contractor, referrals must generally be made through the Salvation Army.

In order to make a referral, a first responder will complete a referral form. This referral form is completed following an interview with the potential victim and sets out the potential victim's narrative as well as filling in specific indicators of trafficking. The form requires the consent of the victim where they are an adult. From November 2015, a copy of the form must be sent to the police and will be given a crime reference number. A victim should understand that this does not require their cooperation with the police. The form is then passed to the UK Modern Slavery and Human Trafficking Unit (MSHTU) as the Competent Authority. Cases that do not raise immigration issues are dealt with by the MSHTU, otherwise they are passed to the Competent Authorities in UK Visas and Immigration. If someone does not consent to a referral, then this must still be reported using form MS1, which is completed anonymously and sent to the Home Office. Public authorities are under a duty to notify the Home Office of suspected victims of trafficking even where the adult does not consent to an NRM referral. Certain public authorities are under a duty to notify the Home Office of suspected cases of trafficking and modern slavery.⁴ This notification should not include identifying information.

A referral into the NRM can be made even where someone has exited a situation of trafficking, and they remain entitled to a formal identification even where the trafficking can be considered historic.⁵ Where a long period of time has passed since someone was trafficked, it may be affect their entitlement to discretionary leave to remain as a victim of trafficking (see below), rather than entitlement to identification and to access to support provided during the recovery and reflection period.⁶

3. This is examined in more detail in the section "recovery and reflection period" and is a 45 day period following the reasonable grounds decision during which a potential victim of trafficking can access assistance and cannot be removed from the UK.

4. See Home Office Circular 25/2015 and <https://www.gov.uk/government/publications/duty-to-notify-the-home-office-of-potential-victims-of-modern-slavery>.

5. *R (otao Atamewan) v Secretary of State for the Home Department* [2013] EWHC 2727.

6. *R (otao Y) v Secretary of State for the Home Department* [2012] EWHC 1075 (Admin).

Reasonable Grounds decision

In order to access the recovery and reflection period, an individual must receive a positive initial decision, from a Competent Authority, called a “reasonable grounds” decision. The threshold for a reasonable grounds decision is lower than the balance of probabilities, and is stated as “I suspect but cannot prove”. Although a decision-maker is entitled to consider credibility, negative credibility factors should not be given too much weight at this stage where there is sufficient evidence that trafficking may have taken place *R (ota Minh) v SSHD* [2015] EWHC 1725).

If a decision-maker is considering making a negative decision, they must go back to the first responder or support provider (including the local authority) to discuss this decision with them. Where someone is considered not to be a victim of human trafficking, the decision-maker must go on to reach a decision on whether they are a victim of modern slavery.

In the UK, entry into the National Referral Mechanism and formal identification by the Competent Authority in the form of a reasonable grounds decision are required to access the recovery and reflection period and the assistance available to victims. However, a victim is not required to enter the National Referral Mechanism, and can still put forward a positive case as a victim of trafficking, for example by reporting to the police, or in an immigration application.

Recovery and reflection period

A victim of trafficking who has a positive reasonable grounds decision enters a period of rest and recovery for 45 days, during which time they are not removable from the UK. A victim may access support and accommodation in this period, and is also entitled to receive medical treatment free of charge (by virtue of the National Health Service (Charges to Overseas Visitors) Regulations 1989 (as amended)), until either a positive conclusive grounds is received or the rest and recover period expires. They are entitled to legal aid under LASPO 2012 (Schedule 1, paragraph 32) for a claim relating to immigration, employment law or compensation. Separate provisions apply for those claiming asylum. The Court of Appeal has confirmed that legal aid is not routinely available prior to a reasonable grounds decision, or for advice on a referral into the National Referral Mechanism (*R(ota Gudaviciene & Ors) v Director of Legal Aid Casework* [2014] EWCA Civ 1622) However, it may be available in exceptional circumstances. If a negative final decision is received, legal aid entitlement will end unless it is available under an alternative provision. A victim may also access education during this time, and have access to interpreting and translation where appropriate and access to counselling and information on their rights.

Conclusive Grounds decision

In England and Wales, the conclusive grounds decision is in two parts, and there are three outcomes. A decision-maker must first consider whether there are conclusive grounds that the individual is a victim of trafficking, if negative, they must go on to consider whether the individual is a victim of modern slavery. The Competent Authority will make a conclusive grounds decision based on the civil standard of proof – the balance of probabilities. The balance of probabilities requires a decision maker to decide that it is more likely than not that someone is a victim of trafficking. The Victims of Modern Slavery: Competent Authority Guidance (July 2015) requires the decision-maker to contact the first responder, support provider or police to gather sufficient evidence.

According to the Competent Authority Guidance, the decision-maker can interview a potential victim where the evidence is slim or contradictory but should balance the benefits of an interview against the potential risks of re-traumatising a victim. However, an interview is common practice in Wales and occurs in almost every case. An interview can be delayed where someone is unwell where medical evidence is provided and can be postponed if a victim is too traumatised and there is evidence to support this.

Interviews frequently take place at the same time as an asylum interview, where a victim has also claimed asylum. This can lead to crossover in both the interview and decision-making.

Modern Slavery

In England and Wales, a referral can be made to a first responder where someone is not a victim of trafficking, but has been the victim of slavery, servitude and forced or compulsory labour. The definition of slavery is found in the European Convention on Human Rights Article 4, which contains an absolute prohibition on slavery, or servitude save for work undertaken in detention, as part of compulsory military service, or civic duties. Slavery and servitude are differentiated by the degree of control exercised over an individual, which must be total to meet the definition of slavery (*Siliadin v France* [2005] ECHR 2545)

The Competent Authority Guidance makes reference to 1930 ILO no 29, the Forced Labour Convention which cases of modern slavery and servitude are required to meet. The definition of forced labour in Article 2(1) is:

*1. For the purposes of this Convention the term **forced or compulsory labour** shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*

The Competent Authority guidance describes penalty as physical violence or restraint, or more subtle forms of psychological control including “*threats to denounce victims to the police or immigration authorities when their employment status is illegal*”. These threats may vitiate any consent that is given.

A decision-maker will need to identify whether there is a penalty, or means, in an individual case which has resulted in a situation of forced labour, slavery or servitude. This second stage reflects the changes to the law as a result of the Modern Slavery Act 2015. It will include cases where a form of service is provided, including sexual exploitation or forced criminality. The NRM referral form does not differentiate between cases of human trafficking or modern day slavery. Therefore, where exploitation has occurred it will be for the decision-maker to examine whether a case meets the definition of human trafficking or modern slavery. This process requires the decision-maker to look at human trafficking first, before moving on to consider modern slavery.

Decision-making and appeals

A decision-maker within the Competent Authority must follow the published guidance when reaching a decision about whether an individual is a victim of trafficking, unless there is a good reason not to do so.⁷ When making a decision, the decision-maker is directed to consider the credibility of a potential victim, but should not speculate about how a plausible trafficking victim will behave. The Competent Authority Guidance provides mitigating circumstances and reasons why a victim may not appear credible. There is also no obligation on a victim to produce corroborating evidence of their experience, and their statements, in the form of a witness statement or interview should be given due weight as evidence (*R (otao Mutesi) v SSHD* [2015] EWHC 2467).

A decision-maker must also consider any additional evidence that has been provided by the first responder, support provider or the police. Where a support provider or other expert with experience of human trafficking provides further evidence, that should be carefully considered in reaching a decision (*R (on the application of AB) v Secretary of State for the Home Department* [2015] EWHC 1490 (Admin)), and must show in their decision that they have fully considered and taken into account positive elements of an individual's case (*R(otao YH) v SSHD* [2010] EWCA Civ 116).

There is no appeal from either a negative reasonable grounds decision, or a negative conclusive grounds decision. The only available remedy is to ask for a review of the decision or to challenge it by means of judicial review. An immigration tribunal can consider the evidence in respect of trafficking, even where the Competent Authority has made a negative conclusive or reasonable grounds decision, *AS (Afghanistan) v Secretary of State for the Home Department* [2013] EWCA Civ 1469. However, they cannot amend a Competent Authority decision, and do not have the authority to quash decisions that have been made.

7. *Mandalia v SSHD* [2015] UKSC 59.

Accessing support for adult victims

Where an adult victim of trafficking or slavery requires support, including accommodation, then this will be provided by the Salvation Army through specialist sub-contractors. The NRM form contains a provision to request accommodation and assistance through the Salvation Army. In Wales, this accommodation is provided by BAWSO, through safe houses and outreach support. Even where BAWSO does not provide support, they are still notified of cases of potential victims. There is a Wales Victim Response pathway initially piloted in Cardiff which provides a care pathway bringing together the agencies required to support an individual. The care pathway has now been rolled out across other areas in Wales.

The Care Pathway requires a first referral to be made to BAWSO. They will then conduct an assessment and convene a Multi-Agency Risk Assessment Conference (MARAC) to look at the support needs of an individual within 7 days of the referral. These MARACs are specialist in respect of human trafficking, and are chaired by the police. The information is gathered by BAWSO, who will also convene the conference, even where they are not supporting the individual or have not identified them. The conferences are closed and appropriate agencies attend. This includes the police, DWP, UK Visas and Immigration, health and education services and the referring agency who will present the case and information regarding the case is shared.

There are terms of reference for these MARACs. Consent is sought by an individual to have their case taken to a MARAC. At the MARAC, information is shared with the police regarding trafficking, and support needs and any additional assistance is discussed. There are three possible outcomes from a MARAC: either no further action is required, an individual action plan with actions for particular agencies is agreed, or there is a monitoring and watching brief to the appropriate agency. Any follow up meetings are coordinated by BAWSO. The support provided by BAWSO is on-going until a conclusive grounds decision is reached.

Unaccompanied children who may be victims of trafficking are referred to child protection and are accommodated by the Local Authority under its duties to look after children under the Children Act 1989 and, under the Social Services and Well-being (Wales) Act 2014 (see below).

Once a conclusive grounds decision has been reached and communicated to the victim and support provider, then support will end. Where the conclusive grounds decision is positive, an individual has two weeks to move into alternative accommodation. The move on accommodation is likely to be determined by the immigration status of a victim of trafficking. For those who receive a negative conclusive grounds decision, the move on time frame is 48 hours.

Immigration and modern slavery

Not all victims of trafficking are foreign nationals as the definition of human trafficking and modern slavery does not require a national boundary to be crossed. However, the highest number of victims in the UK are from Albania, Nigeria, Vietnam and Romania.⁸ It is a significant feature of human trafficking that victims are frequently without immigration status. This allows traffickers to exploit their vulnerabilities and leaves victims too afraid to approach the authorities.

A victim of trafficking is entitled to receive a renewable residence permit⁹ where they are cooperating with authorities in the host country, or where the competent authority considers it necessary owing to their personal circumstances. In the UK, this residence permit takes the form of Discretionary Leave to Remain (DLR). A victim of trafficking without immigration status may be granted DLR for one year and one day where they receive a positive conclusive grounds decision. This leave can be extended at the end of the period, provided that a fee is paid. DLR

8. [National Crime Agency NRM end of year summary](#), 2014.

9. European Convention on Action Against Trafficking in Human Beings, Article 14.

will be granted where the victim is cooperating with the authorities or where there are compelling reasons relating to their personal circumstances. This can include where a victim is pursuing a claim for compensation against their traffickers.¹⁰ Children who are victims of trafficking will usually be granted discretionary leave until the age of 17½.

Where a victim fears returning to their country of origin, it may be necessary to pursue an asylum claim on Refugee Convention grounds. It has been established in *AZ (trafficked women) Thailand* [2010] UKUT 118 (IAC) that human trafficking can be a ground for asylum and that victims of trafficking can be identified as a particular social group. In order to be granted asylum, a victim must show that they have a well-founded fear of persecution for a Convention reason, and that they would be unable to safely relocate. In *PO (trafficked women) Nigeria* [2009] UKAIT 00046, it was accepted that a victim of trafficking by a criminal gang might be unable to identify the extent of the risk they face. Someone may also be granted humanitarian protection where their return to their country of origin risks breaching Articles 2 or 3 of the European Convention on Human Rights. A victim may also be entitled to make other immigration applications under the Immigration Rules, for example where they have spent a considerable period of time in the UK.

Asylum applications from European citizens are usually inadmissible under the Immigration Rules.¹¹ In order to make an application, the European citizen would need to show that there are exceptional circumstances, for example that the country in question has derogated from the European Convention on Human Rights, or the country has been warned or sanctioned under the Treaty on the European Union. Mobile EU citizens can exercise their free movement rights, which entitle them to enter the UK without work and to remain whilst they are exercising treaty rights. Mobile EU citizens can also be considered for discretionary leave to remain, for example where they will be otherwise unable to work or access welfare benefits.

Overseas Domestic Workers

Overseas Domestic Workers from abroad working in private or diplomatic households enter the UK on a specific visa. This visa is temporary – for a maximum of 6 months – and requires the domestic worker to have worked for their employer prior to coming to the UK. Domestic workers are not allowed to change employer once in the UK. Where someone who is a domestic worker is exploited in the UK, they are prima facie a victim of human trafficking. Those who are identified as victims of trafficking and who are not granted Discretionary Leave to Remain may apply for a further two year visa as a domestic worker in order to change employer. This is provided for in the Modern Slavery Act 2015 at s53(2) and the terms of the visa are found in the Immigration Rules. This provision has been criticised as inadequate by [Kalayaan](#), a charity providing support and advice to overseas domestic workers, because domestic workers arriving in the UK remain tied to their employer and risk exploitation.

Long-term support needs

Many victims of trafficking have support needs which go beyond the 45 day recovery and reflection period. Once they have received a conclusive grounds decision, they will need to move to follow-on accommodation. Where a victim is seeking asylum, this is likely to be accommodation provided by the Home Office and commonly referred to as 'NASS support' or 'asylum support'. Victims of trafficking are frequently placed in initial accommodation, although in many cases, it is not considered suitable for their needs and may be insecure.¹² For victims of trafficking who are not making a claim for asylum or whose asylum claim has been refused, support should be made available for their return to their country of origin. Repatriation should preferably be voluntary¹³, but can be involuntary. It should be conducted with due regard to the rights, safety and dignity of the victim. The Home Office manages assisted voluntary returns.

10. [Victims of Modern Slavery, Competent Authority Guidance v 2, July 2015, p66.](#)

11. See Immigration Rules 326E & 326F, 3 January 2017.

12. See for example the report of the Anti-Trafficking Monitoring Group, *Hidden in Plain Sight* (2013) chapter 4.2.

13. European Convention on Action Against Trafficking in Human Beings, Article 16.

EEA nationals are able to exercise their free movement rights. However, the restrictions on EEA nationals who are out of work receiving housing benefit and unemployment benefits after three months has meant that some victims are unable to access move on accommodation or support where they are unable to work or to find employment. Adults with care needs should be assessed under s19 Social Services and Well-being (Wales) Act 2014.

Child trafficking

Where a potential victim of trafficking is a child, there is no requirement to obtain consent to make a referral into the National Referral Mechanism but it should still be explained to a child. The international definition of trafficking sets out that children cannot consent to be trafficked; the [Operational Handbook on Child Trafficking](#) (2014) explains in more detail why children may be trafficked, and indicators that a child may be a victim of trafficking. All children who may be victims of trafficking or modern slavery must be referred as a child protection issue to the local authority, to allow them to carry out child protection procedures (Competent Authority Guidance). Local Safeguarding Children Boards in Wales have been required to develop inter-agency policies on child trafficking since 2008 and these should be followed where a child is a suspected victim of trafficking.

Local Authority Children's Services departments are first responders and should therefore make referrals into the national referral mechanism where appropriate. The All Wales Practice Guidance requires this referral to be made by a Lead Officer for Trafficking within the first 24 hours. A child protection conference will then be convened. Where a child is in the care of a Local Authority, then a core assessment of the child's needs under section 21 [Social Services and Well-being \(Wales\) Act 2014](#). Children in local authority care should be supported to access legal advice, and other support following an assessment of their needs.¹⁴

Independent Child Trafficking Advocates (ICTAs)

Wales is an early adopter site for the Independent Child Trafficking Advocates national roll-out. Interim [Guidance](#) published in January 2017 states that where a potential victim of child trafficking is identified, the normal NRM procedures apply. However, following a local authority safeguarding referral, an ICTA pro forma must be completed and returned to the ICTA service. The service must then provide an ICTA to the child within a 24 hour period, the advocate appointed to the child initially may then change.

This referral is conducted prior to the NRM referral, and it is possible that the child will meet with the ICTA before the NRM referral is made, or before a reasonable grounds decision is received. The first meeting must be face-to-face, and the ICTA provider is expected to be available to both first responders and children who have been referred into the service 24 hours a day. An ICTA is expected to attend meetings which relate to the child, and they must be invited to all meetings which relate to them. This includes multi-agency risk assessments, and all information relating to the child must be shared with them. Similarly, the ICTA must share relevant information with public authorities to enable them to perform their role fully. The interim guidance requires local authorities to work with ICTAs, and ensure that they are invited to all meetings at least two working days in advance.

Advocates do not have parental responsibility for the children they are working with, however they are able to instruct lawyers or seek legal advice on their behalf. Where a local authority is concerned that a child is at risk of significant harm then they may seek a care order which would give them parental responsibility. This does not diminish the role of the ICTA.

Where a child's age is disputed, and he or she may be an adult, there is a statutory presumption that they will be treated as a child where there are reasonable grounds to believe they may be under 18. An ICTA will still be provided where a child is age disputed. A child or young person will be treated as such until they reach their 18th birthday, even where they are living independently. The Competent Authority Guidance requires any age dispute to be settled before a conclusive grounds decision is made.

14. Department for Education, Statutory Guidance on the Care of Unaccompanied and Trafficked Children (2014).

Looked after children are entitled to on-going support under the [Care Planning, Placement and Case Review \(Wales\) Regulations 2015](#), and trafficked children are entitled to information regarding post-18 support. A Local Authority looking after a child should also act in their best interests in respect of their immigration status and ensure that they have the opportunity to make appropriate immigration applications.

Duty to notify

Under the provisions of the Modern Slavery Act 2015, from 1 November 2015, public authorities are required to notify the Secretary of State of potential cases of human trafficking or modern slavery. The public authorities under this duty include local authorities, the National Crime Agency and the police. The aim of the duty is to build a better picture of modern slavery and to improve the criminal law response.

Where a public authority encounters a potential victim of modern slavery or human trafficking and an NRM referral is not made, then the form MS1 must be completed, which provides the Home Office with details relating to the case. Other agencies may use the form to notify the Home Office of suspected cases of human trafficking and modern slavery, but this is voluntary.

The MS1 form requires the person making the referral to include the nationality and gender of the potential victim. However, further details including the name of a potential victim can only be included on the MS1 form with their consent.¹⁵ Where the suspected victim is a child, all information can be included without consent, however, an NRM referral would usually be made instead of the notification. Anyone completing the form will also need to confirm whether a police referral has been made and if so, to which force. According to the guidance for specified public authorities issued by the Home Office on 1 November 2015, the notification should be completed as soon as practicable, and no later than one month, after becoming aware of a case of suspected modern slavery.

Positive obligations

The duty to notify is a statutory duty, and is separate to the obligation on the state to investigate cases of human trafficking. There is a positive obligation on states where there is suspected human trafficking, found by the European Court of Human Rights in the case of *Rantsev v Cyprus and Russia* (29565/04). This obligation arises where a state was aware, or ought to have been aware of suspected human trafficking. This obligation is directly applicable in the UK, and affects all public bodies, as accepted by the Government in *OOO v Commissioner of Police for the Metropolis* [2011] EWHC 1246. The failure of a first responder to make a referral or investigate may give rise to a claim for where a positive obligation has been breached (*EK (Article 4 ECHR: Anti-Trafficking Convention) Tanzania v SSHD* [2013] UKUT 00313).

Cases of human trafficking and slavery in Wales

According to the National Referral Mechanism statistics, referrals for 2016 had increased to 123 in Wales.¹⁶ This increase is likely to be as a result of increased awareness of human trafficking and modern slavery. The North Wales Regional Anti-Slavery Group is piloting a reception centre model which allows for the fast mobilisation of services for a victim of trafficking or modern slavery. There is Welsh Assembly endorsed training supported by the Wales national training framework on human trafficking which is delivered by a number of different organisations across the country. This training has included health visitors and midwives who make referrals to BAWSO, as do solicitors, the police and other support agencies. The training has been designed by the Anti-Slavery Leadership Group, which includes both statutory and voluntary sector organisations. The Leadership group also agree annual strategic objectives with the Anti-Slavery Co-ordinator.

15. The Modern Slavery Act 2015 (Duty to Notify) Regulations, regulation 3(2).

16. NCA National Referral Mechanism Statistics available at <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics>.

Anti-Trafficking Coordinator

The role of an Anti-Trafficking Coordinator was established in 2011 in Wales. In 2016 the Wales Victim Response pathway was piloted in Cardiff and then rolled out across the rest of Wales. The Coordinator has also led on training on modern slavery tackling child exploitation and labour exploitation and the development of further information sharing protocols. The Welsh strategy to tackle slavery follows the objectives of the Modern Slavery Strategy set out by central government: to pursue, prevent, protect and prepare for cases of modern slavery.¹⁷ The Anti-Trafficking Coordinator has established an Anti-Slavery Leadership Group with key Welsh stakeholders, within which there is a sub-group for training. Therefore, training across Wales is coordinated.

In 2015 the Independent Anti-Slavery Commissioner role in England and Wales was put on a statutory footing. His action plan for 2015–2017 does not contain Wales-specific recommendations; however, he works closely with the Welsh Anti-Trafficking Coordinator.

Changes to the NRM

In 2014 the Government published a review of the NRM with recommendations for England and Wales. The report recommended the removal of system of first responders who are able to make a referral into the NRM to allow anyone to refer possible cases to slavery safeguarding leads in statutory agencies. The NRM review also recommended the relocating the Competent Authorities from the UK Human Trafficking Centre and UK Visas and Immigration as a result of criticism of their role in decision-making.

The NRM pilot has largely adopted the recommendations of the 2014 review. Therefore, for the initial pilot, the system of first responders was replaced with Slavery Safeguarding Leads (SSL). Any front line worker is able to make a referral to a Slavery Safeguarding Lead and referral to a first responder will no longer be required. There is a substantially different process for child victims of trafficking and adults. The pilot is on-going and the process for referrals may develop during the pilot period. The piloted areas are the South West of England and West Yorkshire.

For adult victims of trafficking, a front line worker or an SSL can commence the identification process. A reasonable grounds decision will then be taken by the SSL, based on the complete NRM referral form. The referral form will therefore no longer need to be completed by a specialist first responder. The SSL will decide firstly whether the person referred is a victim of trafficking and secondly whether they are a victim of modern slavery. If a positive decision is made, the case will be referred to a Case Management Unit (CMU) and to the Salvation Army for accommodation. The CMU will notify UK Visas and Immigration and make a decision on whether a referral should be made to the police. A Multi-Disciplinary Panel will then make a conclusive grounds decision. The CMU will also be responsible for referring cases to the panel and for arranging panel meetings. The CMU must request further information where required and provide a case summary. Cases then go to the panels for a conclusive grounds decision. Panels must have at least five members and usually eight. Membership of a panel is through appointment by the Modern Slavery Unit and is open to stakeholders including the police, local authorities and non-governmental organisations. Membership of the panel is voluntary, although the Chair is a paid role. Panels are conducted remotely and are convened when necessary and with members who are available.

The panel does not have a role in deciding whether an individual is granted Discretionary Leave to Remain, a decision which remains the responsibility of UK Visas and Immigration. Where an individual disagrees with the decision of a panel, they may request a review which will be conducted by the Chair of a different panel. There is no appeal from the decision of a Slavery Safeguarding Lead, or a Multi-Disciplinary Panel. As with the current system, the only remedy lies in judicial review, with any legal action to be taken against the Chair of the Multi-Disciplinary Panel. All panel members have received training on Modern Slavery and Human Trafficking.

17. For more information see the [Modern Slavery Strategy \(2014\)](#).

Key Legislation

Modern Slavery Act 2015 - www.legislation.gov.uk/ukpga/2015/30/contents/enacted

Social Services and Well-being (Wales) Act 2014 - www.legislation.gov.uk/anaw/2014/4/contents

Human Rights Act 1998 - www.legislation.gov.uk/ukpga/1998/42/introduction

Children Act 1989 - www.legislation.gov.uk/ukpga/1989/41/contents

Directive 2011/36/EU - https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu_en

European Convention on Action Against Trafficking in Human Beings - www.coe.int/t/dghl/monitoring/trafficking/default_en.asp

European Convention on Human Rights - www.echr.coe.int/Documents/Convention_ENG.pdf

Regulations

The Care Planning, Placement and Case Review (Wales) Regulations 2015 (SI 2015/1818) - www.legislation.gov.uk/en/wsi/2015/1818/contents/made

Statutory Guidance

Home Office Modern Slavery Collection - www.gov.uk/government/collections/modern-slavery

Victims of Modern Slavery: Competent Authority Guidance, Version 2 - www.gov.uk/government/uploads/attachment_data/file/488171/Competent_Authority_Draft_guidance_v2.0_EXT_clean.pdf

Department for Education

Care of Unaccompanied and Trafficked Children - www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children

Further resources

Welsh homepage on modern slavery - www.wales.gov.uk/anti-slavery

Strategic Action Plan, Kevin Hyland OBE, October 2015 - www.gov.uk/government/uploads/system/uploads/attachment_data/file/468729/IASC_StrategicPlan_2015.pdf

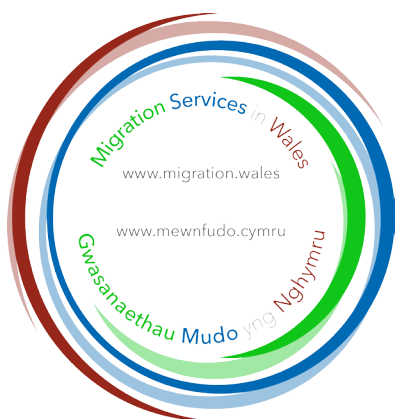
Stolen Smiles, Kathy Zimmerman et al, 2006 - www.lshtm.ac.uk/php/ghd/docs/stolensmiles.pdf

Trafficking of Women and Children in Wales 2010, Jackie Jones, Bristol Law School, November 2010 - ww2.uwe.ac.uk/faculties/BBS/BUS/law/Law_docs/trafficking.pdf

BAWSO - www.bawso.org.uk/

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Migration Services in Wales

Funded by Welsh Government, Migration Services in Wales is a project led by the Welsh Refugee Council in partnership with COMPAS that aims to increase understanding of migration policy and practice in Wales, and to support and facilitate the development of a ‘strategic approach’ to migration in Wales, one that will ensure relevant stakeholders are able to access detailed and up-to-date information.



The Migration Observatory

Based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford, the Migration Observatory provides independent, authoritative, evidence-based analysis of data on migration and migrants in the UK, to inform media, public and policy debates, and to generate high quality research on international migration and public policy issues. The Observatory’s analysis involves experts from a wide range of disciplines and departments at the University of Oxford.



COMPAS

The Migration Observatory is based at the ESRC Centre on Migration, Policy and Society (COMPAS) at the University of Oxford. The mission of COMPAS is to conduct high quality research in order to develop theory and knowledge, inform policy-making and public debate, and engage users of research within the field of migration.

www.compas.ox.ac.uk



Welsh Refugee Council

The Welsh Refugee Council has over 25 years’ experience working with refugees and asylum seekers in Wales. It aims to ensure that Wales is a place of welcome through the delivery of specialist services in Cardiff, Wrexham, Newport and Swansea and by influencing policy and practice to improve the lives of migrants across Wales.



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