

MODERN SLAVERY BILL

DELEGATED POWERS MEMORANDUM

MEMORANDUM BY THE HOME OFFICE

Introduction

1. This Memorandum identifies the provisions of the Modern Slavery Bill which confer powers to make delegated legislation, and explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.
2. The Bill is in 7 Parts:
 - Part 1 makes provision in respect of offences of slavery, servitude and forced or compulsory labour and human trafficking (no delegated powers arise in that Part);
 - Part 2 makes provision for slavery and trafficking prevention orders and risk orders;
 - Part 3 makes provision for maritime enforcement;
 - Part 4 makes provision for an Independent Anti-slavery Commissioner;
 - Part 5 makes provision for the protection of victims;
 - Part 6 makes provision for transparency in supply chains;
 - Part 7 makes consequential and general provision, including commencement powers and provisions in respect of the parliamentary procedure to be applied to regulations made under the Bill (clause 54).

PART 2: SLAVERY AND TRAFFICKING PREVENTION ORDERS AND RISK ORDERS

Clause 14(4): Power to amend Schedule 1

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

3. Part 2 make provision for slavery and trafficking prevention orders and slavery and trafficking risk orders. A prevention order may be made in respect of a person by the courts on that person's conviction for a slavery or human trafficking offence (defined in Schedule 1), and either order may be made on the application of the chief officer of police (usually for the area in which the person to whom the application relates resides), an immigration officer or the Director General of the National Crime Agency ("the NCA"). The court may make an order if it is satisfied that there is a risk that the person may commit a slavery or human trafficking offence and it is necessary to make the order to protect persons from harm likely to occur if the person committed such an offence.

4. Clause 14(4) enables the Secretary of State to amend the list of slavery and trafficking offences in Schedule 1 by regulations. It is considered appropriate to confer this power as it may be necessary, from time to time, to revise the list of offences in Schedule 1, for example,

to add any new slavery or trafficking offences created by legislation in Scotland or Northern Ireland. Given that any such regulations would amend primary legislation, it is considered that the affirmative resolution procedure provides the appropriate level of Parliamentary scrutiny.

Clause 16(6)(a): Power to make rules of court to prescribe a deadline for service of a notice

Power conferred on: Civil Procedure Rules Committee (under section 2 of the Civil Procedure Act 1997) and the Lord Chief Justice (under sections 144 to 145 of the Magistrates' Courts Act 1980)

Power exercisable by: Rules made by Statutory Instrument

Parliamentary procedure: Negative resolution

5. Clause 16 defines who is a “relevant offender” against whom a slavery and trafficking prevention order may be made on application under clause 15. This includes (pursuant to clause 16(3)) a person who under the law of a country outside the United Kingdom has been convicted etc of an “equivalent offence”. Under clause 16(4) an equivalent offence is an act that constituted an offence under the law of the country concerned (subsection (4)(a)) and would have constituted a slavery or human trafficking offence under the law of England and Wales had it been done in England and Wales, by a UK national or as regards the UK (subsection (4)(b)).

6. Clause 16(6) provides that where an application for a slavery and trafficking prevention order is made on the basis that the defendant is a relevant offender as described in subsection (3), the condition in subsection (4)(b) is taken to be met unless, not later than provided by rules of court, the defendant serves a notice on the applicant disputing that contention, providing grounds for that view and requiring the applicant to prove it (or the court allows the defendant to require such proof without service of a notice). Clause 16(6) therefore confers a power to make rules of court to prescribe the deadline within which the notice must be served. It is appropriate that procedural matters of this nature are dealt with in rules of court, the procedure for which is well established.

Clause 20(8): Power to make rules of court in relation to applications to the Crown Court to vary, renew or discharge a slavery or trafficking prevention order

Power conferred on: Civil Procedure Rules Committee (under section 2 of the Civil Procedure Act 1997) and Criminal Procedure Rules Committee (under section 69 of the Courts Act 2003)

Power exercisable by: Rules made by Statutory Instrument

Parliamentary procedure: Negative resolution

7. Clause 20 allows for a slavery or trafficking prevention order to be varied, renewed or discharged on application. Subsection (8) provides for such applications to be made, where the appropriate court is the Crown Court, in accordance with rules of court (otherwise such applications are to be made by complaint). That subsection therefore confers a power to make

rules of court in relation to the procedure for making variation, renewal and discharge applications. It is appropriate that these procedural matters are dealt with in rules of court, the procedure for which is well established.

Clause 30(5): Power to amend clause 30(3)(b)

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

8. Clause 30 makes it an offence for a person to do anything prohibited by a slavery or trafficking prevention order or risk order (or an interim order). This includes a failure to comply with a requirement imposed under clause 18(4) or 25(4) (to surrender a passport in cases where a person is prohibited from travelling to any country outside the United Kingdom) or a requirement imposed under clause 19(1), 21(6), 26(1) or 28(6) (requirement to provide name and address). Subsection (3)(b) provides that a person guilty of an offence is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding £5,000 or both. Subsection (5) confers power on the Secretary of State to make regulations to increase or remove the limit on the fine prescribed in subsection (3)(b). The purpose of this power is to enable the level of the maximum fine to be increased in line with provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to remove the £5,000 upper limit on fines imposed in the magistrates' courts and to provide a power to amend the upper limits on fines with existing maxima lower than £5,000.

9. The effect of the power is to ensure that the maximum fine available on summary conviction for this offence may be aligned with the maximum fine available in relation to other such convictions, in respect of which there is existing statutory provision. Therefore, the Government considers that the negative resolution procedure provides the appropriate level of Parliamentary scrutiny.

Clause 31(1): Power to amend clause 30(1)

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

10. Clause 30 makes it an offence for a person to do anything prohibited by an order. This offence relates to anything done in England and Wales in respect of an order made in the same territory. The Government understands that the administrations in Scotland and Northern Ireland intend to introduce orders in their respective territories which will be equivalent or similar to the orders in Part 2 ("relevant UK order"). Clause 31(1) confers power to make regulations which amend clause 30(1) by adding to (or removing from) the list of orders in clause 30(1) a relevant UK order. This would have the effect of making it an offence in England and Wales to do an act prohibited by an order made in Scotland or Northern Ireland. The Government would make provision to this effect in the Bill but cannot

do so until the equivalent or similar orders have been enacted in Scotland and Northern Ireland.

11. The Government recognises that the matters which may be prescribed by these regulations will have the effect of broadening the offence in clause 30(1). Therefore, the Government considers that the affirmative resolution procedure provides the appropriate level of Parliamentary scrutiny.

Clause 32: Power to make rules of court

Power conferred on: *Civil Procedure Rules Committee (under section 2 of the Civil Procedure Act 1997) and the Lord Chief Justice (under sections 144 to 145 of the Magistrates' Courts Act 1980)*

Power exercisable by: *Rules made by statutory instrument*

Parliamentary procedure: *Negative resolution*

12. Clause 32 enables rules of court to be made in relation to applications for an order under clause 15 or 23. These rules enable an application in relation to a person aged 18 years or over to be made to the youth court if an application has been made to it in relation to a person aged under 18 years and the court thinks that it would be in the interests of justice to hear the matters together. Rules of court may also provide for it to retain matters arising from an application under Part 2 of this Bill when the person concerned attains the age of 18 years. It is appropriate that these procedural matters are dealt with in rules of court, the procedure for which is well established.

Clause 33(1): Duty to issue guidance in relation to the exercise of powers under Part 2

Power conferred on: *Secretary of State*

Power exercisable by: *Statutory guidance*

Parliamentary procedure: *None*

13. Clause 33(1) imposes a duty on the Secretary of State to issue guidance to chief officers, immigration officers and the Director General of the NCA in relation to the exercise of their powers in respect of the new orders. A chief officer may apply to the court for an order to be made, varied, discharged or renewed; and an immigration officer or the Director General may apply to the court for an order to be made. The guidance will set out matters which the Secretary of State considers will assist chief officers, immigration officers and the Director General in their exercise of these powers but there is no provision to the effect that they are required to have regard to it.

14. Such guidance is not subject to any parliamentary procedure on the grounds that it will be prepared in consultation with practitioners, and the persons to whom the guidance is issued. A similar duty to issue guidance is contained in sections 103J(1) (sexual harm prevention orders) and 122J(1) (sexual risk orders) of the Sexual Offences Act 2003 as inserted by Schedule 5 to the Anti-social Behaviour, Crime and Policing Act 2014.

PART 3: MARITIME ENFORCEMENT

Schedule 2, Part 1, paragraph 5: Power to issue and revise code of practice (England and Wales)

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution or None

15. Schedule 2, Part 1 sets out new enforcement powers in relation to ships that will (under clause 35) be exercisable by enforcement officers, including constables, immigration officers and designated customs officials. Paragraph 5 requires the Secretary of State to prepare a code governing the practice to be followed by enforcement officers when arresting a person under the new power of arrest in Schedule 2, Part 1, Para 4. In particular, the code must provide guidance as to the information to be given to the person at the time of arrest.

16. There is already a code of practice governing the exercise by police officers of statutory powers to arrest under section 66(1)(a)(iii) of the Police and Criminal Evidence Act 1984 (known as PACE Code G). Since section 30 of the Police Act 1996 confines the application of police powers to the adjacent UK waters (the 12 nautical mile limit), it follows that the application of the existing PACE codes are similarly confined; hence the need to create a new code governing arrest under Schedule 1, which will apply further afield in the areas stipulated in clause 35(1).

17. Broadly speaking, the approach taken to framing this power has been to achieve parity with the existing model in section 67 of PACE 1984. As such, the procedure for the initial regulations bringing the code of practice into operation is the affirmative resolution procedure. Where the code is subsequently revised, there is a choice of parliamentary procedure for bringing the revision of the code into operation; either the affirmative resolution procedure or no parliamentary procedure.

18. This follows the approach in section 67(7A) of PACE 1984, which was substituted by section 11(1) of the Criminal Justice Act 2003. When section 11(1) of the Criminal Justice Act 2003 was debated in Parliament, the Home Office gave an undertaking that (i) the no parliamentary procedure route would only be used for revisions of PACE codes in confined circumstances where it was appropriate to dispense with closer parliamentary scrutiny because of the minor or non-contentious nature of the revisions concerned; and (b) the Department would treat itself as bound by the advice of the Home Affairs Select Committee as to the appropriate procedure (Lords Hansard, 7 July 2003, col 45). The intention is that this undertaking will apply equally to the power in paragraph 5 of Schedule 2.

19. In light of the fact that the approach is to mirror the existing model in section 67 of PACE 1984 and to apply the same undertaking as that given in respect of section 67(7A), the Government considers that approach taken in Schedule 2 provides the appropriate degree of parliamentary scrutiny.

Schedule 2, Part 3, paragraph 23: Power to issue and revise code of practice (Northern Ireland)

Power conferred on: Department of Justice in Northern Ireland

Power exercisable by: Order made by statutory rule

Parliamentary procedure: Negative resolution

20. Part 3 of Schedule 2 sets out new enforcement powers in relation to ships that will be exercisable in relation to Northern Ireland by Northern Ireland constables and enforcement officers. Paragraph 23 requires the Department of Justice in Northern Ireland to prepare and issue a code in respect of the practice to be followed by Northern Ireland constables and enforcement officers when arresting a person under the new power of arrest in paragraph 22. In particular, the code must provide guidance on the information to be given to the person at the time of arrest.

21. PACE Northern Ireland Code of Practice G, which deals with the statutory power of arrest by police officers, applies within Northern Ireland and its territorial waters. The code made under paragraph 23 will apply when Northern Ireland constables make an arrest, in connection with a listed offence of slavery, servitude and forced or compulsory labour or human trafficking in Northern Ireland waters, foreign waters or international waters. The procedure for the order which brings into force the code or a revision to the code is the negative resolution procedure. This is consistent with the procedure applied to similar codes of practice in Northern Ireland made under the Police and Criminal Evidence (Northern Ireland) Order 1989, and is therefore considered appropriate in this analogous context.

PART 4: THE INDEPENDENT ANTI-SLAVERY COMMISSIONER

Clause 43(5): Power to specify public authorities in relation to the duty to co-operate with the Independent Anti-Slavery Commissioner

Power conferred on: Secretary of State, Scottish Ministers and Department of Justice in Northern Ireland

Power exercisable by: Regulations made by Statutory Instrument and, in relation to the power conferred on the Department of Justice in Northern Ireland, by statutory rule.

Parliamentary Procedure: Negative resolution and, in relation to the power conferred on the Scottish Ministers, negative procedure.

22. Clause 43 provides that the Independent Anti-slavery 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. A specified public authority, where it is reasonably practicable to do so, must comply with any request for co-operation made of it by the Commissioner. Subsection (5) provides that "specified public authority" means a public authority specified in or of a description specified in regulations. Subsection (6) specifies who can exercise the power to make regulations for the purposes of this section (the Secretary of State, the Scottish Ministers or the Department of Justice in

Northern Ireland) . The power of the Scottish Ministers under this section is limited to public authorities which have only functions which are exercisable in or as regards Scotland. Similarly, the power conferred on the Department of Justice in Northern Ireland is limited to public authorities which have functions which are exercisable in or as regards Northern Ireland. The Secretary of State's power is limited to any other public authority and therefore includes public authorities in England and Wales, together with cross-border authorities. The delegated powers conferred on the Secretary of State and the devolved administrations reflect the UK wide remit of the Commissioner and respect the devolution settlements.

23 The purpose of this provision is to ensure that the Commissioner is able to properly fulfil its functions. The clause does not apply to all public authorities, but rather to those specified by regulations. Many public authorities will have no involvement in investigating modern slavery offence or contact with victims, so it would not be appropriate for the power to be cast too wide. Rather, the main bodies that it is anticipated will be specified will be those in law enforcement, local authorities and related fields. It is considered appropriate to confer delegated powers to allow for flexibility regarding the authorities to be specified. The regulations will be subject to the negative resolution procedure (or equivalent procedure in the devolved administrations) by virtue of clause 54(2). As the principle of the duty to co-operate is established on the face of the Bill, it is considered that the negative resolution procedure (or equivalent in Scotland) provides the appropriate level of scrutiny as regards to regulations specifying the public authorities subject to a duty to co-operate with the Commissioner.

PART 5: PROTECTION OF VICTIMS

Clause 45(8): Defence for slavery or trafficking victims compelled to commit an offence

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution

24. Clause 45 provides for a defence for slavery or trafficking victims compelled to commit an offence. The defence applies generally to offences committed by slavery or trafficking victims. However, it does not apply where a victim commits an offence listed in Schedule 3 to the Bill. The offences contained in that Schedule are, in the main, serious sexual and violent offences. Whilst it is considered that the list is currently drawn in the right place, there may be reason to amend the list from time to time, for example in the light of experience of its practical operation or where new offences are created or repealed. Accordingly, clause 45(8) enables the Secretary of State to amend Schedule 3.

25. The decision about whether to include an offence in the list in Schedule 3 (and therefore not make that defence available to a victim of trafficking) is a difficult one that requires careful consideration of the balance between the public interest as a whole and the protection of individual victims of slavery or trafficking. Given that and the fact that the power allows for amendment of primary legislation, it is considered that the affirmative resolution procedure provides the appropriate level of scrutiny.

Clause 47(4): Power to make regulations about child trafficking advocates

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

26. Clause 47 places a duty on the Secretary of State to make such arrangements as she considers reasonable to put in place a new scheme for advocates for child victims of human trafficking, independent as far as practicable from any person responsible for making decisions about that child to be available to represent and support them. This duty is subject to the commencement provision set out in clause 57(5) to (7) (which is analysed later in this memorandum). Subsection (4) provides that the Secretary of State may make regulations about child trafficking advocates and in particular may make provision about the circumstances in which a person may act as an advocate, their appointment and approval, their functions and any requirements on public authorities to co-operate with and provide information to advocates. The Home Office is running a 12 month trial of child trafficking advocates and it is appropriate to set out more information about any framework to be put in place in secondary legislation so that it can be informed by the outcome of that trial. In view of this, it is not appropriate to include further detail about the framework of any scheme on the face of legislation. However, it is recognised that this is an area where stakeholders and parliamentarians will have a strong interest in how any proposals develop and that the detail of any regulations will be more than simply technical and operational, potentially setting out the scope of the scheme, the nature of the advocate role and placing obligations on other public authorities to co-operate and provide information. This provision is therefore subject to the affirmative resolution procedure which is considered to provide the appropriate level of scrutiny.

Clause 48(1): Duty to issue guidance relating to slavery and human trafficking victims

Power conferred on: Secretary of State

Power exercisable by: Statutory guidance

Parliamentary procedure: None

27. Clause 48(1) provides that the Secretary of State must issue guidance to specified public authorities on the sorts of things that may indicate that there is reason to believe that a person may be a victim of slavery or human trafficking, any arrangements for determining whether a person is to be treated as a victim and arrangements for the provision of assistance and support to such persons. Such guidance is not subject to any parliamentary procedure on the grounds that it will be prepared in consultation with practitioners, and the specified public authorities will not be under a statutory duty to have regard to it.

Clause 50(1) and (5) – Duty to notify NCA about suspected victims of slavery or human trafficking: specified public authorities

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution

28. Clause 50 concerns the disclosure of information to the NCA. Clause 50(1) provides that public authorities specified in regulations must notify the National Crime Agency if they have reason to believe that a person may be a victim of slavery or human trafficking and allows the Secretary of State to specify those public authorities that must provide the NCA with certain information about persons whom they have reason to believe may be victims of trafficking or slavery. Subsection (5) provides that “specified public authority” means a public authority specified in regulations made by the Secretary of State for the purposes of this section. It is considered appropriate to include this in secondary legislation to allow for flexibility about the public authorities that may be specified.

29. The aim is to ensure that the NCA receives all the information it needs to build up a full intelligence picture about trafficking and slavery offences. The clause does not apply to all public authorities, but rather to those specified by the Secretary of State. Many public authorities will have no involvement in investigating modern slavery offences or specialist knowledge of the likely indicators of those offences so it would not be appropriate for the obligation to make a notification to be cast too wide. It is intended that those public authorities in law enforcement, local government and related fields who currently act as first responders for referrals of those who there is reason to believe may be victims of human trafficking into the National Referral Mechanism (“NRM”) should be the bodies specified, with the NCA notification and NRM referral processes working in tandem. The nature of the notification process will not place a significant additional burden on the specified public authorities, the principle of the disclosure duty is established on the face of the Bill and all specified public authorities will be bound by the safeguards in relation to disclosure of individuals’ personal data at subsections (3) and (4). It is therefore considered that the level of scrutiny (negative resolution procedure) is appropriate.

Clause 50(2) – Duty to notify NCA about suspected victims of slavery or human trafficking: specified public authorities: specified information

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution

30. Clause 50(2) provides that the Secretary of State may by regulations make provision about the type of information that must be included in a notification to the NCA. These regulations will provide necessary detail about the operation of the provision, allowing the Secretary of State to specify in detail the information required and to alter that requirement if considered operationally necessary. Subsection (3) provides that the regulations must include provision to the effect that any notification relating to an adult may not include information that identifies the person or enables them to be identified unless they consent to its inclusion. Subsection (4) provides for the further safeguard that the regulations may not require information to be included if its inclusion would result in a disclosure which contravenes the Data Protection Act 1998. These provisions ensure that any identifying information in the regulations cannot be included in a notification without the consent of an adult and that the information required to be included will be what is reasonable and necessary in terms of the purpose for which the data is being shared. As the principle of the disclosure duty is

established on the face of the Bill, it is considered that the negative procedure provides the appropriate level of scrutiny for regulations specifying the information that must be provided pursuant to that duty.

PART 6: TRANSPARENCY IN SUPPLY CHAINS ETC

Clause 51(2)(b): Power to prescribe the minimum level of total turnover in relation to commercial organisations to be subject to the duty to prepare a slavery and human trafficking statement

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

31. Clause 51 places a duty on commercial organisations within subsection (2) of the clause to prepare (and publish on their website) a slavery and human trafficking statement each financial year which sets out the steps that the organisation has taken that year to ensure that slavery and human trafficking is not taking place in any of its supply chains or any part of its own business (or sets out that the organisation has taken no such steps). A commercial organisation is within subsection (2) if it supplies goods and services and has a total turnover of not less than an amount prescribed by regulations made by the Secretary of State. It is considered appropriate to set out the turnover threshold in secondary legislation as the Government will be consulting on the appropriate level of the turnover threshold before finalising it and also to retain the flexibility for the threshold to be revised from time to time in the future in the light of the experience of its impact.

32. The Government recognises that the turnover threshold to be prescribed by these regulations will determine the scope of the application of the new duty in subsection (1) to commercial organisations. Given that, the Government considers that the affirmative resolution procedure provides the appropriate level of Parliamentary scrutiny.

Clause 51(3): Power to make regulations in relation to determining an organisation's total turnover

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

33. The effect of clause 51(3) is that, for the purposes of the turnover threshold in subsection (2)(b), the total turnover of a commercial organisation is to be determined in accordance with regulations made by the Secretary of State. This power allows the Secretary of State to set out in regulations how a commercial organisation's total turnover is to be calculated. It is envisaged that such regulations will, for example, set out what monies are to be treated as an organisation's turnover and make clear that an organisation's total turnover includes turnover both within and outside the United Kingdom. Such detailed matters and

typically left to secondary legislation. The negative resolution procedure is considered to provide the appropriate level of Parliamentary scrutiny, given the nature of the regulations in question. There is a similar power in section 28(2) of the Enterprise Act 2002 to set out in secondary legislation how turnover is to be determined; that power is also subject to the negative procedure.

Clause 51(7): Power to issue guidance in relation to the duties imposed on commercial organisations by clause 51

Power conferred on: Secretary of State

Power exercisable by: Statutory guidance

Parliamentary procedure: None

34. Clause 51(7) provides the Secretary of State with the power to issue guidance about the duties imposed on commercial organisations by that clause and to publish any such guidance. It is envisaged that such guidance will, in particular (see subsection (8)) cover the kinds of information that commercial organisations may include in a slavery and human trafficking statement. There is no parliamentary procedure for the issue of such guidance as it will be worked up in consultation with relevant stakeholders, will not conflict with the statutory provisions in clause 51 and those preparing slavery and human trafficking statements will not be required to follow the guidance.

PART 7: FINAL PROVISIONS

Clause 53(2): Power to make consequential provision

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution unless the order amends or repeals primary legislation in which case affirmative resolution

35. Clause 53(2) confers a power on the Secretary of State to make such provision as is considered appropriate in consequence of this Bill. The powers conferred by this clause are wide. But there are various precedents for such provisions including section 115 of the Protection of Freedoms Act 2012 and section 59 of the Crime and Courts Act 2013. The Department recognises that there are a number of consequential changes that are required to be made particularly flowing from the consolidation in Part 1 of the Bill of the existing sexual trafficking offence in the Sexual Offences Act 2003 and the trafficking offence in the Asylum and Immigration (Treat of Claimants, etc) Act 2004. It is possible that not all such consequential changes have been identified. As such it is considered prudent for the Bill to contain a power to deal with these in secondary legislation. If an order under this clause does not amend primary legislation it will be subject to the negative resolution procedure (by virtue of clause 54(2)). If an order under this clause does amend primary legislation it will be subject to the affirmative resolution procedure (by virtue of clause 54(3) and (4)(f)). It is considered that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

Clause 57(1): Commencement power

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: None, except in relation to regulations commencing any part of clauses 47(1) to (5) where a special procedure applies

36. Clause 57(1) contains a standard power for the Secretary of State to bring provisions of the Bill into force by regulations. As usual with commencement powers, regulations made under this clause are not generally subject to any parliamentary procedure (see clause 54(2)(a)). Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

37. Clause 57(5) to (7) provides for a special procedure for commencement of clause 47(1) to (5) (child trafficking advocates). Under the procedure, the Secretary of State may not make regulations to commence those provisions (or any part of them) until at least nine months after Royal Assent. At the end of that period, the Secretary of State will be under a duty to commence those provisions (or any part of them) if a resolution is passed by each House of Parliament that they should come into force (but may not make such commencement regulations otherwise). Regulations pursuant to this procedure must be made within one month of the resolutions being passed (or, if made on different days, the passing of the later resolution). The reason for this special procedure is that child trafficking advocates are currently being trialled. The commencement provision allows the trials to finish and be evaluated, and the Secretary of State to report to Parliament (as required by clause 47(6)), before Parliament takes a decision on whether the child trafficking advocates provision should be commenced.

Clause 57(8): Power to make saving, transitory or transitional provision

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: None

38. Clause 57(8) confers power on the Secretary of State to make such saving, transitory or transitional provision as the Secretary of State considers appropriate in connection with the coming into force of the Bill. This is a standard power to enable the changes made by the Bill to be implemented in an orderly manner. Such powers are often included as part of the power to make commencement orders (for example, section 116 of the Protection of Freedoms Act 2012) and, as such, are not subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them.

Home Office
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