

MODERN SLAVERY BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Modern Slavery Bill as introduced in the House of Commons on 10 June 2014. They have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Bill is in five parts. Part 1 consolidates the current 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 establishes the office of Anti-slavery Commissioner and sets out the functions of the Commissioner. Part 4 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 5 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 traffickers, and/or may not always be recognised as trafficking victims by those who come into contact with them. In particular, there may be particular social and cultural barriers to men identifying themselves as victims.

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”). 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”). The Directive adopts and expands upon the obligations and definitions contained in the Palermo Protocol and the Convention. The United Kingdom has opted into the Directive. In order to ensure full compliance with the obligations contained in the 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 has outlined its approach to modern slavery within the Serious and Organised Crime Strategy.¹ The Inter-Departmental Ministerial Group on Human Trafficking 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.

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

¹ <https://www.gov.uk/government/publications/serious-organised-crime-strategy>

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

of evidence sessions³ 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.⁴ 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.⁵ To ensure the Bill is also informed by international best practice and the challenges faced in key source and transit countries, Anthony Steen, Chair of the Human Trafficking Foundation, was also commissioned as the Home Secretary's special envoy to report back on a series of international visits.

TERRITORIAL EXTENT AND APPLICATION

9. The Bill extends to England and Wales only (subject to some consequential amendments having the same extent as the provisions being amended). This Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

COMMENTARY ON CLAUSES

Part 1: Offences

Clause 1: Slavery, servitude and forced or compulsory labour

10. *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. The offence has been supplemented by provisions that clarify that regard may be had to all the circumstances of the case, including any circumstances that make the victim more vulnerable than others (an example would be where the person is a child). This reflects the position in case law.

³ <https://www.gov.uk/government/news/home-secretary-begins-evidence-sessions-on-modern-slavery>

⁴ <http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/Establishing-Britain-as-a-world-leader-in-the-fight-against-modern-slavery.pdf>

⁵The 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>

11. *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.

12. *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. The purpose of this subsection, together with subsection (4), is to ensure that regard is had to all the circumstances which may make an individual more vulnerable, such as being a child.

13. *Subsection (4)* 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.

Clause 2: Human trafficking

14. This clause 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 4. Introducing one offence for all types of trafficking will make it administratively simpler for investigators and prosecutors to bring forward human trafficking

prosecutions.

15. *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.

16. *Subsection (2)* provides that for the purpose of a human trafficking offence the victim's consent to their travel is irrelevant.

17. *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 Council of Europe Convention and the associated Palermo Protocol.

18. *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.

19. *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.

20. *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.

Clause 3: Meaning of Exploitation

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

22. *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.

23. *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). Clause 3(3)(b)

ensures that equivalent conduct committed outside of England and Wales also comes within the definition even though for jurisdictional reasons it would not be an offence under English law.

24. *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.

25. *Subsection (5)* sets out that exploitation includes all other types of exploitation where a person is forced, threatened or deceived into providing a service of any kind, providing a person with benefits or enabling another to acquire benefits. This includes 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.

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

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

27. This clause provides that it is an offence to commit another offence with a view to committing a trafficking offence under clause 2. This separate offence ensures that the preparatory criminal conduct for 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 clause 5.

Clause 5: Penalties

28. This clause sets out the maximum penalties for the offences in clauses 1, 2 and 4.

29. *Subsection (1)* provides that the maximum sentence for a clause 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 are 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 existing slavery and human trafficking offences.

30. *Subsections (2) and (3)* provide for the maximum penalties for the clause 4 offence. In most instances the maximum is six months imprisonment (again increasing to 12 months when the increase in magistrates' courts sentencing powers are 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 clause 4 is one of kidnapping or false imprisonment, the maximum penalty is life imprisonment.

31. 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).

Clause 6: Sentencing

32. This clause adds the clause 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.

33. 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 clause 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.

34. 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.

Clause 7: Confiscation of assets

35. This clause 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 labour (clause 1) to the list of offences set out in that Schedule, and substitutes the human trafficking offence (clause 2) for predecessor offences.

36. 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).

37. 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.

38. 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 labour offence (clause 1) and the human trafficking offence (clause 2) in Schedule 2 to the 2002 Act, this clause 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.

Clause 8: Power to make slavery and trafficking reparation orders

39. This clause 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.

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

41. *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 clause 1, 2 or 4 offence.

42. *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.

43. *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.

44. *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.

45. *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.

Clause 9: Effect of slavery and trafficking reparation orders

46. *Subsection (1)* provides that a slavery and trafficking reparation order is an order that requires the defendant to pay compensation to his or her 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 clause 1, 2 or 4 that the defendant is convicted of or has taken into account for sentencing.

47. *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.

48. *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.

49. *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.

Clause 10: Slavery and trafficking reparation orders: supplementary provision

50. *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.

51. *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.

52. *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.

53. *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.

Clause 11: Forfeiture of land vehicle, ship or aircraft

54. This clause enables the court, when a person is convicted on indictment of a human trafficking offence under clause 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.

Clause 12: Detention of land vehicle, ship or aircraft

55. *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 clause 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 clause 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.

56. *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 clause 11 is made. Similar provisions are currently contained in section 60B of the Sexual Offences Act 2003.

Clause 13: Enforcement powers in relation to ships

57. Clause 13 provides additional powers for law enforcement (the police, National Crime Agency officers, immigration 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 Schedule 1. This is an issue because victims are in many cases trafficked illegally on vessels, and also may be the subject of slavery, servitude or forced 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.

58. *Subsection (1)* sets out the scenarios in which a 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 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.

59. *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 clause.

60. *Subsection (3)* provides that an enforcement officer must gain the authority of the Secretary of State prior to exercising the powers set out in this clause in relation to a UK vessel in the territorial waters of another state.

61. *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 in question consents to the

use of these powers.

62. *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 in UK territorial waters outside the landward limits of the territorial sea adjacent to England and Wales.

63. *Subsection (6)* sets out that 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 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.

64. *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.

65. *Subsection (8)* sets out the relevant definitions for this clause. An enforcement officer in this context means a police constable, a National Crime Agency agent (on whom powers of a constable are conferred), an immigration officer, a designated customs official or a member of Her Majesty's Armed Forces.

Schedule 1: Enforcement powers in relation to ships

66. *Paragraph 1* introduces the Schedule, which sets out the powers exercisable by the police, National Crime Agency, immigration officers, customs officials, or a relevant member of the Armed Forces ('enforcement officer') in relation to suspected slavery and human trafficking offences at sea (*clause 13*).

67. *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 *clause 13(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 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 an enforcement officer.

68. *Paragraph 3* provides a power to search a vessel and any person or object on that vessel, where 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 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 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.

69. *Paragraph 4* provides a power of arrest where an enforcement officer has reasonable grounds to suspect a slavery or human trafficking offence has been committed on the vessel under investigation. An enforcement officer can arrest without warrant anyone they have reasonable grounds to suspect may be guilty of a slavery or human trafficking offence. 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 officer has reasonable grounds to suspect are subject to legal privilege.

70. *Paragraph 5* provides for a Code of Practice for 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 an enforcement officer fails to comply with any provision of the Code it does not of itself render the 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.

71. *Paragraph 6* provides that 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 Schedule. The assistant may perform functions on behalf of the officer under their supervision.

72. *Paragraph 7* confirms that an enforcement officer may use reasonable force, where necessary, in order to perform the functions set out in this Schedule.

73. *Paragraph 8* provides that, when required, an enforcement officer must provide evidence of their authority.

74. *Paragraph 9* confirms that 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 officer acted in good faith and there were reasonable grounds for their actions.

75. *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 an enforcement officer in exercising the powers in this Schedule, or fails to comply with a requirement of 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 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.

76. *Sub-paragraph (3) of paragraph 10* sets out that a person convicted of this summary only offence will be liable to a fine.

Clause 14: Interpretation of Part 1

77. This clause defines terms used in Part 1.

PART 2: PREVENTION ORDERS

78. Part 2 makes provision (clauses 15 to 33) 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 orders⁶, 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.

Clause 15 and Schedule 2: Slavery and trafficking prevention orders on sentencing

79. This clause 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 clause 33(1) and means an offence listed in *Schedule 2* to the Bill. *Schedule 2* includes reference to the new offences in Part 1 of the Bill, the preceding offences in England and Wales and equivalent offences in Scotland and Northern Ireland. Since clause 15 extends only to England and Wales, the power conferred by this clause will be available only where a court in England and Wales deals with a

⁶ For example, see the orders available under the Sexual Offences Act 2003 (where the victims suffer sexual harm) or the Serious Crime Act 2007.

person for an offence under the law of England and 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 clause 16.

80. *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.

81. *Subsection (3)* defines “slavery or human trafficking offence” by reference to offences listed in Schedule 2.

82. *Subsection (4)* enables the Secretary of State to amend Schedule 2 by order. For example, this power could be used to add to Schedule 2 any new slavery or trafficking offences created by legislation in Scotland or Northern Ireland.

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

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

Clause 16: Slavery and trafficking prevention orders on application

85. This clause 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)*).

86. The court in accordance with *subsection (2)* must be satisfied that the defendant is a relevant offender (defined in clause 17) 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.

87. *Subsection (9)* provides that a STPO may be made in relation to a conviction and finding made before this clause comes into force.

Clause 17: Meaning of “relevant offender”

88. *Subsections (1) to (3)* define a relevant offender for the purposes of clause 16. 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 clause to convictions etc. include those taking place before its commencement.

Clause 18: Effect of slavery and trafficking prevention orders

89. *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)*).

90. *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.

Clause 19: Prohibitions on foreign travel

91. 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)*).

Clause 20: Variation, renewal and discharge

92. This clause makes provision to enable a person in respect of whom a STPO has been made or the police 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.

93. The person in respect of whom the order was made and the police 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)*).

Clause 21: Interim slavery and trafficking prevention orders

94. *Subsections (1) and (2)* provide for an interim STPO to be made where an application has been made for a STPO under clause 16 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.

95. An interim order must be made for a specified period and ceases to have effect once the main application has been determined (*subsection (6)*). An interim order may be varied, renewed or discharged (*subsection (7)*).

Clause 22: Appeals

96. 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 clause 16 and an interim STPO may be appealed to the Crown Court (*subsection (1)(c) and (2)*).

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

98. *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).

99. *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 clause 16 is treated as if it was an order of the magistrates' court for the purposes of a subsequent application to vary that order.

Clause 23: Slavery and trafficking risk orders

100. *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)*).

101. *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.

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

103. *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.

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

Clause 24: Effect of slavery and trafficking risk orders

105. *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)*).

106. *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.

Clause 25: Prohibitions on foreign travel

107. 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)*).

Clause 26: Variation, renewal and discharge

108. This clause makes provision to enable the person who is subject to a STRO, the police 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.

109. The person in respect of whom the order was made, the police and where relevant 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)*).

Clause 27: Interim slavery and trafficking risk orders

110. *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.

111. An interim order must be made for a specified period and ceases to have effect once the main application has been determined (*subsection (6)*). An interim order may be varied, renewed or discharged (*subsection (7)*).

Clause 28: Appeals

112. A person may appeal against the making of a STRO or an interim STRO, or the decision under clause 26 to vary, renew or discharge an order to the Crown Court (*subsection (1)*).

113. *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).

114. *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 clause 23 is treated as if it was an order of the magistrates' court for the purposes of a subsequent application to vary that order.

Clause 29: Offences

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

116. 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.

117. The maximum penalty for either offence is six months imprisonment or a fine of £5,000 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 clause.

118. 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).

Clause 30: Cross-border enforcement

119. *Subsection (1)* confers power on the Secretary of State to add to the list of orders in clause 29(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

120. The effect of this provision is to enable a breach of an order made in Scotland or Northern Ireland to be a criminal offence in England and Wales.

Clause 31: Rules of court

121. *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.

122. *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.

Clause 32: Guidance to chief officers of police etc

123. This clause 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.

Clause 33: Interpretation of Part 2

124. This clause defines the meaning of a number of expressions used in Part 2 of the Bill.

125. *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.

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

PART 3: THE ANTI-SLAVERY COMMISSIONER

Clause 34: The Anti-slavery Commissioner

127. *Subsection (1)* provides for the establishment of an Anti-slavery Commissioner (“the Commissioner” who will be an independent office holder appointed by the Secretary of State (in practice, the Home Secretary)). 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. The Commissioner will not be a corporation sole able to employ staff or enter into contracts, as such staffing and accommodation will be provided by the Secretary of State after consultation with the Commissioner (*subsection (4)*). *Subsection (5)* has the effect of disqualifying the Commissioner from also being a Member of Parliament and *subsection (6)* makes the Commissioner subject to the provisions of the Freedom of Information Act 2000.

Clause 35: General functions of Commissioner

128. *Subsection (1)* states that the Commissioner must encourage good practice in the prevention, detection, investigation and prosecution of the offences in sections 1, 2 and 4, and the identification of victims of those offences. In practice the Commissioner will therefore focus on the effectiveness of the law enforcement

response in England and Wales to encourage effective investigations leading to successful convictions of modern slavery cases.

129. *Subsection (2)* 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 on any matter which the Secretary of State has authorised the Commissioner to report on or which the current strategic plan states is a matter the Commissioner will report on (see *subsections (2)(a) and (3)*). Clause 35(2) and 36 mean that the Commissioner will report on an annual basis based on the strategic plan they agree with the Secretary of State. This clause means 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 in England and Wales. 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 abroad.

130. *Subsection (5)* sets out a power for the Secretary of State to remove from any report information that they think should not be included on the grounds of national security, individual safety or prejudice a criminal investigation or prosecution.

Clause 36: Strategic plans and annual reports

131. *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.

132. *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.

133. *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.

134. *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.

135. *Subsection (5)* provides that a strategic plan must set out: the Commissioner's priorities for the period of the plan; 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.

136. *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 focused on priority areas.

137. *Subsection (7)* 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 calendar year.

138. *Subsection (8)* provides that in producing an annual report the Commissioner must include an assessment of the extent to which they have 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 clause 35(2)(a) and a statement of the other activities they have undertaken in the year in carrying out their functions.

139. *Subsection (9)* requires the Secretary of State to lay any strategic plan they approve and any annual report they receive from the Commissioner before Parliament, as soon as reasonably practicable after approving the plan or receiving the report.

140. *Subsection (10)* gives the Secretary of State the power to remove information from the annual report before it is laid before Parliament. The removal of information will be where the Secretary of State thinks that including it may be against the interests of national security, might jeopardise an individual's safety or might prejudice a criminal investigation or prosecution.

Clause 37: Duty to co-operate with Commissioner

141. *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.

142. *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.

143. *Subsection (3)* and *subsection (4)* 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, but must not be in contravention of any other restrictions on the disclosure of information.

144. *Subsection (5)* defines "specified public authority" as a public authority which is specified in an order made by the Secretary of State for the purposes of this clause.

Clause 38: Restriction on exercise of functions

145. This clause 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 4: PROTECTION OF VICTIMS

Clause 39 and Schedule 3: Defence for slavery or trafficking victims compelled to commit an offence

146. Clause 39 provides for a defence for slavery or trafficking victims who have been compelled to commit an offence as a direct consequence of their trafficking or slavery situation. This is intended to provide further encouragement to victims to come forward and give evidence without the fear of being convicted of offences that they were compelled to commit. 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.

147. *Subsection (1)* provides that a person is not guilty of an offence if they commit an 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.

148. *Subsection (2)* 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) are age, sex, and any mental or physical illness.

149. *Subsection (3)* provides that a person may be compelled to commit an offence by another person or by the person's circumstances.

150. *Subsection (4)* 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.

151. *Subsection (5)* sets out that 'relevant exploitation' is exploitation which is attributable to the person being or having been a victim of trafficking.

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

153. *Subsection (7)* introduces Schedule 3, which sets out those offences to which

the defence 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.

154. *Subsection (8)* enables the Secretary of State to amend Schedule 3 through regulations.

Clause 40: Special measures for witnesses in criminal proceedings

155. Clause 40 extends certain legislative provisions relating to special measures to victims of the clause 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.

Clause 41: Child trafficking advocates

156. *Subsections (1) and (3)* provide the Secretary of State with a power to make arrangements so that specialist child trafficking advocates are available to support and represent children who there is reason to believe may be victims of trafficking. Such arrangements can include paying for such advocates. *Subsection (2)* requires the Secretary of State to have regard to the principle that such advocates should as far as practicable be wholly independent of those professionals responsible for making decisions about the child.

157. *Subsection (4)* enables the Secretary of State to make regulations about child trafficking advocates, including the circumstances and conditions under which a person may act as an advocate, arrangements for the approval of child trafficking advocates, their functions and any requirements that may be placed on public authorities to co-operate with and provide information to these advocates, to ensure the cooperation of the various agencies the advocate will need to work with when supporting the child.

158. *Subsection (5)* provides that the Secretary of State is required to lay a report before Parliament in relation to the steps that the Secretary of State proposes to take in relation to advocates for victims of child trafficking under these powers. The Secretary of State is required to report back to Parliament within 9 months after the day on which this Act is passed. This report will follow a trial of the child trafficking

advocates scheme, due to commence in summer 2014.

Clause 42: Guidance about identifying and supporting victims

159. Clause 42 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 is reason to believe may be victims of slavery or human trafficking and any arrangements for determining whether a person is to be treated as a victim of slavery or human trafficking; and the provision of assistance and support to individuals who there is reason to believe may be 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 European Convention on Action against Trafficking and the EU Directive on Trafficking of Human Beings.

Clause 43: Presumption of age

160. The purpose of this clause is to reflect in this Bill the presumption at Article 13(2) of the EU Directive on preventing and combating trafficking in human beings and protecting its victims that where the age of a person subject to trafficking in human beings is uncertain and there are reasons 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. The Council of Europe Convention on Action against Trafficking in Human Beings contains a similar provision at Article 10(3).

161. *Subsection (1)(a) and (b)* set out who the clause 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.

162. *Subsection (3)* defines 'relevant arrangements' in terms of the assistance and support provided by public authorities as set out in statutory guidance under clause 42.

163. *Subsection (4)* defines "local authority".

Clause 44: Duty to notify NCA about suspected victims of slavery or human trafficking

164. *Subsection (1)* places a duty on public authorities specified in regulations made by the Secretary of State to notify the NCA where there is reason 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 trafficking⁷. In addition, clause 42(1)(a) places a duty on the Secretary of State to issue guidance to such public authorities and other persons who 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.

165. It is envisaged that the specified public authorities will include police forces and local authorities. It is not intended that the specified public authorities should include non-governmental voluntary organisations. This duty will be different from the existing non-statutory National Referral Mechanism (“NRM”).

166. The NRM is a system for children and consenting adults to have their cases assessed by two Competent Authorities within the UK (within the NCA and the Home Office). Individuals can also gain access to support and accommodation once they have received a positive “reasonable grounds” assessment from a Competent Authority. Further advice regarding the NRM process is available on the NCA website⁸. Currently this is the key source of data on trafficking victims in the UK, but many cases are not reported. In 2012, 1,186 individuals were referred to the NRM, but a further 1,477 were identified through the UK Human Trafficking Centre’s 2012 Strategic Assessment. This new duty to report will mean that adult potential victims of trafficking who do not wish to be referred, assessed and supported through the NRM process will still be referred through for data purposes by specified public authorities, and that additional information on victims of other forms of modern slavery will also be captured.

167. *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.

168. *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.

169. *Subsection (4)* provides that regulations made under this section cannot require the disclosure of information in contravention of the Data Protection Act 1998.

170. *Subsection (5)* notes that the public authorities to whom this duty applies will be specified in regulations made by the Secretary of State.

Part 5: Final provisions

⁷<https://www.gov.uk/government/policies/reducing-and-preventing-crime--2/supporting-pages/human-trafficking>

⁸ <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

171. Clauses 45 to 50 contain general provisions. Clause 45 defines certain terms used in the Bill. Clause 46 and Schedule 4 make minor and consequential amendments and allow the Secretary of State by regulations to make consequential provision (including by changing any other legislation). Clause 47 concerns the parliamentary procedure to be adopted for the regulation making powers under the Bill. Clause 49 sets out that Bill will extend to England and Wales only (subject to some consequential amendments having the same extent as the provisions being amended). Clause 50 deals with commencement. The main provisions of the Bill (Parts 1-4) will be brought into force by means of regulations made by the Secretary of State, with the exception of clause 41(5) which will commence automatically two months after Royal Assent.

FINANCIAL EFFECTS OF THE BILL

172. The average annual net cost of the Bill is expected to be around £0.5m.

173. There are only four measures in the Bill which are expected to incur non-negligible costs. All costs and benefits can be attributed to the public sector.

174. The Anti-slavery Commissioner will have an annual budget of up to £500,000 provided by the Home Office. This will provide for the Commissioner's salary and the employment of a small team of support staff. It will enable the Commissioner to travel, conduct research and produce reports, as the role requires.

175. The introduction of Slavery and Trafficking Risk and Prevention Orders is expected to create costs of around £48,000 per year for law enforcement and the criminal justice system. However, by preventing modern slavery offences from taking place, these orders are expected to create savings for the criminal justice system. These have been estimated at around £180,000, creating an overall net benefit per year of £130,000.

176. Extending the maximum sentence available for slavery and trafficking offences to life imprisonment is expected to create an average annual cost of £76,000 for the criminal justice system.

177. Introducing a statutory duty for specified public bodies to notify the National Crime Agency about potential cases of modern slavery is expected to create costs of £36,000 per year.

178. The £0.5m per year estimate (and the calculations in the Impact Assessment) excludes the child advocates scheme, as the Bill provides an enabling power, with the detail of the scheme to be developed after the results of trials are known. However, the proposed child advocates scheme could cost between £2m and £5m per year.

SUMMARY OF IMPACT ASSESSMENT

179. Overall, the Government expects that the benefits of this Bill will substantially outweigh the costs.

180. The main social and economic benefit of this Bill – reducing modern slavery – is difficult to quantify. However, the social and economic cost of human trafficking for sexual exploitation alone has been estimated to be £890m per year (source: Home Office, Understanding Organised Crime, 2013).

181. The total cost of the Bill, spread over ten years, is expected to be £3.93m. This means that the Bill would have to prevent 12 cases of slavery over ten years to be cost neutral.

182. The Bill will be accompanied by an impact assessment which sets out these costs and benefits in more detail. The impact assessment concludes that the benefits of the Bill are expected to substantially outweigh the costs. All costs can be attributed to the public sector and there are no impacts on businesses or non-governmental organisations.

EUROPEAN CONVENTION ON HUMAN RIGHTS

183. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Secretary of State for the Home Department, the Rt. Hon. Theresa May MP, has made the following statement: "In my view the provisions of the Modern Slavery Bill are compatible with the Convention rights." The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights; the memorandum is available on the Bill webpage of the Home Office website.

MODERN SLAVERY BILL

EXPLANATORY NOTES

These notes refer to the Modern Slavery Bill as introduced in the House of Commons on 10 June 2014 [Bill 8].

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