

MODERN SLAVERY ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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.

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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.

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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.