



EXPLANATORY NOTES

Modern Slavery Act 2015

Chapter 30

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MODERN SLAVERY ACT 2015

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Modern Slavery Act 2015 which received Royal Assent on 26 March 2015. They have been prepared by the Home Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act is in seven parts. Part 1 consolidates and clarifies the existing offences of slavery and human trafficking whilst increasing the maximum penalty for such offences. Part 2 provides for two new civil preventative orders, the Slavery and Trafficking Prevention Order and the Slavery and Trafficking Risk Order. Part 3 provides for new maritime enforcement powers in relation to ships. Part 4 establishes the office of Independent Anti-slavery Commissioner and sets out the functions of the Commissioner. Part 5 introduces a number of measures focussed on supporting and protecting victims, including a statutory defence for slavery or trafficking victims and special measures for witnesses in criminal proceedings. Part 6 requires certain businesses to disclose what activity they are undertaking to eliminate slavery and trafficking from their supply chains and their own business. Part 7 requires the Secretary of State to publish a paper on the role of the Gangmasters Licensing Authority and otherwise relates to general matters such as consequential provision and commencement.

BACKGROUND

4. Modern slavery is a brutal form of organised crime in which people are treated as commodities and exploited for criminal gain. The true extent of modern slavery in the United Kingdom, and indeed globally, is unknown. Modern slavery, in particular human trafficking, is an international problem and victims may have entered the United Kingdom legally, on forged documentation or clandestinely, or they may be British citizens living in the United Kingdom. Modern slavery takes a number of forms, including sexual exploitation, forced labour and domestic servitude, and victims come from all walks of life. Victims are often unwilling to come forward to law enforcement or public protection agencies, not seeing themselves as victims, or fearing further reprisals from their abusers. In particular, there may be particular social and cultural barriers to men identifying themselves as victims. Victims may also not always be recognised as victims of modern slavery by those who come into contact with them.

5. There are a number of international instruments on human trafficking. The main international instrument is the Protocol to the United Nations Convention against Transnational Organized Crime, named the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the “Palermo Protocol”). The definition of trafficking contained in that instrument was adopted in the Council of Europe Convention on Action against Trafficking in Human Beings (the “Convention on Action against Trafficking”). That international instrument was ratified by the United Kingdom on 17 December 2008. After this time, the European Commission tabled a proposal for a Directive on trafficking in human beings. A final text was agreed in March 2011 and was adopted on 5 April 2011: Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decisions 2002/629/JHA (the “Directive on preventing and combating trafficking”). That Directive adopts and expands upon the obligations and definitions contained in the Palermo Protocol and the Convention on Action against Trafficking. The United Kingdom has opted into this Directive. In order to ensure full compliance with the obligations contained in that Directive in England and Wales, Parliament made changes to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 through sections 109 and 110 of the Protection of Freedoms Act 2012.

6. In relation to slavery, servitude and forced or compulsory labour, the ILO Convention (No. 29) Concerning Forced or Compulsory Labour added a prohibition of forced or compulsory labour to the existing prohibition of slavery and servitude contained in the 1926 Slavery Convention. These instruments have been ratified by the United Kingdom. A related more recent ILO Convention, ratified by the United Kingdom on 22 March 2000, is ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. That Convention commits signatories to take immediate action to prohibit and eliminate the worst forms of child labour. Article 4 of the European Convention on Human Rights prohibits holding a person in slavery or servitude, or requiring a person to perform forced or compulsory labour.

7. The Government outlined its strategic response to modern slavery in the Modern Slavery Strategy, published in November 2014.¹ The Inter-Departmental Ministerial Group on Modern Slavery also published its annual report² in October 2013 which highlights activity to fight modern slavery across the UK, as well as providing information on the nature and scale of the problem. The Inter-Departmental Ministerial Group published a further joint statement in October 2014.³

¹<https://www.gov.uk/government/publications/modern-slavery-strategy>

²<https://www.gov.uk/government/publications/human-trafficking-inter-departmental-ministerial-group-report-2013>

³ <https://www.gov.uk/government/publications/joint-statement-of-the-inter-departmental-ministerial-group-on-modern-slavery>

8. The intention to introduce a Modern Slavery Bill was announced by the Home Secretary on 25 August 2013. The Home Secretary subsequently announced a series of evidence sessions⁴ to gather information to support pre-legislative scrutiny of the draft Bill, led by Frank Field MP. A report from the evidence sessions was published on 16 December.⁵ A draft Bill was published on 16 December and was the subject of pre-legislative scrutiny, with the Joint Committee publishing its report on 8 April.⁶

TERRITORIAL EXTENT AND APPLICATION

9. Section 60 sets out the territorial extent of the Act.

10. The majority of the Act's provisions extend to England and Wales only (subject to some consequential amendments having the same extent as the provisions being amended), but certain provisions also extend to Scotland and Northern Ireland.

11. In Part 3 of the Act relating to maritime enforcement powers section 35 extends to England and Wales only, 36 to Scotland only, 37 to Northern Ireland only and sections 38 and 39 and Schedule 2 to England and Wales, Scotland and Northern Ireland.

12. The role of the Independent Anti-Slavery Commissioner as set out in Part 4 of the Act extends to England and Wales, Scotland and Northern Ireland.

13. Section 53, relating to protections for overseas domestic workers extends to England and Wales, Scotland and Northern Ireland.

14. Part 6, relating to transparency in supply chains, extends to England and Wales, Scotland and Northern Ireland.

15. Part 7 relating to the Gangmasters Licensing Authority and general matters such as consequential provision and commencement extends to England and Wales, Scotland and Northern Ireland.

16. The human trafficking offence in section 2 provides for extra territorial jurisdiction over UK nationals who commit trafficking offences overseas.

⁴ <https://www.gov.uk/government/news/home-secretary-begins-evidence-sessions-on-modern-slavery>

⁵ <http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/Establishing-Britain-as-a-world-leader-in-the-fight-against-modern-slavery.pdf>

⁶The draft Bill is at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266165/Draft_Modern_Slavery_Bill.pdf

The Joint Committee report is at:
<http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/166.pdf>

COMMENTARY ON SECTIONS

Part 1: Offences

Section 1: Slavery, servitude and forced or compulsory labour

17. *Subsection (1)* provides for an offence of slavery, servitude and forced or compulsory labour. It replaces the existing such offence in section 71 of the Coroners and Justice Act 2009 which is accordingly repealed by Schedule 5 of the Act. The offence has been supplemented by provisions that clarify that regard may be had to all the circumstances of the case and that consent by the victim does not preclude the offence having taken place. This reflects the position in case law.

18. *Subsection (2)* requires *subsection (1)* to be interpreted in accordance with Article 4 of the ECHR. That Article states:

- 1) No one shall be held in slavery or servitude.
- 2) No one shall be required to perform forced or compulsory labour.
- 3) For the purpose of this Article the term “forced or compulsory labour” shall not include:
 - a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - d) any work or service which forms part of normal civic obligations.

19. *Subsection (3)* provides that all the circumstances should be considered when determining whether someone has been held in slavery or servitude or required to perform forced or compulsory labour.

20. *Subsection (4)(a)* highlights personal circumstances, which may make the individual more vulnerable, and which may be relevant when determining whether a person has been held in slavery or servitude or required to perform forced or compulsory labour. The list of particular vulnerabilities which may be considered is non-exhaustive but explicitly includes the individual being a child, the person’s family relationships and any mental or physical illness. A child is defined in *section 56(3)* as a person under the age of 18.

21. *Subsection (4)(b)* makes clear that, in relation to the forced or compulsory labour offence, the court can consider any work or services provided by the person including any work or services provided in circumstances that amount to exploitation under section 3(3) to (6). This makes it clear that the forced and compulsory labour offence can cover a broad range of types of work and services including types, such as begging or pick-pocketing, which could amount to exploitation under section 3(5) or 3(6).

22. *Subsection (5)* clarifies that an individual's consent (whether an adult or a child) to the conduct alleged to amount to an offence under section 1 does not prevent the court from determining that person is being held in slavery or servitude or required to perform forced or compulsory labour.

Section 2: Human trafficking

23. This section provides for a single offence of human trafficking covering sexual and non-sexual exploitation. It replaces the two existing offences in sections 59A of the Sexual Offences Act 2003 (which relates to human trafficking for the purposes of sexual exploitation), as inserted by section 109 of the Protection of Freedoms Act 2012 (which replaced the previous offences in sections 57 to 59 of the Sexual Offences Act 2003), and section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (which relates to human trafficking for the purposes of labour or other exploitation); both these existing offences are repealed by Schedule 5. Introducing one offence for all types of trafficking will make it administratively simpler for investigators and prosecutors to bring forward human trafficking prosecutions.

24. *Subsection (1)* makes it a criminal offence to arrange or facilitate the travel of another person with a view to their being exploited. Travel is defined in *subsection (5)* as arriving in, entering, departing, or travelling within any country.

25. *Subsection (2)* provides that for the purpose of a human trafficking offence the victim's consent to their travel, whether they are an adult or a child, is irrelevant.

26. *Subsection (3)* gives examples of what may amount to arranging or facilitating another person's travel. This includes recruiting, transporting, transferring, harbouring, receiving or exchanging control of that person. The language reflects the definitions of trafficking set out in the Convention on Action against Trafficking and the associated Palermo Protocol.

27. *Subsection (4)* provides that the arranging or facilitating is done with a view to the exploitation of the victim (V) if the perpetrator either intends to exploit V, or knows or ought to know that any other person is likely to exploit V. It is irrelevant where in the world that exploitation might take place.

28. *Subsection (6)* makes the offence extra-territorial in its reach in relation to UK nationals. It provides that a UK national commits an offence regardless of where in the world the arranging or facilitating takes place or regardless of which country is the country of arrival, entry, travel or departure. For example, a UK national who trafficks a person from Spain to France could be prosecuted in England and Wales for this offence.

29. *Subsection (7)* provides for a more limited territorial reach in relation to a non-UK national. Such a person commits the offence if any part of the arranging or facilitating takes place in the UK or if the UK is the country of arrival, entry, travel or departure.

Section 3: Meaning of exploitation

30. The section 2 offence is arranging or facilitating travel with a view to the victim's exploitation. This section sets out the meaning of exploitation for the purposes of section 2.

31. *Subsection (2)* sets out that exploitation includes slavery, servitude and forced or compulsory labour by reference to the offence under section 1. Equivalent conduct outside England and Wales also comes within this definition.

32. *Subsection (3)* sets out that exploitation includes sexual exploitation by reference to conduct which would constitute the commission of an offence of taking, or permitting to take, indecent photographs of children or any of the sexual offences provided for in Part 1 of the Sexual Offences Act 2003 (these include offences relating to rape, sexual assault, prostitution and child pornography). *Section 3(3)(b)* ensures that equivalent conduct committed outside England and Wales also comes within the definition even though for jurisdictional reasons it would not be an offence under English law.

33. *Subsection (4)* sets out that exploitation includes exploitation in the context of trafficking for organ removal or for the sale of human tissue by references to offences in the Human Tissue Act 2004. Again, equivalent conduct outside England and Wales is within the definition.

34. *Subsection (5)* sets out that exploitation includes all other types of exploitation where a person is subject to force, threats or deception which is designed to induce him into providing a service of any kind, providing a person with benefits or enabling another to acquire benefits. This would include forcing a person to engage in activities such as begging or shop theft. It is not necessary for this conduct to be a criminal offence.

35. *Subsection (6)* broadens the type of exploitation described in *subsection (5)* so that it includes where a person is used (or there is an attempt to use the person) to do something for such a purpose, having been chosen on the grounds that he or she is a child, is ill, disabled, or related to a person, in circumstances where a person without the illness, disability, or family relationship would be likely to refuse.

Section 4: Committing offence with intent to commit offence under section 2

36. This section provides that it is an offence to commit another offence with a view to committing a trafficking offence under section 2. This separate offence ensures that preparatory criminal conduct which constitutes a lesser offence, for example theft of a vehicle with the intention of using that vehicle to traffick individuals, can attract the higher penalties provided for in section 5.

Section 5: Penalties

37. This section sets out the maximum penalties for the offences in sections 1, 2 and 4.

38. *Subsection (1)* provides that the maximum sentence for a section 1 or 2 offence is six months imprisonment (increasing to 12 months when the increase in magistrates' courts sentencing powers provided for in the Criminal Justice Act 2003 is brought into force) or an unlimited fine, or both in the case of a summary conviction and life imprisonment for conviction on indictment. This compares with a maximum of 14 years imprisonment for the slavery and human trafficking offences repealed by the Act.

39. *Subsections (2) and (3)* provide for the maximum penalties for the section 4 offence. In most instances the maximum is six months imprisonment (again increasing to 12 months when the increase in magistrates' courts sentencing powers is brought into force) or an unlimited fine, or both in the case of a summary conviction, and 10 years imprisonment for conviction on indictment. However, where the precursor offence committed under section 4 is one of kidnapping or false imprisonment, the maximum penalty is life imprisonment.

40. In the case of conviction on indictment, the availability of a fine will be determined by section 163 of the Criminal Justice Act 2003 (general power of Crown Court to fine offender convicted on indictment).

Section 6: Sentencing

41. This section adds the section 1 and 2 offences to the list of offences in Schedule 15 and Part 1 of Schedule 15B to the Criminal Justice Act 2003 ("the 2003 Act"). The effect is to engage the provisions in sections 224A, 226A(2) and 246A(2)(b) of the 2003 Act. By virtue of the provisions in section 224A of the 2003 Act, a court must impose a life sentence on a person aged 18 or over who is convicted of an offence listed in Part 1 of Schedule 15B to that Act which is serious enough to justify a sentence of imprisonment of 10 years or more, if that person has previously been convicted of an offence listed in any Part of Schedule 15B and was sentenced to imprisonment for life or for a period of 10 years or more in respect of that previous offence. However, the court is not obliged to impose a life sentence where it is of the opinion that there are particular circumstances which relate to the offence, the previous offence or the offender which would make it unjust to do so in all the circumstances.

42. Section 226A provides for extended sentences for adults. The sentence may be imposed in respect of the sexual and violent offences listed in Schedule 15 to the 2003 Act (which will now include the section 1 and 2 offences) where certain conditions are met. The court must consider that the offender presents a substantial risk of causing serious harm through re-offending. In addition the court must either consider that the current offence is serious enough to merit a determinate sentence of at least 4 years, or at the time the present offence was committed the offender must have previously been convicted of an offence listed in Schedule 15B of the 2003 Act (which will now include the slavery and human trafficking offences). Where these conditions are made out, the court may impose an extended period for which the offender is to be subject to a licence of up to five years for a violent offence and up to eight years for a sexual offence. Schedule 15 to the 2003 Act lists violent and sexual offences separately.

43. Section 246A of the 2003 Act deals with the release arrangements in respect of persons sentenced to an extended sentence under section 226A of that Act. Offenders who have committed an offence listed in Parts 1 to 3 of Schedule 15B to the 2003 Act (Part 1 will now include the slavery and human trafficking offences), or whose offending merits a custodial term of 10 years or more, will be considered for release on licence by the Parole Board once the offender has served two-thirds of the appropriate custodial term, and will be released automatically at the end of the appropriate custodial term (that is, the term imposed by the court as the custodial element of the extended sentence) if the Parole Board has not already directed release.

Section 7: Confiscation of assets

44. This section amends Schedule 2 to the Proceeds of Crime Act 2002 (Lifestyle offences: England and Wales). The amendments add the offence of slavery, servitude and forced or compulsory labour (section 1) to the list of offences set out in that Schedule, and substitutes the human trafficking offence (section 2) for predecessor offences.

45. Part 2 of the Proceeds of Crime Act 2002 (“the 2002 Act”) provides that confiscation orders are available to confiscate assets gained through criminal activity from offenders, after conviction. The purpose of confiscation proceedings is to recover the financial benefit that an offender has obtained from his criminal conduct. The court calculates the value of that benefit and orders the offender to pay an equivalent sum (or less where a lower sum is available for confiscation).

46. Section 6 of the 2002 Act makes provision for the making of confiscation orders by the Crown Court. In accordance with section 6, where the defendant is identified as having a “criminal lifestyle”, the proceeds of the defendant’s “general criminal conduct” are liable to confiscation. This means that an offender in relation to whom there are reasonable grounds to believe that he is living off crime will be required to account for his assets, and will have them confiscated to the extent that he is unable to account for their lawful origin. The criminal lifestyle tests are therefore designed to identify offenders who may be regarded as normally living off crime.

47. Under section 75 of the 2002 Act, a person has a criminal lifestyle if he satisfies one or more of the tests set out in that section. The first test is that he is convicted of an offence specified in Schedule 2 to the 2002 Act. Schedule 2 lists the offences which are so closely linked to a life of crime that a conviction for any of them will lead to the defendant being deemed to have a criminal lifestyle for the purposes of the confiscation regime in the 2002 Act. By including the slavery, servitude and forced or compulsory labour offence (section 1) and the human trafficking offence (section 2) in Schedule 2 to the 2002 Act, this section ensures that defendants convicted will be deemed to have a criminal lifestyle and will therefore be subject to the toughest regime in respect of calculating confiscation orders under the 2002 Act.

Section 8: Power to make slavery and trafficking reparation orders

48. This section enables the court, where a person is convicted of a slavery or trafficking offence, to order the defendant to provide reparation to the victim. Sections 130-134 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6 – “the 2000 Act”) already make provision for compensation orders to be made against convicted persons in favour of their victim(s). However, the number of compensation orders made in the last ten years in human

trafficking and slavery cases is low. A specific reparation order for victims of slavery and trafficking will therefore enable courts to order a person convicted of a modern slavery offence to pay reparation to their victim or victims, in respect of the exploitation and degradation they have suffered. A reparation order will only be made where the court is satisfied that the defendant has the means to pay.

49. *Subsection (1)* sets out that a slavery or trafficking reparation order can be made where the defendant is convicted of a slavery offence (section 1) or trafficking offence (section 2) or offence relating to preparatory conduct in relation to trafficking (section 4), and the Court has made a confiscation order against the defendant.

50. *Subsection (2)* allows the Court to make a slavery and trafficking reparation order where a confiscation order is made against a defendant who absconds, but who is subsequently convicted of a section 1, 2 or 4 offence.

51. *Subsection (3)* provides for the Court to make a reparation order in addition to dealing with the person in any other way, for example, imposing a fine or a sentence, and *subsection (4)* allows the Court to vary a sentence already imposed to make a slavery and trafficking reparation order.

52. *Subsection (5)* requires the court to consider the defendant's means, in determining whether to make a slavery and trafficking reparation order. This is to ensure that a reparation order is only made where the court is confident that the funds are available to pay the victim.

53. *Subsection (6)* provides that where a court considers that it would be appropriate to impose a fine and make a reparation order, but the defendant has insufficient means to pay both, priority is given to a reparation order.

54. *Subsection (7)* provides that the Court must consider making a slavery and trafficking reparation order in any case where it has power to make one, even where an application is not made. If the Court does not make an order it must give reasons for not doing so.

55. At the time of enactment confiscation orders may only be made in the Crown Court. However, section 97 of the Serious Organised Crime and Police Act 2005 makes provision for an order to extend the power to make confiscation orders to the magistrates' court in certain circumstances.

56. *Subsection (8)(a)*, ensures that this section will give the power to make a slavery and trafficking reparation order to any magistrates' court that has the power to make a confiscation order by virtue of an order under section 97 of the Serious Organised Crime and Police Act 2005.

Section 9: Effect of slavery and trafficking reparation orders

57. *Subsection (1)* provides that a slavery and trafficking reparation order is an order that requires the defendant to pay compensation to their victim, for the harm that the victim has suffered from a relevant offence. *Subsection (2)* defines relevant offence as a slavery or trafficking offence as set out in section 1, 2 or 4 that the defendant is convicted of or has taken into account for sentencing.

58. *Subsection (3)* provides for the court to determine the amount of compensation to be awarded to the victim taking into account any evidence and representations made by the defendant or the prosecutor.

59. *Subsection (4)* sets out that the total amount of compensation payable under one or more slavery and trafficking reparation orders made in proceedings for an offence must not exceed the amount the defendant is required to pay under the confiscation order made in relation to that offence.

60. *Subsection (5)* requires the court to consider the defendant's means, so far as they appear to be, or are known by the court, in determining the amount that the defendant must pay under the slavery and trafficking reparation order. These provisions ensure that reparation orders will be made for amounts that the defendant is capable of paying, so that the victim will not be the recipient of an order that is not likely to be paid in full.

Section 10: Slavery and trafficking reparation orders: supplementary provision

61. *Subsection (1)* prevents a slavery and trafficking reparation order and a compensation order under the 2000 Act from being made in relation to the same offence, so as to avoid having multiple separate orders made for the purpose of compensating the victim of a slavery or trafficking offence.

62. *Subsection (2)* states that where the court makes a slavery and trafficking reparation order against a person who has already been sentenced, the person's sentence is to be regarded as being imposed on the day on which the reparation order is made for the purpose of any relevant appeal time limits.

63. *Subsection (3)* modifies sections 132 to 134 of the 2000 Act, which provide for appeal of and review of compensation orders made under section 130 of that Act, so that they will apply to slavery and trafficking reparation orders.

64. *Subsection (4) to (9)* enable a court that varies, quashes or discharges a confiscation order in accordance with Part 2 of the 2002 Act to vary, quash or discharge any slavery and trafficking reparation order that has been made in relation to the convictions that gave rise to the confiscation order so varied, quashed or discharged.

Section 11: Forfeiture of land vehicle, ship or aircraft

65. This section enables the court, when a person is convicted on indictment of a human trafficking offence under section 2, to order the forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with the offence of which the person is convicted. *Subsection (2)* lists the circumstances that would allow the forfeiture of a vehicle; *subsections (3) to (5)* do likewise for a ship or aircraft. *Subsection (6)* allows a person who claims to have an interest in a vehicle, ship or aircraft, and who makes an application to the court, to make representations on the question of forfeiture before the court may make an order for its forfeiture. Similar provisions are currently contained in section 60A of the Sexual Offences Act 2003 and supplement the more general provisions on forfeiture in section 143 of the Powers of the Criminal Courts (Sentencing) Act 2000.

Section 12: Detention of land vehicle, ship or aircraft

66. *Subsections (1) to (3)* enable a constable or immigration officer not below the rank of chief immigration officer to detain a vehicle, ship or aircraft of a person arrested for an offence under section 2 if it is one which the constable or officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 11. Detention is permitted until a decision is taken whether or not to charge the arrested person, until the arrested person is acquitted, the charge against him dismissed or the proceedings discontinued, or, where the person is subsequently convicted, until the court makes a decision on forfeiture.

67. *Subsection (4)* lists the circumstances in which a person other than the arrested person may apply to the court for the release of that vehicle, ship or aircraft. *Subsection (5)* provides that on such an application the court may release the vehicle, ship or aircraft subject to satisfactory security or surety and on condition that it is made available to the court if the arrested person is convicted and if an order under section 11 is made. Similar provisions are currently contained in section 60B of the Sexual Offences Act 2003.

Section 13: Interpretation of Part 1

68. This section defines terms used in Part 1.

PART 2: PREVENTION ORDERS

69. Part 2 makes provision (sections 14 to 34) for the introduction of new civil orders to enable prohibitions to be imposed by the courts on individuals convicted of a slavery or trafficking offence, or those involved in slavery or trafficking but who have not been convicted of a slavery or trafficking offence. The rationale for creating these orders is to enable law enforcement bodies and the courts to take tougher action against those involved in trafficking, and to protect individuals from the harm caused by slavery or trafficking by preventing future offending. The new orders will complement existing civil orders⁷, enabling the courts to impose necessary prohibitions on individuals where there is evidence of that individual posing a risk of causing another person to be the victim of slavery, or trafficking for exploitation.

Section 14 and Schedule 1: Slavery and trafficking prevention orders on sentencing

70. This section provides for slavery and trafficking prevention orders (“STPO”) on conviction. *Subsection (1)* enables a court (for example, the magistrates’ court, youth court, Crown Court or in limited cases the Court of Appeal) to impose a STPO on a person on a conviction or other finding in respect of that person for a slavery or human trafficking offence. A slavery or human trafficking offence is defined in *subsection (3)* and section 34(1) and means an offence listed in *Schedule 1* to the Act. Schedule 1 includes reference to the new offences in Part 1 of the Act, the preceding offences in England and Wales and equivalent offences in Scotland and Northern Ireland. Since section 14 extends only to England and Wales, the power conferred by this section will be available only where a court in England and Wales deals with a person for an offence under the law of England and

⁷ For example, see the orders available under the Sexual Offences Act 2003 (where the victims suffer sexual harm) or the Serious Crime Act 2007.

Wales. Offences under the law of Scotland and Northern Ireland are, however, relevant to whether a court in England and Wales may make an order under section 15.

71. *Subsection (2)* provides that the court must be satisfied that there is a risk that the defendant may commit a slavery or human trafficking offence and that it is necessary to make a STPO for the purposes of protecting persons generally, or particular persons, from physical or psychological harm which would be likely to occur if the defendant committed such an offence.

72. *Subsection (3)* defines “slavery or human trafficking offence” by reference to offences listed in Schedule 1.

73. *Subsection (4)* enables the Secretary of State to amend Schedule 1 by order. For example, this power could be used to add to Schedule 1 any new slavery or trafficking offences created by legislation in Scotland or Northern Ireland.

74. *Subsection (5)* provides that a STPO may be made in relation to a conviction and finding made before this section comes into force.

75. *Schedule 1* sets out the offences which are slavery and human trafficking offences for the purposes of Part 2.

Section 15: Slavery and trafficking prevention orders on application

76. This section provides for a STPO in cases other than on conviction etc. An application for a STPO may be made to a magistrates’ court by a chief officer of police, an immigration officer or the Director General of the National Crime Agency (“NCA”) (*subsection (1)*). The NCA, established under section 1 of the Crime and Courts Act 2013, holds the national lead for tackling slavery and human trafficking. Where an application is made by an immigration officer or the Director General of the NCA, the immigration officer or Director General must notify the chief officer of police for the area where the offender resides or is believed to intend to reside (*subsection (7)*).

77. The court in accordance with *subsection (2)* must be satisfied that the defendant is a relevant offender (defined in section 16) and that, since the defendant became a relevant offender, he has acted in a way which demonstrates that there is a risk that the defendant may commit a slavery or human trafficking offence and that it is necessary to make a STPO for the purpose of protecting persons generally, or particular persons, from physical or psychological harm which would be likely to occur if the defendant committed such an offence.

78. *Subsection (9)* provides that acts of an offender committed before the section comes into force may also be considered for the purposes of determining whether an STPO may be made.

Section 16: Meaning of “relevant offender”

79. *Subsections (1) to (3)* define a relevant offender for the purposes of section 15. A relevant offender includes a person convicted, made the subject of a finding or cautioned for a slavery or human trafficking offence in any part of the United Kingdom, and also a person convicted etc. in relation to an equivalent offence outside the United Kingdom (defined in

subsections (4) to (5)). Where an application is made in respect of an equivalent offence, it is open to the person in respect of whom the application is made to challenge whether the offence he or she has been convicted of is an equivalent offence. They can do this by serving a notice on the applicant setting out the grounds for such a challenge (*subsection (6)*), or without serving such a notice if the court permits. *Subsection (7)* provides that references in this section to convictions etc. including those taking place before its commencement.

Section 17: Effect of slavery and trafficking prevention orders

80. *Subsection (1)* provides that a STPO may prohibit the person in respect of whom the order is made from doing anything described in it. The nature of any prohibition is a matter for the court to determine. A prohibition may include preventing a person from participating in a particular type of business, operating as a gangmaster, visiting a particular place, working with children or travelling to a specified country. The court may only include in an order prohibitions which it is satisfied are necessary for the purpose of protecting persons generally, or particular persons, from physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence (*subsection (2)*).

81. *Subsections (3) to (5)* provide for the extent and duration of a STPO and the prohibitions in it. A STPO may last for a fixed period of at least five years or until further order. The prohibitions specified in it may each have different duration.

Section 18: Prohibitions on foreign travel

82. A STPO may prohibit a person from travelling to any specified country outside the United Kingdom, any country other than a country specified in the order or any country outside the United Kingdom (*subsection (2)*). Such a prohibition may be for a fixed period not exceeding five years, but may be renewed at the end of that period (*subsections (1) and (3)*). A person prohibited from travelling to any country must surrender all his or her passports to the police (*subsection (4)*). The police must return any such passports, unless they have been returned to the relevant national or international issuing authorities, once the all-country prohibition ceases to have effect (*subsections (5) and (6)*).

Section 19: Requirement to provide name and address

83. Section 19 provides that a defendant subject to a STPO may be required by the court to notify to the persons specified in the order, within three days, their name and address (including any subsequent changes to this information). *Subsection (2)* provides that the court must be satisfied that this requirement is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence. *Subsection (7)* sets out that where this information is provided to the NCA, the NCA must provide this information to chief officer of police for each relevant police area, which is defined in *subsection (8)*.

Section 20: Variation, renewal and discharge

84. This section makes provision to enable a person in respect of whom a STPO has been made or the police, NCA, or an immigration officer (where they applied for the original order) to apply to the court which made the order to vary, renew or discharge the order (*subsections (1) and (2)*). This provision ensures that the order can be modified to reflect changing circumstances, both to ensure that it remains effective to manage the risk posed by

activities relating to slavery or trafficking and that the order remains necessary for that purpose.

85. The person in respect of whom the order was made and, where relevant, the police, NCA, or an immigration officer have the right to be heard by the court (*subsection (3)*). In relation to the imposition of any additional prohibitions, the court must apply the same test as that which it applied when making the order (*subsection (4)*). An order may not be discharged within five years of it being made without the consent of the person concerned and the relevant chief officer of police (*subsection (6)*).

Section 21: Interim slavery and trafficking prevention orders

86. *Subsections (1) and (2)* provide for an interim STPO to be made where an application has been made for a STPO under section 15 and the court considers that it is just to do so. For example, the court may make an interim order in a case where it is satisfied that this is necessary for the purpose of protecting a person from immediate harm pending the full determination of the application for the order.

87. An interim order must be made for a specified period and ceases to have effect once the main application has been determined (*subsection (7)*). An interim order may be varied, renewed or discharged (*subsection (8)*).

Section 22: Appeals

88. A person may appeal against the making of a STPO on conviction in the same manner as an appeal against sentence (*subsection (1)(a) and (b)*). For example, an order made by the magistrates' court may be appealed to the Crown Court. A STPO made on an application under section 15 and an interim STPO may be appealed to the Crown Court (*subsection (1)(c) and (2)*).

89. A person in respect of whom an order is made may also appeal a decision under section 20 to vary, renew or discharge an order (*subsection (3)*).

90. *Subsection (4)* sets out the powers of the Crown Court when determining an appeal. It will be open to the court to revoke the order or to amend its provision (either the duration or the prohibitions contained in it).

91. *Subsection (5)* provides that in cases specified in the subsection an order made by a Crown Court on an appeal is treated as if it were an order of the court from which the appeal was brought. For example, an order by the Crown Court on an appeal from a decision of the magistrates' court under section 15 is treated as if it was an order of the magistrates' court for the purposes of a subsequent application to vary that order.

Section 23: Slavery and trafficking risk orders

92. *Subsection (1)* enables a magistrates' court to make a slavery and trafficking risk order ("STRO") on an application by a chief officer of police, an immigration officer or the Director General of the NCA. A STRO may be made against either an adult or person under 18. Where an application is made by an immigration officer or the Director General of the NCA, the immigration officer or Director General must notify the chief officer of police for the area where the offender resides or is believed to intend to reside (*subsection (6)*).

93. *Subsection (2)* sets out the test for making a STRO, namely that the court is satisfied there is a risk that the defendant may commit a slavery or human trafficking offence and that it is necessary to make a STRO for the purpose of protecting persons generally, or particular persons, from physical or psychological harm which would be likely to occur if the defendant committed such an offence. There is no requirement for the person in respect of whom an order is sought to have previously been convicted or cautioned in relation to a criminal offence.

94. *Subsection (4)* provides that an application for a STRO is made by complaint.

95. *Subsection (5)* provides that in relation to a person aged under 18 a reference to a magistrates' court is to be taken as referring to a youth court.

96. *Subsection (8)* provides that an application for a STRO may be made in relation to conduct that took place before the commencement of this section.

Section 24: Effect of slavery and trafficking risk orders

97. *Subsection (1)* provides that a STRO may prohibit the person in respect of whom the order is made from doing anything described in it. The nature of any prohibition is a matter for the court to determine. A prohibition may include preventing a person from participating in a particular type of business, operating as a gangmaster, visiting a particular place, working with children or travelling to a specified country. The court may only include in an order prohibitions which it is satisfied are necessary for the purpose of protecting persons generally, or particular persons, from physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence (*subsection (2)*).

98. *Subsections (3) to (5)* provide for the extent and duration of a STRO and the prohibitions in it. A STRO may last for a fixed period of at least two years or until further order. The prohibitions specified in it may each have different duration.

Section 25: Prohibitions on foreign travel

99. A STRO may prohibit a person from travelling to any specified country outside the United Kingdom, from travelling to any country other than a country specified in the order or from travelling to any country outside the United Kingdom (*subsection (2)*). Such a prohibition may be for a fixed period not exceeding five years, but may be renewed at the end of that period (*subsections (1) and (3)*). A person prohibited from travelling to any country must surrender all his or her passports to the police (*subsection (4)*). The police must return any such passports, unless they have been returned to the relevant national or international issuing authorities, once the all-country prohibition ceases to have effect (*subsections (5) and (6)*).

Section 26: Requirement to provide name and address

100. This section provides that a defendant subject to a STRO may be required by the court to notify to the persons specified in the order, within three days, their name and address (including any subsequent changes to this information). *Subsection (2)* provides that the court must be satisfied that this requirement is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence. *Subsection (7)* sets out that where this information is provided to the NCA, the NCA must provide this

information to chief officer of police for each relevant police area, which is defined in *subsection (8)*.

Section 27: Variation, renewal and discharge

101. This section makes provision to enable the person who is subject to a STRO, the police, NCA, or an immigration officer to apply to a magistrates' court to vary, renew or discharge the order (*subsections (1) and (2)*). This provision ensures that the order can be modified to reflect changing circumstances, both to ensure that it remains effective to manage the risk posed by activities related to slavery or trafficking and that the order remains necessary for that purpose.

102. The person in respect of whom the order was made, and, where relevant, the police, NCA, or an immigration officer have the right to be heard by the court (*subsection (3)*). In relation to the imposition of any additional prohibitions, the court must apply the same test as that which applied when making the order (*subsection (4)*). An order may not be discharged within two years of it being made without the consent of the person concerned and the relevant chief officer of police (*subsection (6)*).

Section 28: Interim slavery and trafficking risk orders

103. *Subsections (1) to (3)* provide for an interim STRO to be made where an application has been made for an STRO and the court considers that it is just to do so. For example, the court may make an interim order in a case where it is satisfied that this is necessary for the purpose of protecting a person from immediate harm pending the full determination of the application for the order.

104. An interim order must be made for a specified period and ceases to have effect once the main application has been determined (*subsection (7)*). An interim order may be varied, renewed or discharged (*subsection (8)*).

Section 29: Appeals

105. A person may appeal against the making of a STRO or an interim STRO, or the decision under section 27 to vary, renew or discharge an order to the Crown Court (*subsection (1)*).

106. *Subsection (2)* sets out the powers of the Crown Court when determining an appeal. It will be open to the court to revoke the order or to amend its provision (either the duration or the prohibitions contained in it).

107. *Subsection (3)* provides that in cases specified in the subsection an order made by a Crown Court on an appeal is treated as if it were an order of the court from which the appeal was brought. For example, an order by the Crown Court on an appeal from a decision of the magistrates' court under section 23 is treated as if it was an order of the magistrates' court for the purposes of a subsequent application to vary that order.

Section 30: Offences

108. *Subsection (1)* makes it an offence for a person to do anything which is prohibited by an STPO, interim STPO, STRO or interim STRO, or the Northern Ireland equivalents of an STPO or interim STPO, without reasonable excuse.

109. Where an order includes a foreign travel prohibition in respect of all countries outside the United Kingdom, *subsection (2)* makes it an offence for the person subject to the order to fail, without reasonable excuse, to surrender all his or her passports. It is also an offence for a person to fail to comply with a requirement to provide his or her name and address.

110. The maximum penalty for either offence is six months imprisonment or a fine or both on summary conviction, or five years imprisonment following conviction on indictment (*subsection (3)*). *Subsection (4)* precludes the court from making an order for a conditional discharge following a conviction for an offence in this section.

111. In the case of conviction on indictment, the availability of a fine will be determined by section 163 of the Criminal Justice Act 2003 (general power of Crown Court to fine offender convicted on indictment).

Section 31: Cross-border enforcement

112. *Subsection (1)* confers power on the Secretary of State to add to the list of orders in section 30(1) any “relevant UK order” (defined in *subsection (2)* as an equivalent or similar order made under the law of Scotland or Northern Ireland). This power is exercisable by the Secretary of State making regulations subject to the affirmative resolution procedure

113. A breach of the Northern Ireland equivalent to an STPO or interim STPO is already an offence under section 30(1)(e). The effect of this provision is to enable a breach of any other equivalent orders made in Scotland or Northern Ireland to be a criminal offence in England and Wales.

Section 32: Rules of court

114. *Subsection (1)* allows for rules of court to provide that the youth court can give permission that an application for an STPO or STRO in relation to a person over 18 can be heard in a youth court if there is a linked case relating to an individual under 18 and there is reason for the cases to be heard together.

115. *Subsection (2)* provides that where an individual attains the age of 18 years after proceedings relating to an STPO or STRO have begun, rules of court may prescribe when the case may or must remain in the youth court, or should be transferred to a magistrates’ court.

Section 33: Guidance to chief officers of police etc

116. This section confers a duty on the Secretary of State to issue guidance to chief officers of police, immigration officers and the Director General of the NCA in relation to their powers in relation to STPOs, interim STPOs, STROs or interim STROs (*subsection (1)*). The Secretary of State may issue revised guidance (*subsection (2)*). The Secretary of State is required to publish such guidance (*subsection (3)*); it is not subject to any Parliamentary procedure.

Section 34: Interpretation of Part 2

117. This section defines the meaning of a number of expressions used in Part 2 of the Act.

118. *Subsection (1)* includes the definition of “cautioned”, which refers to a caution in respect of a slavery or human trafficking offence which, at the time the caution is given, that person has admitted.

119. *Subsection (8)* disapplies the usual six month time limit for making an application made by complaint to the magistrates' court.

PART 3: MARITIME ENFORCEMENT

Section 35 and Part 1 of Schedule 2: Enforcement powers in relation to ships: England and Wales

120. Section 35 provides additional powers for law enforcement in England and Wales (the police, port police, British Transport Police, designated NCA officers, customs officials, or a member of Her Majesty's Armed Forces) to tackle suspected human trafficking or slavery at sea. The details of the additional powers are set out in Part 1 of Schedule 2. This is an issue because victims are in many cases trafficked illegally on vessels, and also may be the subject of slavery, servitude and forced or compulsory labour on board vessels. Extending law enforcement powers in relation to suspected modern slavery offences will enable the police and other relevant bodies to better protect suspected victims and bring offenders to justice.

121. *Subsection (1)* sets out the scenarios in which a constable or law enforcement officer may use additional powers in relation to vessels where an offence of human trafficking or slavery is suspected. These restrictions are in line with UK court jurisdiction, so wherever a suspect is apprehended prosecution can take place. The only exception to this is in the case of a UK vessel or stateless vessel in the territorial waters of another state or relevant territory, where UK court jurisdiction only applies where the offender is a British citizen. However, as the nationality of a suspected offender may not be apparent prior to investigation, the power is provided for all UK vessels in this scenario.

122. *Subsection (2)* provides that these powers are only exercisable for the purpose of preventing, detecting, investigating or prosecuting a human trafficking or slavery offence, and in accordance with the conditions of this section.

123. *Subsection (3)* provides that an enforcement officer must gain the authority of the Secretary of State prior to exercising the powers set out in Part 1 of Schedule 2 in relation to a UK vessel in foreign waters.

124. *Subsection (4)* sets out that the approval of the Secretary of State for the scenario in *Subsection (3)* can only be provided if the state or relevant territory in whose waters the powers would be exercised consents to the use of these powers.

125. *Subsection (5)* confirms that the authority of the Secretary of State is also required for law enforcement to use these powers in relation to a foreign vessel, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to the United Kingdom.

126. *Subsection (6)* sets out that, in relation to foreign ships, the approval of the Secretary of State for the scenario in *Subsection (5)* can only be provided if one of the listed conditions has been met. This ensures the measure is aligned with the UN Convention on the Law of the Sea (UNCLOS). The conditions are: that the home state has requested the assistance of the UK for the purposes set out in *subsection (2)(a)*; the home state has authorised the UK to act in that way; or UNCLOS otherwise permits the exercise of these powers.

127. *Subsection (7)* adds that, in giving this authority, the Secretary of State must also give effect to any conditions or limitations the home state in question has made a condition of their authority.

128. The detail of the powers set out in section 35 is set out in Part 1 of Schedule 2. *Paragraph 1* introduces Part 1 of Schedule 2, which sets out the powers exercisable by the police, port police, British Transport Police, designated NCA officer, customs officials, or a relevant member of the Armed Forces ('enforcement officer') in relation to suspected slavery and human trafficking offences at sea (section 35) and section 38 (Hot pursuit of ships in United Kingdom waters).

129. *Paragraph 2* provides a power to stop and board a ship, and to direct the vessel to be taken to a port in England and Wales, or elsewhere, and detained there, where there are reasonable grounds to suspect that a slavery or human trafficking offence is being, or has been committed or the vessel is being used in connection with a slavery or trafficking offence. It notes that if the enforcement officer is acting on the authority of the Secretary of State, as set out in section 35(5), the officer can require the vessel to be taken to a port in another country willing to take the vessel. In operating this power an enforcement officer has the power to require any member of a vessel's crew to take action necessary to support their enforcement activity in relation to the powers set out in *sub-paragraph 2(1)*. Written notice must be provided to the master of any vessel detained under this paragraph, which must state the ship is to be detained until withdrawn via a further written notice, signed by a constable or an enforcement officer.

130. *Paragraph 3* provides a power to search a vessel and any person or object on that vessel, where a constable or an enforcement officer has reasonable grounds to suspect that there is evidence on the ship relating to a slavery or trafficking offence, or a connected offence. It gives a constable or an enforcement officer the power to require a person on the vessel under investigation to give information about themselves or about anything on the vessel. It confirms that searching may include (although is not limited to) opening containers, requiring the production of documents, books or records (in either hard copy or electronic form) and making photographs or copies of anything the constable or officer has power to require. This power can only be used where a search is reasonably required to discover evidence of a slavery, trafficking or connected offence and does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves.

131. *Paragraph 4* provides a power of arrest where a constable or an enforcement officer has reasonable grounds to suspect a slavery or human trafficking offence has been committed on the vessel under investigation. A constable or an enforcement officer can arrest without warrant anyone they have reasonable grounds to suspect may be guilty of a slavery or human trafficking offence. A constable or an officer may also seize and detain anything that appears to be evidence of that offence. The exception to this is any materials that the constable or officer has reasonable grounds to suspect are subject to legal privilege.

132. *Paragraph 5* provides for a Code of Practice for constables or law enforcement officers exercising the power of arrest set out in *paragraph 4*. The Code will provide guidance on the information to be given to a person at the time of arrest. Where a constable or an enforcement officer fails to comply with any provision of the Code it does not of itself render the constable or officer liable to any criminal or civil proceeding. The code may be

admissible in evidence in criminal and civil proceedings and may be taken into account by a court or tribunal where it appears to them to be relevant. The Secretary of State may at any time revise the whole, or a part of the Code. Any revision to the Code does not come into operation until the Secretary of State has provided for it in regulations, which will be made by statutory instrument.

133. *Paragraph 6* provides that a constable or an enforcement officer may take another person or relevant equipment or materials on board a vessel to support them in exercising the powers set out in this Part of the Schedule. The assistant may perform functions on behalf of the constable or officer under their supervision.

134. *Paragraph 7* confirms that a constable or an enforcement officer may use reasonable force, where necessary, in order to perform the functions set out in this Part of the Schedule.

135. *Paragraph 8* provides that, when required, a constable or an enforcement officer must provide evidence of their authority.

136. *Paragraph 9* confirms that a constable or an enforcement officer is not liable in any civil or criminal proceedings for anything done in performance of the functions in this Schedule, provided that a court is satisfied that the constable or officer acted in good faith and there were reasonable grounds for their actions.

137. *Paragraph 10* creates two offences where a person does not comply with the investigation. The first makes it an offence where a person intentionally obstructs a constable or an enforcement officer in exercising the powers in this Schedule, or fails to comply with a requirement of a constable or an enforcement officer, without reasonable excuse. The second makes it an offence where a person knowingly or recklessly provides false information, or intentionally fails to disclose anything material, in response to a constable or an enforcement officer requiring information when exercising the powers within this Schedule. Both of these offences are summary only and on conviction the defendant is liable to a fine.

Section 36 and Part 2 of Schedule 2: Enforcement powers in relation to ships: Scotland

138. Section 36 sets out powers for law enforcement in Scotland (the police, designated NCA officers, customs officials, or a member of Her Majesty's Armed Forces) to tackle suspected human trafficking or slavery at sea. The details of the additional powers are set out in Part 2 of Schedule 2.

139. *Subsection (1)* sets out the scenarios in which a Scottish constable or an enforcement officer may use additional powers in relation to vessels where an offence of human trafficking or slavery is suspected, in waters adjacent to Scotland, or in international or foreign waters. These restrictions are in line with UK court jurisdiction, so wherever a suspect is apprehended prosecution can take place. The only exception to this is in the case of a UK vessel in the territorial waters of another state, where UK court jurisdiction only applies where the offender is a British citizen. However, as the nationality of a suspected offender may not be apparent prior to investigation, the power is provided for all UK vessels in this scenario.

140. *Subsection (2)* provides that these powers are only exercisable for the purpose of preventing, detecting, or investigating a listed offence, set out in *subsection (8)*, and in accordance with the conditions of this section.

141. *Subsection (3)* provides that a Scottish constable or an enforcement officer must gain the authority of the Secretary of State prior to exercising the powers set out in Part 2 of Schedule 2 in relation to a UK vessel in foreign waters.

142. *Subsection (4)* sets out that the approval of the Secretary of State for the scenario in *Subsection (3)* can only be provided if the state or relevant territory in whose waters the powers would be exercised consents to the use of these powers.

143. *Subsection (5)* confirms that the authority of the Secretary of State is also required for a Scottish constable or enforcement officer to use these powers in relation to a foreign vessel, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to the United Kingdom.

144. *Subsection (6)* sets out that the approval of the Secretary of State for the scenario in *Subsection (5)* can only be provided in relation to a foreign ship if one of the listed conditions has been met. This ensures the measure is aligned with the UN Convention on the Law of the Sea (UNCLOS). The conditions are: that the home state has requested the assistance of the UK for the purposes set out in *Subsection (2)(a)*; the home state has authorised the UK to act in that way; or UNCLOS otherwise permits the exercise of these powers.

145. *Subsection (7)* adds that, in giving this authority in relation to a foreign ship, the Secretary of State must also give effect to any conditions or limitations the home state in question has made a condition of their authority.

146. *Subsection (8)* sets out the relevant Scottish offences for this section.

147. The detail of the powers set out in section 36 is set out in Part 2 of Schedule 2. *Paragraph 11* introduces Part 2, which sets out the powers exercisable by Scottish constables, designated NCA officers, and enforcement officers (customs officials or a relevant member of the Armed Forces) under section 36 (Enforcement powers in relation to ships: Scotland) and section 38 (Hot pursuit of ships in United Kingdom waters). *Sub-paragraph (2)* sets out the definitions of “items subject to legal privilege”, “listed offence”, and “the ship”.

148. *Paragraph 12* provides a power to stop and board a ship, and to direct the vessel to be taken to a port in Scotland, or elsewhere, and detained there, where there are reasonable grounds to suspect that a slavery or human trafficking offence is being, or has been committed or the vessel is being used in connection with a slavery or trafficking offence. It notes that if the Scottish constable or enforcement officer is acting on the authority of the Secretary of State, as set out in section 36(5), the officer can require the vessel to be taken to a port in another country willing to take the vessel. In operating this power a Scottish constable or an enforcement officer has the power to require any member of a vessel’s crew to take action necessary to support their enforcement activity in relation to the powers set out in *sub-paragraph 12(1)*. Written notice must be provided to the master of any vessel detained

under this paragraph, which must state the ship is to be detained until withdrawn via a further written notice, signed by a Scottish constable or an enforcement officer.

149. *Paragraph 13* provides a power to search a vessel and any person or object on that vessel, where a Scottish constable or enforcement officer has reasonable grounds to suspect that there is evidence on the ship relating to a slavery or trafficking offence, or a connected offence. It gives a Scottish constable or enforcement officer the power to require a person on the vessel under investigation to give information about themselves. It confirms that searching may include (although is not limited to) opening containers, requiring the production of documents, books or records (in either hard copy or electronic form) and making photographs or copies of anything the a Scottish constable or officer has power to require. This power can only be used where a search is reasonably required to discover evidence of a slavery, trafficking or connected offence and does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves.

150. *Paragraph 14* provides a power of arrest where a Scottish constable or enforcement officer has reasonable grounds to suspect a slavery or human trafficking offence has been committed on the vessel under investigation. A Scottish constable or an enforcement officer can arrest without warrant anyone they have reasonable grounds to suspect may be guilty of a slavery or human trafficking offence. A Scottish constable or an officer may also seize and detain anything that appears to be evidence of that offence. The exception to this is any materials that the constable or officer has reasonable grounds to suspect are subject to legal privilege.

151. *Paragraph 15* provides that a Scottish constable or enforcement officer may take another person or relevant equipment or materials on board a vessel to support them in exercising the powers set out in this Schedule. The assistant may perform functions on behalf of the constable or officer under their supervision.

152. *Paragraph 16* confirms that a Scottish constable or enforcement officer may use reasonable force, where necessary, in order to perform the functions set out in this Part of this Schedule.

153. *Paragraph 17* provides that, when required, a Scottish constable or enforcement officer must provide evidence of their authority.

154. *Paragraph 18* creates two offences where a person does not comply with the investigation. The first makes it an offence where a person intentionally obstructs a Scottish constable or an enforcement officer in performing the functions in this Part of this Schedule, or fails to comply with a requirement of a Scottish constable or an enforcement officer, without reasonable excuse. The second makes it an offence where a person knowingly or recklessly provides false information, or intentionally fails to disclose anything material, in response to a Scottish constable or an enforcement officer requiring information when exercising the powers within this Schedule.

155. Sub-paragraph (3) of *paragraph 18* sets out that a person convicted of this offence will be subject, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine.

Section 37 and Part 3 of Schedule 2: Enforcement powers in relation to ships: Northern Ireland

156. Section 37 sets out powers for law enforcement in Northern Ireland (the police, customs officials, a member of Her Majesty's Armed Forces) to tackle suspected human trafficking or slavery at sea. The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 made under Schedule 24 to the Crime and Courts Act 2013, (once the relevant provisions come into force - expected in May 2015), will enable the powers to also be exercised by certain NCA officers who will fall within the definition of a constable because they will be designated with the powers and privileges of a constable. The details of the additional powers are set out in Part 3 of Schedule 2.

157. *Subsection (1)* sets out the scenarios in which a Northern Ireland constable or an enforcement officer may use additional powers in relation to vessels where an offence of human trafficking or slavery is suspected, in waters adjacent to Northern Ireland, or in international or foreign waters. These restrictions are in line with UK court jurisdiction, so wherever a suspect is apprehended prosecution can take place. The only exception to this is in the case of a UK vessel in the territorial waters of another state, where UK court jurisdiction only applies where the offender is a British citizen. However, as the nationality of a suspected offender may not be apparent prior to investigation, the power is provided for all UK vessels in this scenario.

158. *Subsection (2)* provides that these powers are only exercisable for the purpose of preventing, detecting, investigating or prosecuting a listed offence, set out in *subsection (9)*, and in accordance with the conditions of this section.

159. *Subsection (3)* provides that the authority of the Chief Constable of the Police Service of Northern Ireland is required before an enforcement officer (a customs official or a member of Her Majesty's Armed Forces) may exercise any Part 3 powers.

160. *Subsection (4)* provides that a Northern Ireland constable or an enforcement officer must gain the authority of the Secretary of State prior to exercising the powers set out in Part 3 of Schedule 2 in relation to a UK vessel in foreign waters.

161. *Subsection (5)* sets out that the approval of the Secretary of State for the scenario in *Subsection (4)* can only be provided if the state or relevant territory in question consents to the use of these powers.

162. *Subsection (6)* confirms that the authority of the Secretary of State is also required for a Northern Ireland constable or enforcement officer to use these powers in relation to a foreign vessel, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to the United Kingdom.

163. *Subsection (7)* sets out that the approval of the Secretary of State for the scenario in *Subsection (6)* can only be provided in relation to a foreign ship if one of the listed conditions has been met. This ensures the measure is aligned with the UN Convention on the Law of the Sea (UNCLOS). The conditions are: that the home state has requested the assistance of the UK for the purposes set out in sub-section (2)(a); the home state has authorised the UK to act in that way; or UNCLOS otherwise permits the exercise of these powers.

164. *Subsection (8)* adds that, in giving this authority in relation to a foreign ship, the Secretary of State must also give effect to any conditions or limitations the home state in question has made a condition of their authority.

165. *Subsection (9)* sets out the relevant Northern Ireland offences for this section

166. The detail of the powers set out in section 37 is set out in Part 3 of Schedule 2. *Paragraph 19*, sub-paragraph (1) introduces Part 3, which sets out the powers exercisable by Northern Ireland constables and enforcement officers under section 37 (Enforcement powers in relation to ships: Northern Ireland) and section 38 (Hot pursuit of ships in United Kingdom waters). *Sub-paragraph 19(2)* sets out the definitions of “items subject to legal privilege”, “listed offence”, and “the ship”.

167. *Paragraph 20* provides a power to stop and board a ship, and to direct the vessel to be taken to a port in Northern Ireland, or elsewhere, and detained there, where there are reasonable grounds to suspect that a slavery or human trafficking offence is being, or has been committed or the vessel is being used in connection with a slavery or trafficking offence. It notes that if the Northern Ireland constable or enforcement officer is acting on the authority of the Secretary of State, as set out in section 37(6), the Northern Ireland constable or officer can require the vessel to be taken to a port in another country willing to take the vessel. In operating this power a Northern Ireland constable or an enforcement officer has the power to require any member of a vessel’s crew to take action necessary to support their enforcement activity. Written notice must be provided to the master of any vessel detained under this paragraph, which must state the ship is to be detained until withdrawn via a further written notice, signed by a Northern Ireland constable or an enforcement officer.

168. *Paragraph 21* provides a power to search a vessel and any person or object on that vessel, where a Northern Ireland constable or enforcement officer has reasonable grounds to suspect that there is evidence on the ship relating to a slavery or trafficking offence, or a connected offence. It gives a Northern Ireland constable or enforcement officer the power to require a person on the vessel under investigation to give information about themselves or about anything on the vessel. It confirms that searching may include (although is not limited to) opening containers, requiring the production of documents, books or records (in either hard copy or electronic form) and making photographs or copies of anything the constable or officer has power to require. This power can only be used where a search is reasonably required to discover evidence of a slavery, trafficking or connected offence and does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves.

169. *Paragraph 22* provides a power of arrest where a Northern Ireland constable or enforcement officer has reasonable grounds to suspect a slavery or human trafficking offence has been committed on the vessel under investigation. A Northern Ireland constable or an enforcement officer can arrest without warrant anyone they have reasonable grounds to suspect may be guilty of a slavery or human trafficking offence. A Northern Ireland constable or an officer may also seize and detain anything that appears to be evidence of that offence. The exception to this is any materials that the constable or officer has reasonable grounds to suspect are subject to legal privilege.

170. *Paragraph 23* requires that the Department of Justice in Northern Ireland prepares and issues a code in respect of the practice to be followed by Northern Ireland constables and enforcement officers when arresting a person under the power conferred by *sub-paragraph (1)*, in particular providing guidance as to the information to be given to the person at the time of arrest (*sub-paragraph (2)*). *Subparagraph (3)* confirms that failure to comply with the code does not render a Northern Ireland constable or officer liable to criminal proceedings. *Sub-paragraph (4)* sets out that the code is admissible in criminal and civil proceedings and may be taken into account by a court or tribunal where relevant. *Sub-paragraph (5)* provides that the Department of Justice in Northern Ireland may make revisions to the code at any time and *sub-paragraph (6)* states that the code will only come into effect when the Department lays a draft of the code before the Northern Ireland Assembly and provides by order for the code or a revised code to come into operation. *Sub-paragraph (7)* provides that an order bringing the code into operation may contain relevant transitional provisions or savings. *Sub-paragraph (8)* provides that an order under this section is subject to negative resolution and *sub-paragraph (9)* provides this is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

171. *Paragraph 24* provides that a Northern Ireland constable or enforcement officer may take another person or relevant equipment or materials on board a vessel to support them in exercising the powers set out in this Schedule. The assistant may perform functions on behalf of the officer under their supervision.

172. *Paragraph 25* confirms that a Northern Ireland constable or enforcement officer may use reasonable force, where necessary, in order to perform the functions set out in this Schedule.

173. *Paragraph 26* provides that, when required, a Northern Ireland constable or enforcement officer must provide evidence of their authority.

174. *Paragraph 27* confirms that a Northern Ireland constable or enforcement officer is not liable in any civil or criminal proceedings for anything done in performance of the functions in this Schedule, provided that a court is satisfied that the Northern Ireland constable or officer acted in good faith and there were reasonable grounds for their actions.

175. *Paragraph 28* creates two offences where a person does not comply with the investigation. The first makes it an offence where a person intentionally obstructs a Northern Ireland constable or an enforcement officer in exercising the powers in this Schedule, or fails to comply with a requirement of a Northern Ireland constable or an enforcement officer, without reasonable excuse. The second makes it an offence where a person knowingly or recklessly provides false information, or intentionally fails to disclose anything material, in response to a Northern Ireland constable or an enforcement officer requiring information when exercising the powers within this Schedule.

176. *Sub-paragraph 28(3)* sets out that a person guilty of an offence under this paragraph is liable on summary conviction, to a fine not exceeding the statutory maximum; and on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

Section 38: Hot pursuit of ships in United Kingdom waters

177. Section 38 sets out powers of hot pursuit, where law enforcement seek to pursue a suspected vessel between waters adjacent to different jurisdictions within the UK or between UK and international waters.

178. *Subsection (1)* provides that an English and Welsh constable or an enforcement officer may exercise the powers set out in Part 1 of Schedule 2 in relation to a ship in Scotland waters or in Northern Ireland waters if the ship is pursued there from relevant waters, and the condition in *subsection (10)* is met (that before the pursuit of the ship, a signal is given for it to stop, and the pursuit of the ship is not interrupted).

179. *Subsection (2)* sets out that powers in *subsection (1)* can only be exercised in relation to a ship for the purposes provided in *subsection (2)(a)* of section 35 (Enforcement powers in relation to ships: England and Wales), and, if the ship is a foreign ship or registered under the law of a relevant territory, in accordance with *subsections (5) to (7)* of that section.

180. *Subsection (3)* sets out that for the purpose of *subsection (1)* relevant waters means England and Wales waters or international waters (in the case of a United Kingdom ship or a ship without nationality) or England and Wales waters (in the case of a foreign ship or a ship registered under the law of a relevant territory).

181. *Subsection (4)* provides that a Scottish constable or an enforcement officer may exercise the powers set out in Part 2 of Schedule 2 in relation to a ship in England and Wales waters or in Northern Ireland waters if the ship is pursued there from relevant waters, and the condition in *subsection (10)* is met (that before the pursuit of the ship, a signal is given for it to stop, and the pursuit of the ship is not interrupted).

182. *Subsection (5)* sets out that powers in *subsection (4)* can only be exercised in relation to a ship for the purposes provided in *subsection (2)(a)* of section 36 (Enforcement powers in relation to ships: Scotland), and, if the ship is a foreign ship or registered under the law of a relevant territory, in accordance with *subsections (5) to (7)* of that section.

183. *Subsection (6)* sets out that for the purpose of *subsection (4)(b)* relevant waters means Scotland waters or international waters (in the case of a United Kingdom ship or a ship without nationality) or Scotland waters (in the case of a foreign ship or a ship registered under the law of a relevant territory).

184. *Subsection (7)* provides that a Northern Ireland constable or an enforcement officer may exercise the powers set out in Part 3 of Schedule 2 in relation to a ship in England and Wales waters or in Scottish waters if the ship is pursued there from relevant waters, and the condition in *subsection (10)* is met (that before the pursuit of the ship, a signal is given for it to stop, and the pursuit of the ship is not interrupted).

185. *Subsection (8)* sets out that powers in *subsection (7)* can only be exercised in relation to a ship for the purposes provided in *subsection (2)(a)* of section 37 (Enforcement powers in relation to ships: Northern Ireland), and, if the ship is a foreign ship or registered under the law of a relevant territory, in accordance with *subsections (6) to (8)* of that section.

186. *Subsection (9)* sets out that for the purpose of *subsection (7)(b)* relevant waters means Northern Ireland waters or international waters (in the case of a United Kingdom ship or a ship without nationality) or Northern Ireland waters (in the case of a foreign ship or a ship registered under the law of a relevant territory).

187. *Subsection (10)* provides that for pursuit to meet the conditions of this section, before the pursuit of the ship, a signal must be given for it to stop, and the pursuit of the ship must not be interrupted.

188. *Subsection (11)* provides that the signal referred to in *subsection (10)(a)* must be given in such a way as to be audible or visible from the ship in question

189. *Subsection (12)* provides that, for the purposes of *subsection (10)(b)*, pursuit is not considered interrupted simply because the method of carrying out the pursuit, or the identity of the ship or aircraft carrying out the pursuit, changes during the course of the pursuit.

190. *Subsection (13)* confirms that nothing in this Part affects any right of hot pursuit that a constable or an enforcement officer may have under international law.

Section 39: Interpretation of Part 3

191. Section 39 sets out the definitions used throughout Part 3 and Schedule 2. *Subsection (1)* sets out the relevant definitions. An enforcement officer in this context means a designated customs official or a member of Her Majesty's Armed Forces. A constable is defined for each of the jurisdictions. In England and Wales, a constable means a police constable, an NCA officer designated with the powers and privileges of a constable in England and Wales under Schedule 5 of the Crime and Courts Act 2013 (a "designated National Crime Agency Officer"), a member of the port police, or a member of the British Transport Police. In Scotland a constable means a member of Police Scotland or an NCA officer designated with the powers and privileges of a constable in Scotland under Schedule 5 of the Crime and Courts Act 2013 (a "designated National Crime Agency Officer"). In Northern Ireland a constable means a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve. After the relevant provisions of the Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 come into force, an NC A officer designated with the powers and privileges of a constable in Northern Ireland will also fall within the definition. It also sets out the definitions for relevant territories and different UK territorial waters. *Subsection (2)* sets out the definition of a "United Kingdom connection", in the context of *subsection (1)*, which includes a British citizen, a British overseas territory citizen, a British overseas citizen, a person habitually resident in the UK or a body corporate established under the law of a part of the United Kingdom, whose principal place of business is in the United Kingdom.

PART 4: THE INDEPENDENT ANTI-SLAVERY COMMISSIONER

Section 40: The Independent Anti-slavery Commissioner

192. *Subsection (1)* provides for the establishment of an Independent Anti-slavery Commissioner (“the Commissioner”) who will be an independent office holder appointed by the Secretary of State (in practice, the Home Secretary) following consultation with Scottish Ministers and the Department of Justice in Northern Ireland. The Commissioner will have a UK-wide remit. The duration of an appointment and provision for resignation and removal from office will be provided for in the terms of appointment (*subsection (2)*). *Subsection (3)* makes provision for the payment of expenses, remuneration or allowances. *Subsection (4)* provides that the Secretary of State must, before the start of each financial year, set the Commissioner’s budget for that year. The Secretary of State can allow the Commissioner to exceed this budget for a specified purpose. *Subsection (5)* defines “financial year”. *Subsection (6)* allows the Commissioner to appoint staff. *Subsection (7)* has the effect of disqualifying the Commissioner from also being a Member of Parliament and *subsection (8)* disqualifies the Commissioner from being a member of the Northern Ireland Assembly. *Subsection (9)* makes the Commissioner subject to the provisions of the Freedom of Information Act 2000.

Section 41: General functions of Commissioner

193. *Subsection (1)* states that the Commissioner must encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences and the identification of victims of those offences. *Subsection (2)* lists the offences to which *subsection (1)* applies. These offences include all current slavery and trafficking offences in England, Wales, Scotland and Northern Ireland. In practice the Commissioner will focus on improving the identification of victims as well as the effectiveness of the law enforcement response in the UK, to both encourage effective investigations leading to successful convictions of modern slavery offences and prevent future offences.

194. *Subsection (3)* sets out a non-exhaustive list of things the Commissioner may do in exercise of his general functions in *subsection (1)*. In carrying out his general function the Commissioner may make reports to the Secretary of State, the Scottish Ministers and the Department for Justice in Northern Ireland on any matter which they asked the Commissioner to report on or which the current strategic plan states is a matter the Commissioner may report on (see *subsections (3)(a) and (5)*). Section 42 means that the Commissioner will report on an annual basis based on the strategic plan they agree with the Secretary of State. However, section 41(3) means that the Commissioner could also report at other times, for example if they are undertaking a specific programme of work on a particular topic. The Commissioner may make recommendations to public authorities about the exercise of their functions. The Commissioner may undertake research and may support others to do so. This could be administrative support or financial support, where funds are available. The Commissioner may also provide information, education or training to any person, for example to law enforcement agencies on good practice in investigating modern slavery offences. The Commissioner may also consult any person they feel is appropriate in carrying out their functions and co-operate with or work jointly with others in the UK or internationally. This includes co-operating and consulting with public authorities, such as the Commissioner for Victims and Witnesses, and voluntary organisations.

195. *Subsection (4)* clarifies that the Commissioner can consider the provision of assistance and support to victims of slavery and human trafficking offences in relation to the functions set out in *subsection (1)*.

196. *Subsection (7)* sets out a power for the Secretary of State to remove from any report information that she thinks would be against the interests of national security, would prejudice the safety of any individual in England and Wales or prejudice a criminal investigation or prosecution of offences under the law of England and Wales. *Subsection (8)* sets out a similar power for Scottish Ministers to remove material from any report which might prejudice the safety of any person in Scotland or the investigation of offences under the law of Scotland. *Subsection (9)* sets out a power for the Lord Advocate to remove material from a report that might prejudice a prosecution of offences under the law of Scotland. The division of this power reflects responsibilities within the Scottish Government. *Subsection (10)* provides the same power for the Department of Justice in Northern Ireland in relation to the safety of any person in Northern Ireland or offences under the law of Northern Ireland. *Subsection (11)* states that if the Secretary of State, Scottish Ministers or the Department of Justice in Northern Ireland lay a report before their respective legislatures, the report must be laid as it is published by the Commissioner under *subsection (6)*.

Section 42: Strategic plans and annual reports

197. *Subsection (1)* requires the Commissioner to prepare a strategic plan of their programme of work and priorities, as soon as reasonably practicable after their appointment, for approval by the Secretary of State.

198. *Subsection (2)* provides that the Commissioner must prepare a strategic plan, prior to the end of the period of a current strategic plan and submit it to the Secretary of State for approval.

199. *Subsection (3)* allows the Commissioner to prepare a revised strategic plan, at any time, and to submit it to the Secretary of State for approval.

200. *Subsection (4)* states that a strategic plan is a plan prepared by the Commissioner setting out how the Commissioner will perform their functions, for the period of the plan. It also states that a strategic plan must be prepared for a period of not less than one year and no more than three years.

201. *Subsection (5)* provides that a strategic plan must set out the Commissioner's priorities for the period of the plan and which matters the Commissioner proposes to report on in line with their functions; and state any activities that the Commissioner intends to undertake in carrying out his or her functions, for the period of the plan.

202. *Subsection (6)* allows the Secretary of State to approve the strategic plan, either without modifications or with modifications agreed with the Commissioner. In practice the Commissioner will work collaboratively with the Secretary of State to produce a mutually agreed plan which is focused on priority areas.

203. *Subsection (7)* requires the Secretary of State to consult the Scottish Ministers and the Department of Justice in Northern Ireland before approving a strategic plan and sending a copy of the final plan to those devolved administrations.

204. *Subsection (8)* requires the Commissioner to provide a report on the activities they have undertaken to fulfil their functions as soon as is reasonably practicable after the end of each financial year to the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland.

205. *Subsection (9)* provides that in producing an annual report the Commissioner must include an assessment of the extent to which the Commissioner has met the objectives and priorities they set out in their annual plan. The Commissioner must also include a statement of the matters on which the Commissioner has reported under section 41(3)(a) and a statement of the other activities they have undertaken in the year in carrying out their functions.

206. *Subsections (10), (11) and (12)* require the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland to lay any strategic plan the Secretary of State approves and any annual report they receive from the Commissioner before Parliament, the Scottish Parliament and the Northern Ireland Assembly respectively, as soon as reasonably practicable after receipt.

207. *Subsection (13)* provides that any annual report that is laid before a legislature under *Subsections (10) to (12)* must not contain any material which has been removed from the report under *subsections (14) to (17)*.

208. *Subsection (14)* gives the Secretary of State the power to remove information from an annual report where the Secretary of State thinks that including it would be against the interests of national security, might jeopardise an individual's safety in England and Wales or might prejudice a criminal investigation or prosecution under the law in England and Wales.

209. *Subsection (15)* gives Scottish Ministers the power to remove material from an annual report where the Scottish Ministers think that it might jeopardise the safety of any person in Scotland, or might prejudice the investigation of an offence under the law of Scotland. *Subsection (16)* gives the Lord Advocate the power to remove material from an annual report where the Lord Advocate thinks that it might prejudice the prosecution of an offence under the law of Scotland.

210. *Subsection (17)* gives the Department of Justice in Northern Ireland the power to remove information from an annual report where the Department thinks that it might jeopardise the safety of any person in Northern Ireland, or might prejudice the investigation or prosecution of an offence under the law of Northern Ireland

Section 43 and Schedule 3: Duty to co-operate with Commissioner

211. *Subsection (1)* provides that the Commissioner may request co-operation from a specified public authority where the Commissioner considers that the co-operation is necessary for the purposes of the Commissioner's functions.

212. *Subsection (2)* provides that a specified public authority, where it is reasonably practicable to do so, must comply with any request for co-operation made to it by the Commissioner.

213. *Subsection (3) and subsection (5)* provide that information disclosed by an authority to the Commissioner pursuant to *subsection (2)* will not breach any obligation of confidence owed by the public authority making the disclosure (apart from disclosures of patient information), but must not be in contravention of any other restrictions on the disclosure of information. This maintains existing safeguards protecting the disclosure of “patient information” (as defined in *subsection (4)*) and ensures that health professionals would not be under conflicting professional obligations as a result of health bodies being subject to the duty to co-operate with the Commissioner.

214. *Subsection (6)* defines “specified public authority” as a public authority which is specified in Schedule 3.

215. *Subsection (7)* gives Scottish Ministers the power to add or remove a public authority from Schedule 3 which has functions that are only exercisable in or as regards Scotland or to amend an entry on in Schedule 3 relating to such an authority. *Subsection (8)* provides the Department of Justice in Northern Ireland with the same power to add, remove or amend Schedule 3 but only relating to a public authority which has functions that are only exercisable in or as regards Northern Ireland. *Subsection (9)* provides the Secretary of State with the equivalent power for any other public authority – this includes those authorities only having functions in England and Wales together with those having a UK-wide remit.

216. *Subsection (10)* enables regulations made under subsection (7), (8) or (9) to tailor the duty to co-operate to reflect the specific circumstances of authorities which may be added to Schedule 3 and subjected to the duty in future. This is to ensure that placing a public authority under the duty to co-operate will not result in any conflict with a pre-existing duty or give rise to other unintended consequences as a result of that authority’s particular functions or legislative framework. Such regulations will be subject to the affirmative resolution procedure or equivalent in Scotland and Northern Ireland.

Section 44: Restriction on exercise of functions

217. This section restricts the Commissioner from exercising their functions in relation to particular individuals or cases, but does not prevent the Commissioner from drawing conclusions from individual cases in the context of considering a general issue.

PART 5: PROTECTION OF VICTIMS

Section 45 and Schedule 4: Defence for slavery or trafficking victims who commit an offence

218. Section 45 provides for a defence for slavery or trafficking victims. This is intended to provide further encouragement to victims to come forward and give evidence without fear of being convicted for offences connected to their slavery or trafficking situation. The defence will not apply in the case of certain serious offences. Currently, in cases where a slavery or trafficking victim may have committed an offence as a direct consequence of their trafficking or slavery situation, the Crown Prosecution Service apply specific guidance as to whether or not to bring a prosecution. There is a different test in the defence for persons aged 18 or over and those under the age of 18.

219. *Subsection (1)* provides that a person, aged 18 or over at the time of the act which constitutes an offence, is not guilty of that offence if they commit the offence because they are compelled to do so; they were compelled as a result of slavery or relevant exploitation; and a reasonable person with relevant characteristics in the same position as the person would have no realistic alternative to committing the offence.

220. *Subsection (2)* provides that a person may be compelled to commit an offence by another person or by the person's circumstances.

221. *Subsection (3)* explains that compulsion is only attributable to slavery or relevant exploitation if it is part of conduct which constitutes an offence under section 1 or conduct which constitutes relevant exploitation, or it is a direct consequence of a person being, or having been, a victim of slavery or relevant exploitation.

222. *Subsection (4)* provides that a person under the age of 18 at the time of an act which constitutes an offence is not guilty of that offence if they commit the offence as a direct result of their being a victim of slavery or relevant exploitation, and a reasonable person in the same situation and having the person's relevant characteristics (including their age) would have committed the offence. The lack of the test of compulsion and the lower threshold for meeting the reasonable person test is in recognition of the unique vulnerabilities of children.

223. *Subsection (5)* provides that the relevant characteristics of the victim claiming the defence that will be considered for the purposes of the reasonable person test in *subsection (1)(d)* and *subsection (4)(c)* are age, sex, and any mental or physical illness or disability. *Subsection (5)* also sets out that 'relevant exploitation' is exploitation which is attributable to the person being or having been a victim of trafficking.

224. *Subsection (6)* provides that any reference to an act also includes an omission.

225. *Subsection (7)* introduces Schedule 4, which sets out those offences to which the defence (for both those under the age of 18 and those over the age of 18) will not apply. The defence will not apply to certain serious offences, mainly serious sexual or violent offences, to avoid creating a legal loophole for serious criminals to escape justice. Where the defence does not apply because the offence is too serious, the Crown Prosecution Service will still be able to decide not to prosecute if it would not be in the public interest to do so.

226. *Subsection (8)* enables the Secretary of State to amend Schedule 4 through regulations.

Section 46: Special measures for witnesses in criminal proceedings

227. Section 46 extends certain legislative provisions relating to special measures to victims of the section 1 and 2 offences. These include provisions whereby witnesses in certain cases are automatically treated as eligible for special measures (unless they tell the court they do not want to be eligible). Special measures apply to witnesses who are giving evidence in court and include screening the witness from the accused, giving evidence by live link, giving evidence in private, removal of wigs and gowns, video recorded evidence in chief and video recorded cross-examination or re-examination. Trafficking victims are currently already covered by the relevant provisions, so the effect in practice is to extend coverage to

slavery victims too, so that (for example) all victims of slavery and trafficking are automatically eligible for special measures

Section 47: Civil legal aid for victims of slavery

228. Currently, victims of trafficking are able to apply for civil legal services for advice and representation in relation to certain immigration matters, damages claims and certain employment claims under paragraph 32 of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Section 47 amends Part 1 of Schedule 1 to LASPO to extend the same provision to victims of slavery, servitude or forced or compulsory labour through inserted paragraph 32A.

Subsection (1) of inserted paragraph 32A extends the provision of civil legal services to an individual for whom there are reasonable grounds to believe, or a conclusive determination that, the individual is a victim of slavery, servitude or forced or compulsory labour and no conclusive determination that the individual is not a victim.

Subsections (2) and (3) of inserted paragraph 32A provide for victims of slavery, servitude or forced or compulsory labour (or their personal representatives where the victims are deceased) to be provided with civil legal services in relation to claims for damages, or under employment law, which arise from the conduct which made them such a victim.

Section 48: Independent child trafficking advocates

229. *Subsections (1) and (3)* provide the Secretary of State with a duty to make such arrangements as the Secretary of State considers reasonable so that specialist independent child trafficking advocates are available to support and represent children who there are reasonable grounds to believe may be victims of trafficking. These arrangements can include paying for such advocates. This duty is subject to the commencement provision set out in section 61, which provides that the provisions cannot be commenced until 9 months have passed from Royal Assent and resolutions to this effect have been passed by both Houses of Parliament. At the time of enactment independent child trafficking advocates are being trialled. The commencement provision allows the trial to finish and be evaluated, and the Secretary of State to report to Parliament (as required by *subsection (7)*), before Parliament takes a decision on whether this provision should be commenced.

230. *Subsection (2)* requires the Secretary of State to have regard to the principle that such advocates should, as far as practicable, be independent of those responsible for making decisions about the child.

231. *Subsection (4)* places a duty on any person appointed as a child's independent child trafficking advocate to promote the child's well-being and act in the child's best interests.

232. *Subsection (5)* gives a child's independent child trafficking advocate the power, where it is appropriate to do so, to assist the child to obtain legal, or other, advice, including (where necessary) to instruct legal representatives to act on the child's behalf.

233. *Subsection (6)* places a duty on the Secretary of State to make regulations about independent child trafficking advocates, which must include the circumstances and conditions under which a person may act as an independent child trafficking advocate, arrangements for the approval of the appointment of such advocates, the timing of

appointment (as soon as reasonably practicable where there are reasonable grounds to believe a child may be a victim of trafficking – this can be before any referral into the UK’s victim identification process) and the advocates’ functions. These regulations must also include requirements on the public authorities that are taking decisions regarding, or providing services to, a child to recognise and pay due regard to the child’s independent child trafficking advocate and to provide information regarding the child to the child’s independent child trafficking advocate (subject to any restrictions on disclosure).

234. *Subsection (7)* provides that the Secretary of State is required to lay a report before Parliament on the steps that the Secretary of State proposes to take in relation to independent child trafficking advocates under this section. The Secretary of State is required to report back to Parliament within 9 months of Thursday 26 March 2015, the day on which this Act was passed.

Section 49: Guidance about identifying and supporting victims

235. Section 49 requires guidance to be issued to public authorities and other persons as considered appropriate by the Secretary of State in relation to identifying and supporting victims. The guidance will cover the sorts of things which indicate that a person may be a victim of slavery or human trafficking; arrangements for the provision of assistance and support to persons who there are reasonable grounds to believe may be victims of slavery or human trafficking and any arrangements, including those made under section 50, for determining whether a person is to be treated as a victim of slavery or human trafficking. The purpose of the guidance is to further support effective identification of potential victims of slavery and human trafficking and to set out the assistance and support on offer to all slavery and trafficking victims, taking into account international requirements set out in the Convention on Action against Trafficking and the Directive on preventing and combating trafficking.

Section 50: Regulations about identifying and supporting victims

236. Section 50 enables the Secretary of State to make regulations about identification of and support for victims. The UK currently meets its international obligations on victim identification and support on a non-statutory basis, using administrative powers. The Home Office intends to pilot significant changes to the current process as a result of the recent review of its operation. This enabling power allows for the future possibility of the UK’s system regarding victim identification and support being set out in regulations. Under section 58(4)(g), the regulations would be subject to the affirmative procedure.

Section 51: Presumption about age

237. The purpose of this section is to reflect in this Act the presumption at Article 13(2) of the Directive on preventing and combating trafficking, that where the age of a person subject to trafficking in human beings is uncertain and there are reasonable grounds to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15. Convention on Action against Trafficking contains a similar provision at Article 10(3).

238. *Subsection (1)(a) and (b)* set out who the section applies to. *Subsection (2)* sets out the terms under which the presumption may be applied and allows for the presumption to be removed when the person’s age has been determined by a lawfully compliant age assessment or other determination.

239. *Subsection (3)* defines ‘relevant arrangements’ in terms of the assistance and support provided by public authorities as set out in statutory guidance under section 49 and in any regulations made under section 50.

240. *Subsection (4)* defines “local authority”.

Section 52: Duty to notify Secretary of State about suspected victims of slavery or human trafficking

241. *Subsection (1)* places a duty on specified public authorities to notify the Secretary of State, or if so provided by the Secretary of State in regulations, another public authority, where there are reasonable grounds to believe that a person may be a victim of slavery or human trafficking. There is a range of guidance already available to specified public authorities and wider front-line workers who may encounter potential victims of trafficking⁸. In addition, section 49(1)(a) places a duty on the Secretary of State to issue guidance to public authorities and other persons whom the Secretary of State considers appropriate as to the sorts of things that indicate that a person may be a victim of human trafficking or slavery.

242. This new duty to notify will mean that adult potential victims of trafficking who do not wish to be referred, assessed and supported through the current administrative process for doing so may still be referred for data purposes by specified public authorities, and that additional information on victims of other forms of modern slavery will also be captured.

243. *Subsection (2)* enables the Secretary of State by regulations to prescribe the information that must be included in a notification under *subsection (1)*. It is envisaged that, as a general rule, such information will include the nationality of the victim, type of exploitation experienced and the location and dates it took place.

244. *Subsection (3)* provides that identifying information about an adult potential victim of slavery or trafficking should only be included in a notification where the individual concerned has given their consent. In the case of child potential victims, this information can be provided without their consent.

245. *Subsection (4)* ensures that regulations made by the Secretary of State may provide that a public authority which includes information in a notification in accordance with the regulations does not breach any obligations of confidence owed by the public authority in relation to that information. This also ensures that the regulations which determine the information to be included in any notification under the duty do not require or authorise the disclosure of information which contravenes any other restriction on the disclosure of information (however imposed). This would ensure that existing safeguards protecting the disclosure of information are respected, such as those in the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000 and the Crime and Courts Act 2013.

246. *Subsection (5)* specifies those public authorities to whom this duty applies. This includes all those public authorities who have an existing role in identifying victims as designated first responders under the current process for identifying and supporting victims.

⁸<https://www.gov.uk/government/policies/reducing-and-preventing-crime--2/supporting-pages/human-trafficking>

247. *Subsection (6)* enables the Secretary of State to make regulations to add or remove public authorities subject to the duty, or amend an existing entry. Section 58(4)(h) provides that regulations removing a public authority for reasons other than the body ceasing to exist are subject to the affirmative resolution procedure. Regulations adding to the list of public authorities are subject to the negative resolution procedure.

Section 53: Overseas domestic workers

248. Visitors to the UK are able to bring their existing domestic staff with them when they visit the UK using an Overseas Domestic Workers visa; these arrangements also allow diplomats to bring foreign staff into the UK. *Subsections (1) to (4)* create a requirement that the Immigration Rules provide for a new type of leave to remain for those who have come to the UK on an Overseas Domestic Worker visa (an “Overseas Domestic Worker”) and are determined to be a victim of slavery or human trafficking. The leave would allow the victim to work as a domestic worker in a private household and to change employer; further conditions of such leave are to be set out in Immigration Rules. It is envisaged that the principal requirement of such leave will be a conclusive determination made by a public authority under regulations made under this Act or arrangements identified in Immigration Rules that the Overseas Domestic Worker is a victim of slavery or human trafficking. *Subsection (3)* provides that Immigration Rules may specify the maximum period for which a person may have leave to remain under this provision. *Subsection (3)* also provides that, if so specified, this period cannot be less than 6 months.

249. *Subsections (5) and (6)* require the Secretary of State to issue immigration guidance in relation to an Overseas Domestic Worker who may be a victim and to provide in such guidance that immigration enforcement action (removal and deportation) will not be taken during a specified period against an Overseas Domestic Worker for overstaying or breaching an employment-related condition of their leave where this resulted from matters relied on by the Overseas Domestic Worker as slavery or human trafficking. This means that if an Overseas Domestic Worker leaves their employer due to matters relating to the Overseas Domestic Worker’s slavery or human trafficking and comes forward, they can be confident that no immigration enforcement action will be taken for the period specified in the statutory guidance.

PART 6: TRANSPARENCY IN SUPPLY CHAINS ETC

Section 54: Transparency in supply chains etc

250. Section 54 requires a commercial organisation over a certain size to publish a slavery and human trafficking statement each year which sets out the steps it has taken to ensure there is no slavery or trafficking in its supply chains or its own business, or states that it has taken no such steps. Section 54 does not mandate what a slavery and human trafficking statement must contain (beyond the actual steps taken or a statement that the organisation has taken no steps) nor require commercial organisations to take any particular action beyond preparation of the annual statement.

251. *Subsection (1)* requires a commercial organisation within *subsection (2)* to prepare a slavery and human trafficking statement for each financial year of the organisation.

252. *Subsection (2)* applies the disclosure duty to commercial organisations that supply goods or services and have a minimum total turnover, which will be set in regulations. Regulations will also set out how an organisation's total turnover is to be determined (*subsection (3)*).

253. *Subsection (4)* explains that a slavery and human trafficking statement is a statement of the steps that an organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place either in its supply chains or its own business. Alternatively, it can be a statement that the organisation has taken no such steps.

254. *Subsection (5)* set out six areas of information that a slavery and human trafficking statement may include. This provision does not require businesses to take any steps in these areas, but it provides a clear indication as to what a business could include. The Government expects many businesses would choose to cover these areas, and this in turn would make statements easier to assess and compare.

255. *Subsection (6)* requires that statements are approved and signed at a senior level within the business. For companies, the provisions are modelled on the Companies Act 2006 and would require approval by the Board and a director's signature. This would ensure that these statements have appropriate support and approval from senior management, who are best placed to implement changes in the business.

256. *Subsection (7)* provides that an organisation must publish the slavery and human trafficking statement on its website, if it has one, and that there must be a prominent link to this statement on the homepage. If an organisation does not have a website, it must provide a copy of the slavery and human trafficking statement to anyone who requests one in writing, within 30 days of that request (*subsection (8)*).

257. *Subsection (9)* gives the Secretary of State the power to issue guidance about the duties imposed by this section, and to publish that guidance in a way the Secretary of State considers appropriate. Such guidance may include further provision about the kind of information which organisations may include in a slavery and human trafficking statement (*subsection (10)*).

258. *Subsection (11)* sets out the enforcement mechanism for the disclosure duty. If a commercial organisation fails to comply, the Secretary of State may bring civil proceedings in the High Court for an injunction requiring that organisation to comply (or, in Scotland, in the Court of Session for specific performance of a statutory duty).

259. *Subsection (12)* defines terms used in the section: 'commercial organisation', 'partnership' and 'slavery and human trafficking'. A commercial organisation is defined as a body corporate or partnership which carries on a business, or part of a business, in the UK.

PART 7: MISCELLANEOUS AND GENERAL

260. Sections 55 to 62 contain miscellaneous and general provisions. Section 55 requires the Secretary of State to publish a paper on the role of the Gangmasters Licensing Authority within a year of Royal Assent, and to consult on that paper. Section 56 defines certain terms used in the Act. Section 57 and Schedule 5 make minor and consequential amendments and allow the Secretary of State by regulations to make consequential provision (including by changing any other legislation). Section 58 concerns the parliamentary procedure to be adopted for the regulation making powers under the Act. Section 60 sets out that the Act will extend to England and Wales only, apart from sections relating to the Independent Anti-slavery Commissioner, maritime powers, Overseas Domestic Workers, transparency in supply chains etc and Part 7, which include UK provisions (and subject to some consequential amendments having the same extent as the provisions being amended). Section 61 deals with commencement.

COMMENCEMENT

261. There is a special procedure in relation to section 48(1) to (6) which is set out in the notes dealing with that section. The main provisions of the Act (Parts 1-6) will be brought into force by means of regulations made by the Secretary of State, with the exception of section 48(7) which will commence automatically two months after Royal Assent. Part 7 will commence on Royal Assent, except for section 57(1) and Schedule 5 (consequential amendments) which will be brought into force by regulations made by the Secretary of State.

HANSARD REFERENCES

262. The table below sets out the dates and Hansard references for each stage of the Bill's passage through Parliament.

Stage	Date	Hansard reference	Bill Print
House of Commons			
Introduction	10 June 2014	Vol. 582 Col. 413	<u>Bill on Introduction</u>
Second Reading	8 July 2014	Vol. 584 Cols. 166 – 260	
Committee	21 July 2014	Public Bill Committee- Modern Slavery Bill (Bill 008) 2014 - 2015	
	2 September 2014		
	4 September 2014		
	9 September 2014		
	11 September 2014		
	14 October 2014		
Report and Third Reading	4 November 2014	Vol. 587 Cols. 683- 795	<u>Bill as amended in Committee</u>

*These notes refer to the Modern Slavery Act 2015 (c. 30)
which received Royal Assent on 26 March 2015*

Stage	Date	Hansard reference	Bill Print
House of Lords			
Introduction	5 November 2014	Vol. 756 Col. 1620	<u>Bill as brought from the Commons</u>
Second Reading	17 November 2014	Vol. 757 Cols. 279-330	
Committee	1 December 2014	Vol. 757 Cols. 1114-1154, 1166-1183, 1196-1224	
	3 December 2014	Vol. 757 Cols. 1345-1383	
	8 December 2014	Vol. 757 Cols. 1610-1704	
	10 December 2014	Vol. 757 Cols. 1836-1912	
Report	23 February 2015	Vol. 759 Cols. 1408-1440, 1456-1480, 1496-1528	<u>Bill as amended in Committee</u>
	25 February 2015	Vol. 759 Cols. 1657-1715, 1731-1754	
Third Reading	4 March 2015	Vol. 760 Cols. 221-249	<u>Bill as amended at Report</u>
Ping Pong			
Commons Consideration of Lords Amendments	17 March 2015	Vol. 594 Cols. 645-694	<u>Lords Amendments</u>
Lords Consideration of Commons Amendments	Wednesday 25 March 2015	Vol. 760 Cols. 1426-1452	<u>Commons Disagreement and Amendments in Lieu</u>
Royal Assent	26 March 2015	Lords: Vol. 760 Cols. 1590 Commons: Vol. 594 Col. 1682	<u>Modern Slavery Act 2015</u>

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